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,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. 1:08-CV-1364
v.	)	
ZAHRA GHODS; *et al.*,	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT SIMON GULKANIAN

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 Simon Gulkanian ("Gulkanian"), showing the Court as follows:

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

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

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 Gulkanian received at least $335,000 of funds belonging to the Receivership Companies and he directed the transfer of another $551,000 of the Receivership Companies' funds to his business associates. Neither Gulkanian nor his business associates had invested any funds with or lent any funds to Zahra Ghods, her 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. Gulkanian and his business associates.

5. The admissions of Mr. Gulkanian, 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 as to certain of the claims.

6. The Receiver seeks Summary Judgment on Count I (Fraudulent Transfer), Count II (Conversion), 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, Mr. Gulkanian who is the recipient of fraudulent transfers, is liable for the funds as a matter of law.

8. Count II (Conversion): Gulkanian received $335,000 from the Receivership Companies and directed the transfer of another $551,000 from the Receivership Companies directly to his associates. Gulkanian has failed and refused to return the funds. Gulkanian is liable to the Receiver for conversion as a matter of law.

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[1] The Receiver is not seeking Summary Judgment on 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 VIII (Unjust Enrichment and Constructive Trust): Alternatively, Mr. Gulkanian is liable for unjust enrichment. Mr. Gulkanian received $335,000 from the Receivership Companies, which were operated as a Ponzi scheme. Mr. Gulkanian has been unjustly enriched, and it would be inequitable for Mr. Gulkanian to retain the funds.

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

11. 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 Mr. Gulkanian is liable, but has stubbornly litigation, and therefore 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 Gulkanian for $335,000 plus interest and attorneys' fees, as to Count I (Fraudulent Transfer), or under Count VIII (Unjust Enrichment and Constructive Trust), Count IX (Money Had and Received), and

Count XI (Attorneys' Fees). Alternative, the Receiver respectfully requests that he be granted partial summary judgment against Defendant Gulkanian for Count II (Conversion) in the amount of $886,000 plus interest and attorneys' fees.

Respectfully submitted this 28th day of June 2010.

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UNITED STATES DISTRICT COURT
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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,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. 1:08-CV-1364
v.	)	
ZAHRA GHODS; *et al.*,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT SIMON GULKANIAN 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

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,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. 1:08-CV-1364
v.	)	
ZAHRA GHODS; *et al.*,	)	
Defendants.	)	

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

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"), submits his Motion for Partial Summary Judgment as to Defendant Simon Gulkanian ("Gulkanian"), 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, ¶ 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 $10 million was transferred to Ghods from the Receivership Companies or directly from investors at her direction for the supposed trading of medium-term bank notes and as commission payments to 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 $10 million transferred to Ghods or others, no return was ever earned on the alleged investments, nor returned to the Receivership. (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, ¶ 29). 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 Fictitious $100 million Certificate of Deposit.

Beginning in approximately September 2005, Ms. Ghods told the Receivership Companies and investors that their funds were secured by a $100 million CD held at the Canadian Imperial Bank of Commerce ("CIBC") in Canada, and showed them copies of the supposed CD and confirmations from CIBC. (Fact, ¶ 30). Ms. Ghods told the Receivership Companies and investors about the CD to

induce investors to invest and the Receivership Companies to entrust funds with her. (Fact, ¶ 31). Ghods gave the CIBC documents to representatives of the Receivership Companies, who provided copies of the documents to investors and posted it on the Weston Rutledge website for viewing by investors. (Fact, ¶ 32). Ghods was aware that these documents were being shown to investors and that investors were relying on the representations in the documents. (Fact, ¶ 33).

Ghods and her companies received funds from the Receivership Companies and thereafter transferred funds to third parties in connection with the CD transaction. (Fact, ¶ 34). Ghods transferred at least $886,000, but possibly as much as $1.236 million, from the Rusa Cap and Unisource accounts to Gulkanian, his company, Prima Investments & Capital LLC, ("Prima Investments"), his associates Eugene Vayner, Armen Davtyan and third parties involved in the leasing of a counterfeit CIBC certificate of deposit in the amount of $100 million (the "$100 million CD"). (Fact, ¶ 35). In return, documents were purportedly mailed to Ghods indicating Ghods/Rusa Cap's ownership of a $100 million CD at CIBC. (Fact, ¶ 36). Ms. Ghods misled the Receivership Companies and investors to believe that she owned – not that she had "rented" – the $100 million CD and thus had the ability to repay any funds that she had received from the Receivership Companies. (Fact, ¶ 37). She induced the Receivership Companies to continue to

accept and pay out funds to investors and induced investors to entrust their funds with the Receivership Companies and with Ms. Ghods and her companies. (Fact, ¶ 38). The Receivership Companies accepted her representations as true and relied on them in entrusting further funds to her. (Fact, ¶ 39).

