

MANNING CURTIS BRADSHAW
& BEDNAR LLC

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Ascendus Capital Management, LCC,
and Smith Holdings, LLC

FILED DISTRICT COURT
Third Judicial District

JAN 08 2010

SALT LAKE COUNTY

By _____
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.

JS GELDT INVESTMENTS, LLC,

Defendant.

COMPLAINT

Case No. 100900300

Judge Deaver

Plaintiff R. Wayne Klein (the "Receiver"), as duly court-appointed Receiver for FFCF Investors, LLC ("FFCF"), Ascendus Capital Management, LLC ("Ascendus"), and Smith Holdings, LLC ("Smith Holdings") (collectively the "Receivership Entities"), by and through his counsel, Manning Curtis Bradshaw & Bednar LLC, hereby files this action against Defendant JS Geldt Investments, LLC ("JS Geldt"), and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Receiver was appointed Receiver for the Receivership Entities by the Honorable Denise P. Lindberg, Third Judicial District Court of Salt Lake County, State of Utah, pursuant to an Order dated March 18, 2009 (the "Order"), entered in the action *A. David Barnes, M.D., P.C. v. FFCF Investors, LLC et al.*, Case No. 08922273. Pursuant to Utah Code Ann. § 48-2c-1212 (1), Judge Lindberg and the Third Judicial District Court have exclusive jurisdiction over the Receivership Entities and all of their property, wherever located.

2. Under the terms of the Order, the Receiver is authorized to investigate the affairs of the Receivership Entities, to marshal and safeguard their assets, and to institute legal proceedings for the benefit of the Receivership Entities and their investors and creditors against individuals or entities which the Receiver claims have wrongfully or improperly received funds or other proceeds from the Receivership Entities.

3. Jurisdiction and venue are properly vested with this Court pursuant to Utah Code § 78A-5-102 and Utah Code § 48-2c-1212.

4. Upon information and belief, JS Geldt is a limited liability company with its principal place of business in Idaho Falls, Idaho.

GENERAL ALLEGATIONS

5. Documents reviewed by the Receiver reveal that, beginning in approximately

2002, Ascendus collected millions of dollars from investors as part of a "Ponzi" scheme.¹

6. Ascendus, through its agents, solicited money from investors, and told these investors to open brokerage accounts where Ascendus would have authority to buy and sell options (the "Ascendus Funds").

7. Ascendus would receive commissions based on the profits supposedly earned through its trading.

8. Ascendus regularly communicated to its investors through statements and invoices that their investments had performed positively and had not generated losses. The investors would then owe a percentage of these profits to Ascendus as commissions. These statements falsely reported profits. Over time it appears that the options trading lost money for the investors; however, Ascendus reported profits to the investors to claim its commissions through falsified account statements sent to investors.

9. Investors who attempted to withdraw alleged profits from their accounts actually withdrew portions of their remaining principal.

10. In or about 2005, Ascendus, through its agents, reported that the options market no longer provided the profitable opportunities that had existed earlier and that Ascendus would be closed down.

¹ Utah case law has defined a Ponzi scheme as "a fraudulent investment scheme in which money contributed by later investors generates artificially high dividends for the original investors, whose example attracts even larger investments." *State v. Bolson*, 2007 UT App 268, ¶ 4, 167 P.3d 539 (citing Black's Law Dictionary 1180 (7th ed.1999)).

11. At that time, investors were told that a new investment program was being created through another entity, FFCF, and that the investors would be able to continue to realize profits through investments with FFCF, an entity operated and controlled by the same individuals that operated and controlled Ascendus.

12. Many investors in Ascendus then invested their money with FFCF.

13. Unlike the investment funds in Ascendus, investment funds in FFCF were combined into one investment pool.

14. FFCF operated as another Ponzi scheme, and over the next two years, investors began to withdraw money until the investment scheme operated by FFCF collapsed.

