



IT IS ORDERED as set forth below:

Date: May 13, 2015

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---|---|----------------------------------|
| IN RE: | : | CASE NUMBER: 06-62966-PWB |
| | : | |
| INTERNATIONAL MANAGEMENT ASSOCIATES, LLC, | : | IN PROCEEDINGS UNDER |
| | : | CHAPTER 11 OF THE |
| | : | BANKRUPTCY CODE |
| Debtor. | : | |
| | : | |
| WILLIAM F. PERKINS, | : | |
| | : | ADVERSARY PROCEEDING |
| Plaintiff, | : | NO. 08-6185 |
| | : | |
| v. | : | |
| | : | |
| ATLANTA PERINATAL ASSOCIATES, | : | |
| P.C., EDWANA ADAMS, | : | |
| SYRETHA ANDREWS, | : | |
| ALICIA DORSEY, KHEISHA FRIDAY, | : | |
| CAROL GRONE, DEXTER M. PAGE, | : | |
| KAREN THOMPkins, | : | |
| BRADFORD BOOTSTAYLOR, | : | |
| | : | |
| Defendants. | : | |

ORDER ON MOTION TO VACATE SUMMARY JUDGMENT

The Plaintiff in this adversary proceeding is the Plan Trustee for the substantively consolidated estates of International Management Associates, LLC (“IMA”). The complaint seeks recovery of the following four transfers, totaling \$ 576,568.89, to one of the Defendants, Dr. Bradford Bootstaylor (Complaint, paragraph (f) of prayer for relief, Exhibit “A” [Docket No. 1 at 11, 15]):

| | |
|-------------------|----------------------|
| November 16, 2001 | \$ 150,000.00 |
| April 10, 2002 | \$ 100,000.00 |
| June 5, 2003 | \$ 113,903.64 |
| January 7, 2004 | <u>\$ 212,665.25</u> |
| Total | <u>\$ 576,568.89</u> |

The complaint alleges, and the Court has found after a trial on the issue, that IMA and its affiliates operated a “Ponzi” scheme from October 1, 1997, through February 17, 2006. [Docket No. 54]. Based on the existence of a Ponzi scheme, the applicable law is that an innocent participant in a Ponzi scheme who received funds from the scheme in excess of the invested amount is liable for the excess, generally referred to as “false profits.” This legal principle is the same whether the applicable law is Georgia’s version of the Uniform Fraudulent Transfer Act (“UFTA”) that became effective on July 1, 2002 (O.C.G.A. § 18-2-74 *et seq.*) or former Georgia fraudulent conveyance law. (Former O.C.G.A. § 18-2-22).

The Plaintiff does not contest Dr. Bootstaylor’s status as an innocent participant, *i.e.*, his good faith. The only questions remaining with regard to Dr. Bootstaylor’s liability are, therefore, how much money he invested in the scheme and how much he received. To the extent that what

he received exceeds what he put in, the excess is “false profits” that the Plaintiff is entitled to recover.

The Plaintiff moved for summary judgment based on the affidavit of the Plaintiff that showed Dr. Bootstaylor received false profits of \$ 262,462.86 based on an investment of \$ 314,106.03 and receipt of the four transfers referenced above that total \$ 576,568.89. The Trustee’s affidavit shows that the records of IMA establish the transfers made to Dr. Bootstaylor as alleged in the complaint [Docket No. 80 at 72] and the following investments by Dr. Bootstaylor [*id.*]:

| | | |
|-------------------|------------------|----------------------|
| November 9, 1999 | \$ 15,934.73 | |
| November 16, 1999 | 30,238.59 | |
| February 2, 2000 | 12,290.21 | |
| June 12, 2000 | 142.50 | |
| June 12, 2000 | 12,000.00 | |
| August 14, 2000 | 12,000.00 | |
| February 7, 2001 | 100,000.00 | |
| July 6, 2001 | 70,000.00 | |
| August 8, 2001 | 25,000.00 | |
| August 15, 2001 | 25,500.00 | |
| December 31, 2002 | <u>11,000.00</u> | |
| Total | | <u>\$ 314,106.03</u> |

Dr. Bootstaylor failed to file a timely response to the motion, and the Court entered summary judgment against him on August 25, 2014. [Docket No. 89]. Because claims against

other defendants remain pending in this proceeding, the Court has not entered a final judgment against Dr. Bootstaylor. See Fed. R. Civ. P. 54(b).