F. Simon Gulkanian and Eugene Vayner.

Simon Gulkanian was the individual who facilitated the provision of documents to Ms. Ghods that supposedly proved the existence of the $100 million CD. (Fact, ¶ 40). Mr. Gulkanian lives in California but is an refugee/asylee from Russia. (Fact, ¶ 40). Mr. Gulkanian was acquainted with an individual named Eugene Vayner, who also lived in California; they met in Russia. (Fact, ¶ 41). Mr. Vayner[1] was working with Zahra Ghods and introduced Gulkanian to Ghods in connection with Ghods' attempts to rent a financial instrument. (Fact, ¶ 42).

Mr. Gulkanian states that Ms. Ghods was attempting to rent a $100 million CD. (Fact, ¶ 44). At the time that Mr. Gulkanian was introduced to Ms. Ghods, he had not "participated in a transaction prior to that time where [he] engaged in the renting of a financial instrument." (Fact, ¶ 45). Thereafter, Mr. Gulkanian claims that Alexander Pashanov, another colleague, called him out of the blue to tell him

[1] Mr. Vayner has been involved in Rusa Cap with Ghods, as his name and purported signature appears on corporate resolutions for Rusa Cap and other documents. (Fact, ¶ 43).

that he had investors interested in renting out financial instruments. (Fact ,¶ 47). Whereupon, Mr. Gulkanian contacted Ms. Ghods and Mr. Vayner to let them know that he had found a contact who could lease financial instruments from a Canadian bank to Ghods. (Fact, ¶ 48).

Mr. Gulkanian states that Ms. Ghods told him that the cost to rent a CD was 8% of the face value per year. (Fact, ¶ 50). According to Mr. Gulkanian, Ms. Ghods agreed to pay Mr. Gulkanian 5% per year out of her profit for finding a CD for her to rent. (Fact, ¶ 51). Notably, Mr. Gulkanian's explanation of how one can rent a CD, makes no sense. (Fact, ¶ 52).

G. Gulkanian and Ghods Enter into Written Agreements to Lease a CD.

Mr. Gulkanian and Ms. Ghods entered into a Memorandum of Understanding and Agreement on July 31, 2005 relating to the renting of a CD (hereinafter the "CD Agreement"). (Fact, ¶ 54). The parties to the CD Agreement are (1) Ghods, Rusa Cap and Unisource, (2) Eugene Vayner and Investment Financial Funds Bank Group, Inc. ("IF Fund"), and (3) Simon Gulkanian and Prima Investment and Capital LLC ("Prima"). (Fact, ¶ 55). Prima promised to "get $100 million Certificated Deport (sic) 'CD' from a group of banking (sic) in Canada through Canadian Bank, by depositing $400,000 and activate the said CD via SWIFT. . .." (Fact, ¶ 56).

Thereafter, Mr. Gulkanian introduced, by telephone, Ms. Ghods to Mr. Pashanov in connection with Ms. Ghods' renting a $100 Million CD. (Fact, ¶ 57). On August 26, 2005, Gulkanian e-mailed Zahra Ghods with instructions for mailing documents to AP Import Expert Ltd. in Toronto Canada in connection with renting a CD. (Fact, ¶ 58). On September 12, 2005, Mr. Gulkanian e-mailed Ms. Ghods with the names of three companies and three international accounts to wire funds in connection with renting the CD:

a. LifeDream Travel Tours, Inc., account at the Royal Bank of Canada: $50,000;

b. A.P. Import-Export, Ltd., account at the Canadian Imperial Bank of Commerce, $100,000; and

c. Balta Enterprises, Ltd., an account at RBTT Bank of Antilles, St. Maarten, Netherlands, $200,000

