

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. 3:05-CV-1976-L (BD)
	§	
v.	§	<b>ECF</b>
	§	
JOHN W. STARK, JR. and BARBARA	§	<b>Referred to U.S. Magistrate Judge</b>
STARK,	§	
	§	
Defendants.	§	

**BRIEF IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

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

COMES NOW, Michael J. Quilling, as Receiver for Sardaukar Holdings, IBC and Bradley C. Stark, (“Plaintiff” or “Receiver”) and, in accordance with Local Rule 56.5, files this his Brief in Support of Plaintiff’s Motion for Summary Judgment against Defendants John W. Stark, Jr. and Barbara Stark. In support of his motion, the Receiver would respectfully show the Court as follows:

**I.  
INTRODUCTION**

It is well settled that, under the Uniform Fraudulent Transfer Act, all transfers out of a *Ponzi* scheme are fraudulent as a matter of law. The undisputed material facts in this case conclusively show that the Defendants’ son, Brad Stark, operated Sardaukar Holdings as a *Ponzi* scheme. This conclusion is supported by Sardaukar’s own bank statements, which clearly establish 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. These facts establish, as a matter of law, that all transfers from Sardaukar were made with the intent to hinder, delay, or defraud creditors under the Uniform Fraudulent Transfer Act.

The parties agree that Sardaukar transferred at least \$173,174.06 directly to the Defendants or on their behalf. Accordingly, there is no genuine issue of material fact precluding the Receiver from recovering on his fraudulent transfer claim for that amount.

The Receiver also seeks a summary judgment ruling that Defendants cannot satisfy their burden to prove that they accepted \$173,174.06 from their son in good faith and for reasonably equivalent value. Defendants acknowledge too many suspicious circumstances that would cause a reasonable person to inquire before accepting \$173,174.06 from an off-shore securities trading company run by Brad Stark. In addition, the “consideration” that Defendants purportedly exchanged provided little or no actual benefit to Sardaukar and no reasonable jury could conclude that Sardaukar would have consented to these transfers had they been negotiated at arm’s length. Therefore, under the UFTA and the settled law of this district, the Receiver is entitled to summary judgment on his fraudulent transfer claims against Defendants John W. Stark, Jr. and Barbara Stark.

## **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 SEC v. Megafund Corporation, et al.*; Cause No. 3:05-CV-1328 (N.D. Tex.) (the “Receivership Proceedings”). The SEC filed suit against Brad Stark, his wife Pam Stark, Sardaukar Holdings IBC, 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 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 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).

4. The Receiver filed this action against John W. Stark, Jr. and Barbara Stark (collectively, “Defendants”) to recover \$173,174.06 of investor funds that they received from Sardaukar Holdings, IBC (“Sardaukar”). *See Complaint* [Dkt. No. 1]. That amount represents the following transfers made directly to Defendants or on their behalf between December 2004 and June 2005:

<u>Date</u>	<u>Amount</u>	<u>Sender</u>	<u>Recipient</u>
12/08/2004	832.90	Sardaukar (JPMorgan Chase Bank)	Continental Airlines (for John Stark)
01/31/2005	24,042.02	Sardaukar (JPMorgan Chase Bank)	March Community Credit Union
02/18/2005	3,999.33	Sardaukar (JPMorgan Chase Bank)	Virgin Atlantic Airlines (for John Stark)
03/18/2005	95,154.43	Sardaukar (JPMorgan Chase Bank)	GMAC Mortgage
03/23/2005	11,132.60	Sardaukar (JPMorgan Chase Bank)	Virgin Atlantic Airlines (for Barbara Stark)
04/19/2005	9,274.53	Sardaukar (JPMorgan Chase Bank)	John Stark
04/19/2005	1,611.65	Sardaukar (JPMorgan Chase Bank)	Koeln US (for Barbara Stark)

