UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

R. WAYNE KLEIN, the Court Appointed Receiver of Trigon Group, Inc., and for the assets of Daren L. Palmer,

Plaintiff,

v.

DOYLE BECK, an individual,

Defendant.

Case No. 4:10-CV-0088-EJL-REB

MEMORANDUM DECISION AND ORDER

Pending before the Court in the above-entitled matter are post trial motions filed by both sides. The Court finds the motions were timely filed. Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without oral argument.

BACKGROUND

This matter went to trial on July 31, 2012. The jury returned the Special Verdict on August 3, 2012 finding in favor of the Defendant Doyle Beck ("Beck") on the Receiver's Actual and Constructive Fraudulent Transfer Claims and for the Receiver on the claim of Unjust Enrichment. Defendant argues the verdict on the unjust enrichment claim should be set aside as a matter of law and the Receiver argues the verdict is inconsistent and based on the jury's findings the Court should as a matter of law find for the Receiver on fraudulent transfer claims or allow a new trial. The Court will address each of the party's motions.

1. Defendant Beck's Renewed Rule 50(a) Motion under Rule 50(b) and Motion to Alter or Amend Judgment Pursuant to Rule 59(e) (Dkt. 66).

A. Standard of Review

Rule 50(b) of the Federal Rules of Civil Procedure allows for a renewed motion for judgment as a matter of law if such issue was raised during trial pursuant to Rule 50(a). "A grant of such motion [50(b)] is proper if the evidence, construed in favor of the nonmoving party, permits only one reasonable conclusion. " *Art Attacks Ink, LLC v. MGA Entertainment Inc.* , 581 F.3d 1138, 1143 (9th Cir. 2009).

Rule 59(e) which allows a court to alter or amend a judgment is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003).

"There are four grounds upon which a Rule 59(e) motion may be granted: 1) the motion is 'necessary to correct manifest errors of law or fact upon which judgment is based;' 2) the moving party presents 'newly discovered or previously unavailable evidence;' 3) the motion is necessary to 'prevent manifest injustice;' or 4) there is an intervening change in controlling law.'" *Turner v. Burlington North. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003)(citation omitted). Upon demonstration of one of these grounds, the movant must then come forward with "facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Donaldson v. Liberty Mut. Ins. Co.*, 947 F. Supp. 429, 430 (D. Haw. 1996).

Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge. *Illinois Central Gulf Railroad Company v. Tabor Grain Company*, 488 F. Supp. 110, 122 (N.D. Ill. 1980) (a rehash of the arguments previously presented affords no basis for a revision of the court's order).

Where Rule 59(e) motions are merely being pursued "as a means to reargue matters already argued and disposed of and to put forward additional arguments which [the party] could have made but neglected to make before judgment, [s]uch motions are

not properly classifiable as being motions under Rule 59(e)" and must therefore be dismissed. *Davis v. Lukhard*, 106 F.R.D. 317, 318 (E.D. Va. 1984). *See also, Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)("Plaintiff improperly used the motion to reconsider to ask the Court to rethink what the Court had already thought -- rightly or wrongly.").

B. Analysis

Beck claims the Court committed err when it did not grant his Rule 50(a) motion before the jury began deliberations and he renews his motion now under Rule 50(b). Beck argues that because the Receiver had an adequate legal remedy under the Idaho's Uniform Fraudulent Transfers Act ("UFTA"), the Receiver cannot seek equitable relief via an unjust enrichment cause of action. The Receiver responds that Idaho's UFTA does not specifically pre-empt unjust enrichment claims, so the claim is proper.

Beck also argues under Rule 50(b) that he cannot be unjustly enriched as he was a bona fide purchaser for value and because Beck is entitled to an interest amount that exceeds Plaintiff's unjust enrichment award. The Receiver argues these arguments have been rejected by the Court and are not a basis to alter the judgment rendered by the jury on the unjust enrichment claim. This argument may have been raised in pretrial motions, but was not raised as a basis for the Rule 50(a) motion. Accordingly, it is not properly preserved for a Rule 50(b) motion. To the extent this argument is pursuant to Rule 59(e), the Court finds its earlier pretrial motion rulings were not based on a "manifest error of

law" and/or that a "manifest injustice" exists if the Court allows the unjust enrichment verdict to stand.

