

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**WEST PALM BEACH DIVISION**

CASE NO.: 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC  
A CREATIVE CAPITAL CONCEPTS, LLC,  
and GEORGE L. THEODULE,

Defendants.

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**RECEIVER'S MOTION TO COMPEL GEORGE L. THEODULE TO TURNOVER,  
SURRENDER POSSESSION OF AND TRANSFER TITLE TO CERTAIN REAL  
PROPERTY LOCATED AT 13806 155<sup>th</sup> PLACE NORTH, JUPITER, FLORIDA AND  
INCORPORATED MEMORANDUM OF LAW**

Jonathan Perlman, Receiver for Creative Capital Consortium LLC., and A Creative Capital Concepts, LLC (“Initial Receivership Entities or CCC”), and pursuant to the Order Appointing Receiver as well as applicable statutory and case law, files this Motion (“Motion”) to Compel George L. Theodule (“Theodule”) to Turnover, Surrender Possession and Transfer Title to Certain Real Property, specifically a single family dwelling having an address of 13806 155<sup>th</sup> Place North located in Jupiter, Florida with the legal description of Section 16, Township 41, Range 41 the South 239 feet of the Northerly 272908 feet of the East 209.60 feet of the Westerly 1247.87 feet of the Section also known as R-221 with a street address of 13806 155<sup>th</sup> Place N, Jupiter, Florida (the “Property”) (Composite Exhibit “A”) and incorporated memorandum of law.

## **I. INTRODUCTION**

By virtue of the Order Appointing Receiver (“Order”), title to all property, real or personal, of the Receivership Entities and its principals, wherever located within or without this state, is vested by operation of law in the Receiver.

The Receiver seeks the surrender of possession and the transfer of title of the Property presently titled in the name of Theodule, but which Defendant Theodule agrees is an asset belonging to CCC as set forth in certain court filings herein identified. Theodule has never resided at the Property.

The Receiver respectfully moves that the Court enter an order compelling Theodule to surrender possession of the Property and to effectuate a legal transfer of title thereto to the Receivership Estate.

## **II. FACTS SUPPORTING RELIEF REQUESTED**

On December 29, 2008, the Securities and Exchange Commission (“SEC”) filed its Complaint for Injunctive and Other Relief (the “Complaint”) against Theodule, individually, and the Initial Receivership Entities. The SEC alleged that Theodule, through the Initial Receivership Entities, sold unregistered securities and violated various sections of the Securities Exchange Act of 1934 ( the “Exchange Act”) and that Theodule and the Initial Receivership Entities violated Section 10(b) of the Exchange Act. (DE # 1)

On December 29, 2008, the Court entered the Receivership Order appointing the Receiver as receiver over the Initial Receivership Entities. On December 31, 2008, the Court expanded the receivership to include United Investment Club LLC, and Reverse Auto Loan,

LLC. The Receivership Order provides that title to all real property of the Receivership Entities and their principals shall vest with the Receiver. (DE #8)

On January 6, 2009, the Court entered a Preliminary Injunction (the "Injunction Order") freezing the assets of Theodule and the Initial Receivership Entities. Additionally the Injunction Order required, among other things, that (1) Theodule provide a sworn accounting of all proceeds he received, directly or indirectly, as a result of the securities law violations; (2) Theodule disgorge, with prejudgment interest, any ill-gotten gains he received; and (3) the Initial Receivership Entities take steps necessary to repatriate to the territory of the United States all funds and assets of investors. (DE #21)

From December 2007 through the present, Theodule was the principal and alter ego of the Receivership Entities. On March 18, 2008, Theodule, using CCC funds, purchased the Property, but titled the Property in his name personally. In each of the two sworn accountings Theodule has submitted to the Court, he states that the Property was "titled in name of George Theodule, but was acquired on behalf of CCC. George Theodule never lived in the house. Address: 13806 155<sup>th</sup> Place North, Jupiter, Florida, FL, 33478." (DE # 47; see also DE #20).

