

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 JEFFREY JAMES MAYO PRIEBE

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 Jeffrey James Mayo Priebe ("Priebe"), 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. Priebe.

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 Priebe received at least \$4,785,000 of funds belonging to the Receivership Companies. Priebe had not invested any funds with nor 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. Priebe.

5. The admissions of Mr. Priebe, 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. Priebe who is the recipient of fraudulent transfers, is liable for the funds as a matter of law.

8. Count II (Conversion): Priebe admits to receiving \$5 million from the Receivership Companies, and it is clear from the Trading Agreement that Priebe knew that he had been entrusted with funds belonging to third parties, which were supposed to be kept safe and returned. Priebe has failed and refused to return the funds. Therefore, Priebe is liable to the Receiver for conversion as a matter of law.

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. Priebe is liable for unjust enrichment. Mr. Priebe has admitted to receiving \$5 million from the Receivership Companies, which were operated as a Ponzi scheme. Mr. Priebe has been unjustly enriched, and it would be inequitable for Mr. Priebe to retain the funds.

10. Count IX (Money Had and Received): Alternatively, Mr. Priebe is liable for money had and received. Mr. Priebe has admitted to receiving funds from the Receivership Companies, which were operated as a Ponzi scheme. In equity and good conscience, Mr. Priebe 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. Priebe is liable, but has stubbornly litigated, 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 Priebe for \$4,785,000 plus interest and attorneys' fees, as to 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).

Respectfully submitted this 28th day of June 2010.

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a/k/a Lexington International Fund, Inc.;
and Oxford Adams Capital, LLC

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,)

v.)

ZAHRA GHODS; *et al.*,)

Defendants.)

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

CERTIFICATE OF SERVICE

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

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 Summary Judgment as to Defendant Jeffrey Priebe (“Priebe”), 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 Weston Rutledge Financial Services, Inc., Zamindari Capital, LLC, Lexington International Fund, LLC, a/k/a Lexington International Fund, Inc., and Oxford Adams Capital, LLC (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, ¶¶ 10 & 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 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 \$10 million transferred to bank accounts controlled by Ms. Ghods or by others, no funds were ever returned, and no return was earned on the supposed 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. Jeff Priebe and Antonio Ruspoli met Zahra Ghods and knew her “investment” opportunities were fraudulent.

Mr. Priebe had met Mr. Antonio Ruspoli¹ in 2002 or 2003. (Fact, ¶ 31). Priebe was Mr. Ruspoli's business agent at one time and introduced Mr. Ruspoli to Ms. Ghods, presumably for that purpose. (Fact, ¶ 32). In 2003, Mr. Priebe introduced Ruspoli to Ghods, and they met with her in California regarding possible investments. (Fact, ¶ 33). They discussed various business opportunities with Ms. Ghods, including "her possibility of acquiring different banking instruments," including "bank guarantees, letters of credit." (Fact, ¶ 35).

However, Priebe quickly called into question the investments offered by Ghods. One of the "investments" that Ghods discussed with Priebe and Ruspoli involved gemstones that were supposedly worth \$2.39 billion, and being held in a Brink's facility in Germany. (Fact, ¶ 37). When asked whether Mr. Priebe believed Ms. Ghods' representations as to the gemstones he stated:

To me the dollar figure was very high. And the insurance, the little bit I understood of it didn't make any sense. As well as going back to the iron ore mine and the company I formed, that didn't make any sense to me either. So I didn't proceed with either one of those business transactions.

(Fact, ¶ 39). When asked whether it caused him to question Ms. Ghods' credibility, he stated "Yeah, very much, very much." (Fact, ¶ 40). Mr. Priebe

¹ Antonio Ruspoli was also named as a Defendant in the instant action. He failed to answer, and the Court granted a Default Judgment against him in the amount of \$5,500,782.60 on 10/08/2009. (Docket, 58).

learned that the gemstones were synthetic and that the “insurance policy was a fake.” (Fact, ¶ 41). The lack of authenticity of the documents and the fraudulent nature of the proposed transaction was determined in “late 2004 or early 2005” before Mr. Priebe engaged in the transaction at issue in this litigation. (Fact, ¶ 42).

