



CLOSED, ECF, JURY, KAPLAN, PTRL

**U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:06-cv-00959**

Quilling v. McDuff et al
Assigned to: Judge Sam A Lindsay
Referred to: Magistrate Judge Jeff Kaplan
Case in other court: USCA, 07-10191
Cause: 28:1332 Diversity-Fraud

Date Filed: 05/30/2006
Date Terminated: 05/24/2007
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

Plaintiff

Michael J. Quilling
*Receiver for Megafund Corporation and
Lancorp Financial Group LLC*

represented by **Brent Jason Rodine**
Quilling Selander Cummiskey &
Lownds
2001 Bryan St
Suite 1800
Dallas, TX 75201
214/871-2100
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Dallas, TX 75201
 214/871-2100
 Fax: 214/871-2111 FAX
 Email: mquilling@qsclpc.com
ATTORNEY TO BE NOTICED

V.

Defendant

Gary McDuff
Individually
doing business as
 Southern Trust Company
doing business as
 First Global Foundation

represented by **Gary McDuff**
 1314 Minchen Drive
 Deer Park, TX 77536
 PRO SE

Defendant

Robert Reese
Individually
TERMINATED: 02/28/2007
doing business as
 Excel Financial Inc
TERMINATED: 02/28/2007

represented by **Richard L Wright**
 Zisman Law Firm
 1412 Main St
 23rd Floor
 Dallas, TX 75202
 214/745-1300
 Fax: 214/ 720-0748
 Email: rlwright@bishopwrightlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Shannon McDuff
Individually
TERMINATED: 11/15/2006
doing business as
 Secured Clearing Corp
TERMINATED: 11/15/2006

represented by **Shannon McDuff**
 1314 Minchen Drive
 Deer Park, TX 77536
 PRO SE

Date Filed	#	Docket Text
05/30/2006	<u>1</u>	COMPLAINT against Shannon McDuff, Gary McDuff, Robert Reese filed by Michael J. Quilling. (Filing fee \$350; Receipt number 231240) (jrb,) (Entered: 05/31/2006)

05/30/2006		DEMAND for Trial by Jury by Michael J. Quilling. (jrb,) (Entered: 05/31/2006)
05/30/2006		***Magistrate Judge Sanderson chosen by random selection to handle matters that may be referred in this case. (jrb,) (Entered: 05/31/2006)
05/30/2006	2	Summons Issued as to Shannon McDuff, Gary McDuff, Robert Reese. (jrb,) (Entered: 05/31/2006)
05/30/2006	3	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Michael J. Quilling. (jrb,) (Entered: 05/31/2006)
06/01/2006	4	Order Designating Case for ECF - see order for specifics. (Signed by Judge Sam A Lindsay on 6/1/06) (jrb,) (Entered: 06/01/2006)
06/01/2006	5	Standing Order of Reference : This case is hereby referred to Magistrate Judge Jeff Kaplan for pretrial management. (Signed by Judge Sam A Lindsay on 6/1/06) (jrb,) (Entered: 06/01/2006)
06/12/2006	6	AFFIDAVIT of Service for Summons/Complaint/Certificate of Interested Persons served on Gary McDuff, Individually and d/b/a Southern Trust Company and First Global Foundation on 6/06/06. (Quilling, Michael) (Entered: 06/12/2006)
06/15/2006	7	STANDING ORDER FOR ELECTRONIC FILINGS RELATED TO MATTERS REFERRED TO THE UNITED STATES MAGISTRATE JUDGE (Signed by Judge Wm F Sanderson Jr on 6/15/06) (jrb,) (Entered: 06/15/2006)
06/26/2006	8	NOTICE of Surety -Act and Bond by Shannon McDuff, Gary McDuff. (lmr,) (Entered: 06/27/2006)
06/26/2006	9	AMENDED AND UPDATTED COMMERCIAL AFFIDAVIT OF FACTS by Shannon McDuff, Gary McDuff. (Attachments: # 1)(lmr,) (Entered: 06/27/2006)
06/26/2006	10	Waiver of Perjury-Immunity.(lmr,) (Entered: 06/27/2006)
06/29/2006	11	ORDER. Defendants must file either an appropriate motion under Fed. R. Civ. P. 12(b), or an answer that complies with therequirements of Fed. R. Civ. P. 8(b), within 20 days after being served with the summons andcomplaint. If they fail to do so, plaintiff may seek entry of a default and a default judgment inaccordance with Fed. R. Civ. P. 55(a) & (b).No further warnings will be given to defendants. Any pleading tendered to the clerk thatdoes not comply with the requirements of the federal rules will be stricken from the record. (Signed by Judge Jeff Kaplan on 6/29/06) (jrb,) (Entered: 06/29/2006)