05/09/2005	3,000.00	Sardaukar (JPMorgan Chase Bank)	John Stark
05/10/2005	2,600.00	Pam Stark (Bank of America)	Barbara Stark
05/18/2005	6,863.30	Sardaukar (JPMorgan Chase Bank)	John Stark
06/01/2005	2,600.00	Pam Stark (Bank of America)	Barbara Stark
06/07/2005	3,431.65	Sardaukar (JPMorgan Chase Bank)	John Stark
06/08/2005	2,600.00	Pam Stark (Bank of America)	Barbara Stark
06/20/2005	2,600.00	Pam Stark (Bank of America)	Barbara Stark
06/24/2005	3,431.65	Sardaukar (JPMorgan Chase Bank)	John Stark
<b>TOTAL:</b>	<b>\$173,174.06</b>		

*Id.*; Receiver's Declaration, Exhibit "A" at ¶ 6 (App. at 6-7).

5. The Defendants admit that they received these funds from Sardaukar. *Defendants' Discovery Responses*, Exhibit "D" at 7 (App. at 65).

6. The Receiver has seized all known bank accounts, interviewed numerous principals and investors, subpoenaed records, and investigated the underlying transfers and purchases from investor funds. *Receiver's Declaration*, Exhibit "A" at ¶ 7 (App. at 7). He has also taken possession of all records relating to Sardaukar's account at JPMorgan Chase Bank, N.A. *Id.* Those account records are voluminous, so the Receiver's accountant has prepared a summary attached as Exhibit "A-1" and fully incorporated for all purposes. 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. *Receiver's Declaration*, Exhibit "A" at ¶ 8 (App. 7-8). On its face, this kind of arrangement illustrates a classic *Ponzi* scheme. *Id.*



7. Sardaukar was wholly owned and operated by Brad Stark, who was not a licensed securities broker. *Id.* at ¶ 3 (App. 5-6). Although Defendant John Stark was listed as Sardaukar's President and CEO, he claims that he never played an active role in the company and simply signed corporate documents at Brad Stark's request. *John Stark's Deposition*, Exhibit "C" at 14-15, 27-28, 31, 41 (App. at 47, 50-51, 53). Furthermore, Defendants were aware that Brad Stark was purportedly running this trading company out of Defendants' home. *Id.* at 28 (App. at 50).

8. In 2003, Brad Stark was convicted for possessing forged and counterfeit securities and spent several months in prison for that offense. *Felony Conviction of Bradley C. Stark*, Exhibit "E" (App. at 87); *see also John Stark's Deposition*, Exhibit "C" at 23-26 (App. at 49-50).

9. Soon after his release, Brad Stark resumed control of Sardaukar and went on a conspicuous and extravagant spending spree that personally benefitted the Defendants and their family. *John Stark's Deposition*, Exhibit "C" at 25-26 (App. at 49-50). The Defendants noticed that Brad Stark suddenly had significantly more money than at any other time in his life. *Barbara Stark's Deposition*, Exhibit "B" at 42-43 (App. at 36); *John Stark's Deposition*, Exhibit "C" at 17-19 (App. at 47-48).

10. On January 31, 2005, Brad Stark paid off a \$24,042.02 personal line of credit that Defendants maintained with March Community Credit Union. *Summary of Sardaukar's JPMorgan Account*, Exhibit "A-1" at 4 (App. at 14); *Barbara Stark's Deposition*, Exhibit "B" at 27-28, 36-37 (App. at 32, 34); *John Stark's Deposition*, Exhibit "C" at 7-8, 14 (App. at 45, 47).

11. On March 18, 2005, Brad Stark transferred \$95,154.43 from Sardaukar to GMAC Mortgage to pay off the mortgage on Defendants' home residence at 16960 Washington Street in Riverside, California. *Summary of Sardaukar's JPMorgan Account*, Exhibit "A-1" at 7 (App. at 17);

*Barbara Stark's Deposition*, Exhibit "B" at 12, 17-22 (App. at 28-31); *John Stark's Deposition*, Exhibit "C" at 17-19 (App. at 47-48); *see also Defendants' Discovery Responses*, Exhibit "D" at 4 (stating the address of Defendants' residence in Riverside).

