

**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 BRIEF IN OPPOSITION TO PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Defendant 3-D Marketing LLC files this Brief in Opposition to Plaintiff’s Motion for Summary Judgment, and respectfully shows the Court as follows:

**I.
DEFENDANT’S OBJECTIONS TO
PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. In its Brief in Support of Plaintiff’s Motion for Summary Judgment, the Receiver asserts certain matters to be “Statement of Undisputed Material Facts.” There are ten referenced paragraphs. Defendant objects to the following paragraphs in that section of Plaintiff’s Motion and sets forth the reason for its objection:

- With regard to paragraph no. 1, Plaintiff references a pleading. To the extent that the Receiver is offering the pleading as “notice” of a lawsuit, Defendant has no objection to that limited offer. To the extent that the pleading is offered for any truth to the matters alleged therein, Defendant objects on the obvious hearsay basis.

- With regard to paragraph no. 2, again the fact that an Order was entered appointing a temporary receiver in a lawsuit against different defendants, and the fact that Mr. Quilling was appointed as receiver are not contested facts. To the extent that those procedural issues are offered as “evidence” in this proceeding, Defendant objects on the basis of hearsay.
- With regard to paragraph no. 3, Defendant objects to the extent that the “Receiver,” i.e., Michael J. Quilling, is trying to bootstrap the activities of others under the generic heading of conduct by the “Receiver.” Only Mr. Quilling has offered a declaration. Mr. Quilling is competent to speak to what he did, not what others did while working for him. Matters such as interview information, the records he reviewed, what others told him, etc. are all hearsay to this Defendant.
- With regard to paragraph no. 4, the claimed testimony is without proper predicate, no expert witness has been designated by Plaintiff, the testimony is without proper foundation, and is conclusory.
- With regard to paragraph no. 5, the records themselves are hearsay, and the testimonial evidence referenced in the paragraph of the Receiver’s Declaration is objectionable as without proper predicate, no expert witness has been designated by Plaintiff, the testimony is without proper foundation and is conclusory.
- With regard to paragraph no. 6, a portion of the paragraph is accurate. It is accurate that 3-D Marketing LLC made two separate \$50,000.00 investments with Stark/Sardaukar and that 3-D Marketing LLC received a

document from Sardaukar Holdings reflecting 1,000 shares of stock, as of March, 2004 (that time frame would be post-investment, pre-withdrawal of any funds.)¹

- With regard to paragraph no. 7, Defendant generally agrees with the statements, other than the inclusion of the word “personal” in describing the account at Bank of America. Further, Defendant would remind the Court that the Complaint has alleged that the Defendant was an investor, which Defendant has admitted, and the verb “sent” in reference to the checks seems to lack the business purpose of an investment that has been alleged and admitted.
- With regard to paragraph no. 8, Defendant did receive a copy of the certificate for Sardaukar stock, but does not agree with Plaintiff’s characterization of: (a) “Stark issued...” and (b) “purportedly valued...” The stock certificates speak for themselves without any pejorative characterization by the Receiver.
- With regard to paragraph no. 9, presumably Mr. Stark was the person or individual that was initiating the partial return of investment to 3-D Marketing LLC, the first of which was dated in March, 2005, and the second in April, 2005. The second partial return of investment was related to the investments made on behalf of LB Charitable Trust.²

¹ Parenthetically, Defendant sent a series of Requests for Admissions to the Receiver asking if the Receiver stipulated that the document was authentic, and the Receiver declined to so stipulate. Now the Receiver is using the document as evidence. A curious sequence.

² The request by LB Charitable Trust for the forwarding of and return of its \$75,000 investment, made payable to 3-D Marketing LLC, is not contested by the Receiver.

- With regard to paragraph no. 10, Defendant denies that this comment is competent evidence, as it is without proper predicate, no expert witness has been designated by Plaintiff, the testimony is without proper foundation, and is conclusory. Further, the comment is contrary to the documents produced by the Receiver, reflecting a diminution in the account basis for 3-D Marketing LLC (as a result of the \$75,000.00 withdrawal) and a diminution in the account basis for LB Charitable Trust (as a result of the \$75,000.00 withdrawal).

II.

NO *PONZI* SCHEME HAS BEEN PROVED

2. As more particularly recited in 3-D Marketing LLC's Motion for Summary Judgment, no *Ponzi* scheme has been proved, and certainly no *Ponzi* scheme has been proved as a matter of law. (Defendant contested such allegation in its Answer, and there has been no expert witness designated by Plaintiff that would offer opinion testimony that such a "scheme" is present. Defendant would obviously be unfairly and substantially prejudiced by the Court permitting such testimony at this twelfth hour.)

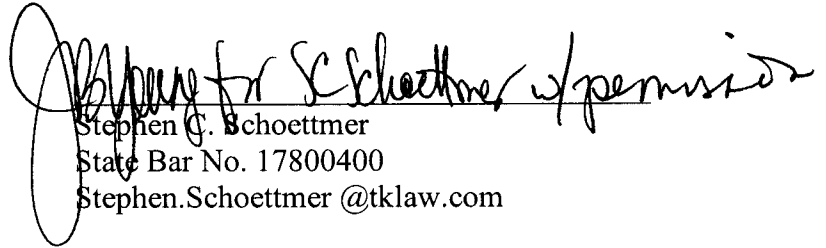
III.

THE RECEIVER RECORDS SHOW THE REDUCTION OF THE INVESTOR'S ACCOUNT BALANCE

3. There are two business records of Sardaukar that indicate that records were being maintained with respect to the net account balance of the various investors. The return of \$75,000.00 to 3-D Marketing LLC was reflected in the account balance of 3-D Marketing LLC. The account balance of LB Charitable Trust also reflected the

\$75,000.00 that was transferred to 3-D Marketing LLC. See Exhibits D and E to Receiver's Appendix in Support of Plaintiff's Motion for Summary Judgment.³

Respectfully submitted,

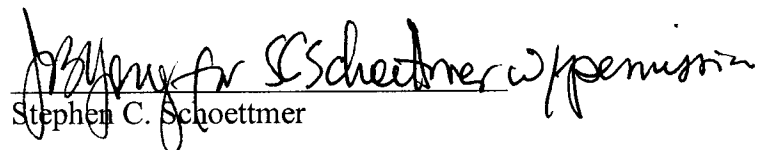


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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2006, a true and correct copy of the foregoing Defendant's Brief in Opposition to Plaintiff's Motion for Summary Judgment was served on counsel for Plaintiff by e-filing.



Stephen C. Schoettmer

³ The Entity Balance Sheet as of April 30, 2005 is offered by 3-D Marketing LLC as Exhibit O to the Appendix to Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment and Brief in Support. The reference to "entity" is obviously to 3-D Marketing LLC as reflected in the timing of the investments and the date of the \$75,000.00 withdrawal (all matters that are not disputed by either party.) The Balance Sheet also notes the involvement of LB Charitable Trust and the \$75,000.00 payable to LB Charitable Trust (as a result of their loan to 3-D Marketing LLC). See also Declaration of Sharon Judith Reibman, attached as Exhibit P to the Appendix to Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment, evidencing her investment of \$100,000.00 to Stark/Sardaukar, on behalf of LB Charitable Trust.