

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THOMAS S. RICHEY, as Receiver for)	
WESTON RUTLEDGE FINANCIAL)	
SERVICES, INC., ZAMINDARI)	
CAPITAL, LLC, LEXINGTON)	
INTERNATIONAL FUND, LLC, a/k/a)	
LEXINGTON INTERNATIONAL FUND,)	
INC., and OXFORD ADAMS CAPITAL,)	
LLC,)	
)	CIVIL ACTION FILE
Plaintiff,)	NO. 1:08-CV-1364
)	
v.)	
)	
ZAHRA GHODS; <i>et al.</i> ,)	
)	
Defendants.)	

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO DEFENDANT PURYA GHRABETI

Plaintiff Thomas S. Richey, as Receiver for Weston Rutledge Financial Services, Inc., Zamindari Capital, LLC, Lexington International Fund, LLC, a/k/a Lexington International Fund, Inc., and Oxford Adams Capital, LLC (collectively the “Receivership Companies”) (the “Receiver”), pursuant to F.R.Civ. P. 56 and Local Rule 56.1, respectfully submits his Motion for Partial Summary Judgment as to Defendant Purya Ghrabeti (“Ghrabeti”), showing the Court as follows:

1. The Receiver filed this action against on April 8, 2008 against

multiple Defendants, including Mr. Ghrabeti, who received the most funds from the Receivership Companies.

2. The Receivership Companies were operated as a Ponzi scheme in which there were never sufficient funds to cover the obligations of the companies; in order to make payouts to investors of either “principal” or “interest,” the Receivership Companies had to use funds from new investors. The money paid out to Receivership Company investors was paid from funds deposited by other Receivership Company investors, rather than from any actual earnings by the Receivership Companies or the investors on any investments.

3. Defendant Purya Ghrabeti received at least \$265,913 of funds belonging to the Receivership Companies. Ghrabeti had not invested any funds with nor lent any funds to Zahra Ghods, or companies, or the Receivership Companies and did not provide consideration of any value to the Receivership Companies in exchange for these funds.

4. The Receivership Companies were operated as Ponzi companies, were insolvent and were rendered more insolvent when the funds were transferred to Mr. Ghrabeti.

5. Ghrabeti admitted all facts necessary to prove his liability on the claims. The Receiver served Requests for Admission on Ghrabeti who failed to

respond. The matters in the unanswered Requests are conclusively established, and they, along with the other evidence in this case, demonstrate that there is no genuine issue of material fact left to be decided. Thus, the Receiver is entitled to judgment as a matter of law.

6. The Receiver seeks Summary Judgment on Count I (Fraudulent Transfer), Count VIII (Unjust Enrichment and Constructive Trust), Count IX (Money Had and Received), and Count XI (Attorneys' Fees).¹

7. Count I (Fraudulent Transfer): Transfers of funds to individuals involved in a Ponzi scheme are fraudulent transfers under the Uniform Fraudulent Transfer Act. Thus, as a matter of law, Ghrabeti, who is the recipient of fraudulent transfers, is liable for the funds as a matter of law.

8. Count VIII (Unjust Enrichment and Constructive Trust):
Alternatively, Ghrabeti is liable for unjust enrichment. Ghrabeti has admitted to receiving funds from the Receivership Companies, which were operated as a Ponzi scheme. Ghrabeti has been unjustly enriched, and it would be inequitable for Ghrabeti to retain the funds.

¹ The Receiver is not seeking Summary Judgment on Count II (Conversion), Count III (RICO), Count IV (Georgia RICO), Counts V or VI (not applicable to this Defendant), Count VII (Civil Conspiracy), or Count X (Punitive Damages).

9. Count IX (Money Had and Received): Alternatively, Ghrabeti is liable for money had and received. Ghrabeti has admitted to receiving funds from the Receivership Companies, which were operated as a Ponzi scheme. In equity and good conscience, Ghrabeti is not entitled to keep the funds.