12. During this time, Defendants also noticed that Brad Stark had purchased at least five luxury cars for himself, his wife, and their children and had put payments down on three new residences for himself and the Defendants. *Barbara Stark's Deposition*, Exhibit "B" at 43-44 (App. at 36); *John Stark's Deposition*, Exhibit "C" at 5-6 (App. at 44-45). Brad Stark also purchased a \$9,500.00 Rolex for Defendant John Stark. *John Stark's Deposition*, Exhibit "C" at 17-18 (App. at 47-48).

13. In addition, Pam Stark suddenly had money to start plans for an art store called Tesori Fine Art & Collectibles ("Tesori Fine Art") and the family took "buying trips" around the world to purchase a full inventory of art replicas. *Barbara Stark's Deposition*, Exhibit "B" at 43, 47-48, 52-53 (App. at 36-38); *see also John Stark's Deposition*, Exhibit "C" at 45-46 (App. at 54-55). Defendant Barbara Stark was purportedly an employee of Tesori Fine Art, but suspects that the salary she was paid came from Brad Stark. *Barbara Stark's Deposition*, Exhibit "B" at 43, 47-48, 56-57 (App. at 36-37, 39).

### III. ARGUMENTS AND ANALYSIS

#### A. Standards 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 Defendants Do Not Dispute The Material Facts Establishing A Fraudulent Transfer Under The UFTA.**

There is no genuine issue as to the material facts establishing the Receiver’s claim under the Texas Uniform Fraudulent Transfer Act (“UFTA”)<sup>1</sup> or the supplemental provisions of common law.

In relevant part, the UFTA provides that:

(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. While creditors must ordinarily prove fraudulent intent to recover under this provision of the UFTA, that element is automatically established for transfers out of a *Ponzi* scheme. *Quilling v. Gilliland*, Civil Cause No. 3:01-CV-1617 (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 conception. *Warfield v. Byron*, 2006 WL 118250, \*5 (5th Cir. Jan. 17, 2006), *citing Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). Accordingly, all payments from a *Ponzi* scheme—including those

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<sup>1</sup> The California Uniform Fraudulent Transfer Act contains the same provisions. *See* Cal. Civ. C. § 3439 *et seq.*

purporting to be “compensation”—are fraudulent transfers hindering, delaying and defrauding creditors. *See Cook*, 2001 WL 256172 at \*3, 4 (granting Receiver’s motion for summary judgment to recover compensation paid from a *Ponzi* scheme); *see also Warfield*, 2006 WL 118250 at \*6-7 (disgorging compensation skimmed from investor payments into a *Ponzi* scheme); *In re Alpha Telecom, Inc.*, 2004 WL 3142555, \*4 (D. Or. Aug. 18, 2004) (disgorging compensation for selling securities for a *Ponzi* scheme).

In this case, Defendants admit that they received funds from Sardaukar and have not yet disputed that those funds originated from a *Ponzi* scheme. Therefore, as explained more fully below, the Receiver has established his fraudulent transfer claim as a matter of law and is entitled to summary judgment.

**1. Defendants Have Raised No Genuine Issue Of Material Fact Regarding Their Receipt Of Investor Funds From Sardaukar.**

The Defendants admit that Brad Stark caused Sardaukar to transfer at least \$173,174.06 directly to the Defendants or for their benefit. *Defendants’ Discovery Responses*, Exhibit “D” at 7 (App. at 65). The Defendants schedule these transfers by dates, amounts, and descriptions that exactly match debits appearing in Sardaukar’s account at JPMorgan Chase Bank. *Id.*; *see also Summary of Sardaukar’s JPMorgan Account*, Exhibit “A-1” (App. at 11-23). Accordingly, there is no genuine issue of material fact regarding the dates, amounts, recipients, or source of those funds. *Receiver’s Declaration*, Exhibit “A” at ¶ 6 (App. at 6-7).

