

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

09-81226

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

<p>JONATHAN E. PERLMAN, Esq., as court appointed Receiver of Creative Capital Consortium, LLC, et al.,</p> <p>Plaintiff,</p> <p>v.</p> <p>DEVELOPMENT FUNDING & SERVICES, LLC, AND DANIEL LAVAN, JR.</p> <p>Defendants.</p>	<p>CIV-ZLOCH /ROSENBAUM</p> <p><u>COMPLAINT FOR DAMAGES AND TO AVOID AND RECOVER FRAUDULENT TRANSFERS AND FOR OTHER RELIEF</u></p>	<p>FILED by <u>AS</u> D.C.</p> <p>AUG 21 2009</p> <p>STEVEN M. LARIMORE CLERK U. S. DIST. CT. S. D. of FLA. - MIAMI</p>
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The Plaintiff, Jonathan E. Perlman, Esq., the court-appointed Receiver (the "Receiver") of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC,¹ United Investment Club, LLC and Reverse Auto Loan, LLC, a Florida limited liability company,² sues the Defendant, Development Funding & Services, LLC and Daniel Lavan ("Defendants") and alleges:

THE PARTIES, JURISDICTION AND VENUE

1. The Receiver was appointed by the United States District Court for the Southern District of Florida pursuant to this Court's Order dated December 29, 2008 (the "Receivership Order") in the action styled: *Securities and Exchange Commission ("SEC") v. Creative Capital*

¹ Creative Capital Consortium, LLC and A Creative Capital Concept\$, LLC shall sometimes collectively be referred to herein as "Creative Capital" or the "Creative Capital Entities."

² Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, United Investment Club, LLC and Reverse Auto Loan, LLC shall sometimes be collectively referred to as the "Receivership Entities."

Consortium, LLC, A Creative Capital Concept\$, LLC and George L. Theodule (collectively, the “Receivership Defendants”), Case No. 08-81565-CIV-HURLEY/HOPKINS, pending in the United States District Court, Southern District of Florida (the “SEC Receivership Action”).

2. The receivership was subsequently expanded to include United Investment Club, LLC and Reverse Auto Loan, LLC, a Florida limited liability company.

3. Under the terms of the Receivership Order, the Receiver is authorized to investigate the affairs of the Receivership Entities, to marshal and safeguard these entities’ assets, and to institute legal proceedings for the benefit and on behalf of the Receivership Entities’ investors and other creditors.

4. Pursuant to the Receivership Order, the Receiver is authorized and has standing to assert claims against third parties including but not limited to: (i) all legal and equitable claims available to the Receivership Entities prior to the institution of the SEC Receivership Action; and (ii) claims to avoid and recover fraudulent and preferential transfers as receiver for the Receivership Entities and by virtue of his status as a joint lien creditor of the Receivership Entities pursuant to Florida Statutes §§ 671.201(13) and 679.1021(1)(zz).

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§754 and 1692.

6. This complaint is brought to accomplish the objectives of the Receivership Order and is thus ancillary to the Court’s exclusive jurisdiction over the receivership estate. Pursuant to the principles of ancillary jurisdiction or supplemental jurisdiction under 28 U.S.C. §1367, the Court in the SEC Receivership Action has supplemental jurisdiction over the claims set forth herein. Hence, venue is also proper in this Court.

7. The Court has personal jurisdiction over Defendants pursuant to 28 U.S.C. §§754 and 1692.

8. At all times material hereto, George Theodule (“Theodule”) was an officer, director, managing agent and/or control person of each of the Creative Capital Entities. Theodule is a named defendant in the SEC Receivership Action. From and after the formation of each Creative Capital Entity, Theodule operated a massive Ponzi scheme receiving over \$60 million of investor funds.

9. The Defendant, Development Funding & Services, LLC (“Development Funding”) is a Florida limited liability company whose address is 13750 West Colonial Drive, Suite 350-156, Winter Garden, Florida.

10. The Defendant, Daniel Lavan, (“Lavan”) is an individual residing in Winter Garden, Orange County, Florida. At all times material hereto, Lavan was a controlling principal of Development Funding.

FACTS COMMON TO ALL COUNTS

11. On December 29, 2008, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive and Other Relief (the “Complaint”) against the Initial Receivership Entities. The SEC alleged that Theodule, through the Receivership Entities, sold unregistered securities and violated various sections of the Securities Exchange Act of 1934 (the “Exchange Act”).

12. More specifically, the SEC alleged that all of the Receivership Defendants violated section 10(b) of the Exchange Act.