### **III. MEMORANDUM OF LAW**

The terms of the Receivership Order authorizes the Receiver to investigate the affairs of the Receivership Entities, to marshal and safeguard these entities' assets, and to institute legal proceedings for the benefit and on behalf of the Receivership Entities' investors and other creditors against individuals or entities which the Receiver claims have improperly received funds traceable from investors in the Receivership Entities, including but not limited to actions seeking constructive trusts, disgorgement of profits and recovery and avoidance of fraudulent transfers under Florida Statute §726.101, et seq. or otherwise.

**A. The Property Should Be Surrendered and Title Transferred to the Receiver by Enforcement of the Order Appointing Receiver**

Paragraph 16 of the Order Appointing Receiver states that “Title to all property, real or personal, all contracts, rights of action and all books and records of Creative Capital and its principals, wherever located within or without this state, is vested by operation of law in the Receiver.” located within or without this state, is vested by operation of law in the Receiver.” In his sworn accounting filed with the Court and identified above, Theodule admits that he owns and holds title to the Property for and on behalf of CCC. Therefore title to the Property belongs to the Receivership Estate by operation of law. As such, possession to the Property should be surrendered and title transferred to the Receivership Estate.

**B. The Property is Subject to Turnover Pursuant to Equitable Grounds**

Pursuant to Florida law, the Property is subject to turnover based upon the equitable principles of constructive trust, equitable lien, resulting trust and unjust enrichment.

“A constructive trust is an equitable remedy imposed by operation of law where there has been a wrongful taking of the property of another.” *Brown v. Toscano*, 254 F.R.D. 690 (S.D. Fla. 2008) (citing *Finkelstein v. Southeast Bank, N.A.*, 490 So. 2d 976, 984 (Fla. 4th DCA 1986). “It is ‘a remedial device with dual objectives: to restore property to the rightful owner and to prevent unjust enrichment.’” *Id.* at 697 (quoting *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022, 1025 (Fla. 4th DCA 1996)). Moreover, “the Supreme Court of Florida described a constructive trust as ‘one raised by equity in respect to property which has been acquired by fraud, or where, though acquired without fraud, it is against equity that it should be retained by him who holds it.’” *Id.* at 697 (quoting *Quinn v. Phipps*, 113 So. 419, 422 (1927)). The elements of an unjust enrichment claim are “(1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit

conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff.” *Zambrana v. Geminis Envios Corp.*, 2008 WL 2397624 \*5 (S.D. Fla. 2008) (quoting *Shands Teaching Hosp. and Clinics, Inc. v. Beech Street Corp.*, 899 So.2d 1222, 1227 (Fla. 1<sup>st</sup> DCA 2005).

As admitted in his sworn accountings filed with the Court, the Property is property of the Receivership Entities being held by Theodule for the benefit of the Receivership Estate. In addition, funds of the Receivership Entities were used to acquire the Property. Theodule admittedly paid no consideration to the Receivership Entities for acquiring the Property in his name. Equity requires that title to the Property be restored to the Receiver.

### **C. Turnover is Appropriate Pursuant to Chapter 726 of the Florida Statutes**

For the same reasons set forth above, turnover is alternatively required pursuant to Chapter 726 of the Florida Statutes, which permits the avoidance of transfers made with actual intent to hinder, delay or defraud creditors, or for no consideration.

### **CONCLUSION**

Pursuant to the Order Appointing Receiver and by virtue of FUFTA and other equitable claims as set forth above, the Receiver is entitled to take possession of the Property, to have legal title to the Property transferred to the Receivership estate, to take possession of all documents related to the Property and to receive the benefit of income appurtenant thereto. Based upon the foregoing, the Receiver seeks the entry of an order requiring the surrender of possession of the Property and the transfer of title of Theodule’s interest and all rights appurtenant to the Property (including all books, records, deeds, mortgages, liens or any documents relating thereto) and any other relief as may be determined by the Court.

**RESERVATION OF RIGHTS**

The Receiver reserves the right to file an ancillary proceeding against any and all third parties holding or concealing assets of the Receivership Estate and/or that are the recipients of fraudulent or preferential transfers.

The Receiver further reserves the right, in addition to any other rights of enforcement or action with respect to the Property, to request a writ of execution against the Property and obtain a judgment vesting title in the Receivership Estate pursuant to Rule 70 of the Federal Rules of Civil Procedure.