Ms. Ghods also proposed a different transaction to Priebe and Ruspoli involving “U.S. dollar bonds.” (Fact, ¶ 43). Priebe and Ruspoli met with Ghods in California and she provided them with papers, which she claimed were original U.S. bonds. (Fact, ¶ 43). Ghods was proposing “to deposit them or establish a line of credit.” (Fact, ¶ 44). Mr. Priebe stated “We believed after the meeting . . . that they were fraudulent just by looking at them.” (Fact, ¶ 45). When asked what caused Mr. Priebe to question the authenticity of the documents he stated:

It was in the millions and millions of dollars. I wouldn't believe that someone would just hand those over to somebody and she has them sitting in her briefcase. . . [and] well, besides of course the amount and the fact that she is just hauling them around in her briefcase they looked --- I forget the date. They are from 1915. They looked all crinkly and smudged . . .

(Fact, ¶ 46). There were also misspellings in the document and lack of spaces between words. (Fact, ¶ 47). Mr. Priebe stated:

Right after the meeting we both believed that they were fraudulent and laughed about the paper that she presented to us. However from – I believe that Mr. Ruspoli still looked into it just as far as, I don't know, conversations by phone to other people if it was even possible that they issued such a thing even though the grammar and spelling

and everything else was incorrect.

(Fact, ¶ 48). At the time that Ms. Ghods presented the papers to Mr. Priebe and Mr. Ruspoli they told her that they believed the documents were fraudulent. (Fact, ¶ 49). Ms. Ghods sent Priebe and Ruspoli other investment proposals over the years which were “potential instruments that she could have possession of or was supposedly the owner of. All of those were – my feelings were exactly the same as the gems and the bonds, that they were coming from obscure places, large dollar amounts” and that they were also fraudulent. (Fact, ¶ 50).

Yet, following the discussion regarding the U.S. bonds and the \$2 billion gemstones, which Mr. Priebe admits he knew were fraudulent, Mr. Priebe and Mr. Ruspoli entered into discussions regarding another investment opportunity with Ms. Ghods. In 2005, Mr. Priebe and Mr. Ruspoli discussed with Ms. Ghods:

different investments within Europe where the principal would be protected. There may be different types of leverage that would be done on the principal. However, there would always be a buy and a sell side of the, for lack I guess of a better word, instrument or note. So the principal, number one as I mentioned, was secure and there was no risk.

(Fact, ¶¶ 51 & 52). Ms. Ghods told Mr. Priebe and Mr. Ruspoli that she had \$1 million to invest. (Fact, ¶ 53).

F. Priebe, Ruspoli and Ghods entered into a contract to invest funds.

Thereafter, Ghods, Ruspoli, and Priebe entered into a “Trade Agreement” as of March 20, 2005, concerning the trading of bank notes and the transfer of funds from Rusa Cap to San Marino in the care of Priebe and Ruspoli. (Fact, ¶ 54). The Trade Agreement was drafted by Mr. Priebe, Mr. Ruspoli and Ms. Ghods. (Fact, ¶ 58). Mr. Priebe and Mr. Ruspoli signed jointly as “R&P” agreeing to all of the obligations that “R&P” promised to perform and making the factual representations contained in the document regarding their experience and ability to perform those obligations; Mr. Priebe and Mr. Ruspoli also signed for “Rusa Cap, Inc. San Marino (RCISM)” as “Bank Registered Agent.” (Fact, ¶ 56). Priebe and Ruspoli both signed on behalf of “R&P,” which the cover page of the Trade Agreement explains as follows: “Antonio Maria Ruspoli & Jeffrey J. Mayo Priebe (HEREIN, ‘R&P’),” clearly an abbreviation referring to them both, jointly. (Fact, ¶ 56). R&P then throughout the agreement make representations that it had “confidential and proprietary sources that will enable the Trade Agreement to access sources and markets” for the trading of bank instruments, (Exhibit 12, p.2), and that it had the power and authority “to carry on its business as an agent of the trading bank for as it is now being conducted,” (Exhibit 12, ¶ 5.2 at p. 4). In entering into the Trade Agreement, Priebe and Ruspoli held themselves out and acted as partners: “R&P” was not a separate legal entity but a joint business