**2. Defendants Have 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 uncontroverted testimony offered by the Receiver. *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. *Id.* at ¶¶ 7-8 (App. at 7-8). The Defendants have not challenged the Receiver's conclusion and no legitimate evidence to the contrary has yet been offered this case, the Receivership Proceedings, or in any ancillary cases.<sup>2</sup>

As explained in the Receiver's Declaration, 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. Black's Law Dictionary 1180 (7th ed. 1999). 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. *Receiver's Declaration*, Exhibit "A" at ¶ 7 (App. at 7). 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 the Starks' spending sprees and handouts were commingled and used to pay "returns" to earlier investors.<sup>3</sup> *Id.* at ¶ 8 (App. at 7-8). This kind of arrangement illustrates a classic *Ponzi* scheme. *Id.*

In short, Defendants admit receiving funds that were undoubtedly proceeds from a *Ponzi*

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<sup>2</sup> In *Quilling v. Tschebaum, et al.*; 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. [Dkt. No. 15] (3:05-CV-1465). Testimony from a representative of Man Financial, however, exposed Stark's affidavit as perjury and the records as forgeries. [Dkt. No. 17] (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 U.S. Magistrate Judge* [Dkt. No. 72] (3:05-CV-1465).

<sup>3</sup> 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. *Receiver's Declaration*, Exhibit "A" at ¶ 7 n.1 (App. at 7). Their money was commingled with that of individual investors and should not be misconstrued as an investment or other legitimate, revenue-producing vehicle. *Id.*

scheme. Therefore, under the settled law of this district and the UFTA, the Receiver has satisfied his burden for proving a fraudulent transfer claim against the Defendants.

**C. Defendants Cannot Prove That They Took Investor Funds In Good Faith And For Reasonably Equivalent Value Because The Undisputed Material Facts Show Otherwise.**

In response to the Receiver's fraudulent transfer claim, Defendants have suggested that they took investor funds "in good faith and for reasonably equivalent value." *See, e.g., Defendants' Discovery Responses*, Exhibit "D" at 8 (App. at 66). This is an affirmative defense for which Defendants bear the burden of proof. Tex. Bus. & Com. Code § 24.009; *Cook*, 2001 WL 256172 at \*4 ("If [respondent] wishes to raise section 24.009 as a defense he may do so, but the burden falls on him to present facts that support it."). The elements are conjunctive, meaning that Defendants must prove both good faith *and* an exchange of equivalent value. *Id.* at \*3. Failing to prove both elements negates Defendants' affirmative defense. *Id.* As explained more fully below, the undisputed material facts prevent Defendants from satisfying their burden of proof because: (1) Defendants certainly possessed enough knowledge that would cause a reasonable person to inquire further before accepting \$173,174.06 from an off-shore securities trading company run by Brad Stark; or (2) the "consideration" that Defendants purportedly exchanged provided little or no actual benefit to Sardaukar and no reasonable jury could conclude that Sardaukar would have consented to these transfers had they been negotiated at arm's length.

**1. Defendants Did Not Accept Investor Funds In Good Faith Because There Were Circumstances That Would Cause A Reasonable Person To Inquire Further About Those Transfers.**

Without question, the Defendants accepted investor funds under circumstances that would cause a reasonable person to inquire further before accepting \$173,174.06 from Brad Stark's company. Defendants knew that Sardaukar was wholly owned and operated by their son, who had

recently served time in prison for securities violations. *John Stark's Deposition*, Exhibit "C" at 23-26 (App. at 49-50); *Barbara Felony Conviction of Bradley C. Stark*, Exhibit "E" (App. at 87); *see also Stark's Deposition*, Exhibit "B" at 37-38 (App. at 34-35) (stating that she has not "really had an interest" in knowing why her son was incarcerated). Within months of his release, however, Brad Stark resumed control of Sardaukar and went on a conspicuous spending spree that personally benefitted Defendants and their family. Clearly, these circumstances should have put Defendants on notice that their son was not running a legitimate, securities trading company.

