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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(WEST PALM BEACH)**

**Case No.: 09-80190-CIV-HURLEY/HOPKINS**

JONATHAN E. PERLMAN, ESQUIRE, as Court  
Appointed Receiver of CREATIVE CAPITAL  
CONSORTIUM, LLC, CREATIVE CAPITAL  
CONCEPTS, LLC, UNITED INVESTMENT  
CLUB, LLC and REVERSE AUTO LOAN, LLC,  
all Florida Limited Liability Companies,

Plaintiff,

v.

CAPTIN CONSTRUCTION GROUP, INC., a  
Georgia Corporation, HOMELAND TITLE  
SERVICES, LLC., a Georgia Limited Liability  
Company, and VALENTIN ARDELEAN,

Defendants.

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**SUPPLEMENT TO HOMELAND TITLE'S MOTION FOR SUMMARY JUDGMENT**

Defendant, Homeland Title Services, LLC (“Homeland”), hereby supplements its motion for summary judgment [DKT. 93] to clarify that Homeland was, at all times, an innocent escrow agent, without knowledge that it was being used to transfer funds that were allegedly part of a Ponzi scheme. (See Supplemental Affidavit of Patricia Hunt, attached hereto).

While, this case does not seek damages under the Bankruptcy Code, 11 U.S.C. § 550, the Eleventh Circuit in *Martinez v. Hutton (In re Harwell)*, 628 F.3d 1312 (11th Cir. 2010), recently “added” a prong to its analysis of the application of the conduit test to the Bankruptcy fraudulent transfer statute. After reviewing its own precedent, the Court explained that a “clear pattern

emerges,” and announced that “good faith is a requirement under this Circuit’s mere conduit or control test.”<sup>1</sup> *Id.* at 1322-23.

In *Harwell*, an attorney, Hutton, was retained to negotiate a buyout of his client’s interests in two Florida businesses. While those negotiations were ongoing, a Colorado court entered a judgment of \$1.4 million against Hutton’s client, and Hutton was retained to defend against the creditor’s domestication of its judgment in Florida. While the judgment creditor was attempting to domesticate its judgment and collect its debt, Hutton settled the buyout dispute for \$500,000. Hutton received the first \$100,000 into his trust account and was directed by his client to distribute the funds in five checks to his client and the client’s wife. Hutton admitted that he knew about the judgment and the creditor’s collection efforts when he transferred the funds. A few days later, the remaining \$400,000 was deposited directly into Hutton’s trust account and immediately transferred out to various parties, including the debtor’s wife and father.

The Eleventh Circuit in *Harwell* ultimately determined that a two-prong test was appropriate: the defendant must establish that he or she (1) did not have control over the property received and (2) acted in good faith and was an innocent participant in the fraudulent transfer. *Id.* The Court explained that given Hutton’s knowledge of the judgment and his attempt to assist his client in avoiding the judgment, the mere fact that he was a conduit may not be enough to warrant a summary judgment in his favor. The Court went on:

In the vast majority of cases, a client's settlement funds transferred in and out of a lawyer's trust account will be just like bank transfers, and lawyers as intermediaries will be entitled to mere conduit status because they lack control over the funds. Mere conduits, such as lawyers and banks, do not have an

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<sup>1</sup> This holding is contrary to the decisions from the Seventh Circuit in *Bonded Fin. Servs. Inc. v. European Bank*, 838 F.2d 890 (7th Cir. 1988), and the Second Circuit in *Christy v. Alexander & Alexander of New York, Inc. (In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey)*, 130 F.3d 52 (2d Cir. 1997), which expressly rejected the requirement of good faith.

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affirmative duty to investigate the underlying actions or intentions of the transferor. However, under the particular circumstances of this case and given the bankruptcy court's assumptions about Hutton's major role in the fraudulent transfer of these funds in issue, Hutton is not entitled to summary judgment in his favor based on the mere conduit or control test.

*Id.* at 1324. Accordingly, because attorney Hutton had knowledge of and played a major role in the fraudulent transfer of funds, he was not necessarily protected by his status as an escrow agent.

In this case, there is absolutely no evidence that Homeland Title was aware of the alleged Ponzi scheme or that it was being used to perpetrate any fraudulent transfer. As the Eleventh Circuit in *Howell* made clear, Homeland Title had no duty to investigate, and simply followed the written instructions of the Buyer and Seller on the agreements furnished to it as part of its role as title agent. Thus, Homeland is entitled to a summary judgment.

DATED: November 1, 2011

Respectfully submitted,

/s/ Lawrence S. Gordon

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**CERTIFICATE OF SERVICE**

**I hereby certify** that a true and correct copy of the foregoing was served by on \_\_\_\_\_, 2011 on all counsel or parties of record on the Service List below.

\_\_\_\_\_  
*/s/ Lawrence S. Gordon*  
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