(Fact, ¶ 60). Mr. Gulkanian claims that he obtained the company and banking information from Mr. Pashanov, the owner of AP Import-Export. (Fact, ¶¶ 59, 61). Pursuant to a September 13, 2005 letter from Ms. Ghods and Rusa Cap, "Per request of Mr. Simon Gulkanian I am sending the attached three wires, which send at 11:00 am California time." (Fact, ¶ 62). Gulkanian directed Ghods where to send the funds belonging to the Receivership Companies. (Fact, ¶ 63)

Mr. Gulkanian produced a September 18, 2005 agreement entitled a "Master payorder and procedures to Memorandum of Understanding dated July 31, 2005

Joint Venture agreement" (hereinafter referred to as the "September 2005 Agreement"). (Fact, ¶ 64). The same parties to the CD Agreement are parties to the September 2005 Agreement. (Fact, ¶ 65). Prima was defined as: "represented by Mr. Simon Gulkanian 'Prima'. Prima provider of CD group in direct JV with the Canadian group as CD provider in CIBC. Copy of said CD attached." (Id.) Pursuant to the September 2005 Agreement "Prima will arrange to bring the POF [proof of funds] and followed by SWIFT-799 at later date." (Id.) Ghods agreed to pay $500,000 to lease the CD. (Fact, ¶ 66). The parties also agreed that "No one can reveal the funds is (sic) being leased, if that was mentioned the program will be stopped." (Fact, ¶ 67). At the time of the September 2005 Agreement, Rusa Cap had already wired $500,000 to rent the CD for two (2) months. (Fact, ¶ 68).

On September 26, 2005, Ghods wrote Gulkanian, acknowledging receipt of the CD on September 21, 2005. (Fact, ¶ 69). It is unclear who mailed the CD documents to Ms. Ghods; Ghods produced papers appearing to indicate that the documents came from CIBC via a DHL package. (Fact, ¶ 70). However, because the documents are forgeries, they cannot have been mailed to Ghods by CIBC. (Id.) Gulkanian denies sending the documents to Ghods, claiming that he also received a copy by mail. (Fact, ¶ 71).

H. <u>No $100 million CD Existed</u>.

No $100 million CD ever existed and Ghods was certainly not the owner of a $100 million CD. (Fact, ¶ 73). Ms. Ghods was an active participant in the deception of the Receivership Companies and investors regarding the CD. (Fact, ¶ 74). She assisted in writing a purported letter from CIBC stating that Rusa Cap had been a CIBC depositor since September 2001, and that as of September 2005, it had an account balance in the "high ten figures." (Fact, ¶ 75). The letter also gave an address for Ms. Ghods in Canada and stated that Ms. Ghods was the sole signatory on the account. (Fact, ¶ 76). Despite these representations, which Ms. Ghods herself drafted, Ms. Ghods admits that she did not have an address in Canada and in fact, has never been to Canada. (Fact, ¶ 77). Neither Ms. Ghods nor Rusa Cap had an account at CIBC. (Fact, ¶ 78). Ms. Ghods admits that neither she, Rusa Cap, nor Unisource ever owned a $100 million CD. (Fact, ¶ 79). Ms. Ghods testified that she was only "renting" the CD pursuant to an arrangement created by Defendant Simon Gulkanian. (Fact, ¶ 80).

The account number reflected on the CD, was not an account belonging to Rusa Cap, but was an account belonging to an unrelated third party. (Fact, ¶ 81). Ghods testified that when attempting to verify the CD, she learned that the account belonged to a company called Art Link. (Fact, ¶ 82). Ghods admits that the

supposed $100 million CD could never be verified with CIBC and Gulkanian asked for additional funds to make the CD verifiable. (Fact, ¶ 83). Mr. Gulkanian admits that a woman was arrested in connection with the CD transaction. (Fact, ¶ 84). When asked why he and Mr. Pashanov stopped speaking, he stated, "he informed me that some peoples who were involved this different transaction, they arrested . . . lady who work to make for him, like this whole CD thing. She been arrested, and she don't like, work anymore with these peoples." (Fact, ¶ 85).