10. Count XI (Attorneys' Fees): The Receiver seeks his litigation expenses, including attorneys' fees "where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense." The undisputed facts show that the Receiver is entitled to recover his costs and attorneys' fees.

Wherefore, the Receiver respectfully requests that he be granted partial summary judgment against Defendant Purya Ghrabeti as to Count I (Fraudulent Transfer), Count VIII (Unjust Enrichment and Constructive Trust), Count IX (Money Had and Received), and Count XI (Attorneys' Fees).

Respectfully submitted this 28th day of June 2010.

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Purya Ghrabeti
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This 28th day of June, 2010.

/s Stacey Godfrey Evans
Stacey Godfrey Evans

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THOMAS S. RICHEY, as Receiver for)
WESTON RUTLEDGE FINANCIAL)
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CAPITAL, LLC, LEXINGTON)
INTERNATIONAL FUND, LLC, a/k/a)
LEXINGTON INTERNATIONAL FUND,)
INC., and OXFORD ADAMS CAPITAL,)
LLC,)

Plaintiff,)

v.)

ZAHRA GHODS; *et al.*,)

Defendants.)

CIVIL ACTION FILE
NO. 1:08-CV-1364

PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO DEFENDANT PURYA GHRABETI

Plaintiff Thomas S. Richey, as Receiver for Weston Rutledge Financial Services, Inc., Zamindari Capital, LLC, Lexington International Fund, LLC, a/k/a Lexington International Fund, Inc., and Oxford Adams Capital, LLC (collectively the "Receivership Companies") (the "Receiver"), respectfully submits his Brief in Support of his Motion for Partial Summary Judgment as to Defendant Purya Ghrabeti ("Ghrabeti"), showing the Court as follows:

STATEMENT OF FACTS

A. Background of the Receivership.

On May 17, 2006, the Securities and Exchange Commission (“SEC”) filed a complaint to stop a Ponzi scheme operated by Geoffrey A. Gish (“Gish”), involving the Receivership Companies. (See Statement of Undisputed Facts (“Fact”) at ¶¶ 1-2). The Court granted a temporary restraining order and asset freeze against Gish and the Receivership Companies, and appointed Thomas S. Richey as Receiver of the Receivership Companies. (Fact, ¶ 4). The SEC obtained a Final Judgment against Gish pursuant to a settlement with Gish, in which Gish did not deny the facts alleged by the SEC. (Fact, ¶ 5).

Gish operated a Ponzi scheme claiming that his investments were high-yield trading programs that generated lucrative profits by purchasing debt instruments from major international banks at a discount and quickly reselling them at face value. (Fact, ¶¶ 6 & 7). The supposed investments were fraudulent “prime bank instrument schemes,” involving unachievable returns through fictional trading in non-existent markets. (Fact, ¶ 8). The Receivership Companies never received any appreciable returns of either interest or principal on any of the supposed investments made on their behalf. (Fact, ¶ 9).

B. The Receivership Companies were operated as a Ponzi Scheme.

Three-hundred investors deposited approximately \$31 million to the Receivership Companies' bank accounts. (Fact, ¶ 11). Approximately \$15,000,000 was transferred from the Receivership Companies' bank accounts to third-parties who were to place the funds in risk-free, high-yield, income-generating investments and return the proceeds to the Receivership Companies. (Fact, ¶ 12). Most investors who invested funds in the Receivership Companies lost all or substantially all of their principal investments. (Fact, ¶ 14). A total of \$18 million of investors' funds is missing. (Fact, ¶ 13).

The Receivership Companies were operated as a Ponzi scheme in which there were never sufficient funds to cover the obligations of the companies; in order to make payouts to investors of either "principal" or "interest," the Receivership Companies had to use funds from new investors. (Fact, ¶ 15). The money paid out to Receivership Company investors was paid from funds deposited by other Receivership Company investors, rather than from any actual earnings by the Receivership Companies or the investors on any investments. (Fact, ¶ 16).