13. The SEC sought a permanent injunction against the Receivership Defendants to restrain them from any further securities law violations.

14. Additionally, the SEC sought (1) an order requiring the Receivership Defendants to provide a sworn accounting of all proceeds they received, directly or indirectly, as a result of the securities law violations; (2) an order requiring the Receivership Defendants to disgorge, with prejudgment interest, any ill-gotten gains they received; (3) the imposition of civil penalties pursuant to section 21(d) of the Exchange Act; (4) an order freezing the Receivership Defendants' assets pending resolution of the matter; (5) the appointment of a receiver over the Receivership Entities; (6) an order requiring the Receivership Defendants to take steps necessary to repatriate to the territory of the United States all funds and assets of investors; and (7) an order requiring the Receivership Defendants to preserve records in their custody, possession or subject to their control.

15. On December 29, 2008, upon the request of the SEC, the Receivership Court entered the Receivership Order appointing the Receiver as receiver over the Receivership Entities, their subsidiaries, successors and assigns (collectively, also the "Receivership Entities").

16. After a contested hearing, the Court entered a Preliminary Injunction on January 6, 2009 preventing Theodule from continuing to violate the securities laws as well as the other relief requested by the SEC, including disgorgement of ill-gotten gains. The Receivership Entities consented to the entry of a preliminary injunction by virtue of consents executed and filed by the Receiver on behalf of such entities.

17. The offices of the Receivership Entities were found vacant when the Receiver obtained access to the premises. While certain documents and records have been recovered, others remain missing or destroyed.

18. Prior to the receivership, the Receivership Entities, which promised to double investments within 90 days risk free, raised in excess of \$60 million from thousands of investors

by and through the use of over 100 investment clubs located in Florida, New Jersey, Georgia and other states.

19. Subsequent to his appointment, the Receiver determined that the Receivership Entities had no legitimate business operations. Consequently, the Receiver determined that so-called "profit payments" made to investors by the Receivership Defendants, along with other payments that appear to have no legitimate business purpose, could have only come from money raised from other investors, and, as such, the Receivership Entities were operated as a classic Ponzi scheme.

20. Since his appointment, the Receiver and his professionals have attempted to locate and secure money illegally raised from investors by the Receivership Defendants and the proceeds thereof. To that extent, the Receiver is initiating lawsuits against persons who illegally diverted assets from the Receivership Entities' possession, and who are otherwise liable to the Receiver for damages.

21. All conditions precedent to the filing of this action have been performed, waived or have occurred.

**THE FRAUDULENT INVESTMENT SCHEME
OF THE CREATIVE CAPITAL ENTITIES**

A. Overview of the Scheme

22. The Creative Capital Entities have engaged in a fraudulent Ponzi scheme predominately targeting the United States Haitian community since at least November 2007.

23. Holding himself out as a pastor, Theodule ingratiated himself with investors by claiming he was offering his investment expertise to help build wealth in the Haitian community. He also informed investors he used part of his trading profits to fund start-up businesses in the Haitian community, as well as business projects in Haiti and Sierra Leone.

24. The Creative Capital Entities primarily attracted investors through word-of-mouth, and Theodule made his representations during face-to-face meetings in which he touted his ability to double investor funds in just 90 days. Theodule typically depicted his investment plan and boasts of incredible profits trading stocks and options on dry erase boards or flip charts.

25. Theodule also routinely boasted to investors about Creative Capital's high rates of return, and stressed the need to begin investing as soon as possible. He told one investor he had made millionaires out of a significant number of people in the time it had taken her to decide to invest, and pressured her to liquidate the equity in her home to invest with him.

26. The Creative Capital Entities' presentations emphasized the safety and security of investing with them. They guaranteed investors 100% returns with no risk, and claimed to invest in the stocks and options of well-known companies such as Google, John Deere, Monsanto, Best Buy, Gamestop, and others.

27. Since the commencement of the investment scheme, the Creative Capital Entities have raised more than \$60 million from thousands of investors nationwide.

28. While the scheme was being perpetrated, Theodule, using Creative Capital funds and other property owned by Creative Capital, acquired certain real and personal property as nominee for Creative Capital, the actual owner of such property. Indeed, in his sworn accounting of assets filed with the Court, Theodule expressly acknowledged several such assets being acquired in such manner, and that such assets were property of Creative Capital and not of himself individually.