The Court acknowledges there is arguably a split of authority regarding whether certain common law equity claims are pre-empted by the existence of a legal remedy under the UFTA. Idaho has not specifically addressed the issue, but Beck argues by analogy to recent Idaho decisions regarding corporate dissolutions and the Uniform Commercial Code ("UCC"), the Idaho UFTA should be construed strictly to prevent an unjust enrichment claim. The Court respectfully disagrees that the recent Idaho decisions cited lead to that conclusion.

"Where the clear implication of a legislative act is to change the common law rule we recognize the modification because the legislature has the power to abrogate the common law." *McCann v. McCann*, 275 P.3d 824, 833 (Idaho 2012) (citing *Baker v. Ore-Ida Foods, Inc.*, 513 P.2d 627, 635 (Idaho 1973). "As a general principle, 'the rules of common law are not to be changed by doubtful implication. However, where the implication is obvious it cannot be ignored.'" *Id.* (citations omitted). The Court continued that "[i]t is well established in Idaho that equitable claims will not be considered when an adequate legal remedy is available. *Id.* (citations omitted).

In *McCann*, the Idaho Supreme Court held the Idaho Code § 30-1-1430 regarding corporate dissolutions does not contain explicit language on whether or not it preserves or abrogates any common law. *Id.* Because the statute did not clearly or obviously imply

a change in the common law, the court held dissolution is a drastic remedy and may be an inadequate remedy in certain situations. *Id.* at 834. Therefore, the statute did not control and alternative equitable remedies to dissolution could be considered. *Id.*

In *Mickelsen v. Broadway Ford, Inc.*, 280 P.3d 176, 179-180 (Idaho 2012), the court held the proper analysis of the claim was under the statutory provisions of the UCC, not the common law elements of fraud. In applying *McCann*, the court found because the UCC contains the rights and remedies for material misrepresentation or fraud, it was clear the UCC code section was meant to displace common law actions for misrepresentation or fraud in leases that fall under that chapter of the UCC. *Id.*

The Court has reviewed Idaho's UFTA and finds it does not clearly abrogate the common law claim of unjust enrichment. The elements of actual or constructive fraudulent transfers are not the same as the elements of a claim for unjust enrichment. Absent the Idaho legislature's clear intent to abrogate the common law claim of unjust enrichment, the Court finds such a claim is not prohibited under the facts of the case at bar.

In the four federal cases cited by Beck, the issues presented are distinguishable from the facts of this case. For example, in *Cavadi v. DeYeso*, 941 N.E. 2d 23 (2011), the court held the nonstatutory action of a reach and apply claim was not coextensive with an action under UFTA, but a claim that property had been conveyed in fraud of creditors, a constructive trust arises in which UFTA will apply and prevent the common law

constructive trust claim. This case did not specifically deal directly with an unjust enrichment claim but with a fraud of the creditor constructive trust claim. Moreover, the *Cavadi* court held Massachusetts' UFTA expressly contemplated supplementation by the common law and cited to *In re Valente*, 360 F.3d 256,261 (1st Cir. 2004) for the proposition that the drafters of the Rhode Island (like Idaho), demonstrated a desire to preserve the common law as a supplement to the UFTA unless precluded by the terms of the Act. It is a case by case determination if the common law action was pre-empted by the UFTA or not.

This Court's finding in this case is not at odds with recent Idaho case law *Cavadi* and *In re Valente*. A fraudulent conveyance constructive trust common law claim would be most likely preempted. But the unjust enrichment cause of action in this case does not have an element of fraud and is not clearly encompassed within Idaho's UFTA. Therefore, the Court finds Idaho law does not expressly or impliedly preempt an unjust enrichment cause of action if the Receiver does not prevail on the UFTA claims.

Next, Beck argues that the unjust enrichment claim should not proceed because the UFTA provided an adequate legal remedy to the Receiver. Beck argues that just because the Receiver did not prevail on the legal claim does not make the legal claim inadequate such that the equitable claim of unjust enrichment can proceed. Beck cites the Court to *Mannos v. Moss*, 155 P.3d 1166, 1173 (Idaho 2007) ("Unjust enrichment claim is an equitable claim and 'equitable claims will not be considered when an adequate legal

remedy is available.'")(citations omitted). In reading *Mannos*, this Court finds the holding was limited to where parties have entered a contract, then a claim for unjust enrichment is unviable. *Id.* In the present case, there was no contract claim between Beck and Trigon that would prevent the equitable claim of unjust enrichment, so *Mannos* does not apply. Moreover, the Court finds the UFTA may not always be an adequate legal remedy for unjust enrichment, therefore the equitable claim could be considered by the jury.

Finally, Beck argues even if the Court allows the unjust enrichment verdict, the Court must set it aside as Beck was not unjustly enriched. Beck's logic is Idaho allows a person to earn twelve percent (12%) interest and the $55,000 interest payment the jury found was not equal to 12% on the $500,000 Beck loaned Yost, so there was no unjust enrichment. Beck also claims it would be unfair as he was a bona fide purchaser. These arguments disregard the elements of unjust enrichment the jury found as well as the fact that it is undisputed that Beck received an additional $50,000 as interest on the loan to Yost that the Receiver did not try to recover. The Court adopts its earlier analysis on these arguments and finds construing the evidence presented in favor of Plaintiff, the elements of unjust enrichment were supported by a preponderance of the evidence. Beck's Rule 50(b) motion and motion to alter or amend the judgment pursuant to Rule 59 are denied.

2. Receiver's Motion for Judgment as a matter of law Pursuant to Rule 50(b) and Motion to Alter or Amend the Judgment or, in the Alternative, for a New Trial. Pursuant to Rule 59(a) and (e) (Dkts. 67 and 68)

A. Standard of Review

Plaintiff set forth the correct standard of review for their Rule 50 motion:

> Judgment may be entered under Rule 50(b) even absent any Rule 50(a) motion if the motion alleges "inconsistencies in the answers given in the special verdict" rather than defects in proof. *Pierce v. Southern Pacific Transp. Co.*, 823 F.2d 1366, 1369 (9th Cir. 1987). "When a special verdict does not support a judgment a reviewing court may make an exception to the Rule 50(b) requirement of a motion for directed verdict as a prerequisite to a motion for JNOV….Similarly, when a jury's answers are irreconcilably inconsistent, a reviewing court may review whether the answers support the judgment even in the absence of either a motion for directed verdict or a motion for JNOV." *Id.* (citing *Traders & Gen. Ins. Co. v. Mallitz*, 315 F.2d 171, 175 (5th Cir.1963) and *Fugitt v. Jones*, 549 F.2d 1001, 1004 (5th Cir.1977)). *See Fugitt*, 549 F.2d at 1005 ("If the answers were legally inconsistent, the entry of judgment on such a special verdict embodies the same error as the denial of a motion to set aside the verdict or denial of a motion for a new trial.").

The standard for a Rule 59 (e) was previously set forth by the Court. Rule 59(a) provides the court may grant a motion for new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court. . . ."

B. Analysis

The Receiver maintains the jury rendered an inconsistent verdict and based on that allegedly inconsistent verdict, the Court should enter judgment in favor of the Receiver on the fraudulent transfer claims or order a new trial. In order to understand this

argument, the Court reviewed the special verdict, the jury instructions and the Court's recollection of the testimony. After this analysis, the Court finds the jury did not return an inconsistent jury verdict.

The Receiver argues that a Ponzi scheme investor who lacks good faith has no right to receive monies from the Ponzi scheme and therefore has no legal authority over any monies received. The Receiver bases this argument on *Donell v. Kowell*, 533 F.3d 762, 771 (9th Cir. 2008) (a receiver of a Ponzi scheme can recover all amounts paid to an investor who lacked good faith) and *In re Incomnet*, 463 F.3d 1064, 1070 (9th Cir. 2006) (initial transferee is one who has dominion over the money or other asset; the right to put the money to one's own purpose). Beck argues a person who lacks good faith and invests in a Ponzi scheme may have to return the monies they received from the Ponzi scheme to the receiver, but it does not change that person's status as an initial transferee.

The Receiver is blending concepts from different UFTA cases with different facts than the case at bar to extend the law. Most Ponzi investors lack good faith in that they fail to make the reasonable inquiries a prudent investor would conduct prior to investing. This does not mean the investor/victim is no longer an initial transferee, but it does mean they may not be able to keep the proceeds received from the Ponzi scheme. The result would be different in this case if Palmer was trying to argue he was an initial transferee. Then the Receiver's proposed rule of law would apply. The Court finds this extension of law is not required under the facts of this particular case.

Based on the special verdict returned and evidence presented at trial, the Court finds the jury found by a preponderance of the evidence that Beck was not a direct investor in Trigon. Instead, the evidence established that Beck made a loan to Yost. Yost may have invested the loan proceeds with Trigon, but Yost was not acting as an agent for Trigon when Yost borrowed money from Beck.

The jury found that Yost was an initial transferee as defined by Jury Instruction No. 29. Question No. 4. Meaning Yost had legal title and/or authority over the funds Yost received from Trigon and that Yost used to repay Beck his principal and interest.

The jury also found Beck did *not* establish by a preponderance of the evidence that: 1) Yost acted in good faith, and 2) Yost gave reasonably equivalent value to Trigon. Question Nos. 8 and 9. These answers by the jury related to an affirmative defense raised by Beck.

The Receiver argues because Yost did not act in good faith he could not legally be a valid "initial transferee" because Yost could never have valid legal title or dominion over any monies he received from Trigon. While this argument is a hybrid of cases dealing with the UFTA, this argument fails based on the findings by the jury in this particular case. The Receiver's argument ignores that there are *two* ways for a person to lack good faith in Jury Instruction No. 31. First, a person lacks good faith if that person possessed enough knowledge of actual facts [regarding Trigon as a Ponzi scheme] to

induce a reasonable person to inquire further about the transaction. Or second, a person lacks good faith if the person colludes or actively participates in a Ponzi scheme.

It is clearly possible, under the evidence presented at the trial that the jury found that Yost did not act in good faith because a reasonable person would have inquired further about Trigon's business before investing and before talking friends and relatives into investing. Yost testified that until Palmer came clean and told him it was all a sham, he did not know Trigon was a Ponzi scheme. Yost testified if he had known, he would have exposed the whole thing. Yost's lack of knowledge of the Ponzi scheme was corroborated by Palmer's testimony that Trigon was all his idea and under his control. The Court is aware of the potential bias based on familial relationships that existed between Yost and Palmer, but Yost testified he was greedy, instructed by Palmer what to tell investors and was duped like the other investors. In considering all the evidence presented and the lack of sophistication about investments on the part of Yost, the jury appears to have found Yost's testimony that he was not actively participating in the Ponzi scheme to be credible.

The Receiver maintains he presented "overwhelming evidence" of the active participation in the Ponzi scheme by Yost. While it is true the evidence could have been viewed in this light, it is also true the fact finders could have found Yost was not actively involved, but an enthusiastic investor caught up in the fraudulent representations of Palmer. Talking others into investing in an investment one does not know is a Ponzi

scheme, does not make that person an "active participant" in the scheme. Yost may have been ignorant of what Palmer was really doing, but his ignorance or blindness to the true facts does not necessarily make him an active participant. Many more people than Yost were fooled by Palmer's representations of low risk and high returns.

If the Receiver had proven by a preponderance of the evidence that Yost was actively participating in the Ponzi scheme, then the jury easily could have found Yost was not initial transferee under the Jury Instructions given. It is important to note for purposes of this motion that the Receiver had no objections to the Court's proposed instructions. Moreover, the two instructions that were objected to by Defendant, were instructions that allowed the Receiver to argue his case that Yost was an active participant and not an initial transferee.

Jury Instruction No. 30 provided that if a person does not have legal title and/or authority to monies from a Ponzi scheme, that person may not be deemed an "initial transferee." Jury Instruction No. 15 informed the jury that Trigon was a Ponzi scheme and payments made from Ponzi scheme funds are made with the "actual intent to defraud." So, if the jury found the Receiver had carried his burden on establishing Yost was actively participating in the Ponzi scheme such that Trigon's transfer of monies to Yost to pay Beck was part of the intent to defraud, then the jury could have found that Yost never had legal title and/or authority over the funds he received and was not an initial transferee.