C. The Instant Action Was Filed to Recover Receivership Funds.

The Receiver filed the instant action against multiple Defendants who received the most funds from the Receivership Companies. (Fact, ¶ 17).

D. Zahra Ghods was a Key Player in the Ponzi Scheme.

Zahra Ghods (“Ghods”) and her companies, Rusa Cap, Inc. (“Rusa Cap”) and Unisource Cap, LLC (“Unisource”), were key players in the Gish Ponzi scheme. (Fact, ¶ 18). Ghods caused investors to make investments with the Receivership Companies, and over \$9 million was transferred to Ghods from the Receivership Companies or directly to her from investors at her direction for the supposed trading of medium-term bank notes and as commission payments to Ms. Ghods for arranging these investments. (Fact, ¶ 18). Ms. Ghods falsely told Gish, other representatives of the Receivership Companies, and investors that she, through Rusa Cap and Unisource, ran high-yield, bank note trading programs and could earn returns of as much as 30% per quarter; on other occasions during this time period, she falsely represented that the investments would earn 30% - 50% per quarter. (Fact, ¶ 24). Ms. Ghods had never operated any such trading programs, did not have any experience with trading in bank notes, and was not capable of earning such returns from any such programs. (Fact, ¶ 25). She had no legitimate or reliable access to any such trading programs and no ability to provide access to no-risk, high-yield investments for the Receivership Companies and their investors, and her promises of 30% - 50% returns were false. (Fact, ¶ 26). Of the \$9 million transferred to bank accounts controlled by Ms. Ghods or by others, no

funds were ever returned, and no return was earned on the alleged investments. (Fact, ¶¶ 16, 18, 27).

The Receiver obtained a Default Judgment as to Ghods, Rusa Cap, and Unisource in the amount of \$12,266,599.33. (Fact, ¶ 19). The SEC also brought suit against Ghods and her companies, alleging that Ghods and Rusa Cap actively participated in the fraudulent prime bank Ponzi schemes and that she and her companies received approximately \$9 million of investor funds supposedly to trade in prime bank debt instruments. (Fact, ¶ 20). The court granted the SEC a Summary Judgment against Ghods and her companies. (Fact, ¶ 21).

E. The SEC obtained a judgment against Ghods.

The SEC brought suit against Ghods and her companies, alleging that Ghods and Rusa Cap actively participated in the fraudulent prime bank Ponzi schemes perpetrated by Gish, and that she and her companies received approximately \$9 million of investor funds supposedly to trade in prime bank debt instruments. (Fact, ¶ 20). The Court granted the SEC a Summary Judgment against Ghods and her companies on February 26, 2009. (Fact, ¶ 21). The Court found that “Ghods and Rusa Cap violated the antifraud provisions of the federal securities laws.” (Fact, ¶ 32). The court ordered disgorgement of all amounts transferred to Ghods and her companies, but excluded from that number the amounts transferred to the

Rusa Cap San Marino accounts since those accounts were not controlled by Ghods. (Fact, ¶ 34).

F. Defendant Purya Ghrabeti received \$265,913 of funds belonging to the Receivership Companies.

Defendant Purya Ghrabeti received at least \$215,300 of funds belonging to the Receivership Companies and charged at least \$41,820 on Defendant Zahra Ghods' American Express credit card which was then paid with funds that Zahra Ghods received from the Receivership Companies. (Fact, ¶ 37, 41, 47). The accountants calculate the amount owed as \$257,120 (\$215,300 plus \$41,820 in credit card payments). (Fact ¶ 53). Ghrabeti had not invested any funds with nor lent any funds to Zahra Ghods or the Receivership Companies and did not provide consideration of any value to the Receivership Companies in exchange for these funds. (Fact, ¶¶ 37, 44-45). Ghrabeti knew that the funds came from investors in the Receivership Companies and that the Receivership Companies were insolvent and would be rendered more insolvent when he received the funds. (Fact, ¶¶ 43, 51). Thus, as a matter of law, Ghrabeti is the recipient of fraudulent transfers, which regardless of fault, he must return to the Receiver.

