

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.

**RECEIVER'S MOTION TO COMPEL YOLETTE T. WILLIAMS TO TURN OVER,
SURRENDER POSSESSION AND TRANSFER TITLE TO CERTAIN REAL
PROPERTY LOCATED AT 7940 NORTH NOB HILL ROAD, UNIT 4-303, TAMARAC,
FLORIDA AND SUPPORTING MEMORANDUM OF LAW**

Jonathan Perlman, Court-appointed receiver (the "Receiver") for Creative Capital Consortium LLC., and A Creative Capital Concepts, LLC ("CCC"), pursuant to the Order Appointing Receiver, files this Motion and Supporting Memorandum of Law to Compel Yolette T. Williams ("Williams") to Turn Over, Surrender Possession and Transfer Title to Certain Real Property, specifically a residential condominium having an address of 7940 North Nob Hill Road, Unit 4-303 located in Tamarac, Florida with the following legal description:

Unit No.U04-303 of El-Ad Nob Hill, a Condominium, according to the Declaration of Condominium recorded at O.R. Book 39458, Page 1134 and all exhibits and amendments thereof as recorded in the Public Records of Broward County, Florida. ("Property")¹

¹ A copy of the warranty deed and public record from the Broward County Property Appraiser's Office is attached as Exhibit A.

I. INTRODUCTION

The Order Appointing Receiver (“Receivership Order”) vests title to all property, real or personal, of CCC and its principals, wherever located within or without this State, in the Receiver. By this motion, the Receiver seeks the turnover and surrender of possession and the transfer of title of the Property presently titled in the name of Williams, which is an undisputed asset belonging to CCC. Williams has never resided at the Property. The Receiver respectfully moves that the Court enter an order compelling Williams to turn over and surrender possession of the Property and to effectuate a legal transfer of title thereto to the Receivership Estate. The Receiver requests an evidentiary hearing on this Motion as soon as practicable.

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 George Theodule (“Theodule”), individually, and CCC. The SEC alleged that Theodule, through CCC, sold unregistered securities and violated various sections of the Securities Exchange Act of 1934 (the “Exchange Act”) and that Theodule and CCC 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 CCC. On December 31, 2008, the Court expanded the receivership to include United Investment Club LLC, and Reverse Auto Loan, LLC (collectively “CCC”). The Receivership Order provides that title to all real property of CCC 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 CCC. Additionally the Injunction Order required, among

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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 prejudice interest, any ill-gotten gains he received; and (3) Theodule and CCC 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 CCC. [DE 1]. Williams is the sister of Theodule. [DE 54-6] From December 2007 through the present, Williams has worked as an agent for Theodule, CCC and their ancillary business operations, including as a principal of certain investment clubs through which Theodule and Williams would unlawfully solicit and raise money from individual investors for the benefit of and use by CCC and through which she and Theodule directed the illegal solicitation and transfer of funds.²

On August 29, 2008, Theodule wired CCC funds in the amount of \$150,000.00 to Williams (the "Transfer").³ Williams received the Transfer for the express purpose of purchasing the Property.⁴ On September 12, 2008, Williams purchased the Property with the proceeds of the Transfer.⁵ Williams holds legal title to the Property, is not currently living at the Property and obtains monthly income from the Property from a resident lessee.⁶ Theodule lists the Property in his second sworn accounting as a CCC investment or asset. [DE 47].

² See the Affidavit of Mark Bumar attached as Exhibit B at ¶ 6.

³ A copy of the confirmation of the wire transfer to William's account at Wachovia Bank is attached as Exhibit C.

⁴ See Bumar Affidavit at ¶ 7.

⁵ See Exhibit A.

⁶ See Bumar Affidavit at ¶ 7.

III. MEMORANDUM OF LAW

A. **This Court Has the Authority to Order Turnover, Surrender of Possession and Transfer of Title to the Property Upon the Receiver's Motion**

The terms of the Receivership Order authorizes the Receiver to investigate the affairs of CCC, to marshal and safeguard these entities' assets, and to institute legal proceedings for the benefit and on behalf of CCC investors and other creditors against individuals or entities which the Receiver claims have improperly received funds traceable from investors in CCC, 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.