B. Investor Funds Are Raised Through a Network of Investment Clubs under the Auspices of a Bogus, Self-Regulatory Agency

29. To add to investors' sense of security, Theodule directed prospective investors to form "investment clubs," which a purported self-regulatory agency, Smart Investment

Management Services, LLC (“SIMS”), helped the investors form. This entity also supposedly protected investors through independent verification of their deposits.

30. In reality, SIMS was a private company run by a former Creative Capital employee and not a regulatory entity.

31. The investment clubs pooled investor funds and sent them to Creative Capital for a 90-day period, during which Theodule purportedly traded stocks and options on behalf of the investment club members.

32. Unlike a real investment club, the members did not participate in making investment decisions, rarely had club meetings, and deposited funds exclusively with the Creative Capital Entities.

33. Thus, the investment clubs served principally as vehicles to funnel funds to Theodule and Creative Capital.

34. The investment clubs typically required a minimum \$1,000 investment per investor, which the investor could not withdraw during the 90-day investment period.

35. The investment clubs deposited the investors’ funds into their own bank accounts, pooled the funds, and remitted the money to Creative Capital, minus a 10% club commission.

36. At the end of the 90-day investment period, when the Creative Capital Entities had purportedly doubled the investment amount, they supposedly returned the principal and profits back to the investment clubs, minus a 40% commission on the profits. Prior to distributing the proceeds back to the individual club members, the investment clubs typically charged a second 10% commission on the principal.

C. Fraudulent Misrepresentations and Omissions

37. In connection with Creative Capital's fraudulent Ponzi scheme, numerous material misrepresentations and omissions were made regarding Creative Capital's business, Theodule's stock trading, and the use of investor funds.

38. For example, Theodule's claimed success in trading stocks and options was demonstrably false. Indeed, soon after his appointment, the Receiver came to learn that of the more than \$18.3 million that had been deposited in brokerage accounts Theodule controlled, he had lost approximately 97% of those funds trading stocks and options. In fact, Theodule consistently lost money trading in those accounts since November 2007, and never generated any net trading profits.

39. Soon after his appointment, however, the Receiver came to learn that Creative Capital hid its losses from current and prospective investors, paying principal and purported profits to existing investment clubs and individual investors of approximately \$16.8 million from new investor funds.

40. Additionally, Theodule claimed he used trading profits to fund new business ventures, some of which benefitted the Haitian community in the United States and Haiti, and others in Sierra Leone.

41. In reality, there were no trading profits because the funds of the Creative Capital Entities: (i) had been used to pay earlier investors their purported profits; and (ii) had been misappropriated for the personal use and benefit of Theodule, his friends and his family.

42. Theodule's representations about the safety and security of investors' funds were also patently false. SIMS was not a regulatory agency, but rather a private corporation headed by a former Creative Capital employee.

43. Further, there was no evidence that SIMS has access to or otherwise verified the deposits to ensure the safety of investor funds. To the contrary, the Receiver came to learn that Theodule had commingled investor funds extensively with his own personal accounts and had misappropriated at least \$5.7 million. This amount includes net transfers of at least \$4.0 million to his personal bank accounts, cash withdrawals of more than \$1.0 million and more than \$700,000 for apparent personal expenses such as multiple luxury vehicles, credit card bills, a wedding payment for Theodule's marriage, and a down-payment for the purchase of a house.

44. Thus, Theodule misrepresented the safety and security of the Creative Capital investments when he led investors to believe: (i) they could withdraw their funds any time after the initial 90-day investment period; (ii) there was no risk; and (iii) SIMS verified the security of their funds.

45. At all times material hereto, the Creative Capital Entities were undercapitalized and insolvent.

D. The Dolce Regency Transaction

46. On or about March 27, 2008, Creative Capital executed a Retainer Agreement with attorney Gabrielle Alexis, ("Alexis"), and Law Offices of Gabrielle Alexis, P.A., a Florida professional association ("GAPA") (the "Retainer Agreement") whereby Alexis and her law firm agreed to provide outside "general counsel" legal services to Creative Capital. The Retainer Agreement further described the legal services as follows:

to include but are not limited to: providing necessary legal advice to CLIENT on issues *related to Real Estate Transactions, Mortgage Programs and Contracts; reviewing purchase agreements for accuracies in preparation for closings of the transactions; preparing agreements between partners of the Real Estate programs with CLIENT;* preparing contracts and agreements for individuals desiring to participate in the different mortgage programs that CLIENT will offer.

(emphasis added).