The Receiver made a demand on Ghrabeti for the return of funds on October 1, 2007, but as of the date of this Motion, Ghrabeti has failed to make any payments to the Receivership Companies. (Fact, ¶¶ 52-53). The Receiver filed the

present action on April 8, 2008 to recover funds that certain defendants, including Ghrabeti, received from the Receivership Companies.

ARGUMENT AND CITATION TO AUTHORITY

I. Standard for Granting Summary Judgment.

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Thus, “[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’” Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (citations omitted). Although the Court must view the evidence on summary judgment in the light most favorable to the non-moving party, “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” Craven v. United States, 70 F. Supp. 2d 1323, 1327 (N.D. Ga. 1999) (citations omitted), aff’d, 215 F.3d 1201 (11th Cir. 2000).

Ghrabeti's Admissions. Federal Rule of Civil Procedure 36(a) provides that requests for admissions are automatically deemed admitted unless answered or objected to within 30 days after service. Thus, if a party never responds to requests for admissions, the matters therein are conclusively established unless the court on motion permits withdrawal or amendment of the admissions. See U.S. v. 2204 Barbara Lane, 960 F.2d 126, 129 (11th Cir. 1992). Unanswered requests for admission serve as "admissions on file" and are undisputed facts sufficient to support a grant of summary judgment. See id. at 129-30. Here, the Receiver served Requests for Admission ("Requests") on Ghrabeti on December 23, 2009. (Fact, ¶ 36). As of the date of the filing of this Motion, Ghrabeti has failed to respond to the Requests. (Fact, ¶ 38). Therefore, the matters in the unanswered Requests are conclusively established, and they, along with the other evidence in this case, demonstrate that there is no genuine issue of material fact left to be decided. Thus, the Receiver is entitled to judgment as a matter of law.

II. Transfers to Ghrabeti were Fraudulent Transfers as a Matter of Law.

Transfers of funds to individuals involved in a Ponzi scheme are fraudulent transfers under the Uniform Fraudulent Transfer Act. The Act provides:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

O.C.G.A. § 18-2-74(a). There are three tests for finding a fraudulent transfer under the statute. The transfers and amounts that Ghrabeti received satisfy all three tests.

A. The Receivership Companies caused the transfers to Ghrabeti with actual intent to defraud.

First, the amounts received by Ghrabeti were fraudulent transfers because the management of the Receivership Companies made those transfers with “actual intent to hinder, delay, or defraud” creditors of the Receivership Companies.

O.C.G.A. § 18-2-74(a)(1). This is so because the Receivership Companies were operated as a Ponzi scheme.

“The term ‘Ponzi scheme’ refers to an investment scheme whereby returns to investors are financed, not through the success of an underlying business venture, but from the principal sums of newly attracted investors” and “[i]nitial investors are actually paid the promised returns, attracting additional investors.”

Rasch v. State, 260 Ga. App. 379, 379 n.1, 579 S.E.2d 817, 818 n.1 (2003); see

also In re C.F. Foods, L.P., 280 B.R. 103, 110 n.15 (Bankr. E.D. Pa. 2002) (“In general a [P]onzi scheme is a fraudulent investment arrangement in which returns to investors are not obtained from any underlying business venture but are taken from monies received from new investors.”). The evidence clearly establishes that the funds that the Receivership Companies paid out to investors were not from returns on their investments, but rather were from new investors depositing funds into the Receivership Companies; thus, the Receivership Companies were operated as a Ponzi scheme. (Fact, ¶¶ 15-16; Fuqua Affid. at ¶¶ 14, 17¹).

