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Ascendus Capital Management, LCC,
and Smith Holdings, LLC

FILED DISTRICT COURT
Third Judicial District

MAY 03 2010

By _____
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

R. WAYNE KLEIN, AS COURT-
APPOINTED RECEIVER FOR FFCF
INVESTORS, LLC, ASCENDUS CAPITAL
MANAGEMENT, LLC, AND SMITH
HOLDINGS, LLC,

Plaintiff,

vs.

ALEX MURILLO,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Case No. 090921814

Judge Anthony B. Quinn

This matter came before the Court for hearing on April 15, 2010, on Defendant's Motion for Partial Summary Judgment on statute of limitations grounds. Plaintiff Wayne Klein, Receiver, was represented by L.R. Curtis, Jr. of Manning Curtis Bradshaw & Bednar LLC. Defendant Alex Murillo was represented by Stephen Quesenberry of Hill, Johnson & Schmutz.

The Court, having duly reviewed the pleadings and the memoranda supporting and opposing the motion, and having heard oral argument, announced a decision from the bench. In furtherance of the oral ruling, and for good cause appearing therefore, the Court finds:

1. The Complaint in this case makes out a case that the transfers to Mr. Murillo were made with actual fraudulent intent. This case differs from the typical Ponzi scheme case where the effort is to recover payments that were made to other investors on the theory that the company making the payments was insolvent and therefore any payments made to other investors were made with fraudulent intent. Mr. Murillo is differently situated in that he was paid finder's fees for bringing in new investors. Nevertheless, accepting as true all of the allegations in the Complaint and all the reasonable inferences from those allegations, the transfers to Mr. Murillo were made at a time when the Company knew it was insolvent and knew that Mr. Murillo was providing no valuable service. Mr. Murillo was not providing valuable service to the company because the investors he was bringing in only served to increase the insolvency of the Company.
2. Because the transfers were made with actual fraudulent intent, the discovery rule applies and the statute of limitations does not begin to run until the Receiver was appointed in this case.
3. The Receivership Entities were under the adverse domination of their principals. Therefore, they were unable to act in their best interest until the Receiver was appointed. Under this adverse domination, the statute of limitations also does not begin to run on any claims that the Receivership Entities have against Mr. Murillo until the Receiver was

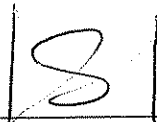
appointed.

ORDER

The Court hereby denies Defendant's Motion for Partial Summary Judgment.

DATED this 3 day of May, 2010.

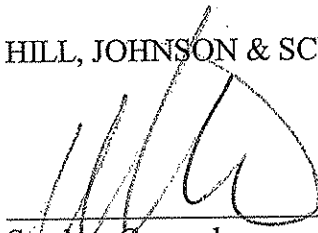
BY THE COURT:



Honorable Anthony B. Quinn
Third District Judge

Approved as to form:

HILL, JOHNSON & SCHMUTZ



Stephen Quesenberry
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 2010, I caused to be served in the manner indicated below a true and correct copy of the attached and foregoing [Proposed] **ORDER DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** upon the following:

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL

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