07/18/2006	12	Request for Clerk's Entry of Default against Gary McDuff and Shannon McDuff by Michael J. Quilling. (jrb,) Modified on 7/24/2006 (jrb,). (Entered: 07/19/2006)
07/28/2006	13	<i>Original</i> ANSWER to Complaint by Robert Reese (Wright, Richard) (Entered: 07/28/2006)
08/01/2006	14	ORDER SETTING STATUS CONFERENCE. Status Conference set for 8/18/2006 09:00 AM before Magistrate Judge Jeff Kaplan. See order for details. (Signed by Judge Jeff Kaplan on August 1, 2006) (jyg,) (Entered: 08/02/2006)
08/01/2006	15	STANDING ORDER ON NON-DISPOSITIVE MOTIONS. See order for details. (Signed by Judge Jeff Kaplan on August 1, 2006) (jyg,) (Entered: 08/02/2006)
08/08/2006	16	Mail Returned as Undeliverable. 11 Order received back from Gary McDuff as Return to Sender, Unclaimed, Unable to Forward. (skt,) (Entered: 08/09/2006)
08/08/2006	17	Mail Returned as Undeliverable. 11 Order received back from Shannon McDuff as Return to Sender, Unclaimed, Unable to Forward. (skt,) (Entered: 08/09/2006)
08/18/2006	18	Initial SCHEDULING ORDER: Amended Pleadings due by 9/1/2006. Discovery due by 10/20/2006. Joinder of Parties due by 9/1/2006. Motions due by 10/20/2006. See order for details (Signed by Judge Sam A Lindsay on August 18, 2006) (jyg,) (Entered: 08/18/2006)
08/18/2006	19	ORDER regarding "Respondent's Challenge to Jurisdiction." The court treats this pleading as Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction and directs the clerk to file the motion. Plaintiff shall file a written response to the motion by September 14, 2006. Defendant may file a reply brief by September 29, 2006. (Signed by Judge Jeff Kaplan on 8/18/06) (nap,) (Entered: 08/21/2006)
08/18/2006	20	Respondent's Challenge of Jurisdiction/MOTION to Dismiss by Gary McDuff (nap,) (Entered: 08/21/2006)
08/18/2006		Set/Reset Deadlines as to 20 Motion to Dismiss. Responses due by 9/14/2006; Replies due by 9/29/2006. (nap,) (Entered: 08/21/2006)
08/22/2006	22	Request for Clerk's Entry of Default against Shannon McDuff by Michael J. Quilling with Affidavit Supporting attached. (jyg,) (Entered: 08/23/2006)

