

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

MICHAEL J. QUILLING, RECEIVER	§	
FOR MEGAFUND CORPORATION and	§	
STANLEY A. LEITNER,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 3:06-CV-0355-N
	§	
v.	§	
	§	(JURY TRIAL DEMANDED)
MI-TY PRODUCTIONS, INC.,	§	
	§	
Defendant.	§	ECF

**MOTION FOR ENTRY OF FINAL
DEFAULT JUDGMENT AND BRIEF IN SUPPORT**

TO THE HONORABLE DAVID C. GODBEY, UNITED STATES DISTRICT JUDGE:

COMES NOW, Michael J. Quilling, in his capacity as Receiver for Megafund Corporation and Stanley A. Leitner, (“Plaintiff” or “Receiver”) and files this Motion for Entry of Final Default Judgment, Combined with Brief in Support, and would respectfully show the Court as follows:

I.

FACTS AND PROCEDURAL HISTORY

1. This Motion is supported by the Affidavit of Michael J. Quilling, Receiver (“Receiver’s Affidavit”), which is attached and fully incorporated herein as Exhibit A.

2. On July 1, 2005 the Securities and Exchange Commission (“SEC”) initiated Civil Action No. 3:05-CV-1328-L, currently styled *Securities and Exchange Commission v. Megafund Corporation, Stanley A. Leitner, Sardaukar Holdings, IBC, and Bradley C. Stark, CIG, Ltd., and James A. Rumpf, Individually and d/b/a Cilak International, Defendants, and Pamela C. Stark,*

Relief Defendant. Receiver's Affidavit, Exhibit A at ¶ 2. In connection therewith, the SEC sought appointment of a Receiver for the Defendants and Relief Defendant. *Id.* The Court appointed Michael J. Quilling as Receiver in that proceeding by Order of July 5, 2005. Since then, the Receiver has continued to function in that capacity. *Id.*

3. By Order of July 19, 2005, that Court expanded the Receivership in that proceeding to include CIG, Ltd. and James A. Rumpf, individually and d/b/a Cilak International, as additional Defendants. *Id.* at ¶ 3. The Order also appointed Michael J. Quilling as Receiver for each of those individuals and entities. *Id.* Since then, the Receiver has continued to function in that capacity. *Id.*

4. By a third Order entered in the SEC Proceedings on January 20, 2006, the receivership was expanded to include Lancorp Financial Group, LLC. *Id.* at ¶ 4. That Order also appointed Michael J. Quilling as the company's Receiver and he has since continued to function in that capacity. *Id.*

5. The Receiver has investigated the businesses, transactions, assets, liabilities, books, and records of Megafund Corporation ("Megafund") and its director, Stanley A. Leitner ("Leitner"). *Id.* at ¶ 5. He has also interviewed witnesses, taken depositions, and reviewed all available documents concerning the company's investment scheme. *Id.*

6. The Receiver's investigation has revealed that Leitner operated a *Ponzi* scheme and fraudulent investment program through Megafund. *Id.* at ¶ 6. Investors sent funds to Megafund's accounts at Wells Fargo Bank and SouthTrust Bank believing those funds would be invested under Leitner's supervision. *Id.* Leitner told investors that their funds would be sent to a "Trader" to execute various trades on their behalf and that their principal investments were never at risk. *Id.* As Megafund received investor funds, however, Leitner fraudulently diverted large amounts as

Ponzi payments to previous investors and for other expenses not related to the investment program.
Id.

7. The fraudulent nature of Megafund's investment program is self-evident from the bank records. *Id.* at ¶ 7. Attached to the Receiver's Affidavit as Exhibit A-1 and fully incorporated herein is an accounting summary of Megafund's Wells Fargo account ("Accounting Summary"). This ledger clearly shows how investor funds were used to pay "returns" on other investments. *Id.*; *see also Accounting Summary*, Exhibit A-1. Furthermore, Megafund made distributions to individuals and entities that never exchanged anything of value in return. *Receiver's Affidavit*, Exhibit A at ¶ 7; *see also Accounting Summary*, Exhibit A-1. MI-TY Productions, Inc. ("Defendant") is among those who benefitted from this scheme. *Accounting Summary*, Exhibit A-1 at 8.

8. Megafund diverted investor funds to Defendant in numerous transfers dating from February 10, 2005, to April 28, 2005. *Id.* Based upon records currently available to the Receiver, Defendant received eleven separate transfers from Megafund's Wells Fargo bank account, totaling at least \$967,500.00. *Id.* Megafund and its investors did not receive a reasonable value in exchange. *Receiver's Affidavit*, Exhibit A at ¶ 8; *see also Accounting Summary*, Exhibit A-1. Accordingly, Defendant has no legitimate claim to these funds. *Receiver's Affidavit*, Exhibit A at ¶ 8.

9. Plaintiff commenced this lawsuit by filing his Complaint on February 24, 2006. *Id.* at ¶ 9. A true and correct copy of the Complaint is attached to the Receiver's Affidavit as Exhibit A-2 and fully incorporated herein.

10. The Defendant was served with process by delivering a copy of the Summons and Complaint to CSC - Lawyers Incorporating Service, its registered agent for service of process. *Id.*

at ¶ 10. A true and correct copy of the Declaration of Service is attached to the Receiver's Affidavit as Exhibit A-3 and fully incorporated herein ("Declaration of Service").

11. The Defendant is a private entity and not an incompetent, infant, person currently in military service, or any officer or agency of the United States. *Id.* at ¶ 11.

