

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

MICHAEL J. QUILLING, Receiver  
for Megafund Corporation and  
Lancorp Financial Group, LLC,

Plaintiff,  
Case 3:06-cv-00959

Civil Action No. 3:06-CV-0959-L (BD)  
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v.

ECF

GARY McDUFF, Individually and d/b/a  
SOUTHERN TRUST COMPANY and  
FIRST GLOBAL FOUNDATION,  
ROBERT REESE, Individually and d/b/a  
EXCEL FINANCIAL, INC., and  
SHANNON McDUFF, Individually and  
d/b/a SECURED CLEARING CORP.,

Defendants.

Referred to the U.S. Magistrate Judge

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, as Receiver for Megafund Corporation and Lancorp Financial Group, LLC, (“Plaintiff” or “Receiver”) and files this his Motion for Partial Summary Judgment against Defendant Gary McDuff, individually and d/b/a Southern Trust Company and First Global Foundation in accordance with Fed. R. Civ. P. 56, Local Rule 56.3, and this Court’s Standing Order of Reference [Dkt. No. 5]. In support of this motion, the Receiver has contemporaneously filed a separate brief under Local Rule 56.5 and would respectfully show the Court as follows:

## I. SUMMARY

The Receiver seeks summary judgment against Gary McDuff, individually and d/b/a Southern Trust Company and First Global Foundation, (“Defendant”) on his claims for fraudulent transfer and constructive trust and disgorgement. The Receiver has attached a supporting brief under Local Rule 56.3(b) that sets out the elements of Defendant’s defense, the legal bases for relief, and all citations to evidence in the appendix.

## II. SUMMARY JUDGMENT EVIDENCE

Plaintiff’s Motion for Summary Judgment is based upon the evidence listed below:

1. Declaration of Michael J. Quilling (Exhibit A)
2. Summary of Megafund’s Wells Fargo Account (Exhibit A-1)
3. Summary of Megafund’s SouthTrust Account(Exhibit A-2)
4. Diagram Depicting Flow of Funds (Exhibit A-3)
5. Summary of Lancorp’s Bank of America Account (Exhibit A-4)
6. Summary of First Global Foundation’s CCI Account (Exhibit A-5)
7. Summary of Robert Reese’s CCI Account (Exhibit A-6)
8. Summary of Secured Clearing’s CCI Account (Exhibit A-7)
9. Summary of MexBank’s CCI Account (Exhibit A-8)
10. Summary of Gary McDuff’s CCI Account (Exhibit A-9)
11. Megafund Promotional Material (Exhibit B)
12. Letter from Gary McDuff (Exhibit C)
13. Deposition of Gary Lancaster (Exhibit D)

14. Note from Gary McDuff (Exhibit E)
15. E-mail from Gary McDuff (Exhibit F)
16. Funds Transfer Request (Exhibit G)
17. E-mail from Sean Shiff (Exhibit H)
18. Funds Transfer Request Form (Exhibit I)
19. Fax from Gary McDuff to Megafund (Exhibit J)
20. Affidavit of Process Server (Exhibit K)
21. Title Report on 1318 Minchen Drive (Exhibit L)

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Plaintiff also requests that this Court take judicial notice of the pleadings and other documents contained in this Court's file for this proceeding, *Securities and Exchange Commission v. Megafund et al.*, Cause No. 3:05-CV-1328 (N.D. Tex.), and *Quilling v. Humphries*, Cause No. 3:06-CV-0299 (N.D. Tex.).

### **III. REQUESTED RELIEF**

Under Rule 56 of the Federal Rules of Civil Procedure, the Receiver respectfully requests that this Court enter judgment in his favor and against the Defendant because the undisputed material facts entitle him to the following as a matter of law:

- (1) a judgment declaring that Defendant received \$304,272.58 of investor funds that were fraudulently transferred from a *Ponzi* scheme or otherwise imposed with a constructive trust;
- (2) a judgment against Defendant for \$304,272.58 and order to disgorge the same;
- (3) a judgment declaring that Defendant used investor funds, or proceeds therefrom, to purchase the residence at 1318 Minchen Drive in Deer Park, Texas;

(4) an order awarding the residence at 1318 Minchen Drive in Deer Park, Texas to the Receiver as proceeds from investor funds fraudulently transferred out of a *Ponzi* scheme or otherwise imposed with a constructive trust;

(5) an order that any recovery from Robert Reese, Shannon McDuff, or the sale of the residence at 1318 Minchen Drive shall be credited against the Defendant's judgment debt; and

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(6) a judgment awarding the Receiver his reasonable attorneys' fees, expenses, costs, pre- and post-judgment interest, and such other and further relief, general or special, at law or in equity, to which he is justly entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201-4240  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

By:                           /s/ Michael J. Quilling                            
Michael J. Quilling  
State Bar No. 16432300  
E-mail: mquilling@qscipc.com  
Brent J. Rodine  
State Bar No. 24048770  
E-mail: brodine@qscipc.com

ATTORNEYS FOR PLAINTIFF

## CERTIFICATE OF SERVICE

On the 20th day of October, 2006 a true and correct copy of the above and foregoing was sent via first class mail, with full and proper postage prepaid thereon, to:

Gary McDuff  
1314 Minchen Drive  
Deer Park, Texas 77536

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/s/ Michael J. Quilling