WHEREFORE, the Receiver requests that the Court enter an order granting Receiver's motion to compel George L. Theodule to turnover, surrender possession of and transfer title to certain real property located at 13608 155<sup>th</sup> Place North, Jupiter, Florida and any other relief the Court deems appropriate.

Dated: March 16, 2009.

Respectfully submitted,

s/Carmen Contreras-Martinez \_\_\_\_\_  
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Attorneys for Receiver Jonathan E. Perlman, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on March 16, 2009, the foregoing document is being served on all counsel of record and entities identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Carmen Contreras-Martinez  
Attorney

**SERVICE LIST**

**Securities and Exchange Commission v. Creative Capital Consortium, LLC et. al.  
CASE NO.: 08-CIV-81565-HURLEY/HOPKINS**

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Property Appraiser Parcel Identification Number = ~~80-41-41-16-00-000-3120~~

**QUITCLAIM DEED**  
(Individual to Individual)

THIS QUITCLAIM DEED, Made the 18th day of March, 2008, by **Donna Haver** a single woman, hereinafter referred to as "Grantor", to **George Theodule**, an Individual, hereinafter called "Grantee."

Witnesseth, that the Grantor, for and in consideration of the sum of ten dollars (\$10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, and quitclaim unto Grantee the following lands and property, together with all improvements located thereon, lying in the County of Palm Beach, State of Florida, to-wit:

Section 16, Township 41, Range 41, the South 239 feet of the Northerly 272908 feet of the East 209.60 feet of the Westerly 1247.67 feet of the Section also known as R-221

Prior instrument reference: Book 09164, Page 1658, Document No. \_\_\_\_\_, of the Public Records of the Clerk of the Court for Palm Beach County, Florida.

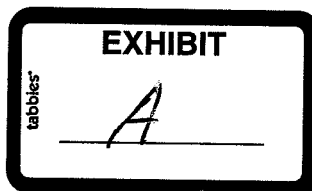
LESS AND EXCEPT all oil, gas and minerals, on and under the above described property owned by Grantor, if any, which are reserved by Grantor.

SUBJECT to restrictions, reservations, easements, and covenants of record, reference hereto will not serve to reimpose the same.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title interest, lien equity and claim whatsoever of the said Grantor(s), either in law or equity, to the only proper use, benefit and behalf of the Grantee(s) forever.

Taxes for tax year 2008 shall be  prorated between Grantor and Grantee as of the date selected by Grantor and Grantee, or  paid by Grantee, or  paid by Grantor.

The property herein conveyed  is not a part of the homestead of Grantor, or  is part of the homestead of Grantor and if Grantor is married, the conveyance is joined by both Husband and Wife.



WITNESS Grantor(s) hand(s) this the 19<sup>th</sup> day of March, 2008.

Signed, Sealed and Delivered  
in the presence of *these Witnesses*  
(one of whom may be the Notary):

Sign: Antonio McCloud  
Witness Signature

Antonio McCloud  
Printed Name

Donna Haver  
Grantor  
Donna Haver

Sign: [Signature]  
Witness Signature

Martin Osona  
Printed Name

STATE OF Florida

COUNTY OF Palm Beach

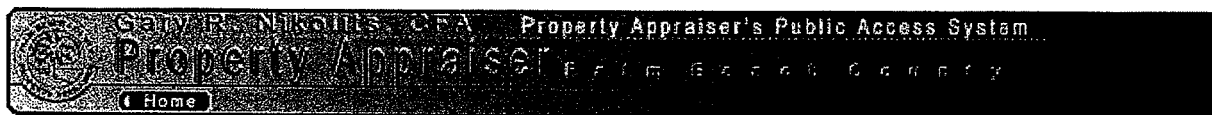
The foregoing instrument was acknowledged before me this 19 March 2008 (date), by DONNA HAVER (name(s)), who is personally known to me or who has produced DRIVERS LICENSE (type of identification) as identification.