This Court has the authority to conduct summary proceedings to determine the possession and ownership rights to the Property as opposed to requiring a plenary action, providing that due process is satisfied by affording the non-party a full and fair opportunity to present any claims and defenses. SEC v. Elliott, 953 F.2d 1560 (11th Cir. 1992). The Eleventh Circuit in Elliott approved of this expedited format, observing that summary proceedings improve judicial efficiency, avoid formalities that would slow down the time necessary to settle disputes, decrease litigation costs and prevent further dissipation of receivership assets. Id. at 1566.

In determining the proper procedure for adjudicating non-party claims involving the ownership and distribution of assets in a receivership, the controlling factor in safeguarding procedural due process is the actual substance of the proceeding, not the name or form. Id. at 1571. Williams is intimately familiar with the matters at issue as she has received notice, through her counsel, of the salient court proceedings to date, including the Temporary Restraining Order, the Preliminary Injunction, and the Receivership Order. Counsel for the Receiver has interviewed Williams twice in this matter, and she remains under subpoena for

continued deposition testimony and document production.⁷ Finally, Williams has recently submitted an affidavit in opposition to the Receiver's Second Verified Motion to Expand. [DE 54-6]. By virtue of her ongoing involvement, and by personally serving Williams with the instant Motion and conducting a full evidentiary hearing by which Williams may testify, call witnesses, and otherwise present and refute evidence with respect to the relief requested by the Motion, due process is satisfied in accordance with the principles set forth by the Eleventh Circuit.

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

Paragraph 16 of the Receivership Order 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." In his sworn accounting filed with the Court and identified above, Theodule states that the Property is a CCC investment or asset. Williams further acknowledges receipt of the Transfer as a gift and purchase of the Property.⁸ Because the Property is clearly a CCC asset, title to the Property vests in the Receivership Estate by operation of law. Possession to the Property should be surrendered and title transferred to the Receivership Estate.

C. 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, the intent of which is to restore the property to the rightful owner and to prevent unjust enrichment. Brown v. Toscano, 254 F.R.D. 690 (S.D. Fla.

⁷ A copy of the subpoena issued by the Receiver to Williams is attached as Exhibit D.

⁸ See Bumar Affidavit at ¶ 7.

2008). The remedy of constructive trust is particularly appropriate where property has been acquired by fraud. Quinn v. Phipps, 113 So. 419 (1927).

The elements of an unjust enrichment claim are met when a person knowingly receives and voluntarily accepts and retains a benefit from another under circumstances which would equitably require either disgorgement or the equivalent payment of value. Zambrana v. Geminis Envios Corp., 2008 WL 2397624 *5 (S.D. Fla. 2008).

For all of the reasons set forth above, equity also requires that title to the Property be restored to the Receiver.

D. 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. In his sworn accounting filed with the Court and identified above, Theodule states that the Property is a CCC investment or asset. Williams further acknowledges receipt of the Transfer and purchase of the Property for which she provided no equivalent value. Williams was an agent for Theodule and CCC, and had knowledge of the unlawful nature of the business, and illegally raised funds for their direct benefit. With an actual intent to hinder, delay or defraud his creditors/investors, Theodule used these funds in effecting the Transfer to Williams and Williams received the Transfer and purchased the Property without providing any reasonable equivalent value.⁹ Chapter 726 of the Florida Statutes clearly contemplates the avoidance of the Transfer under the circumstances set forth herein.

⁹ See Bumar Affidavit at ¶ 7.

IV. CONCLUSION

Based upon the foregoing, 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. The Receiver therefore seeks the entry of an order requiring the turnover and surrender of possession of the Property and the transfer of title of Williams' interest and all rights appurtenant to the Property (including all books, records, deeds, mortgages, liens or any documents relating thereto) to the Receiver and any other relief as may be determined by the Court. The Receiver further requests an evidentiary hearing as soon as practicable in order to expedite the recovery of this asset for the benefit of the Receivership Estate.

RESERVATION OF RIGHTS

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

WHEREFORE, the Receiver requests the relief requested herein and any other relief the Court deems appropriate.

Dated: April 13, 2009
Miami, Florida

Respectfully submitted,
/s/ Carmen Contreras-Martinez
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Attorneys for Receiver Jonathan E. Perlman, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimile, CM/ECF, and /or first-class postage prepaid U.S. Mail to all Parties on the attached service list this 13th day of April, 2009.

