

II.
SUMMARY JUDGMENT EVIDENCE

Plaintiff's Motion for Summary Judgment is based on the evidence listed below, as well as all other pleadings and evidence currently on file or to be filed in this action:

1. Declaration of Michael J. Quilling, Exhibit "A" (App. at 4-7); and
2. Summary of Saradanka's JP Morgan Chase Account, Exhibit "B" (App. at 8-25).

Further, Plaintiff requests that the Court take judicial notice of the pleadings and other documents contained in this Court's file for the above-styled and numbered cause, as well as *Securities and Exchange Commission v. Megafund et al.*, Cause No. 3:05-CV-1328 (N.D. Tex.), and *Quilling v. Tschebaum et al.*, Cause No. 3:05-CV-1465 (N.D. Tex.).

III.
REQUESTED RELIEF

Plaintiff respectfully requests that this Court enter judgment in his favor and against the Defendant under Fed. R. Civ. P. 56 and award Plaintiff an Order that includes the following:

1. a finding that the Defendant received \$187,915.05 fraudulently transferred out of a *Ponzi* scheme or otherwise imposed with a constructive trust;
2. an entry of judgment in the amount of \$187,915.05 and an order disgorging that amount from the Defendant; and
3. an award for the Plaintiff's costs, fees, and pre- and post-judgment interest at the highest rate permitted by law.

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests that the Court enter a judgment in his favor as set forth above and for such other and further relief, general or special, at law or in equity, to which he is otherwise justly entitled.

from recovering on his fraudulent transfer claim for \$187,915.05.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. This case arises out of a lawsuit brought by the Securities and Exchange Commission (the “SEC”) against numerous defendants involved in a fraudulent investment program. *See Securities and Exchange Commission v. Megafund Corporation et al.*, Cause No. 03-06-2006-1328 (N.D. Tex.) (the “Receivership Proceedings”). The SEC filed suit against Brad Stark, Sardaukar Holdings IBC (“Sardaukar”), and others for promising high-yield returns to investors and then squandering their money on extravagant, unrelated personal expenses. *See Complaint* [Dkt. 1] at ¶ 3 (3:05-CV-1328).

2. By order of July 5, 2005, the Court presiding over the Receivership Proceedings appointed Michael J. Quilling as Receiver for those 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 Receiver has seized all known bank accounts related to the Receivership Proceedings, interviewed numerous principals and investors, subpoenaed records, and investigated the underlying transfers and purchases from investor funds. *Receiver’s Affidavit*, Exhibit “A” at ¶ 2 (App. at 5). In particular, he has taken possession of all records relating to Sardaukar’s account at JPMorgan Chase Bank, N.A. *Id.* at ¶ 3 (App. at 6). Those records are voluminous, so the Receiver’s accountant has prepared a spreadsheet summary for easy reference. *Account Summary*, Exhibit “B” (App. at 9 et seq.).

4. Sardaukar’s account records conclusively show that (1) investor funds constituted

virtually all of Sardaukar's revenue; (2) those funds were commingled and used for personal expenses rather than legitimate investments; and (3) any investment "returns" to earlier contributors were actually *Ponzi* payments from the commingled funds of later contributors. *Id.* at ¶ 5 (App. 6-7). On its face, this kind of arrangement illustrates a classic *Ponzi* scheme.¹ *Id.*

5. The Order Appointing Receiver expressly authorizes legal action to recover investor funds 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. [Dkt. No. 36] at ¶ 13 (3:05-CV-1328).

6. The Receiver filed this action against Jeffrey Marc Schonsky ("Defendant") to recover (1) \$175,000.00 of investor funds transferred directly to the Defendant, (2) \$6,719.42 of investor funds used purchase Defendant's laptop computer, and (3) \$6,195.63 of investor funds used to purchase Defendant's Rolex watch. *See Complaint* [Dkt. No. 1]. These transfers are reflected in the following entries from Sardaukar's monthly bank statements:

<u>Date Cleared</u>	<u>Amount</u>	<u>Sender</u>	<u>Recipient</u>
12/17/2004	6,195.63	Sardaukar (JPMorgan Chase Bank)	Ben Bridge Jeweler #48
02/24/2005	175,000.00	Sardaukar (JPMorgan Chase Bank)	Jeff Schonsky
05/05/2005	6,719.42	Sardaukar (JPMorgan Chase Bank)	Alienware
TOTAL:	\$187,915.05		

1 This is consistent with the Magistrate Judge's findings of fact in *Quilling v. Tschebaum*, 3:05-CV-1465 (N.D. Tex.), concluding that Sardaukar "never generated any investment revenue" and "[w]hat little money remained after Stark depleted the bank account was commingled and used to pay 'returns' to earlier investors." *Findings and Recommendation of the United States Magistrate Judge* [Dkt. No. 72] at 5 (3:05-CV-1465).