[Signature]  
Notary Public

Printed Name: Reco Cole

My Commission Expires:  
\_\_\_\_\_

**Reco Cole**  
Notary Public, Gwinnett County, Georgia  
My Commission Expires September 19, 2009



**Property Information**

Location Address: 13806 155TH PL N

[View Map](#)

Municipality: UNINCORPORATED

[Calculate Portability](#)

Parcel Control Number: 00-41-41-16-00-000-3720

[Proposed Tax Notice](#)

Subdivision:

Official Records Book: 22922 Page: 1594 Sale Date: Mar-2008

[Reverse Side](#)

Legal Description: 16-41-41, S 239 FT OF NLY 2729.08 FT OF E 209 FT OF WLY 1247.87 FT OF SEC A/K/A R-221

**Owner Information**

Name: THEODULE GEORGE

[All Owners](#)

Mailing Address: 13806 155TH PL N  
JUPITER FL 33478 8577

**Sales Information**

Sales Date	Book/Page	Price	Sale Type	Owner
Mar-2008	22922/1594	\$10	QUIT CLAIM	THEODULE GEORGE
Feb-1996	09164/1658	\$100	QUIT CLAIM	
Dec-1993	08044/0469	\$132,000	WARRANTY DEED	

[All Sales](#)

**Exemptions**

Regular Homestead: \$25,000 Year of Exemption: 2008

Additional Homestead: \$25,000

Total: \$50,000

**Appraisals**

Tax Year:	2008	2007	2006
Improvement Value:	\$121,482	\$124,968	\$143,049
Land Value:	\$109,989	\$165,895	\$172,808
Total Market Value:	\$231,471	\$290,863	\$315,857

**Property Information**  
 Number of Units: 1  
 \*Total Square Feet: 2468  
 Acres: 1.15

Use Code: 0100 Description: RESIDENTIAL

\* in residential properties may indicate living area.

**Assessed and Taxable Values**

Tax Year:	2008	2007	2006
Assessed Value:	\$124,588	\$120,959	\$118,009
Exemption Amount:	\$50,000	\$25,000	\$25,000
Taxable Value:	\$74,588	\$95,959	\$93,009

[Structure Detail](#)

**Tax Values**

Tax Year:	2008	2007	2006
Ad Valorem:	\$1,454	\$1,620	\$1,706
Non Ad Valorem:	\$1,230	\$1,228	\$793
Total Tax:	\$2,684	\$2,848	\$2,499

[Tax Calculator](#)  
[Details](#)

**Tax Collector WebSite**

NOTE: Lower the top and bottom margins to 0.25 on File->Page Setup menu option in the browser to print the detail on one page.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO.: 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CREATIVE CAPITAL CONSORTIUM, LLC  
A CREATIVE CAPITAL CONCEPT\$, LLC,  
and GEORGE L. THEODULE,

Defendants.

---

**ORDER GRANTING RECEIVER'S MOTION TO COMPEL GEORGE L. THEODULE  
TO TURNOVER, SURRENDER POSSESSION OF AND TRANSFER TITLE TO  
CERTAIN REAL PROPERTY LOCATED AT 13806 155<sup>th</sup> PLACE NORTH, JUPITER,  
FLORIDA**

This Cause came before the Court, without hearing, upon Receiver Jonathan E. Perlman's Motion to Compel George L. Theodule To Turnover, Surrender Possession Of and Transfer Title To Certain Real Property (the "Motion"). The Court having considered the Motion, the facts thereunder, and the statutory and case law, and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED

1. The Motion is GRANTED.
2. George L. Theodule is hereby ordered to turnover, surrender possession of and transfer title to the Receiver of the real property located at 13806 155<sup>th</sup> Place North located in Jupiter, Florida with the legal description of Section 16, Township 41, Range 41 the South 239 feet of the Northerly 272908 feet of the

East 209.60 feet of the Westerly 1247.87 feet of the Section also known as R-221 ("Property").

3. Simultaneous with this turnover and surrender of the Property, George L. Theodule is hereby ordered to execute a deed, in the form and manner requested by the Receiver, transferring title of the Property from Theodule to the Receivership Estate.
4. George L. Theodule shall turnover, surrender possession of and transfer title to the Property to the Receiver within ten (10) days from the date of this Order.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2009.

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DANIEL T.K. HURLEY, Judge  
United State District Court, Southern District of Florida