Over a month after entry of summary judgment, on September 29, 2014, Dr. Bootstaylor filed a motion for relief from the summary judgment order. [Docket No. 92]. On January 14, 2015, the Court entered an Order directing Dr. Bootstaylor to supplement his motion within 30 days with evidence of a meritorious defense. [Docket No. 95].

Dr. Bootstaylor asserts that the following evidence shows the existence of a meritorious defense:

1. His affidavit stating, "...I am confident that I received no more than I invested."
2. Copies of portions of his tax returns for the years 2002, 2003, and 2004. [Docket No. 97-1].¹

Dr. Bootstaylor also contends that inconsistencies with regard to the supporting documentation attached to the Plaintiff's affidavit raise issues of fact as to the amount of the deposits and withdrawals Dr. Bootstaylor made with IMA. (Defendant's Supplemental Brief at 3-4) [Docket No. 97]).

At the trial of the Ponzi scheme component of this adversary proceeding, the Court admitted summaries of business records of International Management Associates based on the Plaintiff's testimony. On appeal, the Eleventh Circuit ruled that the underlying business records were admissible and that, therefore, the summaries were admissible under Fed. R. Evid. 1006. *George Russell Curtis, Sr., Living Trust v. Perkins (In re International Management Associates, LLC)*, 781 F.2d 1262 (11th Cir. 2015).

¹ The tax returns are not complete. Page 1 of Schedule E is missing from the returns for 2002 and 2003.

The records attached to the Plaintiff's affidavit clearly establish that IMA made the transfers as alleged in the complaint and in the motion for summary judgment. The records support the Plaintiff's summary and reveal no material inconsistencies that preclude admission of the documents or a finding of fact that Dr. Bootstaylor received the transfers.

The only evidence that contradicts the Plaintiff's affidavit are Dr. Bootstaylor's denial that he received more than he deposited and the copies of his tax returns. In a trial, the Court could weigh this evidence against the Plaintiff's evidence and resolve the controversy.

Dr. Bootstaylor's general, conclusory denial, without any challenge to any specific transfer or any documentation about the actual transfers and without any supporting documentation other than his tax returns, does not appear sufficient to overcome the Plaintiff's evidence. As the Court recalls the Plaintiff's testimony at the Ponzi scheme trial, the Plaintiff undertook a careful and extensive review and reconstruction of IMA's records to produce a reliable database to show how IMA received and disbursed funds. Unless Dr. Bootstaylor produces documents or records that show a credible basis for finding that the Plaintiff made an error with regard to his accounts, the Court will have no basis for rejecting the Plaintiff's evidence.

Dr. Bootstaylor's tax returns for 2002 through 2004 do not appear sufficient for this purpose. There are no returns for 1999 through 2001 when Dr. Bootstaylor had investments with IMA. Thus, Dr. Bootstaylor has produced no evidence of income for those years. The tax returns for 2002 and 2003 show interest income² and passive income³ totaling \$176,271, but they do not reflect cash deposits or cash transfers to Dr. Bootstaylor. Dr. Bootstaylor has not produced

² The returns show the same amount of interest for each year: \$82,523. [Docket No. 97-1 at 4 (2002) and at 14 (2003).]

³ The returns show \$ 820 from IMA in 2002 [Docket No. 97-1 at 7] and \$ 10,405 in 2003. [Docket No. 97-1 at 17].

any records to support the relevant entries with regard to IMA transactions on the tax returns for 2002 and 2003.

