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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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U.S. DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
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IN RE: ALL FUNDS ON DEPOSIT IN)
ACCOUNT NUMBER 000669829075 in)
THE BANK OF MM A.C.M.C. BANQUE DE)
COMMERCE, INC., AT NATIONSBANK,)
N.A., CONSISTING OF \$18,756,420.97,)
MORE OR LESS.)

C.A. NO. 3:98mc96-McK

GEORGE AND DOLORES ROLLAR,)

Plaintiffs,)

v.)

C.A. NO. 3:01CV205-McK

UNITED STATES OF AMERICA, et al.,)

Defendants.)

RICHARD VASQUEZ,)

Intervener.)

REPLY TO RESPONSE TO MOTION FOR SUMMARY JUDGMENT

The Court-Appointed Receiver, Plaintiffs George and Dolores Rollar, and Intervener Richard Vasquez join in this Reply to the Response filed by M.M. A.C.M.C. Banque de Commerce, Inc. ("BDC") to their Motion for Summary Judgment and in support of such would show the Court as follows:

1. THE RESPONSE DOES NOT CREATE A FACT ISSUE.

Other than address standing to assert a claim (as opposed to a return of the funds), BDC fails in its Response to direct the Court to any evidence sufficient to raise a fact issue concerning

any of the numerous grounds for summary judgment presented in the Motion for Summary Judgment.¹ On that basis alone, the Motion for Summary Judgment should be granted.

2. **THE RESPONSE CONCEDES THAT BDC HAS NO BASIS FOR A RETURN OF THE SEIZED FUNDS.**

In its Response at page 3, as it must, BDC concedes that it has no basis whatsoever to claim a return of the seized funds². Instead, BDC states:

“In light of this fact and BDC’s acknowledgment that Sterling Assets Limited received these funds from third party investors, BDC will limit its **CLAIM** (emphasis added) to the non-escrow funds which are as follows: \$1,000.00 for the initial deposit ...; lease payment from Boyden and Laufer in the amount of \$380,000.00 ...; interest accrued on the escrow funds amounting to \$105,749.93.”

Accordingly, at most, BDC now asserts that it has a **CLAIM** to a very small portion of the funds. The Motion for Summary Judgment which addresses BDC’s frivolous motion for a return of all the seized funds must be granted.

3. **BDC’S CLAIM MUST BE TREATED IN THE SAME MANNER AS ALL OTHER CLAIMS.**

Apparently BDC believes that by virtue of filing a motion for a return of all the seized funds (now pared to nothing more than a claim for a small portion of the funds), it is somehow entitled to an acknowledgment and allowance of its claim simply because it filed the frivolous

¹ The only effort BDC makes to raise a fact issue is Mohr’s attack on his conviction in Norway. But that attack, which is based on the conclusory allegations contained in paragraph 13 of the Affidavit of A.C.W. Mohr, is essentially immaterial in light of BDC’s concession that it has no claim to the Escrow Funds. In any event, the conclusory allegations in Mohr’s Affidavit, rather than cast doubt on the fairness of the Norwegian proceedings, establish that he was provided a full and fair trial of the issues. First, Mohr does not deny the statements in the Sentence that he was provided with legal counsel. Moreover, Mohr points out that there was a judge with two lay assistants, that he had a public trial, that there were witnesses presented against him in court, that he had the opportunity to present witnesses as a part of his defense and that he had the opportunity to object to evidence offered by the state. While Mohr, like most other convicted felons, is unhappy with the outcome of the proceedings and the judge’s rulings on Mohr’s objections, he nevertheless demonstrates through his affidavit a procedure not inconsistent with the due process to which he would be entitled in the United States

² The Receiver, the Plaintiffs and the Intervener have always contended the Motion for Return of Property Seized was frivolous. One must only wonder whether the abandonment of the Motion, after the receivership estate has had to incur significant fees in order to demonstrate the frivolousness of the motion, is sanctionable.

motion in the first instance. Such is not the case. If BDC truly believes it has a claim, it must complete and return the Court-approved Claim Form³ to the Receiver at which point the Receiver will then review and recommend either its allowance or disallowance to the Court. BDC should not be allowed to (nor has it cited any supporting authority) bypass this important review process which must be followed by all the claimants. The Receiver does note for the benefit of the Court, however, that he does not believe BDC has a valid claim⁴.

4. THE RECEIVER'S ALLEGED LACK OF IMPARTIALITY IS OF NO MOMENT.

In conclusion to its Response, BDC, by way of informative aside, professes a concern about the Receiver's impartiality. Assuming, *arguendo*, that the Receiver is not impartial as to BDC, it is of no moment. The Receiver is duty bound to take a hard look at every claim. The Receiver will use the same circumspection as to BDC's claim that he uses as to every claimant. Once the Receiver has reviewed the claims, he will RECOMMEND to the Court that it be allowed or disallowed. The Court, not the Receiver, will make the final call. BDC will ultimately find solace in this Court's impartiality.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs, the Intervener and the Receiver request that the Court grant the Motion for Summary Judgment and for such other and

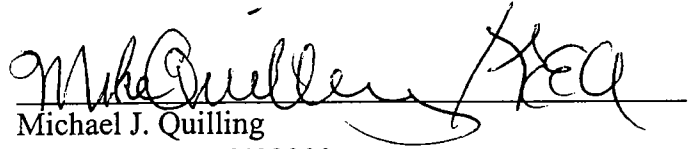
³ Now that the Receiver understands that BDC only contends it has a claim, he will forward a Claim Form to BDC.

⁴ By way of example only and with full reservation of the right to assert additional defenses to any claim which might be filed by BDC, the Receiver can easily demonstrate that the \$1000.00 account opening deposit came from Henwood Investments, an investor. Likewise, the alleged lease payments from Boyden and Laufer, the return of which were demanded shortly after being made were, according to Mohr, settled by using funds from another BDC account which just so happens to contain other investor funds. Thus, BDC robbed Peter to pay Paul and, therefore, BDC does not have a claim to the Boyden and Laufer payments. The investor(s) whose funds were used to pay Boyden and Laufer, however, do. Finally, BDC's claim to the interest is laughable. It has been the axiomatic rule since the mid-1700's that the "interest follows principal." *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165, 118 S. Ct. 1925 (1998). Not surprisingly, North Carolina follows this rule. *McMillan v. Robeson County*, 262 N.C. 413, 417, 137 S.E. 2d. 105, 108 (1964) (the earnings on the fund were a mere incident of ownership of the fund itself).

further relief, general or special, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

By:



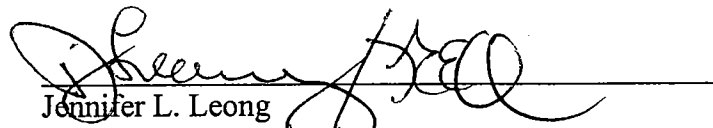
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CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of July, 2002 a true and correct copy of the foregoing document was served via first class mail, postage pre-paid, on:

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