47. While the Retainer Agreement was initially based upon an hourly fee basis, in a document dated May 2, 2008, entitled Amendment to Retainer Agreement, GAPA and Creative Capital agreed that the fee agreement would be modified from an hourly rate to a fixed monthly amount of \$10,000. Between March of 2008 and June of 2008, Creative Capital paid Alexis and GAPA as provided under the May 2, 2008, modified fee agreement. Notably, no written fee agreement ever existed between or among Theodule and Alexis or GAPA.

48. On or about May 29, 2008, Theodule, as sole managing member, formed Dolce Regency, LLC., a limited liability company, for the purpose of investing in real estate, including the purchase of a large, multi-unit condominium and hotel development project in Orlando, Florida. Subsequently on or about July 24, 2008, Theodule authorized an amendment to the Articles of Organization, changing the name of Dolce Regency, LLC. to Dolce Regency Suites, LLC, a Florida limited liability company (“Dolce Regency”) and adding as manager Pacific Atlantic Investment, LLC., a limited liability

49. In reality however, contrary to Dolce Regency’s Articles of Organization, Creative Capital, not Theodule, is the actual owner of Theodule’s membership interests in Dolce Regency. The funding for the real estate transactions contemplated by Dolce Regency was accomplished using cash assets/money invested by Creative Capital investors, consistent with Theodule’s practice of acquiring Creative Capital assets in his own name as nominee for Creative Capital.

50. Furthermore, Alexis and GAPA, Creative Capital’s attorneys, had only one client – Creative Capital – for whom Alexis was performing and being compensated for real estate related legal services under the written Retainer Agreement.

51. On or about August 12, 2008, Theodule, as managing member of Dolce Regency, executed a Membership Interest Purchase and Sale Agreement (the “Dolce Purchase Agreement”), pursuant to which Dolce Regency acquired a 100% membership interest in Regency Suites I, LLC (“Regency Suites I”), a Florida limited liability company and the owner and developer of the proposed Regency Suites hotel-condominium, a 364,000 square foot real estate development project consisting of 325 mixed-use residential and hotel units located on Regency Suites Drive in Orlando, Florida (the “Regency Property.”)

52. The Dolce Purchase Agreement expressly disclosed Alexis and GAPA as counsel for Dolce Regency in connection with their purchase of the Regency Suites I membership interests. Dolce Regency’s purchase of these membership interests, used as the vehicle to acquire ownership of the Regency Property, was directly within the scope of Retainer Agreement among Creative Capital and GAPA, which defined GAPA and Alexis’ legal services as being *“related to Real Estate Transactions, Mortgage Programs and Contracts; reviewing purchase agreements for accuracies in preparation for closings of the transactions; and preparing agreements between partners of the Real Estate programs.”*

53. In the weeks prior to the purchase of the Regency Property, Theodule informed a number of investment club presidents and investors in Creative Capital that he was planning to use a portion of the funds they had invested in Creative Capital to purchase of the Regency Property. Certain of Creative Capital’s investors traveled to Orlando with Theodule to view the Regency Property in connection with the potential purchase by Creative Capital.

54. On or about June 23, 2008, in contemplation of the purchase of the Regency Property, Theodule caused \$11 million dollars belonging to Creative Capital investors to be

transferred to an existing Creative Capital client trust account formed by Alexis and GAPA for and on behalf of Creative Capital (the “Creative Capital Trust Account.”)

55. On August 13, 2008, in contemplation of the purchase of the Regency Property, Creative Capital, by and through Alexis and GAPA, transferred \$7 million of the \$11 million dollars transferred to the Creative Capital Trust Account to an escrow account established by the law offices of Dean, Mead, Edgerton, Bloodworth, Capuano, and Bozarth, P.A, (the “Dean Mead Law Firm”) as escrow agent for the sale of the Regency Property, Regency Suites I (the “Dolce Transfer.”). Theodule and GAPA subsequently transferred the \$4 million dollars remaining in the Creative Capital Trust Account to a trading account at Options Express, where they traded the account in the same fashion as many other investors’ accounts.

56. Subsequent to the Dolce Transfer, on or about August 29, 2008, Dolce Regency, by and through the Dean Mead Law Firm, caused certain transfers to be made from the Dolce Transfer funds to and for the benefit of the Defendants in the amount of One Hundred Ninety Seven Thousand Dollars (\$197,000.00) (the “Development Funding Transfers.”) The Development Funding Transfers were made in the form of closing disbursements associated with the sale of the Regency Property.