I. Moneys Owed by Simon Gulkanian.

Under the agreements with Gulkanian, Rusa Cap was supposed to make periodic "rental" payments on the CD. (Fact, ¶ 88). Ghods transferred at least $886,000, but possibly as much as $1.236 million, from the Rusa Cap and Unisource accounts to Gulkanian, Prima Investments, Eugene Vayner, Armen Davtyan and third parties involved in the leasing of the CD (Fact, ¶ 87). Ms. Ghods paid $685,000 to Simon Gulkanian, Armen Davtyan and Prima Investments. (Fact, ¶ 89). In addition, Ms. Ghods also transferred $26,000 from the Rusa Cap Wells Fargo account to Eugene Vayner, a former officer of Rusa Cap who Ms. Ghods claims recommended the $100 million CD transaction to her. (Fact, ¶ 90). Gulkanian and Vayner transferred funds amongst themselves. (Fact, ¶ 91) Ms. Ghods also transferred $525,000 in funds from the Rusa Cap and

Unisource accounts to three entities, Balta Enterprises, Life Dream Travel Tours, and AP Import-Export Ltd (referred to as the "Canadian Group"), that, according to the contract Mr. Gulkanian represented in the CD lease transaction. (Fact, ¶ 92).

During 2005-06, a total of $1,236,000 from the Receivership Companies was transferred from Ghods to Gulkanian, Prima Investments, Armen Davtyan, Eugene Vayner, Balta Enterprises, AP Import-Export and Life Dream Travel Tours in connection with the CD rental. (Fact, ¶¶ 93-94). Mr. Gulkanian admits that these payments were for the purpose of renting the CD. (Fact, ¶ 95).

Mr. Gulkanian admits that he received a wire in the amount of $225,000 from Rusa Cap on November 16, 2005 and that Ghods/Rusa Cap made a $40,000 payment to Armen Davtyan at the direction of Mr. Gulkanian. (Fact, ¶ 96). He states that he was then supposed to pay $265,000 to the Canadian Group, and claims he wired $265,000 to one of the 3 entities on February 28, 2006. (Fact, ¶ 97). The bank records show that the $225,000 and $40,000 payments were made from Rusa Cap to Gulkanian and Davtyan; however, the records show that Gulkanian never wired $265,000 out to anyone. (Id.)

Mr. Gulkanian also testified that Zahra Ghods' son brought him a cashier's check for between $250,000 and $265,000 to make the second payment on the CD. (Fact, ¶ 98). There was no cashier's check for any of those amounts deposited to

Gulkanian's accounts during 2005 or 2006. (Id.) However, there was a deposit into Gulkanian's account of a $350,000 cashier's check dated February 28, 2006. (Id.) After deposit of the $350,000 cashier's check, on the same day, Gulkanian wired $250,000 to Balta Enterprises, $50,000 to Life Dream and $50,000 to AP Import-Export. (Fact, ¶ 99). The records show that Gulkanian did not wire out the original $265,000, but instead retained $225,000 in his bank account and his associate retained $40,000. (Fact, ¶ 100). Only after receipt of the $350,000 cashiers check, which based on Gulkanian's testimony appears to come from Ghods and her son, did he wire funds out to the three entities. (Id.) Including the $350,000 cashier's check, Mr. Gulkanian and his company, Prima, received transfers of $685,000 from Rusa Cap, Zahra Ghods and Unisource. (Fact, ¶ 101). Not including the $350,000 cashier's check, Mr. Gulkanian and Prima received $335,000 from Rusa Cap, Unisource and Zahra Ghods. (Id.)

Mr. Gulkanian admits that he "didn't do anything to earn the payment of $225,000." (Fact, ¶¶ 102 & 103). Gulkanian states that he was supposed to forward to others any payments that he received from Zahra Ghods and her companies. (Fact, ¶ 104). He admits that if he didn't forward the funds to anyone, he is obligated to return it. (Fact, ¶ 105).

Notably, at one point in his deposition, Mr. Gulkanian denied receiving

"even one penny" from Rusa Cap or Zahra Ghods. (Fact, ¶ 107). By the end of the deposition, Mr. Gulkanian admitted that was not true. (Fact, ¶ 108.) Mr. Gulkanian also denied ever instructing Zahra Ghods to wire funds to Balta Enterprises, Life Dream Travel Tours. (Fact, ¶ 109). However, later in his deposition, he admitted providing the information to Ms. Ghods. (Fact, ¶ 110).