venture between Priebe and Ruspoli; Priebe represented in the Trade Agreement that he was duly authorized to act on behalf of the partnership. (Fact, ¶ 57).

The Trading Agreement recites that Rusa Cap would furnish funds to be used to establish a credit line that R&P were to “facilitate and manage the purchase and resale” of bank instruments. (Fact, ¶¶ 60-61). Significantly, the Trading Agreement indicated that Mr. Priebe and Mr. Ruspoli would be trading “for benefit of Unisource Cap LLC (Iron Ore pledge provider)] and Zamindari LLC (for Cash pledged provider), for behalf of the investor and fund provider(s).” (Fact, ¶ 61). Zamindari Capital LLC is one of the Receivership Companies. Thus Mr. Priebe knew that the funds with which he and Mr. Ruspoli would be entrusted did not belong to Rusa Cap, but to Zamindari and third party investor and fund provider(s) on whose behalf he and his partner were to engage in trading. (Id.)

Under the Trade Agreement, Ruspoli and Priebe also understood that their trading activities could not subject the funds they received to any risk: they agreed to “have established a credit line as reserved funds and pledge said funds in order to enhance said amount with safety of principal at all times.” (Fact, ¶ 60). They agreed that funds from Rusa Cap were to remain in the San Marino bank account at all times. (Fact, ¶ 61). Priebe and Ruspoli promised a return of 150% per month and 1,500% after ten months. (Fact, ¶¶ 62-63, 65). Essentially Ruspoli and Priebe

were promising a return of \$15 million on a \$1 million investment after ten (10) months. (Fact, ¶ 66). Mr. Priebe stated that it is was a “good investment if you could find something like that.” (Fact, ¶ 64).

As a result of the Trade Agreement, Mr. Ruspoli and Mr. Priebe opened a bank account for Rusa Cap in the Republic of San Marino at the Banca Commerciale Sammarinese SPA in Domangnano (hereinafter the “Rusa Cap San Marino Account”). (Fact, ¶ 68). The Republic of San Marino is a city-state in Italy; its entire territory is 62 square miles, has a population of 30,000 citizens, and is one of the world’s smallest nations. (Fact, ¶ 68, footnote 8). Mr. Priebe went to the bank after funds had arrived from Rusa Cap and signed papers in order to be added as a signatory to the account. (Fact, ¶ 70). Mr. Priebe and Mr. Ruspoli were the only signatories to the account. (Fact, ¶ 71). Mr. Priebe went to the bank with Mr. Ruspoli several times to check on the account balances; the bank would provide them with “a printout with a stamp and somebody would sign below that or on top of the stamp.” (Fact, ¶ 72). Pursuant to the agreement of the parties, the funds were to remain in a blocked account. (Fact, ¶ 73). However, Mr. Priebe failed to determine whether the account was in fact a blocked account. (Fact, ¶ 74). When asked what he was doing to ensure that those funds would be protected, Mr. Priebe responded “I didn’t do anything.” (Fact, ¶ 75).