Receiver's Affidavit, Exhibit "A" at ¶ 4 (App. at 6); *Account Summary*, Exhibit "B" (App. at 9, 13, 18).

7. Those same bank statements show that the Defendant did not invest with Sardaukar or exchange an equivalent value for the assets received. *Receiver's Affidavit*, Exhibit "A" at ¶ 4 (App. at 6); *Account Summary*, Exhibit "B" (App. at 9 et seq.) (showing that Sardaukar received no contributions from Defendant). In fact, Defendant describes the \$175,000.00 check as a "gift" and admits that the other two transfers occurred "substantially[] as described" in the Receiver's Complaint. *Original Answer of Defendant* [Dkt. No. 5] at ¶ 1.

8. These undisputed material facts show that (1) the Defendant received \$187,915.05 in cash or other assets from Sardaukar and (2) that Sardaukar was a *Ponzi* scheme. Therefore, as explained more fully below, the Receiver respectfully requests that this Court enter judgment in his favor and rule that these transfers were fraudulent as a matter of law under the Texas Uniform Fraudulent Transfer Act and the supplemental provisions of common law.

III. ARGUMENTS AND ANALYSIS

A. Standard for Granting Summary Judgment.

A party may obtain summary judgment when there is no genuine issue as to any material fact. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is "material" only if it might affect the outcome of the case. *MacDonald v. Delta Air Lines, Inc.*, 94 F.3d 1437, 1440 (10th Cir. 1996); *see also Poulis-Minot v. Smith*, 388 F.3d 354, 363 (1st Cir. 2004). An issue is "genuine" only if a reasonable jury could return a verdict for the non-movant on the evidence. *MacDonald*, 94 F.3d at 1440; *Poulis-Minot*, 388 F.3d at 363. Stated another way, the Court should

award summary judgment where the record, taken as a whole, could not lead a rational jury to find for the non-moving party. *See Logan v. Commercial Un. Ins. Co.*, 96 F.3d 971 978 (7th Cir. 1996).

B. Summary Judgment is Appropriate in this Case Because the Undisputed Material Facts Establish that Defendant Received Fraudulent Transfers Under the UFTA.

There is no genuine issue as to the material facts establishing the Receiver's right to recovery under the Uniform Fraudulent Transfer Act ("UFTA").
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(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose within a reasonable time before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor . . .

Tex. Bus. & Com. C. § 24.005.² The transferor's intent to "hinder, delay, or defraud" is established as a matter of law by the mere existence of a *Ponzi* scheme. *Quilling v. Gilliland*, 2002 WL 373560, *2 (N.D. Tex. Mar. 6, 2002); *S.E.C. v. Cook*, 2001 WL 256172, *3 (N.D. Tex. Mar. 8, 2001); *see also, In re Ramirez Rodriguez*, 209 B.R. 424, 434 (Bankr. S.D. Tex.1997); *In re Independent Clearing House Co.*, 77 B.R. 843 (Bankr. D. Utah 1987). This presumption is necessarily true because a *Ponzi* scheme is insolvent from its conception. *Warfield v. Byron*, 2006 WL 118250, *5 (5th Cir. Jan. 17, 2006) (*Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924)). Accordingly, all transfers from a *Ponzi* scheme are intended to hinder, delay, and defraud creditors. *See Cook*, 2001 WL

² The New York Fraudulent Conveyance Act operates in the same manner as the UFTA with respect to transfers out of a *Ponzi* scheme. *See* N.Y. Debt & Cred. Law § 276 ("Every conveyance made and every obligation incurred with actual intent . . . to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors."); *In re Churchill Mortg. Inv. Corp.*, 256 B.R. 664, 675 (Bankr. S.D.N.Y. 2000) (noting that "[a] *Ponzi* scheme cannot work forever" and, therefore, establishes "actual intent" to hinder, delay, or defraud for purposes of § 276) (citing *In re Independent Clearing House*, 77 B.R. 843, 860 (D. Utah 1987)).

256172 at *3, 4 (granting Receiver's motion for summary judgment to recover transfers from a *Ponzi* scheme); *see also Warfield*, 2006 WL 118250 at *6-7 (disgorging compensation from a *Ponzi* scheme); *In re Alpha Telecom, Inc.*, 2004 WL 3142555, *4 (D. Or. Aug. 18, 2004) (disgorging transfers made for selling securities on behalf of a *Ponzi* scheme).

In this case, Defendant admits receiving the transfers described in the Receiver's Complaint and he has not yet disputed that they originated from a *Ponzi* scheme. Accordingly, as explained more fully below, the Receiver has established fraudulent intent as a matter of law under the UFTA and is, therefore, entitled to summary judgment.