Because the Receivership Companies were operated as a Ponzi scheme, any transfers they made to Ghrabeti were fraudulent transfers because they were made with the actual intent to defraud, as a matter of law:

One can infer an intent to defraud [investors] from the mere fact that a debtor was running a Ponzi scheme. Indeed, no other reasonable inference is possible. A Ponzi scheme cannot work forever. The investor pool is a limited resource and will eventually run dry. The perpetrator must know that the scheme will eventually collapse as a result of the inability to attract new investors. The perpetrator nevertheless makes payments to present investors, which, by definition, are meant to attract new investors. He must know all along, from the very nature of his activities, that investors at the end of the line will lose their money. Knowledge to a substantial certainty

¹ Affidavits from accountants “have routinely been admitted to demonstrate that an enterprise operated as a Ponzi scheme.” Stenger v. World Harvest Church, Inc., 2006 WL 870310, *11 (unreported case) (N.D. Ga. Mar. 31, 2006) (granting receiver’s motion for summary judgment against church that received donations from companies operated as a Ponzi scheme).

constitutes intent in the eyes of the law, and a debtor's knowledge that future investors will not be paid is sufficient to establish his actual intent to defraud them.

C.F. Foods, 280 B.R. at 110 (emphasis supplied). “Under [the Uniform Fraudulent Transfer Act], transfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception.” Quilling v. Schonsky, 247 Fed. Appx. 583, 586 (5th Cir. 2007); see also C.F. Foods, 280 B.R. at 111 (“Knowledge that future investors will not be paid is sufficient to establish actual intent to defraud them.”); see also In re Slatkin, 525 F.3d 805, 814 (9th Cir. May 6, 2008) (“mere existence of a Ponzi scheme sufficient to establish actual intent to hinder, delay, or defraud creditors” under Uniform Fraudulent Transfer Act).

B. The transfers to Ghrabeti were made without the exchange of reasonably equivalent value and at a time when the Receivership Companies were insolvent.

There are two additional, independent circumstances that establish that the amounts that Ghrabeti received were fraudulent transfers: (1) the transfers were made to Ghrabeti “without receiving a reasonably equivalent value in exchange” and the Receivership Companies were “engaged...in a business for which the remaining assets...were unreasonably small in relation to the business” and (2) the transfers were made to Ghrabeti “without receiving a reasonably equivalent value

in exchange” and the Receivership Companies “intended to incur, or believed or reasonably should have believed” that they would incur debts beyond their ability to pay them as they became due. O.C.G.A. § 18-2-74(a)(2)(A)&(B). The unanswered Requests for Admission conclusively demonstrate that Ghrabeti did not provide any equivalent value for the amounts that he received and the funds came from the Receivership Companies, which were insolvent and would be rendered more insolvent by the transfers. (Fact, ¶¶ 37, 43, 46, 50, 51).

Additionally, as a Ponzi scheme, the Receivership Companies were “insolvent from inception,” thus necessarily “engaged in a business for which remaining assets were unreasonably small in relation to the business” and “intended to incur, or believed or reasonably should have believed” that they would incur debts beyond their ability to repay them as they became due.

The amounts that Ghrabeti received from the Receivership Companies were not in exchange for an equivalent value, which satisfies the first part of either test. The second part of these two tests is satisfied because the Receivership Companies were operated as a Ponzi scheme and thus were “insolvent from inception,” as a matter of law. Stenger, 2006 WL at *10 (“By definition, an enterprise engaged in a Ponzi scheme is insolvent from day one.”). As insolvent entities, the Receivership Companies were necessarily “engaged in a business for which the

remaining assets of the debtor were unreasonably small in relation to the business.” Likewise, the Receivership Companies were necessarily incurring debts that were beyond the Receivership Companies’ ability to repay them as they became due. Here, Ghrabeti received \$257,120 (\$215,300 plus \$41,820 in credit card payments. (Fact, ¶ 53). Ghrabeti has admitted to receiving at least \$215,000 of funds from Zahra Ghods, which he knew came from the Receivership Companies, and charging at least \$40,193 on Ms. Ghods’ American Express credit card, which he also knew was paid for with funds from the Receivership Companies. (Fact, ¶¶ 41-42, 47, 51). These were fraudulent transfers as a matter of law.

