

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-80468-CIV-MIDDLEBROOKS/BRANNON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JCS ENTERPRISES, INC. d/b/a JCS
ENTERPRISES SERVICES, INC., T.B.T.I., INC.,
JOSEPH SIGNORE, and PAUL L. SCHUMACK, II,
Defendants.

ORDER TO TRANSFER ASSETS TO THE RECEIVERSHIP ESTATE

THIS CAUSE comes before the Court on the Receiver's Motion for Order Transferring Assets to the Receivership Estate with Incorporated Memorandum of Law ("Motion") filed by James D. Sallah, Esq., the court-appointed receiver (the "Receiver") of JCS Enterprises Inc. d/b/a JCS Enterprises Services, Inc. ("JCS"), T.B.T.I, Inc. ("TBTI"), My Gee Bo, Inc. ("Gee Bo"), JOLA Enterprises Inc. ("JOLA"), and PSCS Holdings, LLC ("PSCS") (collectively, the "Receivership Entities" or "Receivership Estate"). (DE 373). Paul Schumack, II and Christine Schumack (the "Schumacks") do not oppose this Motion.

On April 7, 2014, the United States Securities and Exchange Commission commenced the current action against JCS, TBTI, Joseph Signore, and Paul Schumack. On September 17, 2014, the Schumacks voluntarily assigned the beneficiary rights in the TBTI, Inc. Defined Benefit Pension Plan with account number ending in 3894 ("Pension Plan account") by a Court-approved Assignment and Assumption Agreement to the Receiver. (DE 118-1). In a related suit against them, the Schumacks entered separate Final Judgments in the amount of \$5,129,806.84, pursuant to Fla. Stat. § 726.105. *See Sallah v. Schumack, et al.*, No. 16-cv-80303 (S.D. Fla. Marh 2, 2016). Because the Schumacks have been unable to satisfy the Final Judgments against

them, the Receiver seeks a Court Order, declaring the funds in the Pension Plan account non-exempt under Fla. Stat. § 222.29 and ordering that they be transferred to the Receiver.

While Fla. Stat. § 222.21 typically protects pension plan accounts from judgments and legal process, Fla. Stat. § 222.29 provides that “[a]n exemption from attachment, garnishment, or legal process provided by this chapter is not effective if it results from a fraudulent transfer or conveyance as provided in chapter 726,” Florida’s Uniform Fraudulent Transfer Act, or FUFTA. FUFTA defines a fraudulent transfer as a transfer made “with actual intent to . . . defraud any creditor of the debtor.” Fla. Stat. § 726.105(1)(a). “[U]nder FUFTA’s actual fraud provision, proof that a transfer was made in furtherance of a Ponzi scheme establishes actual intent to defraud under § 726.105(1)(a).” *Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014).

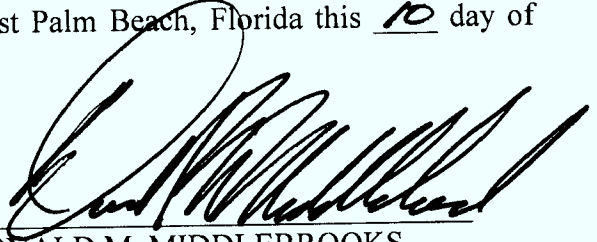
Two courts have found that Schumack operated TBTI as a Ponzi scheme. *See Sallah v. Barnes, et al.*, No. 16-Civ-Marra (S.D. Fla. Nov. 11, 2016) (“Paul L. Schumack, II operated TBTI as a Ponzi scheme.”); *Sallah v. Signore, et al.*, No. 15-CV-80946 (S. D. Fla. July 10, 2015) (“Signore and Schumack operated JCS and TBTI, respectively, as part of a single, continuous Ponzi scheme.”). Thus, the transfers made by TBTI in connection with the Ponzi scheme are avoidable fraudulent transfers under Fla. Stat. § 726.105. According to the affidavit of a Certified Public Accountant, submitted by the Receiver, the funds in the Pension Plan account are traceable to TBTI. (DE 373-2). Thus, pursuant to Fla. Stat. § 222.29, the funds in the Pension Plan account are not exempt from legal process to satisfy the Receiver’s final judgments. It is hereby,

ORDERED AND ADJUDGED that

(1) The Motion (DE 373) is **GRANTED**.

(2) AssetMark Trust Company is **ORDERED** to transfer all assets held in the TBTI, Inc. Defined Benefit Pension Plan with account number ending in 3894 to the Receiver by check made payable to “James D. Sallah, Esq., as Receiver” no later than ten (10) calendar days from the date of service of this Order by overnight courier to the Receiver’s counsel located at Sallah Astarita & Cox, LLC, Attn: Jeffrey L. Cox, Esq., 2255 Glades Road, Ste. 300E, Boca Raton, Florida 33431.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 10 day of April, 2017.


DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Cc: Counsel for Parties;
Ted Angus, Esq.;
Regina M. Fink, Esq.;
AssetMark Trust Company
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