The 2004 return does not reflect any transactions with IMA. Letters from IMA attached to the Plaintiff's affidavit establish that Dr. Bootstaylor's accounts were closed by the transfer of \$212,665.25 to him by early January 2004. [Docket No. 80 at 78-83]. An inference arises from basic federal income tax concepts that Dr. Bootstaylor received the reported income either in 2002 and 2003 or when his accounts were closed without reporting any further income. Accordingly, his tax returns themselves establish that he received at least \$ 176,271 in false profits in 2002 and 2003 alone. It is easily conceivable that he had false profits for the years 1999 through 2001 of \$ 86,191.86, which would result in total false profits of \$ 262,462.86, as the Trustee's evidence establishes.

The Plaintiff's affidavit does not, however, include any records with regard to the deposits that Dr. Bootstaylor made, and the record does not establish any basis for the Court to find that records of deposits could not conveniently be produced. With regard to deposits, therefore, it is arguable that the summary in the Plaintiff's affidavit is not admissible under Rule 1006 unless supplemented with records of the deposits. Based on the Court's recollection of the Plaintiff's testimony at the Ponzi trial, the Court believes it is unlikely that the Plaintiff cannot produce these documents and that it is likely that they will support his summary of the transactions.

Moreover, payments made in furtherance of a Ponzi scheme are presumed to have been made with actual intent to hinder, delay, or defraud creditors. *Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014). Thus, once the Plaintiff establishes that Dr. Bootstaylor received transfers pursuant to a Ponzi scheme, the burden is on Dr. Bootstaylor to establish the value he gave that supports a reduction in the recoverable amount. *See, e.g., Jobin v. McKay (In re M & L Bus.*

Mach. Co., Inc., 84 F.3d 1330, 1338 (10th Cir.); *Hayes v. Palm Seedlings Partners-A (In re Agricultural Research & Tech Group, Inc.)*, 916 F.3d 528, 535 (9th Cir. 1990). Under these principles, the Plaintiff does not have to prove the reduction to which Dr. Bootstaylor is entitled, and any deficiency of proof with regard to the deposits does not preclude summary judgment.

Although, for reasons set forth above, it is unlikely that a trial will result in a different outcome, that is not the question before the Court. Rather, the question is whether the Court should revisit the Plaintiff's motion for summary judgment in view of the opposition that Dr. Bootstaylor has belatedly produced.

Under Fed. R. Civ. P. 54(b), *applicable under* Fed. R. Bankr. P. 7054, when multiple parties are involved in an action, an order granting summary judgment as to one party "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Rule 54(b) thus gives the Court discretion to reconsider the unopposed motion for summary judgment.

The Court is concerned that the record before the Court when it granted the unopposed motion for summary judgment may not support that result. Further, Dr. Bootstaylor's evidence arguably creates a dispute of material fact. Despite the Court's skepticism that Dr. Bootstaylor's evidence is sufficient to overcome the Trustee's evidence, such weighing of the evidence is not permissible in connection with consideration of a motion for summary judgment, when all inferences must be construed in favor of the party opposing it.

In the current circumstances, the Court out of an abundance of caution concludes that it is appropriate to conduct a trial so that Dr. Bootstaylor may fully present his evidence for the Court's consideration. Because a final judgment has not been entered and claims against other parties

await resolution, it does not appear that a trial will impose a significant burden on the Plaintiff. The Court will, therefore, vacate its order granting summary judgment against Dr. Bootstaylor.

By separate Order, the Court will schedule a status conference to consider the prompt scheduling of a trial in this proceeding and other pre-trial procedures.

It is, therefore, hereby **ORDERED** that the Order Granting Plan Trustee's Motion for Summary Judgment Against Defendant Bradford Bootstaylor [Docket No. 89] be, and it hereby is, **VACATED**.

[End of Order]