08/23/2006	21	SUMMONS Returned Executed as to Robert Reese served on 7/27/2006, answer due 8/16/2006. (Quilling, Michael) (Entered: 08/23/2006)
08/25/2006	23	NOTARY CERTIFICATION re 8 Notice of Surety -Act and Bond TI (jyg,) (Entered: 08/28/2006)
09/12/2006	24	RESPONSE in Opposition filed by Michael J. Quilling re 20 MOTION to Dismiss (Rodine, Brent) (Entered: 09/12/2006)
09/25/2006	25	Clerk's ENTRY OF DEFAULT as to Shannon McDuff. (kdc,) (Entered: 09/25/2006)
09/29/2006	26	Challenge of Jurisdiction (2nd NOTICE) by Gary McDuff. (klm,) (Entered: 09/29/2006)
09/29/2006	27	Commercial AFFIDAVIT of Truth re 26 Notice by Gary McDuff. (klm,) (Entered: 09/29/2006)
10/02/2006	28	FINDINGS AND RECOMMENDATIONS re 20 MOTION to Dismiss for Lack of Subject Matter Jurisdiction filed by Gary McDuff. Recommended that the motion should be denied. Objections to F&R due by 10/17/2006. See order for details. (Signed by Judge Jeff Kaplan on October 2, 2006) (jyg,) (Entered: 10/02/2006)
10/20/2006	29	MOTION for Summary Judgment by Michael J. Quilling (jyg,) (Entered: 10/23/2006)
10/20/2006	30	Brief in Support filed by Michael J. Quilling re 29 MOTION for Summary Judgment (jyg,) (Entered: 10/23/2006)
10/20/2006	31	Appendix in Support filed by Michael J. Quilling re 29 MOTION for Summary Judgment (Attachments: # 1 Exhibit A# 2 # 3 # 4 # 5 # 6 # 7 # 8 # 9 # 10 # 11 # 12 # 13)(jyg,) (Entered: 10/23/2006)
10/23/2006		NOTICE of Docket Text/Document Modification by Deputy Clerk regarding Appendix in Support 31 , MOTION for Summary Judgment 29 , Brief/Memorandum in Support of Motion 30 Originally entered in related case. (jyg,) (Entered: 10/23/2006)
10/23/2006	32	ORDER: Set Deadlines as to 29 Motion for Summary Judgment. Responses due by 11/20/2006; Replies due by 12/5/2006. (Signed by Judge Jeff Kaplan on October 23, 2006) (jyg,) (Entered: 10/23/2006)

10/23/2006	33	ORDER ACCEPTING the 28 Findings and Recommendations and denying 20 Challenge to Jurisdiction/Motion to Dismiss filed by Gary McDuff. See order for details. (Signed by Judge Sam A Lindsay on October 23, 2006) (jyg,) (Entered: 10/23/2006)
11/13/2006	34	MOTION for Default Judgment against Shannon McDuff by Michael J. Quilling with Brief in Support. (Attachments: # 1 Exhibit A) (Quilling, Michael) (Entered: 11/13/2006)
11/15/2006	35	ORDER of Final Default Judgment granting 34 Motion for Default Judgment. Pla is hereby awarded judgment against Defendant for \$15,500. Pla is hereby awarded pre-judgment interest on that award at the lawful rate accruing from 2/24/06, until the date of this order. Plaintiff is hereby awarded post-judgment interest on all of the forgoing awards at the lawful rate accruing from the date of this Order until the date that he receives full satisfaction of all awards and interest; and the court hereby directs the clerk of the court to enter this judgment as a final judgment against Defendant Shannon McDuff. (Signed by Judge Sam A Lindsay on November 15, 2006) (jyg,) (Entered: 11/15/2006)
11/21/2006	36	RESPONSE filed by Gary McDuff to 29 MOTION for Summary Judgment; and Notice of Defalut and Assent, Demand, and Second Notice of Rights; and Notice of Filing of Declaration of Secured party to Include in and to Augment the Record; and Second Notice of Surety Act and Bond. (Attachments: # 1 p 36-70) (bss) (Entered: 11/21/2006)
11/29/2006	37	Abstract of Judgment issued. (jyg,) (Entered: 11/29/2006)
12/05/2006	38	REPLY filed by Michael J. Quilling re 29 MOTION for Summary Judgment (Quilling, Michael) (Entered: 12/05/2006)
12/13/2006	39	FINDINGS AND RECOMMENDATIONS re 29 MOTION for Summary Judgment filed by Michael J. Quilling. For the reasons stated herein, the motion should be granted. Objections to F&R due by 1/2/2007 (Signed by Judge Jeff Kaplan on December 13, 2006) (jyg,) (Entered: 12/14/2006)
01/23/2007	40	ORDER granting 29 Motion for Partial Summary Judgment. See order for details. (Signed by Judge Sam A Lindsay on January 23, 2007) (jyg) (Entered: 01/23/2007)