Instead, the Special Verdict indicates that the jury did not find the Receiver carried his burden in establishing Yost was actively participating in the Ponzi scheme so Yost could be found to have held legal title and/or authority over the monies he received from Trigon as an initial transferee. The initial transferee determination is not inconsistent with the determination that Yost did not act in good faith as he should have inquired more about Trigon. Stated another way, as much as the Receiver wanted the jury to find Yost was actively participating in the Ponzi scheme, the Receiver did not carry his burden in convincing the jury of this fact. Therefore, the Court finds the initial transferee designation of Yost, is not inconsistent with the jury finding that Yost may have acted in bad faith in investing in Trigon. In fact, the Court cannot say the jury in fact found Yost to have acted in bad faith. Instead, the Court can only state the jury determined Beck did *not prove by a preponderance of the evidence* that Yost acted in good faith in investing in Trigon.

The jury also found Beck carried his burden in establishing an affirmative defense to the actual fraudulent transfer claim: Yost was an initial transferee, Beck was a subsequent transferee, Beck acted in good faith and Beck gave 'value" to Yost in exchange for the payments Beck received from Yost. The fact the jury found Beck had not carried his burden to establish by a preponderance of the evidence that Yost acted in good faith and gave reasonably equivalent value to Trigon does not mean Yost was not an

initial transferee. It merely means Beck did not carry his burden in convincing the jury that Yost was reasonable in his decision to invest in Trigon without further investigation.

The jury found Beck carried his burden of establishing an affirmative defense to the constructive fraudulent transfer claim: Yost was an initial transferee, Beck was a subsequent transferee, he acted in good faith and Beck gave "value to Yost in exchange for the payments Beck received from Yost.

The jury found Beck was unjustly enriched by the $55,000 he received that belonged to the actual investors or victims of Trigon. All these verdicts are consistent with the evidence presented and the law.

The Court finds as a matter of law that a person who acts without good faith as an investor in a Ponzi scheme, can still be a initial transferee for purposes of an affirmative defense by a subsequent transferee. This is true as long as the person is not actively involved in the Ponzi scheme.

The Receiver argues he is entitled to prejudgment interest on the unjust enrichment verdict. Defendant Beck does not disagree that under Idaho law the Receiver would be entitled to prejudgment interest, but argues the unjust enrichment verdict should not stand. The Court has determined that the unjust enrichment verdict stands, so prejudgment interest is appropriate under Idaho Code § 29-22-104. Here the award of damages at issue was a product of simple math regarding two interest payments made

from Trigon monies and prejudgment interest is appropriate. Plaintiff shall submit a proposed Amended Judgment to reflect prejudgment interest.

CONCLUSION

This was a complex case with a rather complex special verdict form. The jury heard the evidence and rendered a verdict that was consistent with the facts presented and the law given by the Court. While the parties may continue to construe and apply the facts differently than the jury did, the application of the facts to the law produced a consistent verdict. The Court finds the unjust enrichment cause of action is not barred by the Idaho UFTA. The Court declines the parties' invitations to overturn the verdict. In this case, the Court finds the jury got it right.

ORDER

IT IS ORDERED:

1. Defendant Beck's Renewed Rule 50(a) Motion Under Rule 50(b) and Motion to Alter or Amend the Judgment Pursuant to Rule 59(e) (Dkt. 66) is **DENIED.**

2. Plaintiff's Motions for Judgment as a Matter of law Pursuant to Rule 50(b) and Motion to Alter or Amend Judgment, or, in the Alternative, for a New Trial, Pursuant to Rule 59(a) and (e) (Dkts. 67 and 68) are **DENIED IN PART AND GRANTED IN PART.** The Receiver is entitled to prejudgment interest on the unjust enrichment claim

and shall submit a proposed Amended Judgment for the Court's consideration.

3. No further motions for reconsideration will be entertained by the Court.

SO ORDERED.

DATED: **March 22, 2013**

Honorable Edward J. Lodge
U. S. District Judge