

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.

**RECEIVER'S MOTION TO ENJOIN STATE COURT PROCEEDINGS
AND FOR POSSESSION OF JEWELRY**

Pursuant to Rule 66 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1651, and Rule 3.01 of the Local Rules for the Middle District of Florida, Burton W. Wiand, as Receiver, moves the Court for an order (1) permanently enjoining court proceedings in *Paolino v. Neil V. Moody and Christopher D. Moody*, Case No. 2009-ca-001876 (Cir. Ct. 12th Judicial Cir., Sarasota County, Fla.) (the "**Paolino Proceeding**"), to the extent that the plaintiff in that action seeks to recover assets that were acquired with the proceeds of the

fraudulent scheme that underlies this case; and (2) for ownership and possession of the jewelry described herein (the “**Jewelry**”), which is currently held by a receiver appointed in the Paolino Proceeding.

The Receiver files contemporaneously with this motion an affidavit of Christopher D. Moody and Neil V. Moody (the “**Moody Affidavit**”). Notably, neither Christopher D. Moody nor Neil V. Moody (collectively, the “**Moody’s**”) objects to the relief sought in this motion. (Moody Aff. ¶ 8.) The evidence submitted by the Receiver in this motion and in the affidavit establishes that the Jewelry was purchased with proceeds of the fraudulent scheme that underlies this case. Therefore, the Receiver seeks ownership and possession of this Jewelry for the benefit of defrauded investors. As explained below, this necessitates a stay of the Paolino Proceeding to the extent that plaintiff seeks to recover assets funded with proceeds of the fraudulent scheme which underlies this case. Without such a stay of litigation and transfer of the Jewelry, Paolino would recover at the expense of all other defrauded investors. Such recovery would result in unlawful preferential treatment of Paolino.

Background

Documents previously filed in this Securities & Exchange Commission enforcement action (the “**Commission Proceeding**”) set forth the details of the fraudulent investment scheme that underlies this action (the “**scheme**”). (*See, e.g.*, Receiver’s 3d Interim Report dated August 17, 2009 (Doc. 176); Receiver’s Declaration dated January 26, 2009 (Doc. 16).) On January 21, 2009, the Court appointed Burton W. Wiand as Receiver over Relief Defendants Valhalla Management, Inc. (“**Valhalla Management**”); Valhalla Investment

Partners, L.P. (“**Valhalla Investment Partners**”); Viking Management, LLC (“**Viking Management**”); Viking Fund, LLC (“**Viking Fund**”); and Viking IRA Fund, LLC (“**Viking IRA Fund**”).¹ (Order Appointing Receiver (Doc. 8).) These entities are referred to hereinafter as the “**Business Entities**”. The Receiver’s investigation revealed that the Moodys were officers of Receivership Entity Valhalla Management, which was the general partner of Valhalla Investment Partners. The Moodys were also co-managing members of Receivership Entity Viking Management, which was the managing member of Viking Fund and Viking IRA Fund. (*See also* Moody Aff. ¶ 2.)

The Moodys received from the Business Entities a combination of performance allocations and management fees (the “**Fees**”). Previous filings in the Commission Proceeding demonstrate that the Fees received by the Moodys were used to purchase a number of assets, including an investment interest in Quest Energy Management Group, Inc., through Viking Oil & Gas, LLC (*see* Docs. 151, 152, 153), and stock and notes related to Bonds.com Group, Inc. (*see* Docs. 154, 166, 169). (*See also* Receiver’s 3d Interim Report (Doc. 176) § V.E.)