The Receiver made a demand to Gulkanian for the return of funds on August 29, 2007. (Fact, ¶ 112). Despite the demand, Gulkanian has failed to make any payments to the Receivership Companies. (Fact, ¶ 113). Interest has accrued on the amounts paid to Gulkanian and others at his direction. (Fact, ¶ 114.)

J. The SEC obtained a judgment against Ghods.

The SEC brought suit against Ghods and her companies, alleging that they 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, ¶ 115). The court granted the SEC a Summary Judgment against Ghods and her companies on February 26, 2009. (Fact, ¶ 116). The Court found that Ghods made:

> "material misrepresentations concerning: . . . (6) **Ghods's nonexistent $100 million certificate of deposit at the Canadian Imperial Bank of Commerce ("CIBC") as security for the investments and Ghod's non-existent account at CIBC in "the high ten figures,"** . ."

(Fact, ¶ 118).

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 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).

II. Transfers to Gulkanian 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 amounts that Gulkanian received satisfy all three tests.

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

First, the amounts received by Gulkanian were fraudulent transfers because the management of the Receivership Companies made those transfers to Ghods, who then transferred them to Gulkanian 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, as this Court has already held in a related case.[2]

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[2] See Order of September 16, 2009 in Thomas S. Richey, as Receiver, etc. v.

"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 the Receivership Companies paid out to investors were not from returns on their investments, but were from new investors depositing funds into the Receivership Companies, thus the Receivership Companies were operated as a Ponzi scheme. (Fact, ¶¶ 11 - 16).[3]

Barry Beers, et al., Civ. Action File No. 1:07-cv-02736-CC (N.D. Ga.), at 6: "The Court agrees with Plaintiff's position that the evidence establishes that the Receivership Companies made transfers to Defendants with actual intent to defraud the creditors of the Receivership Companies. The Receivership Companies were operated as a Ponzi scheme."

[3] 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).

Because the Receivership Companies were operated as a Ponzi scheme, any transfers made to Ghods and/or Gulkanian 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 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."); 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 UFTA).

B. The transfers to Gulkanian were made without reasonably equivalent value and when the Receivership Companies were insolvent.

There are two additional circumstances that establish that the amounts that

Gulkanian received were fraudulent transfers: (1) the transfers were made to Gulkanian "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 Gulkanian "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 evidence here conclusively demonstrates that Gulkanian 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, ¶ 15). 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 Gulkanian received from the Receivership Companies were not in exchange for an equivalent value, which satisfies the first part of either test. All that was received in exchange for payment was a counterfeit certificate of

deposit, which falsely stated that Rusa Cap had $100 million in funds. There is no evidence that there ever were any funds on deposit at CIBC available to be "leased." 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 beyond the Receivership Companies' ability to repay them as they became due.

C. Good faith is no defense to the Receiver's fraudulent transfer claims.

None of these tests for a fraudulent transfer require that Gulkanian know 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) and C.F. Foods, 280 B.R. at 110 (no "good faith" exception to fraudulent transfer claim).[4]

[4] 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.

Even if there were a good faith exception, it would not apply to Gulkanian because he never owned a $100 million CD and no such CD ever existed. Thus, he knew that the transfer of funds to him from the Receivership Companies was fraudulent.

III. Gulkanian Wrongfully Converted the Receivership Companies' Funds.

Gulkanian also is liable to the Receivership Companies because he converted funds belonging to the Receivership Companies. To establish conversion, the complainant must show: "(1) title to the property or the right of possession, (2) actual possession in the other party, (3) demand for return of the property, and (4) refusal by the other party to return the property." Washington v. Harrison, 682 S.E.2d 679, 682, 299 Ga. App. 335, 338 (2009) (citations omitted).

Gulkanian received $335,000[5] of Receivership funds transferred through Ghods, Rusa Cap and Unisource. (Fact, ¶¶ 89, 94, 101). The Receiver has demanded the return of the funds. (Fact, ¶ 112). Gulkanian has failed and refused to return the funds. (Fact, ¶ 113). Therefore, Gulkanian is liable to the Receiver for conversion as a matter of law.