01/23/2007	41	FINAL JUDGMENT in favor of Michael J. Quilling against Gary McDuff. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows: The Receiver is hereby awarded judgment against Defendant Gary McDuff in the amount of \$304,272.58, together with pre-judgment interest and post-judgment interest as allowed by law. The court directs the Receiver, as the prevailing party, to file any application for attorney's fees within 14 days of the date of this judgment, in accordance with Fed. R. Civ. P. 54(d)(2). (Signed by Judge Sam A Lindsay on January 23, 2007) (jyg) (Entered: 01/23/2007)
01/31/2007	42	NOTICE OF APPEAL as to 41 Judgment, by Gary McDuff. NO FEE PAID. TO/Mailed. (jmr) (Entered: 01/31/2007)
01/31/2007	43	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 42 Notice of Appeal. (jmr) (Entered: 01/31/2007)
01/31/2007	44	Application and Notice for Stay of Judgment Order Pending Appeal by Gary McDuff. (bss) (Entered: 02/01/2007)
02/01/2007	45	ORDER denying 44 Motion to Stay. (Signed by Judge Sam A Lindsay on 02/01/07) (bss) (Entered: 02/01/2007)
02/05/2007	46	Abstract of Judgment issued. (jyg) (Entered: 02/06/2007)
02/06/2007	47	MOTION for Attorney Fees <i>Plaintiff's Application for Attorneys' Fees and Costs and Brief in Support</i> by Michael J. Quilling with Brief in Support. (Rodine, Brent) (Entered: 02/06/2007)
02/07/2007	48	ORDER denying 47 Application/Motion for Attorney Fees and Costs without prejudice. The Receiver may refile his application, together with any evidence and additional briefing necessary to support his fee application, by February 16, 2007. See order for details. (Signed by Judge Jeff Kaplan on February 7, 2007) (jyg) (Entered: 02/07/2007)
02/07/2007	49	MOTION Motion to Approve Agreed Judgment Against Robert Reese, individually and d/b/a Excel Financial, Inc. by Michael J. Quilling (Attachments: # 1 Exhibit A) (Rodine, Brent) (Entered: 02/07/2007)
02/14/2007	50	Transcript Order Form by attorney for Defendant : transcript not requested re 42 Notice of Appeal. No hearings. (jmr) (Entered: 02/15/2007)
02/23/2007		USCA Case Number 07-10191 for 42 Notice of Appeal filed by Gary McDuff. (jmr) (Entered: 02/23/2007)