This should have been immediately obvious to Defendant John Stark, who served as President and CEO of Sardaukar and claims to have provided "accounting" services to the company. *John Stark's Deposition*, Exhibit "C" at 14-15, 27-28, 31, 41 (App. at 47, 50-51, 53); *Defendant's Discovery Responses*, Exhibit "D" at 8 (App. at 66); *see also Flores v. Robinson Roofing & Constr. Co.*, 161 S.W.3d 750-756 (Tex. App.—Forth Worth 2005) (holding that a company's officer did not receive funds in good faith because his participation "raises an inference that [he] knew [the company] was insolvent at the time of the transfer"). Even more alarming is the fact that Defendant John Stark was, at the time, an auditor for the U.S. military who should have questioned the rapid influx of money, Sardaukar's corporate irregularities, and the possibility that some of Brad Stark's spending practices were abusive. *See John Stark's Deposition*, Exhibit "C" at 26-27, 32-35, 39, 41 (App. at 50-53) (acknowledging that Sardaukar claimed to have offices that did not exist and officers who performed no services). At the very least, these circumstances would cause a reasonable person to hesitate before accepting such a large amount of money from a felon recently convicted of securities fraud.

**2. Defendants Took More Than \$173,174.06 Of Investor Funds Without Exchanging Anything Close To Reasonably Equivalent Value.**

The consideration that Defendants purportedly exchanged for investor funds is patently unreasonable and provided no actual benefit to Sardaukar. The UFTA does not specifically define “reasonably equivalent value,” but that term generally includes the range of values that Sardaukar would have been willing to pay Defendants had the transactions been at arm’s length. *See* Tex. Bus. & Com. Code § 24.004(d)(4). Defendants claim that they provided some limited services to Sardaukar and Tesori Fine Art along with personal favors to their son in exchange for the \$173,174.06 of investor funds. *Defendant’s Discovery Responses*, Exhibit “D” at 7-8 (App. at 65-66). But even if this Court accepts Defendants’ explanations as true, it is hard to imagine that Sardaukar would have entered into the following transactions had they been negotiated at arm’s length:<sup>4</sup>

**(A) Defendant John Stark - \$26,001.13**

Sardaukar purportedly paid this amount to Defendant John Stark for consulting on “spreadsheet formulation and design, presentation formats, preliminary accounting services, and preparation for payroll services.” *Defendant’s Discovery Responses*, Exhibit “D” at 8 (App. at 66).

However, Defendant John Stark “never really got to handle the payroll” and merely created a spreadsheet “template” that Sardaukar never used. *John Stark’s Deposition*, Exhibit “C” at 42, 44 (App. at 54). Other than that, Defendant John Stark simply acted as babysitter for his granddaughters and answered Brad Stark’s phone while the family traveled to Italy. *Id.* at 44-46 (App. at 54-55).

**(B) March Community Credit Union - \$24,042.02**

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<sup>4</sup> The Receiver does not necessarily agree with the Defendants’ explanations, but merely addresses them as facts viewed in Defendants’ favor for purposes of summary judgment. The Receiver reserves the right to dispute these explanations and challenge them in any future proceedings.



According to Defendants, their line of credit with March Community Credit Union was used to consolidate debt related to Defendants' purchase of a new Jacuzzi and their personal credit cards. *John Stark Deposition*, Exhibit "C" at 7-8 (App. at 45); *see also Barbara Stark Deposition*, Exhibit "B" at 27-28 (App. at 32). Defendants now claim that Sardaukar paid this debt on their behalf in exchange for allowing Brad Stark and his family to live with them. *Defendant's Discovery Responses*, Exhibit "D" at 8 (App. at 66). Defendant Barbara Stark, however, recalls that Brad Stark simply announced that he would pay that debt, without any discussion of exchanging equivalent value to Sardaukar or its investors. *Barbara Stark Deposition*, Exhibit "B" at 17-18, 32-33 (App. at 29-30, 33).