The Receiver’s investigation, aided with the cooperation and assistance of the Moodys, also revealed the Moodys invested \$400,000 in Queen’s Wreath Jewels, Inc. (“**Queen’s Wreath**”), a jewelry store in Sarasota, Florida, with each of the Moodys receiving

¹ The Court also has appointed Burton W. Wiand as Receiver over Scoop Capital, LLC; Scoop Management, Inc.; Scoop Real Estate, L.P.; Victory IRA Fund, Ltd.; Victory Fund, Ltd.; Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Mountain Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; the Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; and Home Front Homes, LLC. (Docs. 8, 17, 44, 68, 79, 140, 153, and 172.)

a 20% interest in Queen's Wreath. (Moody Aff. ¶ 4.a; Moody Aff. Exs. B, C.) The Moodys also made a series of loans to Queen's Wreath. (Moody Aff. ¶ 4.b; Moody Aff. Ex. B.) Further, the Moodys loaned an additional \$750,000 to Queen's Wreath for the purchase of the Jewelry. (Moody Aff. ¶ 4.c; Moody Aff. Exs. A, B.) The funds the Moodys invested in and loaned to Queen's Wreath were proceeds of the scheme. (*See* Moody Aff. Ex. B; *see also* Receiver's 3d Interim Report (Doc. 176) § V.E.3.)

Queen's Wreath sold a portion of the Jewelry,² and it paid down the \$750,000 loan to \$659,235. (*See* Moody Aff. ¶ 4.c ; Moody Aff. Ex. B.) The other loans had a collective balance due of \$97,835.20. (*See id.*) On or about April 7, 2009, Queen's Wreath transferred ownership of the remaining Jewelry to the Moodys in exchange for their interest in the company and in satisfaction of all outstanding loans. (*See* Moody Aff. Exs. B, D.) This transfer was conditioned on Queen's Wreath retaining the Jewelry on consignment and receiving a commission in connection with the sale of any of that jewelry. (*See id.*)

On or about February 4, 2009, Louis D. Paolino, Jr., an investor in the scheme, commenced the Paolino Proceeding against the Moodys seeking to recover damages arising from that scheme. A copy of the Complaint in the Paolino Proceeding is attached hereto as **Exhibit 1**. On February 11, 2009, on Paolino's motion, the circuit court appointed Robert Elliott "as receiver for the purpose of holding and managing those assets identified in the attached Inventory."³ Mr. Elliott is referred to in this motion as the "**Paolino Receiver**." A copy of the order appointing the Paolino Receiver is attached hereto as **Exhibit 2**. Upon

² The sold items do not appear on Exhibit A to the Moody Affidavit.

³ The "Inventory" is the same document attached as Exhibit A to the Moody Affidavit.

information and belief, the Jewelry is currently being held in a safe deposit box, to which the Paolino Receiver and counsel for Queen's Wreath have keys.

Memorandum in Support

The Court's power to stay the Paolino Proceeding is derived from (1) the All Writs Act (28 U.S.C. § 1651) and (2) the inherent powers of an equity court to fashion relief. *See generally SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475 (S.D.N.Y. 2000).

The All Writs Act empowers United States District Courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). An injunction of a state court proceeding falls within the scope of the All Writs Act. *See, e.g., Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002). Although the Anti-Injunction Act (28 U.S.C. § 2283) sometimes precludes a district court from enjoining state court proceedings, injunctions sought by receivers in SEC enforcement actions are often exempt from such preclusion. *See, e.g., Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476 (granting the receiver's motion for an order under the All Writs Act and the inherent power of the Court to stay a competing state court proceeding); *see also SEC v. Wencke*, 577 F.2d 619, 622-23 (9th Cir. 1978) (enjoining further proceedings in a related state-court receivership because doing so "was necessary for the [federal] receivership to achieve its purposes"). Pursuant to a federal court's inherent power under the All Writs Act, "a federal court may enjoin actions in other jurisdictions that would undermine its ability to reach and resolve the merits of the dispute before it." *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476 (internal quotation marks omitted).