III. There is no good faith defense to the Receiver’s fraudulent transfer claims.

None of these tests for a fraudulent transfer require that Ghrabeti, as recipient of the transferred funds, be aware of the fraudulent nature of the transfers. See O.C.G.A. § 18-2-74(a) (Georgia’s fraudulent transfer statute, which contains no element requiring knowledge of fraud by transferee); see, e.g., Quilling, 247 Fed. Appx. at 586 (transferee’s knowledge of Ponzi scheme irrelevant to finding of fraudulent transfer claim) and C.F. Foods, 280 B.R. at 110 (no “good faith” exception to fraudulent transfer claim).²

² Texas and Pennsylvania, like Georgia, have adopted the Uniform Fraudulent Transfer Act. TEX. BUS. & COM. CODE ANN. § 24.005; 12 PA. CONS. STAT. ANN. § 5104. Thus the Quilling and C.F. Foods decisions are directly on point.

IV. Ghrabeti was unjustly enriched by the transfers of the funds, which were impressed with a constructive trust.

Alternatively, Ghrabeti is liable for unjust enrichment. “The theory of unjust enrichment applies when there is no legal contract and when there has been a benefit conferred which would result in an unjust enrichment unless compensated.” Cochran v. Ogletree, 536 S.E.2d 194, 196 (Ga. Ct. App. 2000); see O.C.G.A. § 9-2-7. “Inherent in the theory of unjust enrichment is the requirement that the receiving party knew of the value being bestowed upon him by another and failed to stop the act or to reject the benefit prior to its conferment.” Hollifield v. Monte Vista Biblical Gardens, 553 S.E.2d 662, 670 (Ga. Ct. App. 2001). A constructive trust “is a remedial device created by a court of equity in order to prevent unjust enrichment.” Lee v. Lee, 392 S.E.2d 870, 871 (Ga. 1990).

Here, Ghrabeti received \$257,120 (\$215,300 plus \$41,820 in credit card payments. (Fact, ¶ 53). Ghrabeti has admitted to receiving at least \$215,000 of funds from Zahra Ghods, which he knew came from the Receivership Companies, and charging at least \$40,193 on Ms. Ghods’ American Express credit card, which he also knew was paid for with funds from the Receivership Companies. (Fact, ¶¶ 41-42, 47, 51). He did not lend any funds to, nor invest any funds with, Zahra Ghods or the Receivership Companies, nor did he provide consideration of any value to the Receivership Companies in exchange for his receipt of the funds.

(Fact, ¶¶ 44-46). Thus, Ghrabeti has been unjustly enriched, and the funds were impressed with a constructive trust, requiring Zahra Ghods and Ghrabeti to hold and conserve the funds for the benefit of the Receivership Companies and their investors. It would be inequitable for Ghrabeti to retain the funds. Accordingly, the Receiver is entitled to recover the amounts paid to Ghrabeti.

V. Ghrabeti is liable as a matter of law for money had and received.

Alternatively, Ghrabeti is liable for money had and received. To succeed on a claim for money had and received, the Receiver must show that “a person has received money of the other that in equity and good conscious [sic] he should not be permitted to keep; demand for repayment has been made; and the demand was refused.” Taylor v. Powertel, Inc., 551 S.E.2d 765, 770 (Ga. Ct. App. 2001). As shown above, Ghrabeti has admitted to receiving funds from the Receivership Companies, which were operated as a Ponzi scheme. In equity and good conscience, Ghrabeti is not entitled to keep the funds. The Receiver has made a demand for return of the funds, which Ghrabeti has ignored. Thus, Ghrabeti is liable as a matter of law for money had and received in the amount of \$257,120.

