

Marketing with Sardaukar was reduced by \$75,000 as a result of the first disbursement, and the investment account of L. B. Charitable Trust was reduced by \$75,000 as a result of the second \$75,000 disbursement. Both of these investors have/had much more than \$75,000 invested with Stark/Sardaukar.

Furthermore, it is sophistry for the Receiver to assert that “the Defendant has no legitimate claim to these funds,” when in fact 3D Marketing had every right to have a portion of its investment returned.

II.
STATEMENT OF UNDISPUTED MATERIAL FACTS

1. In late 2004 and early 2005, 3D Marketing made two \$50,000 investments by wire transfer with Bradley Stark/Sardaukar Holdings IBC (referred to as “Sardaukar”). Those amounts are documented by the wire transfers. *See Declaration of D. Steeves at par. 3, App. 56, and Exhibit “A” to the Declaration, App. 58.*

2. A significant business opportunity for 3D Marketing arose in March/April, 2005.² Consequently, 3D Marketing LLC reduced its investment with Sardaukar, obtaining \$75,000.00 in March, 2005 by means of wire transfer to the 3D Marketing LLC account. 3D Marketing LLC then had a \$25,000 investment remaining with Sardaukar. *See Declaration of D. Steeves at par. 4, App. 56-57, and Exhibit “B” to the Declaration, App.59, documenting the wire transfer of funds.*

3. It was agreed that L. B. Charitable Trust would loan 3D Marketing the amount of \$75,000.00. The most expeditious way to have this accomplished was to have \$75,000 of L. B. Charitable Trust’s investment with Sardaukar forwarded to the bank account of 3D Marketing

² A more detailed description of the business opportunity for 3D Marketing is described in the Steeves Declaration.

LLC, which was accomplished on April 7, 2005. *See Declaration of D. Steeves at par. 5, App. 57, and Exhibit "C" to the Declaration, App. 61, documenting the wire transfer of funds.*

4. 3D Marketing LLC is obligated to repay the \$75,000.00 to L. B. Charitable Trust. The \$75,000 loan has been documented in the financial records of 3D Marketing LLC as a liability. 3D Marketing \$75,000 debt obligation to L. B. Charitable Trust is not a matter in dispute between these two companies. *See Declaration of D. Steeves at par. 6, App. 57, and Exhibit "D" to the Declaration, App. 62-63, reflecting the month's end Balance Sheet, April, 2005.*

5. 3D Marketing has not engaged in any fraudulent activity or "fraudulent transfer" with Bradley Stark/Sardaukar Holdings IBC. *See Declaration of D. Steeves at par. 8, App. 57.*

6. In 2005, L. B. Charitable Trust invested \$125,000.00 with Stark/Sardaukar Holdings IBC (referred to as "Sardaukar"). This investment was by way of wire transfer to the Sardaukar bank account. *See Declaration of T. Ortega at par. 3, App. 64.*

7. There was no written contract for the L.B. Charitable Trust investment. It was a discretionary account for Sardaukar. *See Declaration of T. Ortega at par. 4, App. 64.*

8. In early Spring, 2005, 3D requested that L. B. Charitable Trust loan 3D Marketing an amount of money, which was agreed to be \$75,000. L. B. Charitable Trust's investment with Stark/Sardaukar was reduced by that amount and informed Mr. Stark to forward \$75,000.00 to the bank account of 3D. The transfer of funds was accomplished on or about April 7, 2005. *See Declaration of T. Ortega at par. 5, App. 65, and Exhibit "A" to the Declaration, App.66, documenting the wire transfer of funds.*

9. As a result, 3D Marketing owes L. B. Charitable Trust the loaned amount of \$75,000. *See Declaration of T. Ortega at par. 6, App.65.*

10. L. B. Charitable Trust has not engaged in any fraudulent activity with 3D or with Sardaukar. *See Declaration of T. Ortega at par. 7, App. 65.*

III. ARGUMENTS AND ANALYSIS

A. Fraudulent Transfer Statute

The allegation of fraudulent transfer made by the Receiver against 3D Marketing is controlled by a specific statute. In relevant part, the UFTA provides that:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose within a reasonable time before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor . .

Tex. Bus. & Com. C. § 24.005. (The California counterpart appears to be identical.)

B. Allegations Of Ponzi Scheme Are Not Provable By Receiver

The Receiver makes allegations in his Complaint of a *Ponzi* scheme, and those allegations are not provable by the Receiver. Upon information and belief, the Receiver has in excess of available funds compared with the written claims asserted. Nevertheless, the Receiver wants the Court to believe that it has proved a *Ponzi* scheme as a matter of law. It has not.

First, the allegation of a *Ponzi* scheme has been denied by 3D Marketing in its Answer.

Second, it would certainly seem, that to establish the evidence in support of a *Ponzi* scheme, that evidence would necessarily involve opinion and expert testimony. In this case, the Receiver has made no disclosure of any expert and expert testimony, including any disclosure under Federal Rule of Civil Procedure 26. Consequently, 3D Marketing has no need for a rebuttal expert.

3D Marketing refers the Court to the pleadings filed by the defendants John W. Stark, Jr. and Barbara Stark in the proceeding Case No. :05-CV-1976-BD, styled “Defendants’ Response to Plaintiff’s Motion for Summary Judgment, Brief in Support, and Appendix in Support” (served by counsel for those defendants on or about November 27, 2006). Those pleadings, and the evidence offered in support of same, are incorporated herein by reference.

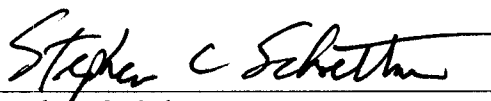
C. The Receiver Is Bound To Its Answers and Responses to Discovery Served

3D Marketing engaged in very specific written discovery with the Receiver in an attempt to determine what facts or evidence the Receiver has to support certain claims that it has made in this litigation, and related issues. The Receiver cannot stonewall with its objections and claims of ignorance, and then address by way of summary judgment response, the same subject matter that he failed to answer or claims ignorance about.

As part of its Appendix, 3D Marketing has attached the discovery responses of the Receiver to these specific discovery inquiries. *See Plaintiff’s Objections and Responses to Defendant’s First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents dated October 2, 2006, App. at 67-89* The discovery period is closed, there has been no amendment of any answers or responses, and the Receiver is “locked in” to the answers and responses that it has provided to 3D Marketing.

Dated December 7, 2006.

Respectfully Submitted,

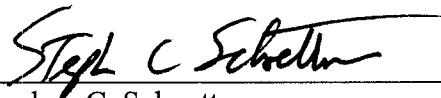


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CERTIFICATE OF SERVICE

The undersigned certifies that on December 7, 2006 a true and correct copy of Brief in Support of Defendant's Motion for Summary Judgment was served via e-filing to counsel for the Plaintiff at the address below.



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