

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

CASE NO. 09-80480-CIV-HURLEY/HOPKINS  
(Ancillary Proceeding to U.S.D.C. Case No. 08-81565-CIV-HURLEY/HOPKINS)

JONATHAN E. PERLMAN, Esq., as court  
appointed Receiver of Creative Capital  
Consortium, LLC, et al.,

Plaintiff,

v.

DOROTHY DELISFORT-THEODULE, et al.

Defendants.

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**RECEIVER'S REPLY IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT REGARDING ACTUAL INTENT TO  
HINDER, DELAY OR DEFRAUD CREDITORS**

The Plaintiff, Jonathan E. Perlman, Esq., the court-appointed Receiver (the "Receiver") of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc. and Unity Entertainment Group, Inc.,<sup>1</sup> pursuant to Fed. R. Civ. P. 56 and S.D. Fla. L.R. 7.5, submits this Reply Memorandum in Support of his Motion for Partial Summary Judgment (the "Motion"). [DE 11]. For the reasons set forth below, the Receiver's Motion for Partial Summary Judgment should be granted.

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<sup>1</sup> Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC, Reverse Auto Loan, LLC, Wealth Builders Circle, LLC, The Dream Makers Capital Investment, LLC, G\$ Trade Financial, Inc. and Unity Entertainment Group, Inc. shall sometimes be collectively referred to as the "Receivership Entities."

## **INTRODUCTION**

The Receiver is entitled to partial summary judgment because the Defendant has failed to produce any evidence to show that there is a genuine issue of material fact as to the alleged fraudulent transfers enumerated in the Receiver's Amended Complaint. The Defendant's response to the Receiver's motion for partial summary judgment is a mere denial of the allegations contained therein. Further, the response does not contain any affidavits in opposition to the Receiver's motion. In contrast, the evidence obtained to date in these proceedings and obtained through investigation conducted by the Receiver and the SEC unequivocally proves that there are no material facts in dispute concerning the Receiver's allegations that the alleged fraudulent transfers at issue in this case were made by the Receivership Entities in furtherance of the Ponzi scheme, and as such were made with actual intent to hinder, delay or defraud the creditors of the Receivership Entities.

Accordingly, the Receiver is entitled to the entry of an order under Fed. R. Civ. P. Rule 56(d) granting partial summary judgment and establishing the actual fraudulent intent of the Receivership Entities.

## **LEGAL ARGUMENT**

### **A. Defendant Failed to Submit Opposing Affidavits and/or Admissible Evidence**

As the Receiver explained in his Motion for Partial Summary Judgment, the transfers made in conjunction with and in furtherance of a Ponzi scheme are *per se* fraudulent, and are therefore *per se voidable* under FUFTA, as a matter of law. Defendant does not respond with an affidavit or other admissible evidence setting out specific facts showing a genuine issue for trial. Instead, the Defendant merely relies on conclusory allegations and denials in her own pleading in response to the motion. Conclusory allegations, however, without specific supporting facts have

no probative value. *Leigh v. Warner Bros., Inc.*, 212 F.3d 1210, (11th Cir.) (2000); *see also Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 592 (11th Cir.), *cert denied*, 516 U.S. 817 (1995) (Mere general allegations which do not reveal detailed and precise facts will not prevent the award of summary judgment).

Further, the rule of law is well-established that once the Plaintiff satisfies his initial burden of demonstrating the absence of a genuine issue of material fact, the burden shifts to the Defendant to “‘go beyond the pleadings,’ and by its own affidavits, or by ‘depositions, answers to interrogatories, and admissions on file’ designate specific facts showing that there is a genuine issue for trial.” *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 594 (11th Cir. 1995) (*quoting Celotex*, 477 U.S. at 324). In the instant case, the Defendant has not come forward with any evidence whatsoever challenging the Receiver’s allegations regarding the transfers at issue.

**B. Defendant Failed to Oppose the Receiver’s Statement of Facts**

The Defendant does not dispute with admissible evidence the Receiver’s statement of undisputed material facts contained in paragraphs 1 through 48 of the Receiver’s brief in support of the motion for partial summary judgment on a paragraph by paragraph basis, and therefore, the matters set forth therein should be deemed admitted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986); *see also* S.D. Fla. L.R. 7.5(d).

**CONCLUSION**

The Defendant does not offer any admissible evidence which can overcome summary judgment. Specifically, the Defendant presents no evidence or argument that refutes the Receiver’s allegations that the alleged fraudulent transfers at issue in this case were made by the Receivership Entities in furtherance of the Ponzi scheme, and as such were made with actual intent to hinder, delay or defraud the creditors of the Receivership Entities. The Defendant’s

failure to rebut these allegations warrants summary judgment in the Receiver's favor on this claim.

For all of the foregoing reasons, the Receiver respectfully requests that the Court enter an order granting the Receiver's Motion for Partial Summary Judgment on Count III of the Amended Complaint.

Dated: May 13, 2010  
Miami, Florida

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2009, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Carmen Contreras-Martinez  
Carmen Contreras-Martinez

**SERVICE LIST**

**JONATHAN E. PERLMAN, ESQ., as court appointed Receiver of Creative Capital Consortium, LLC, et al. v. DORTHY DELISFORT-THEODULE, et al.  
CASE NO. 09-80480-CIV-HURLEY/HOPKINS  
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