

David H. Jones
Dhjones19usus@yahoo.com
Georgia State Bar No. 405585
Attorney for King & King & Jones, P.C.
659 Auburn Avenue, #141
Atlanta, GA 30312
404-522-8484

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

R. WAYNE KLEIN, the Court-Appointed)	
Receiver of U.S. Ventures LC, Winsome)	
Investment Trust, and the assets of Robert J.)	Case No. 2:12-cv-00051-SA
Andres and Robert L. Holloway,)	
)	Judge Samuel Alba
Plaintiff,)	
)	
Vs.)	
)	
King & King & Jones, P.C.)	
)	
Defendant.)	

MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant in the above referenced action and makes this, his Motion for Summary Judgment and shows this honorable court the following:

Defendant King & King & Jones was neither a creditor nor an investor, nor did it have any other relationship with the receivership defendants. King & King & Jones provided services in good faith to Enrique Baca and received payment for those services by wire transfer.

Utah Code Ann. § 25-6-9 asserts that a transfer is not voidable against a person who took in good faith for a reasonably equivalent value. Relevant caselaw also protects merchants and subsequent transferees. It is undisputed that King & King & Jones accepted payment by wire transfer in good faith for services provided to Enrique Baca.

WHEREFORE, based on the forgoing, Defendant respectfully requests the court grant summary judgment in favor of Defendant, and that:

- a.) The above case be dismissed;
- b.) That all costs be cast against the Plaintiffs; and
- c.) For such other and further relief as this Court may deem just and proper.

Respectfully submitted this 19th day of April, 2013

DAVID H. JONES, ESQ.
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Vs.)	
)	
King & King & Jones, P.C.)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT**

Statement of Facts:

1.

Defendant King & King & Jones was hired by Enrique Baca to defend him against criminal charges in the State of Georgia. At the time Defendant was hired, Baca was incarcerated.

2.

Payment was made to retain King & King & Jones for Baca's case by wire transfer on September 26, 2006. A second payment was made, also by wire transfer, on November 21, 2006.

3.

King & King & Jones provided services and accepted payment in good faith for services of reasonably equivalent value. He successfully defended Mr. Baca against the criminal allegations and that case was finally placed on a dead docket.

4.

King & King & Jones did not know the source of the funds received for Mr. Baca's case through the wire transfer. Nor was King & King & Jones in a position to determine the source of the funds. Neither party in the instant case has been able to determine whether Mr. Baca was an innocent investor or an operator of the Ponzi scheme.

5.

There is no genuine dispute as to any of these facts.

Brief in Support of Motion

6.

King & King & Jones is a small business without the resources to trace every payment made by a client back to its very origin. King & King & Jones accepted payment for services rendered to a client. King & King & Jones should not be held liable for the client's dubious investment decisions.

7.

According to Utah Code Ann. § 25-6-9(2012), a transfer is not voidable against a person who took in good faith for a reasonably equivalent value. King & King & Jones was paid for legal services of a reasonably equivalent value by Enrique Baca. King & King & Jones contract was with Enrique Baca. King & King & Jones had no reason to suspect any discrepancy in the payment for Mr. Baca. King & King & Jones did not invest in or have any other direct dealings with the receivership defendants; there certainly was no investment in a Ponzi scheme followed by false rewards that must now be repaid.

8.

The Court of Appeals of Utah provides a thorough analysis Utah's Fraudulent Transfer Act in Ruth B. Hardy Revocable Trust, et. al., v. Eagle Mountain City 2012 UT App 352. In that case the, the party claiming to be a subsequent good-faith transferee who took for value did not provide proof of value, and that claim failed. However, the opinion does provide an analysis of the law. King & King & Jones, unlike the Defendant in *Hardy*, did in fact provides services, for which he was paid. This is not in dispute.

9.

A 1996 case from the 9th Circuit Court of Appeals found that under the Uniform Fraudulent Transfer Act, transfers made to merchants by debtors were not avoidable because, although they were made with actual intent to hinder, delay or defraud creditors, the merchants took the debtor's money in good faith for a reasonably equivalent value. Cohen, et al. v. Metro Honda, et al. 199 B.R. 709 (1996) at 718.

10.

In a 7th Circuit Court of Appeals case involving a fraudulent transfer prior to bankruptcy, the court compares subsequent a holder of a fraudulently conveyed asset to a holder in due course of a commercial paper or a bona fide purchaser of chattel. Citing the waste that would be created if people either had to inquire how their transferors obtained their property or to accept a risk that a commercial deal would be reversed for no reason they could perceive at the time, the court held, “The initial transferee is the best monitor; subsequent transferees usually do not know where the assets came from and would be ineffectual monitors if they did.” Bonded Fin. Serv., Inc. v. European Am. Bank, 838 F. 2d 890 at 892. In the case at bar, King & King & Jones is in the position of the subsequent transferee; the firm was not in a position to monitor of Mr. Baca’s investing choices.

WHEREFORE, based on the forgoing, Defendant respectfully requests the court grant summary judgment in favor of Defendant, and that:

- a.) The above case be dismissed;
- b.) That all costs be cast against the Plaintiffs; and
- c.) For such other and further relief as this Court may deem just and proper.

Respectfully submitted this 19th day of April, 2013

DAVID H. JONES, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendant's motion for summary Judgment and memorandum of law was electronically filed this day with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following Attorneys of record:

David C. Castleberry, Esq.
Aaron Garrett, Esq.
Manning, Curtis, Bradshaw & Bednar, LLC
170 South Main Street
Suite 900
Salt Lake City, Utah 84101

This the 19th day of April, 2013.

s/D. Jones _____
DAVID H. JONES
State Bar No. 405585
Counsel for Defendant

King, King & Jones, P.C.
King, King & Jones, P.C.
Studioplex
659 Auburn Avenue
Suite 141
Atlanta, Georgia 30312
(404) 522-8484
(Fax) 522-8481