57. The Dean Mead Law Firm, in its capacity as escrow agent for Dolce Regency in connection with sale of the Regency Property, acted as a mere conduit for purposes of the Dolce Transfer as that term is defined under Florida law, and was without dominion or control over the funds transferred to its escrow account.

COUNT 1
Action to Avoid and Recover
Fraudulent Transfers Made By Dolce Regency as Debtor Pursuant
to Chapter 726 of The Florida Statutes

(Against Defendant as Initial Transferee)

58. The Receiver realleges paragraphs 1 through 57 above as if fully set forth herein.

59. As a result of the Dolce Transfer, and at all times material hereto, Creative Capital and the other Receivership Entities have legal claims against Dolce Regency, and are “creditors” of Dolce Regency as that term is defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726 .101 et seq. (“FUFTA.”) Furthermore, by virtue of Theodule’s use of Creative Capital investment funds to acquire a nominee membership interest in Dolce Regency, Creative Capital is an equity holder and member of Dolce Regency having claims arising from its membership interest qualifying Creative Capital as a “creditor” under FUFTA.

60. As a result of the Dolce Transfer, and at all times material hereto, Dolce Regency is a “debtor” as that term is defined by FUFTA.

61. The Development Funding Transfers rendered Dolce Regency unable to pay the claims of the Receiver, Creative Capital, and the other Receivership entities in their respective capacities as creditors of Dolce Regency under FUFTA.

62. Pursuant to Chapter 726 of the Florida Statutes, a Receiver may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made within four (4) years before the date of the filing of the petition, if the debtor voluntarily or involuntarily –

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or (III) intended to incur, or

believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

63. Pursuant to Chapter 726 of the Florida Statutes, the Receiver may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from – (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee.

64. The Development Funding Transfers constituted a transfer of an interest in property of Dolce Regency to Development Funding within four years under Chapter 726 of the Florida Statutes.

65. Dolce Regency did not receive reasonably equivalent value for the Development Funding Transfers, and Dolce Regency : (i) was insolvent at the time of the Development Funding Transfers or became insolvent as a result thereof; (ii) was engaged or was about to engage in a business or transaction for which the remaining assets of Creative Capital were unreasonably small in relation to the business or transaction; or (iii) intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they came due.

66. In addition, Dolce Regency made the Development Funding Transfers with the actual intent to hinder, delay or defraud creditors of Dolce Regency and such transfer was not received in good faith by Development Funding. Among other badges of fraud, at or near the time of the Dolce Transfer, Dolce Regency: (i) was insolvent; (ii) was not paying its debts as they became due; (iii) did not receive reasonably equivalent value for the Development Funding Transfers; (iv) had, through its principals, defrauded creditors of millions of dollars; and (v) absconded.

67. As a result of the above, the Receiver can avoid the Development Funding Transfers to the Defendants pursuant to Chapter 726 of the Florida Statutes and recover the value thereof from the Defendants.

WHEREFORE, the Receiver demands judgment against the Defendants as follows: (i) determining that the Development Funding Transfers were fraudulent and avoiding and recovering the value thereof from the Defendants; (ii) awarding pre-judgment interest; and (iii) for any other relief the Court deems appropriate.

COUNT 2
Action to Avoid and Recover
Fraudulent Transfers Made By Creative Capital as Debtor Pursuant
to Chapter 726 of The Florida Statutes

(Against Defendant as Subsequent Transferee)

68. The Receiver realleges paragraphs 1 through 67 above as if fully set forth herein.

69. As a result of investments made by A Creative Capital Concept\$, LLC, United Investment Club, LLC and Reverse Auto Loan, LLC (the three Receivership Entities other than Creative Capital Consortium, LLC) into Creative Capital Consortium, LLC, and the claims of those three Receivership Entities created in connection therewith, the Receiver standing in the shoes of the Receivership Entities is a “creditor” of Creative Capital, as defined by the Florida Uniform Fraudulent Transfer Act at Florida Statutes § 726 .101 et seq. (“FUFTA.”).

70. As a result of the creditor claims among Receivership Entities, at all times material hereto, Creative Capital is a “debtor” as that term is defined by FUFTA.

71. The Dolce Transfer is a “voidable” transfer under FUFTA, and furthermore rendered Creative Capital unable to pay the claims of the Receiver, and the other three Receivership entities in their respective capacities as creditors of Creative Capital under FUFTA.

72. The Development Funding Transfers arise from funds received by Dolce Regency in connection with the Dolce Transfer. The Defendants took the Development Funding Transfers as subsequent transferees of the Dolce Transfer without value and with a lack of good faith pursuant to Florida Statutes § 726.109, and the Receiver may recover the value of the Development Funding Transfers from the Defendants.