**(C) GMAC Mortgage - \$95,154.43**

Defendants currently claim that Sardaukar paid off their mortgage in exchange for "credit" extended to Brad Stark. *Defendant's Discovery Responses*, Exhibit "D" at 8 (App. at 66). This note, however, was originally issued in 1984, when Brad Stark was nine years old. *Barbara Stark Deposition*, Exhibit "B" at 12-13 (App. at 28). The note was used to consolidate two existing home loans on Defendants' residence at 16960 Washington Street in Riverside, California. *Id.*; *John Stark Deposition*, Exhibit "C" at 5-6 (App. at 44-45) (stating that none of that money was given to Brad Stark). Without question, Sardaukar realized no benefit in exchange for that transfer. In fact, these funds reflect Defendants' unjust enrichment at Sardaukar's expense, entitling the Receiver to an equitable lien against that property. *See, e.g., Campbell v. Superior Court*, 132 Cal. App. 4<sup>th</sup> 904, 912 (Cal. App. 4<sup>th</sup> Dist. 2005) ("The basis of equitable liens is variously placed on the doctrines of estoppel, or unjust enrichment, or on the principle that a person having obtained an estate of another ought not in conscience to keep it as between them.")

**(D) Trips to Italy and the United Kingdom - \$19,138.63**

While Defendants claim that these expenses were related to “business,” they both have stated that this trip was taken to purchase inventory for Tesori Fine Art and not any business related to Sardaukar. *Barbara Stark Deposition*, Exhibit “B” at 55 (App. at 34); *John Stark Deposition*, Exhibit “C” at 45 (App. at 54). Accordingly, there was no reasonably equivalent value exchanged to Sardaukar or its investors.

**(E) Defendant Barbara Stark - \$10,400.00**

Defendant Barbara Stark claims that she earned this amount for consulting on “store site selection, store design, and inventory selection” and other “conceptual” matters related to Tesori Fine Art. *Barbara Stark Deposition*, Exhibit “B” at 52-53 (App. at 38); *Defendants’ Discovery Responses*, Exhibit “D” at 8 (App. at 66). Barbara Stark, however, does not claim that she ever provided any services or benefit to Sardaukar, even though she suspects her salary was really being funded by Brad Stark. *Barbara Stark Deposition*, Exhibit “B” at 56-57 (App. at 39).

Without question, these transactions benefitted Defendants and their family more than they benefitted Sardaukar or its investors. Such transfers to friends and relatives are highly suspect under the UFTA. *See* Tex. Bus. & Com. Code §§ 24.002(7), 24.005(b)(1) (disfavoring transactions to insiders, which specifically includes “a relative of the debtor or of a general partner”); UNIFORM FRAUDULENT TRANSFER ACT § 5, comment 5 (“a transfer to a closely related person warrants close scrutiny of the other circumstances, including the nature and extent of the consideration exchanged”); *Jackson Sound Studios, Inc. v. Travis*, 473 F.2d 503 (5th Cir. 1973) (holding that the transfer to a corporate officer’s mother was fraudulent); *J. Michael Putman, M.D.P.A. Money Purchase Pension Plan v. Stephenson*, 805 S.W. 16 (Tex. App.—Dallas 1991) (holding that transfers between an

insider under the UFTA and his close friends were not in good faith and not for reasonably equivalent value).

The “consideration” Defendants cite is nothing more than a pretext for receiving a \$173,174.06 windfall at the expense of Sardaukar investors. No reasonable jury could conclude that Sardaukar would have participated in these transactions at arm’s length because, in every instance, the Defendants’ family personally benefitted without exchanging anything close to reasonably equivalent value.

It is, therefore, clear that Defendants cannot meet their burden of proving that investor funds were taken in good faith and for reasonably equivalent value. The undisputed material facts are littered with suspicious conduct that would cause a reasonable person to inquire further before accepting \$174,736.21 from an off-shore securities trader run by Brad Stark. On top of that, Stark freely spent Sardaukar funds for the Defendants’s personal gain while asking for little or nothing in return that actually benefitted Sardaukar’s investors. Without question, this affirmative defense is a transparent attempt to keep investor funds that Brad Stark fraudulently transferred to Defendants in violation of the UFTA.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

On the 24th 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:

Mark A. Castillo  
The Curtis Law Firm, PC  
901 Main Street, Suite 6515  
Dallas, Texas 75202

    /s/ Michael J. Quilling