

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

CASE NO.: 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC,  
A CREATIVE CAPITAL CONCEPTS, LLC,  
and GEORGE L. THEODULE,

Defendants.

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**RECEIVER'S MOTION TO COMPEL YVES THEODULE TO IMMEDIATELY TURN  
OVER CERTAIN VEHICLES<sup>1</sup>**

Jonathan E. Perlman, Receiver for Creative Capital Consortium LLC., and A Creative Capital Concepts, LLC ("CCC"), files this Motion ("Motion") to Compel Yves Theodule, an individual, to Turn Over Certain Vehicles ("Vehicles") and title to the Vehicles, specifically:

1. 1985 Chevrolet Monte Carlo VIN/I.D. Number: 1G1GZ37G8GR208179
2. 1967 Pontiac GTO (black) VIN/I.D. Number: Unknown<sup>2</sup>

**I. INTRODUCTION**

Pursuant to the Order Appointing Receiver and the Preliminary Injunction entered by the Court, the Receiver seeks the immediate turnover of the Vehicles and title to the Vehicles, which are assets belonging to CCC as further identified herein and which properly belong to the Receivership Estate. The immediate turnover of these CCC assets is absolutely imperative to the Receiver, as any and all delay in their turnover inherently dissipates the value of the Vehicles

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<sup>1</sup> The Securities and Exchange Commission has been contacted by the Receiver and agrees with the filing of this motion and the relief requested herein.

<sup>2</sup> This vehicle was purchased by CCC on or about May 25, 2008.

and ultimately the Receivership Estate. The Receiver respectfully requests that the Court enter an order compelling Yves Theodule and his agents to immediately turn over the Vehicles and title to the Vehicles to the Receiver.

## **II. FACTS SUPPORTING RELIEF REQUESTED**

On December 29, 2008, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive and Other Relief (the “Complaint”) against George Theodule, individually, and CCC. The SEC alleged that George Theodule, through CCC, sold unregistered securities and violated various sections of the Securities Exchange Act of 1934 and that George Theodule and CCC violated Section 10(b) of the Exchange Act. [DE #1].

On December 29, 2008, the Court entered the Receivership Order appointing the Receiver as receiver over CCC. On December 31, 2008, the Court expanded the receivership to include United Investment Club LLC and Reverse Auto Loan, LLC (collectively “CCC”). The Receivership Order, as it pertains to this Motion, specifically provides as follows:

Creative Capital and all of its directors, officers, agents, employee attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of Creative Capital shall deliver forthwith upon demand such property, monies, books and records to the Receiver.

[DE #8].

Pursuant thereto, as the Vehicles identified in this Motion were wholly purchased with CCC funds and are property of CCC, they now belong to the Receivership Estate. The Receiver therefore demands that that the Vehicles and title to the Vehicles, which are currently possessed by Yves Theodule, be immediately turned over and delivered to the Receiver. Further, Yves Theodule, as brother of George Theodule, served as a director, officer and/or registered agent for

at least one of the CCC related investment clubs, exclusively created and implemented for the purpose of collecting investor funds to further the CCC ponzi scheme.

Therefore, the Receiver requests that the Court enter an Order granting Receiver's Motion to compel Yves Theodule to immediately turn over the Vehicles to the Receiver.

### **III. MEMORANDUM OF LAW**

#### **A. This Court Has the Authority to Order Turnover, Surrender of Possession and Transfer of Title to the Vehicles Upon the Receiver's Motion.**

The terms of the Receivership Order authorizes the Receiver to investigate the affairs of CCC, to marshal and safeguard these entities' assets, and to institute legal proceedings for the benefit and on behalf of CCC investors and other creditors against individuals or entities which the Receiver claims have improperly received funds traceable from investors in CCC, including but not limited to actions seeking constructive trusts, disgorgement of profits, and recovery and avoidance of fraudulent transfers under Florida Statute §726.101, et seq. or otherwise.