Independently of the All Writs Act, the Court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). The purpose of establishing a receivership is "to protect the estate property and ultimately return that property to the proper parties in interest," and a receiver is vested with the duty and authority to marshal and preserve assets to effectuate an orderly, efficient, and equitable administration. *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476-77; *see also* 28 U.S.C. § 754 (noting that a receiver "appointed in any civil action or proceeding involving property . . . shall be vested with complete jurisdiction and control of all such property with the right to take possession thereof."). "Such efforts would be rendered meaningless if third parties are permitted to obtain judgments against the estate and thereby deplete its assets." *Id.* at 477 (internal quotation marks omitted). Therefore, a district court presiding over an equity receivership in a Commission enforcement action has the power to stay "competing actions." *Id.*

As in *Credit Bancorp*, this Court's Order Appointing Receiver requires the Receiver to "marshal and safeguard all of the assets of the Receivership Entities and take whatever actions are necessary for the protection of the investors." (Doc. 8). The Order expressly states:

In the event that the Receiver discovers that funds of persons who have invested in the Corporate Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable,

extending this receivership over any person or entity holding such investor funds.

(Doc. 8 ¶24.) Here, the Jewelry was purchased with investor funds and would add significant value to the Receivership estate. (*See* Moody Aff. Ex. B.) Marshalling and safeguarding the Jewelry are necessary to protect all investors and to preserve the assets' value.

The Receiver is acting for the benefit of all defrauded investors, including Paolino, while Paolino, by instituting a separate action, is acting solely for his own benefit. Allowing Paolino to proceed with his action and the Paolino Receiver to liquidate the Jewelry would provide Paolino with all of the benefit of the assets funded with proceeds of the scheme at the expense of all other defrauded investors. This would result in an improper preference to Paolino. *See, e.g., SEC v. George*, 426 F.3d 786, 799 (6th Cir. 2005) (“[E]quality is equity’ as between ‘equally innocent investors’. . . .”) (citing the original “Ponzi scheme” opinion, *Cunningham v. Brown*, 265 U.S. 1, 13 (1924)); *see also SEC v. Elliott*, 953 F.2d 1560, 1570 (11th Cir. 1992).

The Paolino Proceeding prevents the Receiver from fulfilling his duties to marshal and safeguard the Jewelry, as well as any other assets purchased with proceeds of the scheme that the plaintiff in the Paolino Proceeding might seek to recover. In essence, the Paolino Proceeding is a “competing action” that may be enjoined to further the administration of the Receivership estate. *See Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 477. Therefore, pursuant to the All Writs Act, (1) the Paolino Proceeding should be permanently enjoined to the extent that the plaintiff in that case seeks to recover assets that were purchased with proceeds of the

scheme, and (2) possession and ownership of the Jewelry should be transferred to the Receiver.

LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the receiver has conferred with counsel for the SEC, and the SEC does not object to the relief sought in this Motion.

Counsel for Paolino does object. In an effort to resolve this dispute and to obtain the voluntary transfer of the Jewelry to the Receiver, the Receiver offered to recommend to the Court that Paolino's reasonable attorney fees incurred in connection with the appointment of the Paolino Receiver to take possession of the Jewelry be treated as an administrative expense in this Receivership, and thus payable from funds held as part of the Receivership estate. However, Paolino's counsel rejected this proposal.⁴

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. This will send a Notice of Filing to all counsel who have appeared in this action, including Paolino's counsel, Morgan R. Bentley. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant:

⁴ Based on previous statements by Paolino's counsel to the press and the Receiver, it is likely that he will complain that the Receiver has not played an active role in acquiring the Moodys' assets and has otherwise not been diligent in pursuing the Moodys. These uninformed accusations would be wrong. The Receiver has diligently pursued a multitude of avenues, including the Moodys. In relevant part, those efforts led to an agreement that the Moodys will neither transfer any assets of value owned by them nor remove them from the state without prior written notice to the Receiver. (*See generally* 3d Interim Report § V.E.) They also led to the Moodys' cooperation with the Receiver to achieve an orderly, voluntary, and systematic transfer to the Receivership of the Moodys' assets that were acquired with proceeds of the scheme.

Arthur G. Nadel
Register No. 50690-018
Metropolitan Correctional Center, New York
150 Park Row
New York, NY 10007

I further certify that I mailed the foregoing document, its supporting affidavit, and the notice of electronic filing by first-class mail to the court presiding over the Paolino Proceeding at the following address:

The Honorable Charles E. Williams
2000 Main Street Room 108
Sarasota, Florida 34237

s/ Carl R. Nelson

Carl R. Nelson, FBN 0280186
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Attorneys for the Receiver, Burton W. Wiand

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

LOUIS D. PAOLINO, Jr., an individual,

Plaintiff,

v.