WHEREFORE, the Receiver demands judgment against the Defendants recovering the value of the Development Funding Transfers, awarding pre-judgment interest; and for any other relief the Court deems appropriate.

COUNT 3
Unjust Enrichment

73. The Receiver re-alleges paragraphs 1 through 72 above as if fully set forth herein.

74. This is a claim for unjust enrichment.

75. At all material times, the Defendants knew that the Development Funding Transfers were in fact the property of Creative Capital which was being wrongfully used and misappropriated by Theodule.

76. The Receivership Entities, via Dolce Regency, conferred a benefit on the Defendants in the form of the Development Funding Transfers.

77. The Defendants knowingly and voluntarily accepted and retained the benefit conferred upon them by the Development Funding Transfers.

78. The circumstances are such that it would be inequitable and unjust for the Defendants to retain the benefit conferred by the Receivership Entities via Dolce Regency without paying the Receiver the value thereof.

79. The Defendants have been unjustly enriched by virtue of the Development Funding Transfers at the expense of Creative Capital.

80. The Receiver is entitled to the return of those amounts in which the Defendants were unjustly enriched through disgorgement or any other appropriate remedy.

WHEREFORE, the Receiver respectfully requests this Court enter judgment against the Defendants in the amount that they were unjustly enriched, together with interest and costs, and for such further relief as the Court may deem just and proper.

COUNT 4
Imposition of Constructive Trust or
Equitable Lien

81. The Receiver re-alleges paragraphs 1 through 80 above as if fully set forth herein.

82. This is a claim for the imposition of a constructive trust or equitable lien..

83. At all material times, the Defendants knew that the Development Funding Transfers were in fact the property of Creative Capital which was being wrongfully used and misappropriated by Theodule.

84. The Receivership Entities, via Dolce Regency, conferred a benefit on the Defendants in the form of the Development Funding Transfers.

85. The Defendants knowingly and voluntarily accepted and retained the benefit conferred upon them by the Development Funding Transfers.

86. The circumstances are such that it would be inequitable and unjust for the Defendants to retain the benefit conferred by the Receivership Entities via Dolce Regency without paying the Receiver the value thereof.

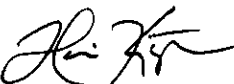
87. The Defendants have been unjustly enriched by virtue of the Development Funding Transfers at the expense of Creative Capital.

88. The Receiver is entitled to the return of those amounts in which the Defendants were unjustly enriched through disgorgement or any other appropriate remedy.

WHEREFORE, the Receiver respectfully requests this Court enter judgment against the Defendants imposing a constructive trust and/or equitable lien in the amount that they were unjustly enriched, together with interest and costs, and for such further relief as the Court may deem just and proper.

Dated: August 21, 2009
Miami, Florida

Respectfully submitted,

By:  for David Lemoie

David C. Cimo
Florida Bar No.: 775400
dcimo@gjb-law.com
David P. Lemoie
Florida Bar No.: 188311
dlemoie@gjb-law.com
GENOVESE JOBLOVE & BATTISTA, P.A.
4400 Bank of America Tower
100 Southeast Second Street
Miami, Florida 33131
Tel: (305) 349-2300
Fax: (305) 349-2310
Attorneys for Receiver
Jonathan E. Perlman, Esq.

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

09-81226

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required by the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST**

I. (a) PLAINTIFFS

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

DEFENDANTS
DEVELOPMENT FUNDING & SERVICES, LLC, AND DANIEL LAVAN, JR.

(b) County of Residence of First Listed Plaintiff Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David P. Lemoie, Esq.
Genovese Joblove & Battista, PA
100 SE Second Street, 4th Floor
Miami, FL 33131
(305) 349-2300

CIV-ZLOCH

Attorneys (If Known)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED. FILED by 103 D.C.

AUG 21 2009

STEVEN M. LARIMORE
CLERK U.S. DISTRICT COURT
S. D. of FLA. - MIAMI

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE VOLUPE WASHINGTON

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|------------|
| | | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Re-filed- (see VI below)
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):
 a) Re-filed Case YES NO b) Related Cases YES NO
 JUDGE Daniel K. Hurley DOCKET NUMBER 08-81565

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1367

LENGTH OF TRIAL via 2-3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

David Lemoie for David Lemoie

8-21-2009

FOR OFFICE USE ONLY

AMOUNT \$ 350.00 RECEIPT # 1007040

08/21/09