

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
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Case No. 09-80190-HURLEY/ROSENBAUM

JONATHAN E. PERLMAN, Esq., as court-)
appointed Receiver of Creative Capital)
Consortium, LLC et al.,)
)
Plaintiff,)
v.)
)
CAPTIN CONSTRUCTION GROUP, INC.,)
a Georgia corporation,)
)
Defendant.)
)

**DEFENDANT CAPTIN CONSTRUCTION’S RESPONSE TO
ORDER TO SHOW CAUSE [DE # 26]**

Defendant Captin Construction Group, Inc. (“Defendant”) hereby responds to the Court’s Order to Show Cause [DE #26] to Defendant why Plaintiff’s Motion for Partial Summary Judgment (“Motion”) should not be granted, and states:

1. On November 20, 2009, Plaintiff filed a Motion for Partial Summary Judgment alleging that there are no genuine issues of material facts as to the existence of a Ponzi scheme purportedly orchestrated by George Theodule (“Theodule”).
2. Plaintiff further alleged that Theodule engaged in fraudulent transfers that included transfers with the Defendant in the above-captioned matter.

3. The facts outlined in Plaintiff's Statement of Undisputed Facts involve activity or conduct that is alleged to be performed by Theodule involving transactions between Theodule and other individuals or entities not a party to the instant cause of action.

4. The Defendant was unable to file its initial opposition because Defendant was unable to verify the facts alleged, as the transactions did not involve the Defendant who was without knowledge of the actual facts alleged thereto, and therefore, Defendant could not confirm or contest the facts as alleged in the subject Motion.

5. Notwithstanding the allegations, Defendant has filed a Memorandum of Law in Opposition to Plaintiff's Partial Motion for Summary Judgment (DE #34] and reserves the right to contest any facts alleged by Plaintiff to the extent any facts alleged are within the purview of the Defendant's knowledge, including without limitation, any facts involving transactions between Theodule and the Defendant.

WHEREFORE, Defendant Captin Construction respectfully requests the Court deny the Motion for Partial Summary Judgment and provide such other and further relief the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed a true and correct copy of the foregoing document using the CM/ECF system and that copies of same, together with

proof of filing, will be served by Electronic Mail and to the addressees as indicated below:

Dated: January 22, 2010

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