CASE NO.

NEIL V. MOODY, an individual,
CHRISTOPHER D. MOODY, an individual,

2009 CA001876 NC

Defendants.

COMPLAINT

Plaintiff Louis Paolino ("Paolino") sues Defendants NEIL V. MOODY, an individual, and CHRISTOPHER D. MOODY, an individual, and states as follows:

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KARLENE RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

GENERAL ALLEGATIONS

1. Paolino is an individual that was induced by Defendants to purchase equity ownership in Viking Fund, LLC ("Viking"), a hedge fund described more fully below. Viking was ultimately managed by Defendants in conjunction with others.

2. Defendant Neil V. Moody is a Florida resident and is otherwise *sui juris*.

3. Defendant Christopher D. Moody is a Florida Resident and is otherwise *sui juris*.

4. Venue is proper because Defendants reside in Sarasota County, Florida and a significant number of events giving rise to Plaintiff's causes of action occurred there.

5. From 2004 on, Paolino sent to Defendants in Sarasota, Florida payments totaling \$5.8 million in exchange for equity interest in Viking, a Delaware limited liability company.¹

6. Viking was created and managed by the Defendants for the express purpose of operating a fraudulent investment scheme whereby they raised capital from investors, falsified

¹ Paolino holds investments in different accounts; to wit: \$2,340,186.41 as partner of Blue Bird Partners, \$1,074,565.06 as partner of Gold Way Partners, \$460,241.98 as trustee of the Rabbi Trust, \$676,475.47 on his own account, \$1,153,301.66 as custodian and next friend for his son, Louis Paolino, III, and \$173,120.98 as custodian and next friend for his daughter Michelle Paolino, a total of \$5,877,891.56.



accounting statements and other investment reports, and then laid claim to management fees based on the falsified statements of account and investment reports.

7. Defendants Neil Moody and Christopher Moody are managing members of Viking Management, LLC ("Viking Management"), which is the managing member of Viking.

8. At all relevant times, Defendants maintained a right to control both Viking Management and Viking itself. Defendants have the unilateral right under Viking's Operating Agreement to determine whether to hire counsel and institute legal proceedings in which Viking is a plaintiff. For these reasons, any demand made to Defendants to institute an action against them by Viking would be futile. *A true and correct copy of Viking's Operating Agreement is attached hereto as Exhibit 1.*

9. Paolino was induced to invest in Viking as a result of Defendants creating the false perception that Viking and its managers were investment experts and that Viking consistently outperformed various market indices such as the S&P 500 and the Dow Jones Industrial Average.

10. Defendants created this perception by issuing false and misleading statements of account that reflected returns on equity much higher than the actual performance of the Viking Fund. As a result of the false and misleading statements of account, Viking's ability to outperform the market as an investment was grossly inflated. In fact, Viking's actual total return on equity since its inception was roughly zero.

11. At all relevant times, Defendants had actual knowledge of Viking's abysmal investment performance. Yet, they continued issuing false statements of account to Viking's investors.

12. Defendants made false representations directly to Paolino regarding the investment performance of Viking.

13. The fraud did not stop with an initial investment. By continuing to issue misleading statements of account to Paolino after his initial investment, Defendants induced

Paolino to make subsequent investments under the false hope of extraordinary investment returns created by the misleading statements of account.

14. Defendants' motive for issuing false statements of account lies in Viking's fee structure.

15. Viking Management, and therefore Defendants, had the right under the Viking Operating Agreement and other corporate documents to distribute a management fee to themselves of 2% plus a fee of 25% of Viking's net new gain in equity.

16. Defendants used the false statements of account to justify taking such management fees, which upon information and belief were in excess of \$40 million.

17. Defendants knew when they appropriated the management fees to themselves that they had no legal right to take the fees.

18. Had Defendants not misled Paolino regarding the investment performance of Viking, Paolino would have never invested in the first place.

