

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,	§	CIVIL ACTION NO. 3:06-CV-263
	§	
v.	§	ECF
	§	
DEREK SCHENK, Individually and d/b/a	§	Referred to the U.S. Magistrate Judge
HALO FILM VENTURES,	§	
	§	
Defendant.	§	

**NOTICE OF DISMISSAL**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

Plaintiff Michael J. Quilling, as Receiver for Sardaukar Holdings IBC and Bradley C. Stark, (“Plaintiff” or “Receiver”) hereby files this Notice of Dismissal under Federal Rule of Civil Procedure 41(a)(1)(i) and would respectfully show the Court as follows:

1. This case arises out of a lawsuit brought by the Securities and Exchange Commission (“SEC”) against Bradley C. Stark, Sardaukar Holdings IBC, and others for promising high-yield returns to investors and then squandering their money on unrelated personal expenditures. *See Securities and Exchange Commission, v. Megafund Corporation, et al.*, Cause No. 3:05-CV-1328-L (N.D. Tex.) (the “SEC Proceedings”).

2. By order of July 5, 2005, the Court overseeing that case appointed Michael J. Quilling as Receiver for the defendants and relief defendant and he has since continued to function in that capacity. *See Order Appointing Temporary Receiver* (“Order Appointing Receiver”) [Dkt.

No. 9], as amended July 19, 2005 [Dkt. No. 36] (3:05-CV-1328).

3. The Order Appointing Receiver expressly authorizes legal action to recover investor funds fraudulently transferred to third parties:

The Receiver is hereby authorized to institute such actions or proceedings to impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities who received assets or funds traceable to investor monies.

*Id.* at ¶ 13.

4. On February 10, 2006, the Receiver filed his Complaint against Defendant seeking to recover \$260,000.00 of investor funds. *See Complaint* [Dkt. No. 1]. The Receiver retained Northshore Process Service (“Northshore”) to effect personal service of process on the Defendant. *Appendix to Receiver’s Motion to Expand Time for Service of Process Upon Defendant* [Dkt. No. 15], Exhibit “A” at ¶ 4 .

5. By April 20, 2006, Northshore had determined that Defendant was not at the address listed in the Complaint. *Id.* at ¶ 5. At Northshore’s recommendation, the Receiver paid for a skip trace to determine Defendant’s current location. *Id.*

6. On May 5, 2006, Northshore informed the Receiver that Defendant was located at 141 Daugherty Avenue in Holbrook, New York (the “Holbrook address”). *Id.* at ¶ 6. The Receiver paid an additional fee to have personal service completed at that address within 24 hours. *Id.*

7. On June 12, 2006, Northshore sent the Receiver a Return of Non-Service and explained that (1) numerous attempts were made to serve the Defendant at the Holbrook address, (2) although the process server observed activity at that address, none of the inhabitants would answer the door to accept service of process, and (3) Northshore believed that leaving a copy of the

summons and complaint at that address would be reasonably effective in giving Defendant notice of this litigation. *Id.* at ¶ 7. On June 30, 2006, one of Northshore's representatives signed an affidavit to that effect, which was attached to the Receiver's *Motion to Allow Alternate Method for Service of Process Upon Defendant* ("Motion for Alternative Service") [Dkt. No. 11].

8. On July 6, 2006, this Court issued an Order denying the Receiver's motion and requesting a supplemental affidavit explaining "how [the process server] knows defendant either resides at the Holbrook address or likely would receive notice of this action if the summons and complaint are posted on the front door of that address." *Order*, July 6, 2006 [Dkt. No. 12].

9. By August of 2006, both of Northshore's employees who tracked Defendant to the Holbrook address had left the company and Northshore's remaining employees would not sign an affidavit addressing the Court's question. *Appendix to Receiver's Motion to Expand Time for Service of Process Upon Defendant* [Dkt. No. 15], Exhibit "A" at ¶ 10.

10. On August 31, 2006, the Receiver requested an additional 60 days to complete service or provide this Court with a supplemental affidavit justifying alternative service under Fed. R. Civ. P. 4 (e)(1). *Receiver's Motion to Expand Time for Service of Process Upon Defendant* [Dkt. No. 14]. The Court granted this relief on September 5, 2006. *Order*, September 5, 2006 [Dkt. No. 10].

11. Since that time the Receiver retained Paul C. Vinelli, another licensed process server in New York, to perform a skip trace from Defendant's last known locations. After performing the skip trace, however, he concluded that Defendant is no longer located at the Holbrook address and his current whereabouts are unknown.

12. For the time being, Defendant has successfully evaded personal service of process

and fled the Holbrook address before alternative service could be achieved. The Receiver, therefore, respectfully requests that this Court dismiss his suit against Defendant without prejudice in an effort to conserve the Receivership Estate's resources.

WHEREFORE, PREMISES CONSIDERED, the Receiver hereby notifies this Court of his desire to dismiss, without prejudice, his claims against Defendant and asks that this Court sign an appropriate Order of Dismissal under Fed. R. Civ. Proc. 41(a)(1)(i) and Local Civil Rule 41.1.

Respectfully Submitted

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