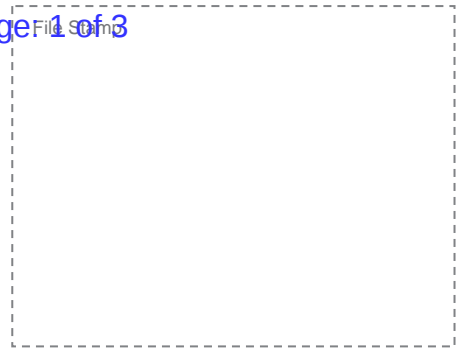


Rev. 2/11

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT



12-14073-EE

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: _____

Caption: JONATHAN E. PERLMAN, ESQ., as Court-Appointed Receiver of Creative Capital Consortium, LLC et al. Plaintiff v. BANK OF AMERICA, N.A. Defendant.	District and Division: Southern District of Florida Name of Judge: Honorable Daniel T.K. Hurley Nature of Suit: Statutory Action by Receiver
	Date Complaint Filed: 03/28/2011 District Court Docket Number: 11-80331-cv-Hurley/Hopkins
	Date Notice of Appeal Filed: 07/24/2012 <input type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action
	Has this matter previously been before this court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide (a) Caption: Perlman v. Bank of America, N.A. (b) Citation: (c) Docket Number: 12-13436-EE

	Attorney Name	Mailing Address	Telephone, Fax, and Email
For Appellant: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other (Specify)	W. Barry Blum, Esq. Carmen Contreras-Martinez, Esq. David C. Cimo, Esq.	Genovese Joblove & Battista, P.A. 100 S.E. 2nd Street, 44th Fl. Miami, FL 33131	Tel: 305 349-2300 Fax: 305 349-2310 bbblum@gjb-law.com ccontreras@gjb-law.com DCimo@gjb-law.com
For Appellee: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Other (Specify)	Joseph E. Culleiton, Esq. Mary J. Hackett, Esq. Kim M. Watterson, Esq.	Reed Smith, LLP Reed Smith Centre 225 Fifth Avenue Pittsburgh, PA 15222	Tel: 412 288-3131 Fax: 412 288-3063 jculleiton@reedsmith.com mhackett@reedsmith.com kwatterson@reedsmith.com

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> US Plaintiff <input type="checkbox"/> US Defendant	<input type="checkbox"/> Final Judgment, 28 USC 1291 <input type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1) <input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b) <input type="checkbox"/> Interlocutory Order, Qualified Immunity <input type="checkbox"/> Final Agency Action (Review) <input type="checkbox"/> 54(b)	<input type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Default Judgment <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Judgment/Bench Trial <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Judgment/Directed Verdict/NOV <input type="checkbox"/> Injunction <input checked="" type="checkbox"/> Other <u>See #5 below</u>	Amount Sought by Plaintiff: \$ <u>68,000,000</u> Amount Sought by Defendant: \$ _____ Awarded: \$ _____ to _____ Injunctions: <input type="checkbox"/> TRO <input type="checkbox"/> Preliminary <input type="checkbox"/> Granted <input type="checkbox"/> Permanent <input type="checkbox"/> Denied

Based on your present knowledge:

- (1) Does this appeal involve a question of First Impression? Yes No
What is the issue you claim is one of First Impression?
- (2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute? Yes No

If Yes, provide

- (a) Case Name/Statute
- (b) Citation
- (c) Docket Number if unreported

- (3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that
 - (a) Arises from substantially the same case or controversy as this appeal? Yes No
 - (b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal? Yes No

If Yes, provide

- (a) Case Name
- (b) Citation
- (c) Docket Number if unreported
- (d) Court or Agency

- (4) Will this appeal involve a conflict of law
 - (a) Within the Eleventh Circuit? Yes No
 - (b) Among circuits? Yes No

If Yes, explain briefly:

- (5) Issues proposed to be raised on appeal, including jurisdictional challenges:
 - A. Whether the lower court abused its discretion by denying the Receiver's Motion for Reconsideration and Request for Leave to File a Second Amended Complaint pursuant to Federal Rule of Civil Procedure 59(e) and, alternatively, under Rule 60(b).

B. and C. on attached page.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 22 DAY OF August, 2012.

W.Barry Blum

NAME OF COUNSEL (Print)

s/W.Barry Blum

SIGNATURE OF COUNSEL

Please ATTACH portion of district court, tax court, or agency record described in 11th Cir. R. 33-1(b): (a) judgments and orders appealed from or sought to be reviewed; (b) any supporting opinion, findings of fact, and conclusions of law filed by the court or the agency, board, commission, or officer; (c) any report and recommendation adopted by an order; (d) findings and conclusions of an administrative law judge when appealing a court order reviewing an agency determination; (e) any agency docket sheet or record index.

B. Whether the lower court abused its discretion by dismissing with prejudice the Plaintiff/Receiver's "aiding and abetting" claims (1) based on an unpublished decision of this Court issued after the lower court had earlier denied a motion to dismiss and ruled that the Receiver's aiding and abetting claims were sufficiently pleaded; (2) without giving the Receiver even one opportunity to amend his complaint after the unpublished decision was raised, despite the Receiver's indication in its opposing papers that additional facts obtained in recent discovery could be put forth in an amended pleading if the court reconsidered its prior ruling that the Receiver's complaint adequately stated claims for aiding and abetting.

C. Whether the lower court, relying on this Court's unpublished decision in *Lawrence*, erred by dismissing with prejudice the Receiver's claims under the Florida Uniform Fraudulent Transfer Act ("FUFTA") based on the "mere conduit" affirmative defense despite that: (1) *Lawrence* did not involve or even address FUFTA or the "mere conduit" affirmative defense, and (2) this Court's decision in *In re Harwell*, 628 F.3d 1312 (11th Cir. 2010), establishes that the "mere conduit" defense requires affirmative proof by a defendant that it acted in good faith.