19. Moreover, had Defendants not provided false statements of account directly to Paolino, he would not have made subsequent investments.

20. Paolino seeks to impose personal liability on Defendants for their conduct in acting on behalf of Valhalla Investment Partners and Viking Management in the management of the Viking, Viking IRA, and Valhalla hedge funds.

COUNT I: FRAUDULENT INDUCEMENT

21. Count I is an action against Defendants for fraudulent inducement with damages in excess of \$15,000.00.

22. Paolino realleges paragraphs 1-20 as if set forth fully herein.

23. Defendants made false representations to Paolino regarding the investment performance of Viking prior to Paolino's purchasing an equity stake in Viking. Defendants falsely represented that Viking was performing at levels that exceed major market indices such as the S&P 500 and the Dow Jones Industrial Average.

24. Defendants knew of the falsity of the misrepresentations at the time they were made to Paolino. Defendants knew that Viking was actually underperforming compared to the performance claimed by Defendants.

25. Not only did Defendants make the misrepresentations to Paolino, but they also made them to others in an attempt to create the false public perception regarding Viking's investment potential.

26. These misrepresentations were made for the purpose of inducing Paolino to purchase an initial equity stake in Viking and then increasing his equity stake in Viking through additional purchases.

27. Paolino was actually induced to make such purchases by reliance on Defendants misrepresentations.

28. As a result of Defendants misrepresentations, Paolino has lost substantial sums of money. Moreover, Defendants have appropriated a substantial portion of this money to themselves and their other business ventures by using the fraudulent management scheme described above. Paolino seeks to recover this money.

WHEREFORE, Paolino demands judgment for damages against Defendants and a trial by jury.

COUNT II: BREACH OF FIDUCIARY DUTY

29. Paolino realleges paragraphs 1 through 20 as if set forth fully herein.

30. This is a derivative action on behalf of Viking against Defendants for breach of duty of good faith and fair dealing for an amount in excess of \$15,000.00.

31. Pursuant to the terms of Viking's Operating Agreement and Florida law, Viking Management and its agents, which includes Defendants, had a duty to Viking and Paolino to manage Viking's assets and take fees in good faith and to deal fairly with Viking's investors in all respects.

32. Defendants breached their fiduciary duty by intentionally providing false statements of account to Paolino and Viking's other investor-members and then taking management fees from Viking assets based on those false statements of account.

33. Defendants' breach of their fiduciary duty caused damage to Viking and Paolino.

WHEREFORE, Paolino demands judgment for damages against Defendants and a trial by jury.

COUNT III: UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

34. Count III is action for unjust enrichment and imposition of a constructive trust on Defendants' assets. Paolino brings Count III both directly and derivatively on behalf of Viking.

35. Paolino realleges paragraphs 1 through 19, 28, and 31 through 33 as if set forth fully herein.

36. By virtue of the Viking Operating Agreement and other relevant legal authority, Defendants made an implied promise to manage the assets of Viking and to take fees from Viking in good faith.

37. Defendants also impliedly promised to deliver statements of account that accurately reflected investment returns to Paolino and other Viking investor-members.

38. In investing large sums of money in Viking and entrusting it to the management of Defendants, Paolino and other Viking investor-members relied on Defendants implied promises of good faith and fair dealing.

39. Moreover, Paolino and other Viking investor-members entrusted large sums of money to the care and management of Defendants, which created a confidential financial manager relationship between Viking and its investor-members, on the one hand, and Defendants on the other.

40. Defendants falsified statements of account and were unjustly enriched by improperly taking management fees from Paolino and Viking assets based on the falsified statements of account.

41. Defendants have used and continue to use the aforementioned funds to purchase property. This property includes:

Lot 10 & E 3 ½ FT LOT 8 BLK H LA LINDA TERRACE Parcel 2035-130052; more commonly known as 2140 Hillview St, Sarasota, Florida.

Lot 58 & LAND IN FRONT THEREOF SAN REMO EST UNIT 3, Parcel 2039-13-0011; more commonly known as 1311 Tangier Way, Sarasota, Florida.