15. On or about August 20, 2007, JS Geldt and/or Stephen Crandall made a loan of \$150,000 to Richard Smith ("Smith"), and this loan to Smith was not satisfied by Smith, but instead was satisfied by a payment of \$166,750 from Ascendus to JS Geldt on or about September 13, 2007.

16. On or about November 6, 2007, JS Geldt and/or Stephen Crandall made a second loan to Smith in the amount of \$750,000. This loan was repaid on or about January 9, 2008, not by Smith, but with a wire transfer in the amount of \$843,777.31 to JS Geldt from FFCF.

17. Neither FFCF nor Ascendus were ever under any obligation to pay the money that they transferred to JS Geldt.

18. The Receiver has demanded that JS Geldt pay to the Receiver money that it received from the Receivership Entities, but JS Geldt has refused to do so.

FIRST CLAIM FOR RELIEF

(Fraudulent Transfer – Utah Code § 25-6-1 *et seq.*)

19. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

20. The transfers of funds to JS Geldt from the Receivership Entities were inherently fraudulent because they were made as part of a Ponzi scheme, and were made with the intent to hinder, delay, or defraud the creditors and/or investors of the Receivership Entities.

21. None of the Receivership Entities received a reasonably equivalent value from JS Geldt for goods or services in exchange for the transfers.

22. Instead, Smith used money from the Receivership Entities to satisfy obligations he had to JS Geldt, and these transfers are avoidable under the Utah Uniform Fraudulent Transfer Act.

23. The Receivership Entities were insolvent at the time the transfers were made to JS Geldt.

24. Pursuant to Utah Code § 25-6-1 *et seq.*, the Receiver is entitled to avoid and recover the transfer of money from the Receivership Entities to JS Geldt as an actual or constructively fraudulent conveyance.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

25. The Receiver incorporates each and every allegation contained in the foregoing

paragraphs.

26. JS Geldt received at least \$1,010,527.31 from the Receivership Entities.

27. Notwithstanding a demand that it do so, the money JS Geldt received from the Receivership Entities has not been paid to the Receiver, nor has JS Geldt provided a reasonably equivalent value of goods or services to the Receivership Entities for the transfers of money to JS Geldt from the Receivership Entities.

28. JS Geldt knowingly and voluntarily accepted and retained a benefit when the funds of the Receivership Entities were transferred to it.

29. The money transferred to JS Geldt by the Receivership Entities continues to be wrongfully retained by JS Geldt.

30. The Receiver is entitled to disgorgement of the funds transferred from the Receivership Entities to JS Geldt, and the circumstances present in this action render JS Geldt's retention of those benefits inequitable.

31. JS Geldt has been unjustly enriched at the expense of the Receivership Entities, and the Receiver is entitled to judgment in the amount of the money transferred to JS Geldt from the Receivership Entities in excess of the reasonable value of goods or services provided by JS Geldt to the Receivership Entities.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against JS Geldt as follows:

1. For damages against JS Geldt in the amount of the money transferred to JS Geldt

from the Receivership Entities in excess of the reasonable value of goods or services provided by JS Geldt to the Receivership Entities, believed to be at least \$1,010,527.31;

2. For an order requiring JS Geldt to disgorge the total amount of the transfers to it from the Receivership Entities in excess of the reasonable equivalent of any goods or services provided to the Receivership Entities;

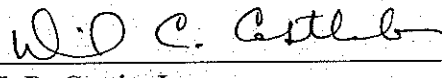
3. For pre-judgment and post-judgment interest to the fullest extent permitted;

4. For costs and attorneys' fees expended in recovering funds from JS Geldt; and

5. For such other and further relief as the Court may deem just and proper.

DATED this 8th day of January, 2010.

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**



L.R. Curtis, Jr.

David C. Castleberry

Attorneys for Receiver for FFCF Investors, LLC,
Ascendus Capital Management, LCC, and Smith
Holdings, LLC

Plaintiff:

Wayne Klein

Court-Appointed Receiver for FFCF Investors, LLC,

Ascendus Capital Management, LCC,

and Smith Holdings, LLC

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