1. Defendant Has Raised No Genuine Issue of Material Fact Regarding his Receipt of Investor Funds from Sardaukar.

The Defendant admits that (1) Brad Stark caused Sardaukar to transfer \$175,000.00 directly to the Defendant and (2) that Stark used another \$12,915.05 of investor funds to purchase Defendant's Rolex watch and laptop computer. *Original Answer of Defendant* [Dkt. No. 5] at ¶ 1 (describing the \$175,000.00 check as a "gift" and admitting that the other two transfers occurred "substantially[] as described" in the Receiver's Complaint). Sardaukar's bank records conclusively confirm this fact and, therefore, there is no genuine issue as to the dates, amounts, or nature of these transfers. *See also Receiver's Affidavit*, Exhibit "A" at ¶ 4 (App. at 6); *Account Summary*, Exhibit "B" (App. at 9, 13, 18). The only remaining issue for recovery under the UFTA is whether these transfers were made out of a *Ponzi* scheme.

2. Defendant Has Raised No Genuine Issue of Material Fact Regarding the Existence of a *Ponzi* Scheme.

For purposes of summary judgment, a *Ponzi* scheme may be proved by the Receiver's uncontroverted testimony. *See Cook*, 2001 WL 256172 at *3. In his affidavit, the Receiver clearly

explains how the undisputed material facts show that Sardaukar was operated as a *Ponzi* scheme. *Receiver's Affidavit*, Exhibit "A" at ¶¶ 5-8 (App. at 6-7). The Defendant has not yet challenged this conclusion and no legitimate evidence to the contrary has been offered in this case, the Receivership Proceedings, or in any ancillary cases.³

As explained in the Receiver's Affidavit, the evidence before this Court conclusively shows that Sardaukar was, in fact, a *Ponzi* scheme. A *Ponzi* scheme exists where money from new investors is used to pay "profits" to earlier investors, without the operation of an actual revenue-producing business. See Black's Law Dictionary 1180 (7th ed. 1999); *Id* at ¶ 5 (App. at 6). The Receiver has taken possession of Sardaukar's account records at JPMorgan Chase Bank, N.A., where Brad Stark received all known contributions from Sardaukar investors. *Id* at ¶ 3 (App. at 6). Those records conclusively show that: (1) investor funds constituted virtually all of Sardaukar's revenue; (2) those funds were commingled and used for personal expenses rather than legitimate investments; and (3) what funds remained after Starks' spending sprees and handouts were commingled and used to pay "returns" to earlier investors.⁴ *Id.* at ¶ 5 (App. at 6-7); see also *Account Summary*, Exhibit "B" (App. at 9 et seq.) (showing that money from Sardaukar investors were commingled, spent for

³ In *Quilling v. Tschebaum*, Civil Action No. 3:05-CV-1465 (N.D. Tex.), Brad Stark attempted to challenge the *Ponzi* scheme's existence by offering his own affidavit and some account records purporting to be from Man Financial, Inc. *Appendix to Defendants' Response to Plaintiff's Motion for Preliminary Injunction and Brief in Support* [Dkt. No. 15] at 4-35 (3:05-CV-1465). Testimony from a representative of Man Financial, however, exposed Stark's affidavit as perjury and the records as forgeries. *Supplemental Appendix to Plaintiff's Reply in Support of Motion for Preliminary Injunction* [Dkt. No. 17] at 7-39 (3:05-CV-1465). The Court later accepted the Receiver's conclusion that Stark operated Sardaukar as a *Ponzi* scheme. *Findings and Recommendation of the United States Magistrate Judge* [Dkt. No. 72] at 4-6 (3:05-CV-1465).

⁴ When reviewing the bank records and accountant summary, it is worth noting that Sardaukar contributors included numerous corporate entities like CIG, Ltd., CDB&B Investors, Inc., Clover Investment LLC, International Consultants & Referrals, and Investment World, Inc. See *Account Summary*, Exhibit "B" (App. at 9, 11, 13). Their money was commingled with that of individual investors and should not be misconstrued as an investment or other legitimate means for generating revenue.

personal expenses, and used to pay smaller returns to other investors). This kind of arrangement illustrates a classic *Ponzi* scheme. *Id.* at ¶ 5 (App. at 7).

IV. CONCLUSION

In short, the Defendant admits receiving funds that were undoubtedly proceeds from a *Ponzi* scheme. Therefore, under the law of this district and the UTA, the Receiver has satisfied his burden for proving a fraudulent transfer claim against the Defendants. The Receiver now respectfully requests that this Court (1) enter a finding that Defendant received \$187,915.05 fraudulently transferred out of a *Ponzi* scheme, (2) enter a judgment in the amount of \$187,915.05 and an order disgorging that amount from the Defendant, (3) award the Receiver his costs, fees, and pre- and post-judgment interest at the highest rate permitted by law, and (4) for such other and further relief, general or special, at law or in equity, to which he is otherwise justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On September 6, 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:

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/s/ Brent J. Rodine
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