02/28/2007	51	Agreed Judgment granting 49 Motion to Approve Agreed Judgment Against Robert Reese. It is ordered that Judgment is hereby entered for Pla and against Dft Robert Reese, in the amount of \$6,000.00 plus the full balance of the listed accounts. Each party is to bear its own costs and fees. (Signed by Judge Sam A Lindsay on February 28, 2007) (jyg) (Entered: 03/01/2007)
03/06/2007		USCA Appeal Fees received \$ 455 receipt number 9378 re 42 Notice of Appeal filed by Gary McDuff (axc) (Entered: 03/06/2007)
03/19/2007		Certified Record on Appeal: 2 vol. electronic record. (jmr) (Entered: 03/19/2007)
03/30/2007	52	NOTICE of USCA Appeal Record to attorney for Michael J. Quilling re 42 Notice of Appeal. (jmr) (Entered: 03/30/2007)
04/06/2007	53	MOTION Motion for Turnover Order Enforcing Constructive Trust by Michael J. Quilling with Brief in Support. (Attachments: # 1 Exhibit A) (Quilling, Michael) (Entered: 04/06/2007)
04/09/2007	54	NOTICE of Transfer of USCA Appeal Record to attorney for Gary McDuff re 42 Notice of Appeal. (jmr) (Entered: 04/09/2007)
04/09/2007	55	ORDER TO SHOW CAUSE. Show Cause Hearing set for 5/4/2007 at 09:00 AM before Magistrate Judge Jeff Kaplan. Show Cause Response due by 4/30/2007. The district clerk shall serve a copy of this show cause order on Gary McDuff at the following address by certified mail, return receipt requested, and by regular mail: Gary McDuff, 1318 Minchen Drive, Deer Park, Texas 77536 (Signed by Judge Jeff Kaplan on April 9, 2007) (jyg) (Entered: 04/09/2007)
04/16/2007	56	NOTICE of Sanction by Gary McDuff (mfw) (Entered: 04/16/2007)
04/16/2007	57	CERTIFICATE OF SERVICE by Gary McDuff re 56 NOTICE of Sanction (mfw) (Entered: 04/16/2007)
04/26/2007	58	NOTICE of notice of sanction by Gary McDuff. (bss) (Entered: 04/26/2007)
05/02/2007	59	Brief/Memorandum in Support filed by Michael J. Quilling re 53 MOTION Motion for Turnover Order Enforcing Constructive Trust (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D) (Quilling, Michael) (Entered: 05/02/2007)

05/04/2007	60	Minute Entry for proceedings held before Judge Jeff Kaplan : granting 53 Motion for a turnover; Show Cause Hearing held on 05/04/2007. (Tape #K1148.) Time in Court: 3 mins. (axm) (Entered: 05/04/2007)
05/04/2007	61	FINDINGS AND RECOMMENDATIONS of the United States Magistrate Judge re 53 MOTION for Turnover Order Enforcing Constructive Trust filed by Michael J. Quilling. Recommendation: the Receiver's motion for turnover order [Doc. #53] should be granted. The court should enter an order: Objections to F&R due by 5/21/2007 (Signed by Judge Jeff Kaplan on 05/04/2007) (axm) (Entered: 05/04/2007)
05/15/2007	62	JUDGMENT/MANDATE of USCA as to 42 Notice of Appeal filed by Gary McDuff. Issued as Mandate: 5/9/07. The appeal is dismissed for want of prosecution... Appellant failed to timely file brief and record excerpts. (jmr) (Entered: 05/15/2007)
05/24/2007	63	ORDER ACCEPTING 61 Findings, Conclusions and Recommendations. The court therefore awards the Receiver immediate possession of the property located at 1318 Minchen Drive, Deer Park, Texas. The court imposes an equitable lien on the Deer Park Property consistent with the constructive trust created by the terms of the final judgment entered on January 23, 2007, and the Receiver is authorized to foreclose on the lien. The court directs the clerk of the court to issue all appropriate writs and processes for the sale of the Deer Park Property. The court authorizes the Receiver to use the outstanding amount of the judgment against Defendant as a credit towards the purchase of the Deer Park Property at the court ordered sale. (Signed by Judge Sam A Lindsay on May 24, 2007) (jyg) (Entered: 05/24/2007)
05/24/2007	64	ORDER: The court entered a final default judgment against Defendant Shannon McDuff on November 15, 2006. Final judgment was entered against Defendant Gary McDuff on January 23, 2007. An agreed judgment against Defendant Robert Reese was entered on February 28, 2007. Accordingly, there is no reason to maintain this case as an open case. (Signed by Judge Sam A Lindsay on May 24, 2007) (jyg) (Entered: 05/24/2007)
05/25/2007	65	Certified Mail Executed on 5/23/2007 as to Gary McDuff re: 55 Order to Show Cause. (skt) (Entered: 06/04/2007)

Transaction Receipt			
07/09/2007 14:19:28			
PACER Login:	qs0002	Client Code:	
Description:	Docket Report	Search Criteria:	3:06-cv-00959
Billable Pages:	5	Cost:	0.40