

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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DISTRICT COURT  
WESTERN DISTRICT MICH

MICHAEL J. QUILLING, Receiver for  
Hammersmith Trust, L.L.C., Hammersmith  
Trust, Ltd., Microfund, L.L.C. and B.  
David Gilliland

Plaintiff,

v.

Case No.: 1:00-CV-826

THE WOLCOTT LIFETIME TRUST,  
JACK W. HIGGINS, TRUSTEE,  
MELODY WOLCOTT GILLILAND,  
JEFFREY D. SAXON, JR.,  
OPTION ONE MORTGAGE  
CORPORATION, NORWEST BANK  
MINNESOTA (now known as WELLS  
FARGO BANK MINNESOTA), and  
NORTHPOINTE BANK,

HON. GORDON J. QUIST

Defendants.

**PRELIMINARY INJUNCTION**

On this 28th day of November, 2000, came on for consideration the Motion for Preliminary Injunction filed in these proceedings by Michael J. Quilling ("Receiver") on November 13, 2000. Based upon the filing of the Motion, on November 15, 2000, the Court issued a Notice and Order to Show Cause requiring that Defendant Jeffrey D. Saxon, Jr. ("Saxon") appear before this Court at 1:30 p.m. on November 28, 2000, to show cause why this Court should not issue the preliminary injunction requested. The Notice and Show Cause Order further required that the Receiver cause the Order, summons, complaint, Motion and supporting declaration of the Receiver be personally served on Saxon. On November 22, 2000, a Return of Service and a Proof and Return of Service were filed with the Court which reflect that the required personal service was achieved on November 20, 2000.

On November 28, 2000, the Receiver and his counsel, along with counsel for other named Defendants appeared before the Court to present evidence and argument. Despite having been

properly served with the required papers, Saxon failed to file any responsive papers or otherwise appear before the Court at the required time.

Based upon the pleadings and papers on file, the evidence presented by the Receiver and the applicable authorities, the Court makes the following findings of fact and conclusions of law.

1. On November 13, 1998, the Securities and Exchange Commission (“SEC”) initiated Case No. 3:98-CV-2689-M styled *Securities and Exchange Commission v. Funding Resource Group, a/k/a FRG Trust; Quentin Hix; Gene Coulter; Steven C. Roberts; MVP Network, Inc., a Texas corporation a/k/a MVP Network (Trust); FMCI Trust; Funders Marketing Company, Inc., a Texas corporation; Raymond G. Parr; Willard Vearl Smith; Earl D. McKinney; Fortune Investments, Ltd., a Nevada corporation, Robert Cord, a/k/a Robert F. Schoonover, Jr.; Winterhawk West Indies, Inc.; IGW Trust; Carolyn Don Hicks; and Carl LaDane Weaver, Defendants, and Howe Financial Trust, an Indiana corporation; Treds Financial Trust; Mary Ann Bauce, Hammersmith Trust, L.L.C., a Tennessee limited liability company; Hammersmith Trust, Ltd., an Irish Corporation; Bridgeport Alliance, L.L.C., a Nevada limited liability company; Landfair Custodial Services, Inc., a Tennessee corporation; Microfund, L.L.C., a Nevada limited liability company; American Pacific Bank & Trust, Inc., an Antiguan corporation; Eurofund Investment Inc., a Tennessee corporation; B. David Gilliland; and Melody Rose, Defendants Solely for Purposes of Equitable Relief*. Defendants, and in connection therewith sought the appointment of a Receiver as to the Defendants and Equity Relief Defendants (the “SEC Proceeding”). By Order dated November 13, 1998, entered in the SEC Proceeding (the “November 13, 1998 order”), Michael J. Quilling was appointed as the Receiver and has continued to function in that capacity since that time.

2. By subsequent Order dated July 22, 1999, entered in the SEC Proceeding (the “July 22, 1999, Order”), the receivership was expanded to include a number of additional individuals and entities, including Hammersmith Trust, L.L.C. (“Hammersmith”), Microfund, L.L.C. (“Microfund”) and B. David Gilliland (“Gilliland”). By virtue of the same Order, Michael J.

Quilling was appointed as the Receiver for each of the additional individuals and entities and he continues to function in that capacity since that time. Michael J. Quilling will hereafter be referred to as “the Receiver.”