12. Service of Process was executed on March 3, 2006, so Defendant had until March 23, 2006 to file its Answer. *Declaration of Service*, Exhibit A-3. As of this date, Defendant still has not filed an Answer, a motion under Fed. R. Civ. P. 12(b) or 56, or otherwise defended this lawsuit. *Receiver's Affidavit*, Exhibit A at ¶ 12.

13. The Clerk of this Court entered Defendant's default into the record on April 5, 2006 in accordance with Rule 55(b)(1) of the Federal Rules of Civil Procedure. *Id.* at ¶ 13. A true and correct copy of the Clerk's Entry of Default is attached to the Receiver's Affidavit as Exhibit A-4 and fully incorporated herein.

II. ARGUMENT AND AUTHORITIES

14. A District Court may enter a final judgment by default. Fed. R. Civ. P. 55(b)(2). A trial court has discretion in determining the most appropriate method of determining the amount of damages for a default judgment. *Id.* It is not necessary to hold an evidentiary hearing to determine damages in a default situation. *See, e.g., Leedo Cabinetry v. James Sales & Distrib., Inc.*, 157 F.3d 410, 414 (5th Cir. 1998). The use of affidavits to prove damages is a widely accepted method for awarding damages in a default judgment. *Chemtall Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1412 (S.D. Ga. 1998). The District Court's ruling on damages in a default situation without an evidentiary hearing is reviewed only for abuse of discretion. *Leedo Cabinetry*, 157 F.3d at 414.

15. In the case at bar, the amount of damages is measured by the amount of funds

fraudulently transferred to Defendant. Plaintiff is entitled to relief by establishing that a fraudulent transfer occurred under the Texas Uniform Fraudulent Transfer Act (the “UFTA”) or the supplemental provisions of common law. Tex. Bus. & Com. C. § 24.008, § 24.011, § 24.013.¹ The fraudulent nature of Megafund’s investment program is self-evident from the bank records. *Receiver’s Affidavit*, Exhibit A at ¶ 7. Those records show that Megafund’s Wells Fargo Account was solely funded by investors’ principal deposits, not interest earned on legitimate investments. *Id.*; *see also Accounting Summary*, Exhibit A-1. From those funds, Megafund paid its investors “returns” on their deposits and distributed money to third parties—including the Defendant—who never exchanged anything in return. *Receiver’s Affidavit*, Exhibit A at ¶ 7; *Accounting Summary*, Exhibit A-1. This arrangement illustrates a classic *Ponzi* scheme.²

16. The mere existence of a *Ponzi* scheme establishes fraudulent intent as a matter of law because the scheme is insolvent from conception. *Warfield v. Byron*, 2006 WL 118250, *5 (5th Cir. Jan. 17, 2006), *citing Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). As such, Megafund’s transfers to Defendant were necessarily fraudulent under the UFTA:

§ 24.005. Transfers Fraudulent as to Present and Future Creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . with actual *intent to hinder, delay, or defraud* any creditor³

¹ The California Uniform Fraudulent Transfer Act contains the same provisions. Cal. Civ. C. § 3439 et seq.

² *See* Black’s Law Dictionary 1180 (7th ed. 1999) (describing a scheme where “money from new investors is used to pay ‘profits’ on the money contributed by earlier investors, without the operation of an actual revenue-producing business”).

³ For purposes of the UFTA, the term “Creditor” includes any person or entity with an existing, future, legal, or equitable right to payment or property. *See* Tex. Bus. & Com. C. § 24.002(3), (4), (9).

Tex. Bus. & Com. C. § 24.005 (emphasis added). Furthermore, the fraudulent nature of those transfers is evidenced by the fact that Defendant did not exchange any reasonable value to Megafund or its investors for the misappropriated funds. *Receiver's Affidavit*, Exhibit A at ¶ 7; *Accounting Summary*, Exhibit A-1; *see also* Tex. Bus. & Com. C. § 24.006.

17. As explained more fully in the Receiver's Affidavit, the damages suffered by Megafund and its investors are easily ascertainable and total \$967,500.00. *Receiver's Affidavit*, Exhibit A at ¶ 14; *see also Accounting Summary*, Exhibit A-1. The Receiver has incurred \$320.00 in costs and \$1,905.00 in attorney's fees relating to this matter. *Receiver's Affidavit*, Exhibit A at ¶ 14.

18. Upon final judgment of this matter, the Receiver is entitled to recover his damages, costs, and fees. Tex. Bus. & Com. Code § 24.013. The legal and factual bases for liability are set forth above and fully supported by the Receiver's Affidavit and accompanying exhibits. Therefore, no evidentiary hearing is necessary to determine the damages to be awarded against the Defendants in this case. *Leedo Cabinetry*, 157 F.3d at 414.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests that the Court enter a final default judgment against the Defendant for \$967,500.00, plus pre- and post-judgment interest at the rate provided by law, as well as applicable costs and attorneys' fees.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ Brent J. Rodine

Brent J. Rodine
State Bar No. 24048770
Email: brodine@qsclpc.com
Michael J. Quilling
State Bar No. 16432300
Email: mquilling@qsclpc.com
D. Dee Raibourn, III
State Bar No. 24009495
Email: draibourn@qsclpc.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of April, 2006 a true and correct copy of the foregoing document was served via first class mail, with full and proper postage prepaid thereon, to:

MI-TY Productions, Inc.
c/o CSC - Lawyers Incorporating Service
2730 Gateway Oaks Drive, Suite 100
Sacramento, California 95833

/s/ Brent J. Rodine