

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, RECEIVER
FOR SARDAUKAR HOLDINGS, IBC
and BRADLEY C. STARK,

Plaintiff,

v.

3D MARKETING LLC,

Defendant.

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CIVIL ACTION NO.
3-06CV0293-P

ECF
Referred to U.S. Magistrate Judge

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant 3D Marketing LLC files its Motion for Summary Judgment against Plaintiff Michael J. Quilling in accordance with Fed. R. Civ. P. 56, Local Rule 56.3, and this Court’s Standing Order of Reference [Dkt. No. 9]. In support of this Motion, 3D Marketing LLC has contemporaneously filed a separate Brief under Local Rule 56.5, and would show the Court as follows:

I.
SUMMARY

1. 3D Marketing seeks summary judgment against the Receiver on the Receiver’s claim for fraudulent transfer and constructive trust and disgorgement, requesting the entry of a take-nothing judgment.
2. The gravamen of Plaintiff’s claim against 3D Marketing is set forth in paragraph 9 of the Complaint. That paragraph contains the Complaint’s only factual allegations regarding 3D Marketing — the rest of the allegations in the Complaint relate to Receivership allegations.

3. Respectfully, the Receiver simply got it wrong with regard to its allegations in paragraph 9, apparently not knowing that another investor authorized the release of a portion of its invested funds (in the amount of \$75,000) to 3D Marketing. 3D Marketing makes no comment about whether the Receiver should have learned of this fact from interested parties prior to filing suit, such as from Brad Stark

4. The testimony offered from the representative of 3D Marketing and L.B. Charitable Trust is clear and concise. The uncontroverted evidence establishes that \$75,000 was returned to 3D Marketing by Sardaukar/Stark in March 2004 from the \$100,000 previously deposited by 3D Marketing,¹ and the \$75,000 forwarded to 3D Marketing in April, 2004 was as a result of another investor — L B Charitable Trust — authorizing that amount to be withdrawn from the substantial sums that LB Charitable Trust had invested with Sardaukar/Stark.

5. 3D Marketing has attached a supporting Brief under Local Rule 56.3(b) that sets out the elements of Receiver's claim, the legal and factual basis for relief, and all citations to evidence in the Appendix. The Receiver cannot meet these elements as a matter of law.

II. SUMMARY JUDGMENT EVIDENCE

6. On November 17, 2006, the Receiver filed his Motion for Summary Judgment in this cause. For the Court's convenience, and for the convenience of the parties, 3D Marketing will build on that evidence offered in the Receiver's Summary

¹ Leaving a net balance of \$25,000 invested by 3D Marketing with Sardaukar.

Judgment Motion², so that there is consistency in the references to Exhibits in the two motions for summary judgments and responses.³ In this Motion, 3D Marketing offers two Declarations (with Exhibits attached) and one discovery pleading as the next listed Exhibits:

- Declaration of Dean Steeves, Exhibit “L”
- Declaration of Tim Ortega, Exhibit “M”
- 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, Exhibit “N”.

III.
RELIEF REQUESTED

7. Under Rule 56 of the Federal Rules of Civil Procedure, 3D Marketing respectfully requests that this Court enter a final take nothing judgment in its favor, and against the Receiver, because the undisputed material facts entitle 3D Marketing to the following as a matter of law:

- a. the summary dismissal of Receiver’s claims that a fraudulent transfer occurred; and

² This is a listing of the Receiver’s Summary Judgment Exhibits set for in November 17th pleading.

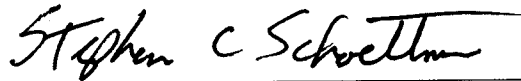
- Declaration of Michael J. Quilling, Receiver, Exhibit “A”
- Summary of Sardaukar’s JPMorgan Account, Exhibit “A-1”
- 3D Marketing Cashier’s Check, Exhibit “B”
- Brad Stark’s Bank of America Account Statement, Exhibit “C”
- 3D Marketing Check, Exhibit “D”
- Sardaukar’s Bank of America Account Statement, Exhibit “E”
- Stock Certificate, Exhibit “F”
- Sardaukar Wire Transfer, Exhibit “G”
- Sardaukar Wire Transfer, Exhibit “H”
- 3D Marketing Daily Account Report, Exhibit “I”
- 3D Marketing Daily Account Report, Exhibit “J”
- E-mail from Dean Steeves, Jan. 12, 2006, Exhibit “K”

³ 3D Marketing has been ordered to respond to the Receiver’s motion on or before December 18, 2006. 3D will make, and reserves the right to make its objections to the Receiver’s proffered evidence at that time.

b. in light of the fact that there is no fraudulent transfer, there can be no claim for a constructive trust or disgorgement with respect to 3D Marketing; alternatively,

c. that the Court deny Receiver's requested relief for constructive trust and disgorgement.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2006, a true and correct copy of the foregoing Defendant's Motion for Summary Judgment was served on counsel for Plaintiff by e-filing.



Stephen C. Schoettmer