/s/ Carmen Contreras-Martinez
Carmen Contreras-Martinez

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SERVICE LIST

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

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Via Federal Express®

Yolette Williams
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Tamarac, Florida 33321
Via Federal Express®

10061-001/667

EX. "A"

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Mondesir & Alexis Title Services, Inc.
1325 Congress Avenue, Suite 100
Boynton Beach, FL 33426
Property Appraisers Parcel Identification (Folio) Numbers: 9105A00770
Grantee SS #: and

Space Above This Line For Recording Data

THIS WARRANTY DEED, made the 12th day of September, 2008 by September, between **AUGUSTO RESTREPO**, a married man joined by his wife, **NOHORA DE RESTREPO**, whose Post Office Address is 7940 North Nob Hill Rd, # 303, Tamarac, FL 33321 herein called the grantor, to **YOLETTE T. WILLIAMS**, a single woman whose post office address is 8030 Nob Hill Road, Apt 104, Tamarac, FL 33321, hereinafter called the Grantee:
(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

W I T N E S S E T H: That the grantors, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in PALM BEACH County, State of Florida, viz.:

Unit No. U04-303 of EL-AD NOB HILL, a Condominium, according to the Declaration of Condominium recorded in O.R. Book 39458, Page 1134 and all exhibits and amendment thereof, as recorded in the Public Records of Broward County, Florida.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

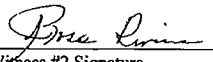
AND, the grantors hereby covenant with said grantee that the grantors are lawfully seized of said land in fee simple; that the grantors have good right and lawful authority to sell and convey said land, and hereby warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2007.

IN WITNESS WHEREOF, the said grantors have signed and sealed these presents the day and year first above written.

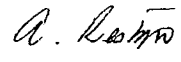
Signed, sealed and delivered in the presence of:



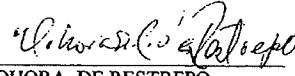
Witness #1 Signature
MICHELLE ARI
Witness #1 Printed Name



Witness #2 Signature
ROSA RIVERA
Witness #2 Printed Name



AUGUSTO RESTREPO
7940 North Nob Hill Road, # 303, Tamarac FL 33321



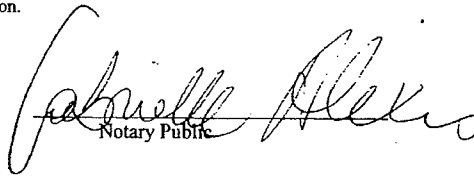
NOHORA DE RESTREPO
7940 North Nob Hill Road, # 303, Tamarac FL 33321

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12th day of September, 2008 by Augusto Restrepo and Nohora De Restrepo who are personally known to me or has produced _____ as identification.

SEAL




Notary Public

Printed Notary Name



Click here to display your 2008 TRIM Notice.

Site Address	7940 N NOB HILL ROAD 4-303 , TAMARAC	ID #	4941 05 AQ 0770
Property Owner	WILLIAMS, YOLETTE T	Millage	3112
Mailing Address	8030 NOB HILL RD APT 104 TAMARAC FL 33321	Use	04

Legal Description	EL-AD NOB HILL CONDO UNIT U04-303
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Property Assessment Values					
Year	Land	Building	Just Value	Assessed / SOH Value	Tax
2009	\$19,950	\$179,570	\$199,520	\$199,520	
2008	\$19,950	\$179,570	\$199,520	\$199,520	\$4,355.58
2007	\$20,930	\$188,380	\$209,310	\$209,310	\$4,471.42

IMPORTANT: The 2009 values currently shown are rollover values from 2008. The real 2009 assessments and portability values will not be finalized until June 1. Please check back here AFTER June 1, 2009, to see the proposed 2009 assessments and portability values.

2009 Exemptions and Taxable Values by Taxing Authority				
	County	School Board	Municipal	Independent
Just Value	\$199,520	\$199,520	\$199,520	\$199,520
Portability	0	0	0	0
Assessed/SOH	\$199,520	\$199,520	\$199,520	\$199,520
Homestead	0	0	0	0
Add. Homestead	0	0	0	0
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exempt Type	0	0	0	0
Taxable	\$199,520	\$199,520	\$199,520	\$199,520

Sales History -- Search Subdivision Sales				
Date	Type	Price	Book	Page
9/12/2008	WD-Q	\$132,000	45742	14
4/7/2008	QCD-D	\$26,500	45295	1769
8/11/2005	SWD	\$248,500	40548	1403

Land Calculations		
Price	Factor	Type
Adj. Bldg. S.F. (See Sketch)		981

Special Assessments					
Fire	Garbage	Light	Drainage	Improvement	Safe
31					
R					
1					

EX. "B"