3. Hammersmith and Microfund are entities which operated huge international Ponzi schemes under the direction and control of Gilliland. In particular, the scam required investors (called “lenders”) to “loan” funds to Hammersmith which loans would be repaid by virtue of monthly interest payments at a rate of 480% percent per annum (and higher) for twelve months and a repayment of all principal in month thirteen. The “loans” were supposedly secured by an assignment of a deposit account containing the investor’s money and by treasury bills for the same amount. The programs offered by Hammersmith and Microfund were fraudulent. The lender/investor funds did not remain in segregated deposit accounts. There were no treasury bills which secured each loan/investment. There was no trading program. There was no generation of any income by either Hammersmith or Microfund which could be used to pay the fantastic returns promised to lenders/investors. Instead, as funds were received, Gilliland caused Hammersmith and Microfund to systematically divert the funds to make Ponzi payments to prior investors and for spending of Gilliland.

4. On July 31, 1998, the Wolcott Lifetime Trust (the “Wolcott Trust”) was established by Classic Trust Administration, Inc. of Nevis West Indies, as the grantor of the Trust. Jack W. Higgins (“Higgins”), a business associate of Gilliland, was appointed as the Trustee and continues to function in that capacity. The lifetime beneficiary of the Wolcott Trust is Melody Wolcott Gilliland (the ex-wife of Gilliland, hereinafter referred to as “Melody Gilliland”) and the remainder beneficiaries are Devon Leigh Gilliland and Ashley Waldron Miller (the daughters of Gilliland). The affairs of the Wolcott Trust are controlled by Gilliland.

5. The primary, if not sole, reason for creation of the Wolcott Trust was to acquire certain real property located in the Township of Port Sheldon, County of Ottawa, and State of

Michigan, consisting of a lot and residence commonly known as 9047 Lakeshore Drive, West Olive, Michigan 49460, and legally described as follows:

A part of the North ½ of the Southwest fractional 1/4 of Section 4, Town 6 North, Range 16 West, described as commencing at a point 1100 feet West and 999 feet South of the Northeast corner of the said Southwest fractional 1/4 of said Section; running thence South 110 feet; running thence West to the margin of Lake Michigan; running thence North along the margin of Lake Michigan 110 feet to a point directly West of place of beginning; running thence East to place of beginning. Including an unrecorded right of ingress and egress from the Public Highway over the presently established roadway.

(the "Property").

6. On August 11, 1998, the Wolcott Trust purchased the Property from John and Nancy Carlyle (the "Carlyles") for the sum of \$385,000. This transaction is evidenced by a warranty deed dated August 11, 1998, from the Carlyles to the Wolcott Trust (the "Wolcott Trust Deed"). The Wolcott Trust Deed was filed on October 9, 1998, and has been recorded in Liber 2494, page 785, Ottawa County Register of Deeds. The money used by the Wolcott Trust to purchase the Property is directly traceable to monies which Gilliland wrongfully diverted from Hammersmith, Microfund. and the defrauded investors. At all material times, Melody Gilliland has been in physical and/or constructive possession of the Property.

7. By virtue of his appointment, the Receiver has been vested with complete jurisdiction and control of the Property, including the right to possession thereof, pursuant to the July 22, 1999, Order and 28 U.S.C. § 754. The Receiver complied with the requirements of 28 U.S.C. § 754 by filing the required documents with the Clerk of the United States District Court for the Western District of Michigan on August 29, 2000.

8. When the Receiver first learned, or had reason to believe, that the Property had been purchased by the Wolcott Trust with funds of the defrauded investors, the Receiver prepared a notice of lis pendens dated August 23, 1999, which described the SEC Proceeding and the Property involved in this action (the "Lis Pendens"). The Lis Pendens was filed on August 24, 1999, and has been recorded in Liber 2699, page 633, Ottawa County Register of Deeds.

9. Saxon is one of the investors in the fraudulent program operated by Hammersmith. As a result of the collapse of the program, Saxon claims to be owed funds by Hammersmith. Prior to the appointment of the Receiver, in an effort to pacify and lull Saxon with respect to his continued demands for payment, Gilliland instructed Higgins to give two checks drawn on a Hammersmith account to Saxon, even though Gilliland knew that there were insufficient funds on deposit to cover the checks. Consequently, when Saxon presented the checks for payment they were dishonored. Saxon then filed hot check charges against Higgins in Alabama.