VI. The Receiver is entitled to attorneys’ fees and expenses.

Pursuant to O.C.G.A. § 13-6-11, a plaintiff may recover litigation expenses, including attorneys’ fees “where the defendant has acted in bad faith, has been

stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense.” Ghrabeti has acted in bad faith, has been stubbornly litigious and has caused the Receiver unnecessary trouble and expense by failing to respond to the Receiver’s October 1, 2007 demand for return of the funds and causing the Receiver to bring the present action to seek return of the funds. In addition, Ghrabeti has failed to respond to the Receiver’s discovery requests. Thus, the Receiver is entitled to recover attorneys’ fees and litigation expenses associated with his efforts to recover these funds, including without limitation the filing and pursuit of this action.

VII. The Receiver is entitled to pre-judgment interest on the funds received by Ghrabeti.

The amounts received by Ghrabeti were sums certain, as set forth in Michael Fuqua’s Affidavit. (Fact, ¶ 54). Thus, the amounts bear interest from the time Ghrabeti became liable to repay them, which was at least as early as the Receiver’s demand letter to Ghrabeti, and more likely the date the SEC filed its complaint against Gish and the Receivership Companies, May 17, 2006. O.C.G.A. § 7-4-15 (“All liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party shall become liable and bound to pay them....”); Undercofler v. Scott, 220 Ga. 406, 409, 139 S.E.2d 299, 302 (1964). The amount of pre-judgment interest owed is seven percent (7%) per

annum simple interest. O.C.G.A. § 7-4-2 (“The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract.”).

The SEC filed suit against Gish and the Receivership Companies on May 16, 2007, and the Receiver made his demand on Ghrabeti on October 1, 2007. Thus, Ghrabeti owes simple interest on the funds received in the amount of seven percent per annum from the earliest appropriate date until judgment is ultimately entered in this case.

CONCLUSION

Ghrabeti’s receipt of Ponzi scheme-based profits clearly satisfies the requirements of the Georgia Uniform Fraudulent Transfer Act and there is no exception for any alleged good faith on the part of Ghrabeti. Ghrabeti is also liable for unjust enrichment and money had and received. Thus, the Receiver is entitled to judgment as a matter of law as to Purya Ghrabeti in the amounts of at least \$257,120 plus \$49,359.31 in pre-judgment interest which has accrued from October 1, 2007, until June 28, 2010, plus interest at the rate of \$49.31/day. The Receiver is also entitled to recover his attorneys’ fees and expenses incurred in this action.

Respectfully submitted this 28th day of June 2010.

s/ Jennifer D. Odom

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and Oxford Adams Capital, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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THOMAS S. RICHEY, as Receiver for)
WESTON RUTLEDGE FINANCIAL)
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CAPITAL, LLC, LEXINGTON)
INTERNATIONAL FUND, LLC, a/k/a)
LEXINGTON INTERNATIONAL FUND,)
INC., and OXFORD ADAMS CAPITAL,)
LLC,)

Plaintiff,)

v.)

ZAHRA GHODS; *et al.*,)

Defendants.)

CIVIL ACTION FILE
NO. 1:08-CV-1364

LOCAL RULE 7.1D CERTIFICATION

I hereby certify that this brief has been prepared with a font and point selection approved in Local Rule 5.1B, namely, Times New Roman font size 14.

This 28th day of June 2010.

/s Stacey Godfrey Evans
Stacey Godfrey Evans

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THOMAS S. RICHEY, as Receiver for)	
WESTON RUTLEDGE FINANCIAL)	
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)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing PLAINTIFF'S BRIEF IN SUPPORT OF HIS PARTIAL MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT PURYA GHRABETI with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record and a copy has been sent to the answering *pro se* defendants by depositing a copy of same in the United States mail with adequate postage affixed thereto as follows:

Purya Ghrabeti
7 Via Gardenia
Rancho Santa Margarita, CA 92688-1430

This 28th day of June, 2010.

/s Stacey Godfrey Evans
Stacey Godfrey Evans