LOT 57 SUMMERWOOD, Parcel 0049-15-0052; more commonly known as 1881 Summer Walk Cir, Sarasota, FL.

Unit 703, LA BELLASARA, a Condominium, according to the Declaration of Condominium recorded in Official Records Instrument Number 2006061218, as amended, and as per Plat thereof recorded in Condominium Book 39, Pages 15, 15A to 15K, inclusive, of the Public Records of Sarasota County, Florida, Parcel No. 2010-09-5022.

42. On information and belief, Defendants have transferred and continue to transfer substantial amounts of money to business entities which Defendants own and control. These business entities include, but may not be limited to:

The Neil V. Moody Charitable Foundation, Inc.,
Valhalla Health Care, Inc.
Valkyrie Management, LLC.
Viking Oil & Gas, LLC
Viking Pharmacy I, LLC
Viking Pharmacy II, LLC
Viking Pharmacy III, LLC
Respiro, Inc.,

43. Because Defendants have a propensity to transfer assets in such a way as to avoid a judgment for damages, Paolino and Viking have no adequate remedy at law.

WHEREFORE, Paolino demands judgment for unjust enrichment and imposition of a constructive trust on assets owned and controlled by Defendants as outlined above.

COUNT IV: CONVERSION

44. Count IV is a derivative action against Defendants for conversion and damages in excess of \$15,000.00.

45. Paolino realleges paragraphs 1 through 20, 31 through 33 as if set forth fully herein.

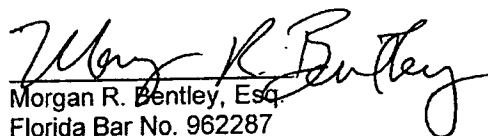
46. Between 2003 and 2009, Defendants converted Viking assets to their own use. On information and belief, the value of the converted assets exceeded \$40 million. The assets include a plethora of stocks, bonds, real property, money market accounts, and other securities.

47. Defendants' claim to said assets was based on fraudulent statements of account that they prepared. Accordingly, Defendants had no legal right, title, or interest in said assets.

WHEREFORE, Paolino demands judgment for damages against Defendants and a trial by jury.

Dated: 2/4/09

WILLIAMS, PARKER, HARRISON
DIETZ & GETZEN



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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

LOUIS D. PAOLINO, Jr., an individual,

Plaintiff,

v.

CASE NO. 2009 CA 001876 NC

NEIL V. MOODY, an individual,
CHRISTOPHER D. MOODY, an individual,

Defendants.

ORDER APPOINTING RECEIVER

This matter having come before this Court upon Plaintiff's Emergency *Ex Parte* Motion for Pre-Judgment Writ of Attachment, and the Court being otherwise fully advised in the premises, finds as follows based on the evidence before the Court:

1. That on February 4, 2009, Louis D. Paolino, Jr. ("Paolino") filed a Complaint against Defendants, Neil and Christopher Moody (the "Moody Defendants") for several torts, including conversion, after the Moody Defendants allegedly improperly took management fees from a hedge fund, Viking Fund, LLC ("Viking"), in which Paolino invested.

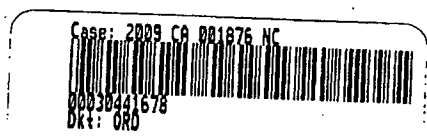
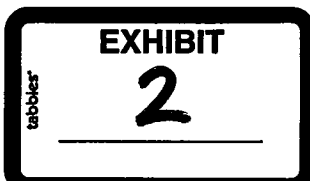
2. At all relevant times, the Moody Defendants were co-managing members of Viking and had control of its assets.

3. From 2004 forward, Paolino sent to the Moody Defendants in Sarasota, Florida payments totaling \$5.8 million in exchange for equity interest in the Viking.¹

4. From the time of Paolino's initial investment until November of 2008, the Moody Defendants sent to Paolino statements of account that purported to represent the actual value of

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TAMM E. BUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

¹ Paolino holds investments in different accounts; to wit: \$2,340,186.41 as partner of Blue Bird Partners, \$1,074,565.06 as partner of Gold Way Partners, \$460,241.98 as trustee of the Rabbi Trust, \$676,475.47 on his own account, \$1,153,301.66 as custodian and next friend for his son, Louis Paolino, III, and \$173,120.98 as custodian and next friend for his daughter Michelle Paolino, a total of \$5,877,891.56.