G. Transfer of Receivership funds to Rusa Cap account in San Marino, Italy

From March to June 2005, \$4.785 million of Receivership Company and investor funds were transferred out of the Rusa Cap accounts by Ms. Ghods, or at her direction, and sent to the San Marino account in the control of Priebe and Ruspoli. (Fact, ¶ 76). Mr. Priebe states that he may have prepared the document that Ms. Ghods provided to the Receivership Companies indicating the bank information for the Rusa Cap account in San Marino. (Fact, ¶ 77). The following amounts were transferred to the Rusa Cap San Marino account:

- a. \$2,880,000.00 by transfer directly from the Receivership Companies into the Rusa Cap San Marino Account; and
- b. \$1,905,000.00 by transfer from the Wachovia Rusa Cap account, which received funds from the Receivership Companies.

(Fact, ¶ 78). According to the records available to the Receiver, Priebe and Ruspoli received at least \$4,785,000 of funds belonging to the Receivership Companies. (Fact, ¶ 79). However, Mr. Priebe admits that as of July 4, 2005, \$5,001,122 was in the San Marino account. (Fact, ¶ 80). It is likely that the difference is due to investors sending funds directly from their accounts in the United States to the San Marino Rusa Cap account. (Fact, ¶ 82).

H. The Funds were not placed in blocked accounts, were moved, and Priebe and Ruspoli refused to return the funds.

Ghods falsely promised to the Receivership Companies and investors that the funds transferred to San Marino were being placed in an account controlled by Ghods and Gish and that both signatures were required to move the funds and falsely represented that the account would be “blocked,” meaning no transfers out of the account would be permitted. (Fact, ¶ 83). Instead, the funds were placed in an unrestricted account, over which only Priebe and Ruspoli had control. (Fact, ¶ 84) This violated the terms of the Trade Agreement. (Fact ¶ 84).

Mr. Priebe had signatory power on the Rusa Cap San Marino account. (Fact, ¶ 85). Mr. Priebe obtained proofs of funds for the account. (Fact, ¶ 86). Mr. Priebe provided to Ghods the bank statements from the account in San Marino reflecting the amounts in the account. (Fact, ¶ 87). For example as of March 30, 2005, \$1,003,000.00 was in the San Marino account. (Fact, ¶ 87). Mr. Priebe sent a fax to Ms. Ghods on July 4, 2005 indicating that the balance in the San Marino account was \$5,001,122. (Fact, ¶ 88). Mr. Priebe understood that Ms. Ghods would be sharing the July 4, 2005 fax with others. (Fact, ¶ 89).

To Mr. Priebe’s knowledge no investment was ever found for the \$5 million in the San Marino account and the funds were never invested. (Fact, ¶¶ 90 & 91). Nothing was actually earned on the \$1 million investment; nothing was ever earned on the \$5 million investment. (Fact, ¶ 92). By the end of July 2005, all of

the funds had been transferred out of the Rusa Cap San Marino bank account and into an account in the name of Ruspoli, individually, at the same bank. (Fact, ¶ 94). Mr. Priebe admits that Mr. Ruspoli “had taken the funds.” (Fact, ¶ 93). Ghods claims that Priebe and Ruspoli told her in November or December 2005 that they had transferred the funds to the Bank of Austria and obtained a \$250 million line of credit with Rusa Cap’s \$5 million and were earning substantial returns. (Fact, ¶ 95).

Ghods began demanding return of the funds by telephone calls and e-mails to Priebe and Ruspoli in 2006. (Fact, ¶ 98). When Ms. Ghods asked for the funds to be returned to the Rusa Cap account in the United States, instead of returning the funds, Mr. Priebe told her “to get in touch with my lawyer . . .” (Fact, ¶ 100). Mr. Priebe was a signatory on the account and could have gone to the account and written a check and returned the funds to the United States but he did not do so. (Fact, ¶ 104).