Gulkanian is also liable for the remaining funds which Rusa Cap paid at his direction to other third parties. There is no question that the law recognizes liability for parties who participate in the tort of conversion, even when they do not

[5] $685,000 if the $350,000 cashier's check is attributed to Ghods, Rusa Cap and/or Unisource.

personally receive the funds. Pazur v. Belcher, 290 Ga. App. 703, 659 S.E.2d 804 (2008); Milk v. Total Pay and HR Solutions, Inc., 280 Ga. App. 449, 634 S.E.2d 208 (2006). A party who deals with an agent knowing that the agent is converting the principal's property also subjects himself to liability. Hawthorne v. Pope, 48 Ga. App. 239, 172 S.E. 574 (1934). It was clear – even mentioned in the contracts – that Ghods and Rusa Cap were supposed to be acting on behalf of third party investors or an investor group and were to be entering into trading programs on their behalf. By knowingly participating with Zahra Ghods in a blatantly fraudulent transaction using investor funds and affirmatively directing where she should send them in order to "lease" a counterfeit certificate of deposit, Gulkanian was a key participant in the diversion, dissipation and theft of Receivership Company funds that Zahra Ghods and Rusa Cap were supposed to be investing safely for the benefit of the investors. Gulkanian is liable not only for the $335,000 in funds that he received, but also for the additional $551,000 that was sent to the Canadian CD providers and others as part of the transaction.

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

Alternatively, Gulkanian is liable under 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).

Gulkanian received $335,000[6] of Receivership funds transferred through Ghods, Rusa Cap and Unisource. (Fact, ¶¶ 89, 94, 101). The Receiver demanded the return of the funds. (Fact, ¶ 112). Gulkanian failed and refused to return the funds. (Fact, ¶ 113). Gulkanian provided nothing of value to the Receivership Companies in exchange for the funds. (Fact, ¶¶ 103-106). Gulkanian has been unjustly enriched by funds belonging to innocent investors and should be held liable as a matter of law.

V. Gulkanian is liable as a matter of law 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;

[6] $685,000 if the $350,000 cashier's check is attributed to Ghods, Rusa Cap and/or Unisource.

and the demand was refused." Taylor v. Powertel, Inc., 551 S.E.2d 765, 770 (Ga. Ct. App. 2001). Gulkanian received funds from the Receivership Companies, which were operated as a Ponzi scheme. The Receiver made a demand for return of the funds, which Gulkanian ignored. In equity and good conscience, Gulkanian is not entitled to keep the funds. Gulkanian is liable as a matter of law.

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."

Gulkanian admitted to receiving funds that originated from the Receivership companies. He has supposedly done nothing to return the funds or to locate the funds. Instead, he has required the Receiver to expend Receivership funds to litigate over his liability for receiving funds to which he had no right or entitlement. Gulkanian has acted in bad faith, been stubbornly litigious and has caused the Receiver unnecessary trouble and expense and should be held accountable for the fees incurred by the Receivership.

CONCLUSION

Gulkanian's receipt of Ponzi scheme-based funds clearly satisfies the requirements of the Georgia Uniform Fraudulent Transfer Act and there is no

exception for any alleged good faith, if any. Gulkanian is also liable for unjust enrichment and money had and received. He not only converted the funds he personally received, but as a willing and knowing participant in Zahra Ghods' and Rusa Cap's conversion of funds entrusted to them for safe investments, by orchestrating this transaction and directing the payment of funds, Gulkanian is liable for all the funds that were dissipated. Thus, the Receiver is entitled to judgment as a matter of law as to Simon Gulkanian in the amounts of at least $886,000, plus interest of $175,697.28 since August 29, 2007 at the rate of $169.92/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.

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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,	)	
Plaintiff,	)	CIVIL ACTION FILE NO. 1:08-CV-1364
v.	)	
ZAHRA GHODS; *et al.*,	)	
Defendants.	)	

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 G. Evans
Stacey Godfrey Evans

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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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,	
Plaintiff,	CIVIL ACTION FILE NO. 1:08-CV-1364
v.	
ZAHRA GHODS; *et al.*,	
Defendants.	

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT SIMON GULKANIAN 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
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Rancho Santa Margarita, CA 92688-1430

This 28th day of June 2010.

/s/ Stacey G. Evans
Stacey Godfrey Evans