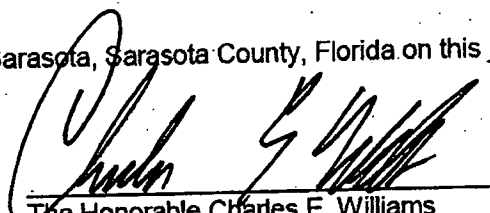


13. Moreover, if the Moody Defendants are allowed to continue selling the jewelry and secreting the funds, an award of damages after a final judgment will not provide any relief to Paolino and/or Viking.

Accordingly, **IT IS ORDERED and ADJUDGED** that, Plaintiff's Emergency *Ex Parte* Motion for Pre-Judgment Writ of Attachment is GRANTED in accordance with the terms outlined below:

1. Robert Elliott is appointed as receiver for the purpose of holding and managing those assets identified in the attached Inventory.
2. Robert Elliott shall immediately take possession of the attached Inventory for the purpose of holding and managing those assets identified in the attached Inventory.
3. Plaintiff shall serve a copy of this Order on the Defendants with all reasonable speed.
4. This Court reserves jurisdiction to enter such further Orders as this Court deems appropriate, including, but not limited to, modification or expansion of the receivership established by this Order.

DONE AND ORDERED in Sarasota, Sarasota County, Florida on this 10th day of February, 2009.



The Honorable Charles E. Williams
Circuit Court Judge

Conformed copies furnished to:

Morgan R. Bentley, Esq.
Charles Ball, Esq.
Neil V. Moody
Christopher D. Moody
Robert Elliott

*Ex #1
CW*

VENDOR: Neil & Chris Moody

INVOICE TOTAL: 675405.00

INVOICE #: 0386

LN	#	STYLE	MFG CLASS	CDE CODES	COST	DESCRIPTION	EXT
1		LR63RYYN	M00	110 888	28451.00	3.16RLY SI1 RAD	28451.00
2		LR62VN21	M00	110 888	24040.00	2.12 OV H/VS2	24040.00
3		LE733212	M00	110 888	4075.00	1.56 3-SIDED ETERNIT	4075.00
4		LR12C7CA	M00	110 888	262589.00	7.02 CUSH E/SI1 CAD	262589.00
5		LR62VPN	M00	110 888	32500.00	2.22 OV D/SI1	32500.00
6		LEY732	M00	110 888	1975.00	206812 FY	1975.00
7		LR868RYC	M00	110 888	151175.00	215003 6.12CT FY IF	151175.00
8		ER30CLD2	M00	210 888	6350.00	CUSH .63 .55LNG DROP	6350.00
9		ER25LMDN	M00	210 888	4650.00	D.55MQ .49RB DROP	4650.00
10		ER8T2100	M00	210 888	6675.00	D.79PS .31RB DROP	6675.00
11		ER30VPS2	M00	210 888	9175.00	.82PS .68OV .74RB	9175.00
12		ER45ORY	M00	210 888	3250.00	201476 RAD YL EAR	3250.00
13		ERHS40BN	M00	210 888	7925.00	215891	7925.00
14		SSER	M00	210 888	5150.00	215820 SHIELD DROP	5150.00
15		1BRM1R21	M00	310 888	47000.00	5.55 RAD G/VS1	47000.00
16		BR6408	M00	310 888	5975.00	110982 MED SCALLOP	5975.00
17		SSBR	M00	310 888	26150.00	200390 YL BZL PS	26150.00
18		NK203021	M00	410 888	10050.00	16" 4.35 PL	10050.00
19		PDNALAN	M00	410 888	31250.00	203558	31250.00
20		PDHS60BN	M00	710 888	7000.00	215889	7000.00