Priebe admits that he and Ruspoli have never returned any principal or profits to Rusa Cap or the Receivership Companies. (Fact, ¶ 101). Priebe also admits that he has never attempted to locate the funds and claims that he has never asked Mr. Ruspoli where the funds were located, even after the litigation was filed. (Fact, ¶ 102). Priebe denies knowing where the funds were transferred or the

current whereabouts of the funds. (Fact, ¶ 96). From 2005 to 2008, Mr. Priebe testified that he has made no effort to determine whether the funds were still in the San Marino account. (Fact, ¶ 103). Mr. Priebe lived in Modena, Italy in 2004-2005 with Antonio Ruspoli, he then lived in Rome, Italy for the next three years, until October 2008, and he visited Mr. Ruspoli nine or 10 times in Italy in 2009. (Fact, ¶¶ 105-107). Yet he claims that he has never once asked Mr. Ruspoli regarding the whereabouts of the funds. (Fact, ¶ 108). Priebe benefitted from the San Marino funds that he claims Mr. Ruspoli took: Priebe lived with Mr. Ruspoli who paid the rent and Mr. Ruspoli also purchased items for Mr. Priebe, including airplane tickets, train tickets and meals. (Fact, ¶ 109).

I. 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, ¶ 110). The Court granted the SEC a Summary Judgment against Ghods and her companies on February 26, 2009. (Fact, ¶ 111). The Court found that “Ghods and Rusa Cap violated the antifraud provisions of the federal securities laws.” (Fact, ¶ 112). The Court found that Ghods made:

“material misrepresentations concerning: (1) the placement of investor funds in supposedly ‘blocked’ accounts; (2) the supposed use of the proceeds for investment in risk-free medium term bank notes, (3) the supposed profitability of investing in such bank notes, (4) the investors’ supposed inability to access investment funds that had been sent out of the country due to the Patriot Act, (5) **the supposed safety and security of the investors’ funds following their unauthorized removal by Antonio Ruspoli from an account in the Republic of San Marino to an unknown account in Austria;** (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,” and (7) the supposed availability as security for the investments of iron ore mines in Mexico that Ghods claims to own.”

(Fact, ¶ 113). 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, ¶ 114).

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. U. S., 70 F. Supp. 2d 1323, 1327 (N.D. Ga. 1999) (citations omitted), aff’d, 215 F.3d 1201 (11th Cir. 2000).

II. The Transfers to Priebe were Fraudulent Transfers as a Matter of Law.

Transfers to individuals of funds 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 Priebe received satisfy all three tests.

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

First, the amounts received by Priebe were fraudulent transfers because the transfers were made 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 “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

² See Order of September 16, 2009 in Thomas S. Richey, as Receiver, etc. v. Barry Beers, et al., Civ. Action File No. 1:07-cv-02736-CC, U.S. District Court for the Northern District of Georgia, 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.”

business venture but are taken from monies received from new investors.”).

As the Court has already found in the past and the evidence clearly again establishes, 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, ¶¶ 10 - 16).³

Because the Receivership Companies were operated as a Ponzi scheme, any transfers made to Priebe 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.

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).

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).

Priebe with his partner Antonio Ruspoli jointly agreed to receive the funds and keep them safe. He knew that the funds they received belonged to third parties and he was acting on their behalf and for their benefit. It does not really matter whether Priebe and Ruspoli through the Trading Agreement formed a partnership or a joint venture, because in either event, Priebe is responsible for the actions of Ruspoli. See Optimum Technologies, Inc. v. Henkel Consumer Adhesives, Inc., 469 F.3d 1231 (11th Cir. 2007). In Georgia, a partnership is found in an association of two or more persons to carry on as co-owners a business for profit, O.C.G.A. § 14-8-6, every partner is an agent of the partnership and every partner’s act binds the partnership, O.C.G.A. § 14-8-9(1), the partnership is liable for a partner’s