10. In order to avoid prosecution for the hot check charges, Higgins, without the knowledge or consent of Gilliland or any other persons associated with the trust, agreed to cause the Wolcott Trust to convey the Property to Saxon. This transaction is evidenced by a handwritten quitclaim deed dated October 18, 1999, from Wolcott Trust, Higgins Trustee, to Saxon (the "Saxon Quitclaim Deed"). The Saxon Quitclaim Deed was filed on October 20, 1999, and has been recorded in Liber 2729, page 168, O'tawa County Register of Deeds. Saxon, however, has never been in actual, physical possession of the Property.

11. Saxon is a not a good faith purchaser because he had actual, constructive and/or inquiry notice of the claims of the Receiver. Not only was the Receiver's Lis Pendens already of record, Saxon was well aware of the receivership and the Receiver's claim to an interest in the Property. Further, Saxon either paid no consideration, or grossly inadequate consideration, for the Property. The Saxon Quitclaim Deed is in direct violation of applicable provisions of the agreement governing the Wolcott Trust insofar as that document did not confer authority upon Higgins to convey the Property to Saxon. Accordingly, any interest which Saxon may have in the Property by virtue of the Saxon Quitclaim Deed is subject, and inferior, to the claims of the Receiver.

12. Upon learning of the Saxon Quitclaim Deed from Higgins, the Receiver immediately sent a letter to Saxon enclosing a copy of the Lis Pendens, giving notice that the Property was a receivership asset and demanding a rescission of the Saxon Quitclaim Deed. Saxon ignored the

demands of the Receiver and instead embarked on his own scheme to convert the Property into cash and to deprive the Receiver, and the other defrauded investors, of the value of the Property. He did so by obtaining a series of loans secured by mortgages against the Property without the intent of repaying those loans; rather, he intended to simply allow the lenders to foreclose upon the Property.

13. On December 21, 1999, Saxon obtained a loan in the amount of \$349,000 from A.R.T. Financial Services, Inc. d/b/a Franklin Mortgage (the "Franklin Mortgage Loan"). The Franklin Mortgage Loan is evidenced by a promissory note in the amount of \$349,000, dated December 21, 1999, and is secured by a mortgage of even date against the Property (the "Franklin Note and Mortgage"). The Franklin Mortgage was filed on December 28, 1999, and has been recorded in Liber 2764, page 287, Ottawa County Register of Deeds.

14. The Franklin Note and Mortgage were transferred to Option One Mortgage Corporation ("Option Mortgage") by a written assignment of mortgage dated December 21, 1999, which was filed on July 25, 2000, and has been recorded in Liber 2867, page 365, Ottawa County Register of Deeds. The Franklin Note and Mortgage were subsequently transferred to Norwest Bank Minnesota ("Norwest Bank") by written assignment of mortgage dated September 7, 2000, which was filed on September 28, 2000, and has been recorded in Liber 2902, page 456, Ottawa County Register of Deeds. The Franklin Note is currently in default and the Receiver has been notified that Option Mortgage and/or Norwest Bank intends to foreclose on the Property.

15. On January 10, 2000, Saxon obtained a loan in the amount of \$75,000 from Northpointe Bank (the "Northpointe Bank Loan"). The Northpointe Bank Loan is evidenced by a promissory note in the amount of \$75,000, dated January 10, 2000, and is secured by a mortgage of even date against the Property (the "Northpointe Note and Mortgage"). The Northpointe Mortgage was filed on February 7, 2000, and has been recorded in Liber 2782, page 650, Ottawa County Register of Deeds. The Northpointe Note is currently in default and that the Property is in jeopardy of foreclosure.

16. The Franklin Mortgage Loan proceeds and the Northpointe Loan proceeds shall hereinafter be referred to as the "Loan Proceeds".

17. When the Receiver learned of the existence of the Saxon Quitclaim Deed, he made demand upon Higgins and Saxon to rescind that instrument and to cause the Wolcott Trust to convey the Property to him. Saxon ignored the demands and embarked on his scheme to defraud the Receiver. However, Higgins, on behalf of the Wolcott Trust, agreed to the demands of the Receiver and caused the Wolcott Trust to convey the Property to the Receiver on February 9, 2000. This transaction is evidenced by a warranty deed from Higgins, Trustee, to the Receiver dated February 9, 2000 (the "Receiver Deed"). The Receiver Deed was filed on March 7, 2000, and has been recorded in Liber 2795, page 485, Ottawa County Register of Deeds.