This Court has the authority to conduct summary proceedings to determine the possession and ownership rights to the Property as opposed to requiring a plenary action, providing that due process is satisfied by affording the non-party a full and fair opportunity to present any claims and defenses. SEC v. Elliott, 953 F.2d 1560 (11th Cir. 1992). The Eleventh Circuit in Elliott approved of this expedited format, observing that summary proceedings improve judicial efficiency, avoid formalities that would slow down the time necessary to settle disputes, decrease litigation costs and prevent further dissipation of receivership assets. Id. at 1566.

In determining the proper procedure for adjudicating non-party claims involving the ownership and distribution of assets in a receivership, the controlling factor in safeguarding procedural due process is the actual substance of the proceeding, not the name or form. Id. at

1571. In a related ancillary-proceeding, the Receiver has filed a lawsuit<sup>3</sup> against Yves Theodule, seeking to recover \$55,000.00 in fraudulent transfers received by Yves Theodule from CCC for less than reasonably equivalent value, as well as seeking to recover \$289,999.31 in fraudulent transfers received by Leading Diversity Club (the alter ego of Yves Theodule) from CCC for less than reasonably equivalent value. By virtue of his ongoing involvement, and by personally serving Yves Theodule with the instant Motion and conducting a full evidentiary hearing by which Yves Theodule may testify, call witnesses, and otherwise present and refute evidence with respect to the relief requested by the Motion, due process is satisfied in accordance with the principles set forth by the Eleventh Circuit.

**B. The Vehicles Should Be Surrendered and Title Transferred to the Receiver by Enforcement of the Order Appointing the Receiver.**

Paragraph 10 of the Receivership Order states that “Creative Capital and all of its directors, officers, agents . . . who are in custody, possession or control of any assets . . . of Creative Capital shall deliver forthwith upon demand such property . . . to the Receiver.” [DE # 8]. Paragraph 16 of the Receivership Order also states that “Title to all property, real or personal, all contracts, rights of action and all books and records of Creative Capital and its principals, wherever located within or without this state, is vested by operation of law in the Receiver.” *Id.* Further, the district court has broad powers and wide discretion to determine relief in an equity receivership. See SEC v. Elliot, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992).

As set forth herein, the facts are undisputed that the Vehicles belong to CCC and that title thereto vests with the Receiver pursuant to the Receivership Order. It is also undisputed that despite the Receiver’s attempts to have Yves Theodule voluntarily turnover the Vehicles, Yves

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<sup>3</sup> This case is captioned *Jonathan E. Perlman, Esq., as court appointed Receiver of CCC v. Yves Theodule, Divine Alliance, Inc. and Leading Diversity Club*, case no. 09-80478-CIV-HURLEY/HOPKINS, pending in the U.S. District Court, Southern District of Florida, West Palm Beach Division.

Theodule has not turned over the Vehicles. Yves Theodule's failure to deliver possession of the Vehicles upon (i) the requests by counsel for the Receiver and (ii) entry of the Receivership Order, evidences a disregard for both the Receiver's and the Court's authority. As depreciating assets, the Vehicles' value to the Receivership Estate is clearly dependent upon securing and liquidating them in good condition. Moreover, unless and until the Vehicles are turned over to the Receiver, there is a continuing danger that they may be damaged or stolen. Further, the Receiver does not know whether the Vehicles are being maintained, how they are being stored, or even whether Yves Theodule has continued to insure them. Any further delay by Yves Theodule in turning over the Vehicles will compromise the Receiver's ability to realize the Vehicles' optimal value and therefore the Receiver seeks immediate possession of the Vehicles in order to protect and preserve Receivership assets.

**C. The Vehicles are Subject to Turnover On Equitable Grounds**

Pursuant to Florida law, the Vehicles are subject to turnover based upon the equitable principles of constructive trust, equitable lien, resulting trust and unjust enrichment. A constructive trust is an equitable remedy imposed by operation of law where there has been a wrongful taking of the property of another, the intent of which is to restore the property to the rightful owner and to prevent unjust enrichment. Brown v. Toscano, 254 F.R.D. 690 (S.D. Fla. 2008). The remedy of constructive trust is particularly appropriate where property has been acquired by fraud. Quinn v. Phipps, 113 So. 419 (1927).

The elements of an unjust enrichment claim are met when a person knowingly receives and voluntarily accepts and retains a benefit from another under circumstances which would equitably require either disgorgement or the equivalent payment of value. Zambrana v. Geminis Envios Corp., 2008 WL 2397624 \*5 (S.D. Fla. 2008).

For all of the reasons set forth above, equity also requires that the Vehicles and title to the Vehicles be restored to the Receiver.

**D. Turnover is Appropriate under Chapter 726 of the Florida Statutes**

For the same reasons set forth above, turnover is alternatively required pursuant to Chapter 726 of the Florida Statutes, which permits the avoidance of transfers made with actual intent to hinder, delay or defraud creditors, or for no consideration. In his sworn accounting filed with the Court and identified above, Theodule states that the Vehicles are a CCC investment or asset, and that they are currently possessed by Yves Theodule. Yves Theodule was an agent for Theodule and CCC, and had knowledge of the unlawful nature of the business, and illegally raised funds for their direct benefit. With an actual intent to hinder, delay or defraud his creditors/investors, Theodule used these funds in effecting the transfer of the Vehicles to Yves Theodule and Yves Theodule received the Vehicles without providing any reasonable equivalent value. Chapter 726 of the Florida Statutes clearly contemplates the avoidance of the transfer of the Vehicles under the circumstances set forth herein. The Receiver further requests an evidentiary hearing as soon as practicable in order to expedite the recover of these assets for the benefit of the Receivership Estate.

**IV. CONCLUSION**

Based upon the foregoing, the Receiver is entitled to take possession and title to the Vehicles for the benefit of the Receivership Estate. The Receiver therefore seeks the entry of an order compelling Yves Theodule and his agents to immediately turn over the Vehicles and title to the Vehicles to the Receiver, and any other relief the Court deems appropriate. Pursuant to S.D. Fla. L.R. 7.1(A)(2), the Receiver attaches a proposed Order granting the relief requested herein.

**LOCAL RULE 7.1 CERTIFICATION OF COUNSEL**

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he has conferred with counsel for the Securities and Exchange Commission who does not have any objection to the relief requested herein. Further, undersigned counsel hereby certifies that he has made reasonable efforts to confer with counsel for Yves Theodule in an attempt to resolve this matter without need for the Court's involvement, but has been unable to do so.

Dated: September 14, 2009  
Miami, Florida

Respectfully submitted,

/s/ Harris J. Koroglu

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2009, the foregoing document is being served on all counsel of record and entities 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/ Harris J. Koroglu  
Harris J. Koroglu, Esq.

**SERVICE LIST**

**Securities and Exchange Commission v. Creative Capital Consortium, LLC et. al.**

**CASE NO.: 08-CIV-81565-HURLEY/HOPKINS**

**United States District Court, Southern District of Florida**

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# **EXHIBIT “A”**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
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A CREATIVE CAPITAL CONCEPTS, LLC,  
and GEORGE L. THEODULE,

Defendants.

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**ORDER GRANTING RECEIVER'S MOTION TO COMPEL YVES THEODULE TO  
IMMEDIATELY TURN OVER CERTAIN VEHICLES**

This Cause came before the Court upon Receiver Jonathan E. Perlman's Motion to Compel Yves Theodule to Immediately Turn Over Certain Vehicles (the "Motion"). The Court, having heard the argument of counsel and being otherwise duly advised in the premises, finds good cause for the relief sought. Accordingly it is

ORDERED as follows:

1. The Motion is GRANTED.
2. Yves Theodule and his agents are hereby ordered to immediately turn over, surrender possession, and transfer title to the Receiver of the two (2) Vehicles identified in the Motion and, any other vehicles and other property that should have been turned over to the Receiver pursuant to prior orders of the Court.
3. Yves Theodule is hereby ordered to execute any documents transferring title of the Vehicles and other property from Yves Theodule to the Receivership Estate in the form and manner requested by the Receiver.

4. The Receiver shall have leave to file a motion seeking sanctions to compensate the Receiver for having to bring the Motion and to compensate the estate for any damage that may have resulted to the Vehicles and other Receivership Estate property.

**DONE AND ORDERED** in Chambers at West Palm Beach, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2009.

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DANIEL T.K. HURLEY  
United State District Court Judge

*Copies provided to counsel of record*