actions, O.C.G.A. § 14-8-13, and all partners are jointly and severally liable for all debts, obligations and liabilities of the partnership, O.C.G.A. § 14-8-15. See J.T. Turner Construction Co. v. Summerour, 301 Ga. App. 323, 687 S.E.2d 612 (2009); Yun v. Um, 277 Ga. App. 477, 627 S.E.2d 49 (2006). Here, the Trading Agreement recited that Priebe and Ruspoli owned proprietary information, they both shared joint rights over the San Marino bank account in which the misappropriated funds were deposited, and they were pursuing a business together for profit, which they agreed to share. A joint venture entails a pooling of action, a joint undertaking for profit and rights of mutual control and results in the actions of one joint venturer binding the other. See Hillis v. Equifax Consumer Services, Inc., 237 F.R.D. 491 (N.D. Ga. 2006); American Association of Cab Companies, Inc. v. Parham, 291 Ga. App. 33, 661 S.E.2d 161 (2008); Kitchens v. Brusman, 280 Ga. App. 163, 633 S.E.2d 585 (2006). Mutual control can be found here in the language of the Trading Agreement and in Priebe's admissions that joint bank account owner he had the right to withdraw the funds no less than Ruspoli.

- B. The transfers to Priebe 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 Priebe received were fraudulent transfers: (1) the transfers were made

to Priebe “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 Priebe “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 Priebe 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. 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 Priebe received from the Receivership Companies were not in exchange for an equivalent value – the Receivership Companies received no value at all, – 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 v. World Harvest Church, Inc., 2006 WL 870310, *10 (N.D. Ga. Mar. 31, 2006) (“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.

C. There is no good faith defense to the fraudulent transfer claims.

None of these tests for a fraudulent transfer require that Priebe, as recipient of the transferred funds, 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 claim) and C.F. Foods, 280 B.R. at 110 (no “good faith” exception to fraudulent transfer claim).⁴

III. Priebe Wrongfully Converted the Funds Transferred to Him From the Receivership Companies.

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.

Priebe is also 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).

Priebe admits to receiving \$5 million in the San Marino account over which he had control. (Fact, ¶¶ 80, 84-86). These funds came from the Receivership Companies, (Fact, ¶¶ 76, 80), and it is clear from the Trading Agreement that Priebe knew that he had been entrusted with funds belonging to third parties, which were supposed to be kept safe and returned. Both Ghods and the Receiver have demanded the return of the funds. (Fact, ¶¶ 98-99 & 115). Priebe has failed and refused to return the funds. (Fact, ¶ 116). Therefore, Priebe is liable to the Receiver for conversion as a matter of law. As shown above, Priebe is also personally liable for his partner (or joint venturer) Ruspoli’s conduct.

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

Alternatively, Priebe 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).

Priebe admits to receiving \$5 million in the San Marino account over which he had control. (Fact, ¶¶ 80, 84-86). These funds came from the Receivership Companies. (Fact, ¶¶ 76, 80). Priebe has provided nothing of value to the Receivership Companies in exchange for the funds. (Fact, ¶¶ 116-117). Priebe has been unjustly enriched by receiving \$5 million in funds belonging to innocent investors and should be held liable as a matter of law.

V. Priebe 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; and the demand was refused.” Taylor v. Powertel, Inc., 551 S.E.2d 765, 770 (Ga.

Ct. App. 2001). Priebe has received funds from the Receivership Companies, which were operated as a Ponzi scheme. The Receiver made a demand for return of the funds, which Priebe has ignored. In equity and good conscience, Priebe is not entitled to keep the funds and 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." Priebe admitted to receiving the funds. 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 Priebe's liability for receiving \$5 million in funds for which he had no right or entitlement. Priebe 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

Priebe'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 on the part of Priebe, if any. Priebe is also liable for conversion, unjust enrichment and money had and received. Thus, the

Receiver is entitled to judgment as a matter of law as to Jeffrey Priebe in the amounts of at least \$4,785,000 plus interest of \$957,129.81 of at the rate of \$917.67/day accruing from August 20, 2007 or the earliest day allowed by law.

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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and Oxford Adams Capital, LLC

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,)

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)
SERVICES, INC., ZAMINDARI)
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

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO DEFENDANT JEFFREY JAMES MAYO PRIEBE 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