18. This Court has *in rem* jurisdiction over this case, pursuant to 28 U.S.C. § 1655, because it involves a dispute relating to title to real estate located wholly within the State of Michigan and some of the Defendants cannot be served within the State of Michigan.

19. This Court has *in personam* jurisdiction over Defendant Saxon, a nonresident Defendant, pursuant to Chapter 600, § 705, of the Michigan Compiled Laws, because he has transacted business within the State of Michigan and has owned, used or possessed real or personal tangible property within the State of Michigan.

20. This Court has subject matter jurisdiction of this case, pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between the parties plaintiff and defendant and the amount in controversy exceeds the sum of \$75,000.

21. This Court has subject matter jurisdiction of this case, pursuant to 28 U.S.C. § 1331, because it is ancillary to the SEC proceedings (the nature of which is more fully described above) and is, therefore, also a proceeding arising under the laws of the United States of America.

22. Venue for this action is proper in the Western District of Michigan, pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events giving rise to the action occurred, and the real property which is the subject of the action is situated, within the Western

District of Michigan. Additionally, venue for this action is proper in the Western District of Michigan, pursuant to 28 U.S.C. § 1655, because the real property which is the subject of this action is located within the Western District of Michigan.

23. The Receiver is authorized to bring this action in the Western District of Michigan without ancillary appointment pursuant to 28 U.S.C. § 754. The Receiver complied with all filing requirements of 28 U.S.C. § 754 on August 29, 2000.

24. Based upon the foregoing findings of fact, the Receiver has demonstrated a *prima facie* case against and entitlement to a preliminary injunction as to defendant Saxon. Specifically, the Receiver has demonstrated (1) a likelihood of success on the merits as to Saxon; (2) that an injunction will save the Receiver from irreparable harm; (3) that the requested injunction will not harm others; and (4) that the public interest will be served by issuance of the injunction. *In re DeLorean*, 755 F.2d 1223, 1228 (6th Cir. 1985). Accordingly,

IT IS HEREBY ORDERED that Jeffrey D. Saxon, Jr., his agents, employees, relatives, servants, attorneys and all persons in active concert or participation with him who receive actual notice of this injunction be and hereby are restrained and enjoined from directly or indirectly, transferring, hypothecating or expending in any manner whatsoever, any funds (and/or assets acquired with such funds) constituting or traceable to Loan Proceeds (as defined above) pending further order of this Court.

IT IS FURTHER ORDERED that Jeffrey D. Saxon, Jr. be and hereby is required to repatriate and cause to be transferred all Loan Proceeds in his actual or constructive possession or under his control to the Receiver within ten (10) days of the date of service of this injunction. Possession of all assets acquired by or traceable to the Loan Proceeds is to be given to the Receiver by Saxon within the same ten (10) day period.

IT IS FURTHER ORDERED that Jeffrey D. Saxon, Jr. be and hereby is required to provide a complete accounting to the Receiver of all Loan Proceeds received by him within ten (10) days from the date of service of this injunction. In that regard, Jeffrey D. Saxon, Jr. shall also provide




to the Receiver copies of all bank statements, canceled checks (front and back), deposit slips and wire transfer advices for account number 700001605 at First Community Bank in Mobile, Alabama in the name of Nohemy Saxon and all other accounts into which Saxon transferred or caused to be transferred any portion of the Loan Proceeds.

IT IS FURTHER ORDERED that pursuant to Rule 65(c) of the Federal Rules of Civil Procedure and the discretion of the Court, *see, Urbain v. Knapp Bros. Manufacturing Co.*, 217 F.2d 810, 815-16 (6th Cir. 1954), no security or bond shall be required of the Receiver as to this injunction.

IT IS FURTHER ORDERED that the findings of fact made herein are binding only against Jeffrey D. Saxon, Jr., and not against the other defendants in this case. Those defendants remain free to dispute any or all of the facts set forth herein.

This injunction shall remain in full force and effect until further order of this Court.

Dated: NOV 29

  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE