UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-CV-80946-MIDDLEBROOKS

JAMES D. SALLAH, not individually, but solely in his capacity as Court-Appointed Receiver for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc., T.B.T.I. Inc., My Gee Bo, Inc., JOLA Enterprise Inc., and PSCS Holdings, LLC,

Plaintiff,

-vs.-

JOSEPH SIGNORE, individually, and LAURA SIGNORE, individually,

Defendants.
_____/

RECEIVER'S MOTION FOR PRELIMINARY INJUNCTION, AND OTHER RELIEF WITH INCORPORATED MEMORANDUM OF LAW

Plaintiff James D. Sallah, Esq. ("Plaintiff," "Mr. Sallah," or the "Receiver"), not individually, but solely in his capacity as Court-Appointed Receiver for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc. ("JCS"), T.B.T.I. Inc. ("TBTI"), My Gee Bo, Inc. ("Gee Bo"), JOLA Enterprise Inc. ("JOLA"), and PSCS Holdings, LLC ("PSCS") (collectively, the "Receivership Entities" or the "Receivership Estate"), by and through undersigned counsel, hereby moves the Court for a preliminary injunction, in accordance with FED. R. CIV. P. 65 and 64 and FLA. STAT. §726.108, against Defendant Laura Signore ("Laura Signore") and states as follows:

INTRODUCTION

The Receiver is moving for a preliminary injunction in order to prevent the further dissipation of assets—assets which are traceable to, and rightly the property of, the Receivership Estate—that are currently in the possession, custody, and control of Defendant Laura Signore.

This case concerns a Ponzi scheme perpetrated by Defendant Laura Signore and her husband, Defendant Joseph Signore ("Joseph Signore") (collectively, Laura Signore and Joseph Signore are referred to as "Defendants"), among others, through companies they controlled—specifically, Receivership Entities JCS, Gee Bo, and JOLA. By the underlying Complaint against Defendants Laura Signore and Joseph Signore, the Receiver is seeking to avoid fraudulent transfers that Defendants caused the Receivership Entities to make to Defendants and to third parties for the purpose of perpetuating the Ponzi scheme. Altogether, the Receiver is alleging that Defendants caused the Receivership Entities to make fraudulent transfers in the amount of **$4,452,833.71**. Specifically, the Receiver is alleging that Defendants caused JCS to transfer **$819,723.42** to Defendant Laura Signore and that she received a fraudulent transfer of **$2,500.00** from TBTI.

Joseph Signore's assets are already subject to a preliminary injunction and asset freeze order issued by Judge Donald M. Middlebrooks on April 28, 2014. *Securities and Exchange Commission v. JCS Enterprises, Inc., d/b/a JCS Enterprises Services, Inc., T.B.T.I. Inc., Joseph Signore, and Paul L. Schumack, II.*, D.E. 47, Case No. 14-CV-80468-MIDDLEBROOKS/BRANNON (S.D. Fla. Apr. 7, 2014) (the "SEC Case"; filings in the SEC Case are hereinafter referred to as "SEC Case, D.E. __"). However, Defendant Laura Signore is not a party-defendant in the underlying action by the Securities and Exchange Commission and is neither subject to an asset freeze nor other order preventing her from dissipating her assets.

The Receiver is seeking to enjoin Defendant Laura Signore from dissipating assets in her possession, custody, or control during the pendency of this action to ensure that these assets, which were taken from the Receivership Estate and which are traceable to the Receivership Estate, are available to satisfy, if only partially, a judgment against Defendant Laura Signore. As argued

herein, the Receiver has evidentiary proof demonstrating his entitlement to a preliminary injunction under FED. R. CIV. P. 65. Additionally, as set forth below, injunctive relief prohibiting a defendant from dissipating assets is also directly authorized by the Florida Uniform Fraudulent Transfer Act and is warranted under traditional equitable principles and FED. R. CIV. P. 64.

The irreparable harm to the Receiver that would result from denial of this injunction directly impacts the public interest because the assets subject to this Motion represent monies to be used to compensate the investors and creditors of Defendants' Ponzi scheme. Laura Signore cannot credibly argue that the harm to her caused by an injunction would outweigh the harm that would befall Defendants' victims, whose finances were decimated by Defendants' Ponzi scheme, if this injunction is denied.

FACTS RELEVANT TO THE INSTANT MOTION

A. PLAINTIFF AND THE RECEIVERSHIP ENTITIES

On April 7, 2014, the United States Securities and Exchange Commission (the "SEC") commenced an action against JCS, TBTI, Joseph Signore, and another individual, Paul L. Schumack, II ("Paul Schumack") in the SEC Case. Attached as Exhibit A is a Declaration of the Receiver James D. Sallah, Esq., hereinafter referred to as [Sallah Dec.]; *see* [Sallah Dec. at ¶3].

On April 7, 2014, the Honorable Donald M. Middlebrooks, United States District Court Judge, issued an Amended Receivership Order and appointed Mr. Sallah as Receiver over JCS and TBTI. On April 14, 2014, the Court expanded the Receivership over Gee Bo. On December 12, 2014, the Court expanded the Receivership over JOLA and PSCS. On December 15, 2014, the Court reappointed Mr. Sallah as Receiver for the Receivership Entities (the "Reappointment Order"). In the Reappointment Order, the Court has directed the Receiver to:

> Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the

> benefit and on behalf of the Receivership Entities and their investors and other creditors, as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute §726.101, *et seq*. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

SEC Case, D.E. 173 at ¶2; [Sallah Dec. at ¶4].

B. DEFENDANT LAURA SIGNORE

Laura Signore was a principal of three (3) Receivership Entities: JCS, Gee Bo, and JOLA. Specifically, Laura Signore was Vice Chairperson and Vice President of JCS and Treasurer and Secretary of both Gee Bo and JOLA. [Sallah Dec. at ¶7, 21.] On information and belief, during the time period when Defendants operated JCS, Laura Signore did not earn any material amount of income from any source other than the Receivership Entities.[1] [*Id.* at ¶25.]

Laura Signore was never sued in the SEC Case and is not currently subject to the Asset Freeze Order from the court in the SEC Case. Nevertheless, Laura Signore has been indicted by a grand jury in a criminal action, *U.S.A. v. Joseph Signore, Paul Lewis Schumack II, Laura Grande-Signore, and Craig Allen Hipp*, Case No. 14-80081-CR-HURLEY/HOPKINS (S.D. Fla. May 8, 2014), and is awaiting trial scheduled to begin during the trial period beginning October 1, 2015. One of the criminal defendants who was indicted with Laura Signore, Craig Hipp ("Hipp"), who

[1] Besides receiving $2,500 from Receivership Entity TBTI, Laura Signore received tax refunds totaling $13,395 from the U.S. Treasury in 2012 and 2013. [Sallah Dec. at ¶24.]

was the President of Manufacturing and Operations for JCS, has already been tried before a jury. The jury convicted Hipp for having "knowingly and willfully conspired to commit mail fraud with Joseph Signore, Paul Lewis Shumack [sic,] and Laura Grande-Signore in connection with the VCM investment scheme. . . ." Copies of the verdict and final judgment from *U.S.A. v. Hipp*, Case No. 14-CR-80081-HURLEY (S.D. Fla. Mar. 13, 2015) are attached hereto as Exhibits B and C.

C. DEFENDANTS' PONZI SCHEME

From at least as early as 2011 through April 7, 2014, Defendants operated JCS. [Sallah Dec. at ¶7.] JCS manufactured and marketed virtual concierge machines ("VCMs"), which are free-standing or wall-mounted, ATM-like machines that were promised to be placed at various locations to enable businesses to advertise their products and services via touch screen and printable tickets or coupons which were dispensed from the VCMs. [*Id.* at ¶8.]

In 2011, JCS and TBTI entered into an agreement whereby TBTI would be the sales agent for JCS and its Virtual Concierge program. [*Id.* at ¶9.] Defendants and Paul Schumack, through JCS and TBTI, respectively, offered and sold investments in JCS's virtual concierge machines ("VCMs"), which would purportedly pay income to investors from advertising revenues generated by the VCMs. [*Id.*] JCS, TBTI, and Gee Bo, combined, raised approximately $80.8 million from at least 1,800 investors nationwide by selling contracts for more than 22,500 VCMs. [*Id.* at ¶10.] JCS and TBTI sold each VCM for an average of between $2,600 and $4,500. These sales to investors were documented through contracts with JCS and TBTI, and those contracts represented that advertising revenue would provide investors with a return of $300 per month for thirty-six (36) to forty-eight (48) months, or a return of at least $10,800 over a 36 month period. [*Id.* at ¶11.]

However, advertising revenues were insufficient to pay the promised returns to investors. [*Id.* at ¶12.] During the relevant time period from 2011 through April 7, 2014, JCS and TBTI,

combined, earned a total of approximately $21,000 in advertising revenue from these machines. [*Id.* at ¶13.] To put things into perspective, the advertising revenue actually generated by VCMs would not even have supported the obligations for **two** (2) VCMs that were sold under the shorter, 36-month contracts. [*Id.* at ¶14.] Moreover, based on a conservative calculation assuming that the payment stream would be limited to 36 months, JCS and TBTI would have been obligated to pay more than $243.4 million to investors during the duration of these investment contracts, or $6.75 million per month. [*Id.* at ¶15.] Besides approximately $21,000 in advertising revenue, JCS and TBTI generated no other meaningful source of revenue or cash inflows from which to pay investors or any other creditors. [*Id.* at ¶16.]

In order to maintain the fiction that the investment was valid and make these payments to investors, Defendants and Paul Schumack caused JCS and TBTI, respectively, to use new investor funds to make so-called "returns" to earlier investors in the total amount of $49.7 million. [*Id.* at ¶17.] While Defendants operated JCS, they caused JCS to transfer monies, among other things: (1) as returns and/or redemptions to earlier investors; (2) for commissions paid to agents who perpetuated their scheme; (3) for their own use, including diverting funds to themselves or other companies they controlled; and (4) to vendors in order to continue to operate their scheme for the purposes of raising additional capital from potential and existing investors. [*Id.* at ¶18.] These transfers were made almost exclusively from: (a) principal money from new investors; (b) existing investors' principal investment money; and/or (c) additional principal investment money from existing investors. [*Id.* at ¶19.]

As a result, because Defendants caused JCS to pay returns and/or redemptions to earlier investors with later investors' funds, Defendants operated JCS as a Ponzi scheme. [*Id.* at ¶20.]

D. DEFENDANTS' USES OF THE RECEIVERSHIP ENTITIES' PROPERTY

Defendants personally received transfers from JCS for the time period from at least December 11, 2011 to April 7, 2014 and caused JCS to make payments for Defendants' benefit. [*Id.* at 22.] Specifically, as detailed in Exhibits 2 through 6 of Mr. Sallah's Declaration, based on the records reviewed by the Receiver as of the filing of this Complaint, between 2011 and April 7, 2014, Defendants caused JCS and JOLA to pay Defendants, as well as to third parties for Defendants' benefit, **$4,450,334.71**. [*Id.*] The payments itemized in Exhibits 2 through 5 detail the date and amount of each such payment and the ultimate recipient of each transfer. [*Id.*] Included in these transfers were cash transfers made to Laura Signore from JCS in the amount of **$819,723.42** and cash transfers from TBTI for **$2,500.00**. [*Id.* at ¶24.] Other than working for JCS, on information and belief, neither Joseph Signore nor Laura Signore had any legitimate source of income during this period of time. [*Id.* at 25, 26.]

Every transfer Defendants caused JCS to make, including to Defendants, was made to perpetuate Defendants' Ponzi scheme and, as a result, these transfers were made for Defendants' benefit. The money Defendants wrongfully caused JCS to transfer for their benefit was diverted and misappropriated by Defendants in furtherance of Defendants' Ponzi scheme. JCS did not receive a reasonably equivalent value in exchange for these transfers of funds made to Defendants or for Defendants' benefit.

At the time of these transfers, Defendants were engaged, or were about to engage, in a business or a transaction for which their remaining assets were unreasonably small in relation to the business or transaction. At the time of these transfers, Defendants intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they

became due. JCS was harmed by this unauthorized course of conduct, which Defendants effectuated through their control of JCS, Gee Bo, and JOLA and which dissipated JCS's assets.

LEGAL DISCUSSION

A. REQUEST FOR PRELIMINARY INJUNCTION UNDER FED. R. CIV. P. 65

The Receiver respectfully requests a preliminary injunction in order to preserve the status quo pending the outcome of this litigation. Under the law in this Circuit, "[t]o obtain a preliminary injunction, the movant must establish that: '(1) it has a substantial likelihood of success on the merits; (2) irreparable harm will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.'" *Indigo Room, Inc. v. City of Fort Myers*, 710 F.3d 1294, 1299 (11th Cir. 2013) (*quoting Am. Civil Liberties Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009). Specifically, the Receiver addresses each of these factors below:

1. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

The Receiver has asserted claims against Defendants, in the alternative, for fraudulent transfer under Ch. 726, Fla. Stat., unjust enrichment, conversion, and breach of fiduciary duty, and has a substantial likelihood of success on the merits for his claims. As set forth in the Relevant Facts section above, the Receiver has evidence that Defendants operated JCS as a Ponzi scheme during the period from at least 2011 through April 7, 2014, by causing JCS and Gee Bo to pay earlier investors' purported returns from later investors' funds. *See Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014) ("A Ponzi scheme uses the principal investments of newer investors, who are promised large returns, to pay older investors what appear to be high returns, but which are in reality a return of their own principal or that of other investors"). Under the law in the Eleventh

Circuit, "proof that a transfer was made in furtherance of a Ponzi scheme establishes actual intent to defraud under §726.105(1)(a) without the need to consider the badges of fraud." *Id.* at 1201.

In this case, Defendants operated a Ponzi scheme and caused JCS to transfer funds to Defendants and for Defendants' benefit by causing the Ponzi scheme to make transfers to third parties. *See id.* at 1203 ("With each transfer that Nadel made, Nadel became a debtor of the receivership entities because he diverted the funds from their lawful purpose in violation of his fiduciary duties and was thus obligated to return those same funds to the entities to be used for the benefit of the investors"). The Receiver has claims against Defendants because the funds of the Receivership Entities that Defendants controlled could have been applied by them to pay the debts they owed to the Receivership Entities as a result of their use of funds to perpetuate a Ponzi scheme. *Id.* Because Defendants caused JCS, Gee Bo, and JOLA to pay monies to themselves and to third parties for Defendants' benefit, as well as making payments of fictitious returns to investors, Defendants are obligated to return to the Receiver the property they caused to be fraudulently transferred.

Defendants have no defenses to the Receiver's claims under Fla. Stat. §726.105(1)(a), because Defendants never accepted the fraudulent transfers they made to themselves in good faith and never provided reasonably equivalent value in exchange for those fraudulent transfers. *See* Fla. Stat. §726.109(1) ("A transfer or obligation is not voidable under s. 726.105(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee"). Given that Defendants operated a Ponzi scheme, they cannot prove that they accepted any transfers in good faith or that the provided the Receivership Estate with reasonably equivalent value for those transfers. Without question, there is a substantial likelihood of success on the merits.

2. IRREPARABLE HARM & INADEQUATE REMEDY AT LAW

The Plaintiff addresses the elements of "irreparable harm" and "inadequate remedy at law" together because "what makes an injury irreparable is that no other remedy can repair it." *Weinstein,* 758 So. 2d at 708 (Fla. 4th DCA 2000) (J. Gross, concurring specially). Without a preliminary injunction, the Receiver will undoubtedly suffer irreparable harm, and no other remedy will be able to restore his request for the avoidance of the transfers or the remedy of a constructive trust.

Defendants caused JCS to transfer substantial funds fraudulently to Laura Signore, including the transfer of **$819,723.42** in cash to Laura Signore, as well as for the purchase of jewelry, thirteen (13) ounces of gold bullion, and furniture and other house fixtures. Under a constructive trust theory, the Receiver is entitled to the recovery of Laura Signore's assets, even if they are kept and maintained as cash. Regardless, "[w]hen a fraudulent transfer defendant holds cash or cash equivalents shown with reasonable likelihood to be the estate's, it is appropriate and, in a given case may be necessary, that the court issue a form of provisional order, injunctive or otherwise, to ensure that a judgment ordering their return will be meaningful." *O'Donnell v. Royal Business* Group*, In re Oxford Homes)*, 180 B.R. 1, 13 (Bankr. D. Me. 1995) (finding irreparable harm in the absence of threatened or impending disposition of the assets) (*citing In re: DeLorean Motor Co.*, 755 F.2d 1223, 1230 (6th Cir. 1985).

Further, while "[t]ypically, the possibility that adequate compensatory damages or other corrective relief will be available at a later date weighs heavily against a claim of irreparable harm," *Bloomfield Institutional Opportunity Fund, LLC v. Allen Inv. Props., LLC*, 2010 U.S. Dist. LEXIS 88192, *18-19 (M.D. Fla. Aug. 9, 2010) (*citing Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990), the

mere availability of money damages does not provide the Receiver with an adequate remedy at law. *See Janvey v. Alguire, et al.*, 647 F.3d 585, 600 (5th Cir. 2011) ("[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate'").

In *Janvey*, the Fifth Circuit reviewed a district court's granting a preliminary injunction in connection with the receiver's fraudulent transfer claims against sales agents who had sold investments in a Ponzi scheme. The Fifth Circuit affirmed the granting of the preliminary injunction, because the "Receiver successfully show[ed] that the threatened harm—dissipation of the assets that are the subject of this suit—would impair the [district court's] ability to grant an effective relief." *Id.* (alterations in original). Significantly,

Besides agreeing that the receiver's request for relief under the Uniform Fraudulent Transfer Act was equitable in nature, the Fifth Circuit found that "the Receiver provided evidence of a massive Ponzi scheme and proof that each individual received proceeds from the fraudulent scheme. **This is sufficient to prove the likelihood of each individual removing or dissipating the frozen assets but for the preliminary injunction**." *Id.* (emphasis added). Specifically, the court stated:

> If the defendants were to dissipate or transfer these assets out of the jurisdiction, the district court would not be able to grant the effective remedy, either in equity or in law, that the Receiver seeks. The assets that the Receiver requests stay frozen are assets that are directly traceable to the Stanford Ponzi scheme and are the subject of this dispute. The Receiver merely asks that those assets continue to be held immovable while his case proceeds to judgment. We do not find that the district court erred in determining that a preliminary injunction was appropriate to protect against monetary asset dissipation.

Id. Similarly, in *Bloomfield Institutional Opportunity Fund*, the court found irreparable harm where the defendant had removed half of the loan proceeds procured by fraud from his bank account:

> If an injunction does not issue, Defendants will continue to further dissipate the money remaining in the account, money of which Defendants have no legitimate claim. Any recovery attempts by Bloomfield of the money it can specifically trace to Shapiro Lending's Bank of America account will therefore be rendered meaningless if Defendants have the opportunity to continue to access and use the money in that account. Accordingly, Bloomfield has shown it will suffer irreparable harm if the injunction does not issue as to the Bank of America account.

Bloomfield Institutional Opportunity Fund, 2010 U.S. Dist. LEXIS at *19. Here, as in the *Janvey*, the Receiver has evidence of a massive Ponzi scheme and proof that Laura Signore received proceeds from the fraudulent scheme. Like in both *Janvey* and *Bloomfield Institutional Opportunity Fund*, those assets are directly traceable to the Receivership Entities, as the Receiver's forensic accounting shows the transfers to Laura Signore and as, upon information and belief, Laura Signore had no other source of income.

Defendants are alleged to have previously fraudulently transferred assets to each other, as well as third parties to perpetuate a Ponzi scheme, and, as such, there is a presumptive likelihood that Laura Signore will do so in the future. If Laura Signore does transfer assets away, the Receiver will undoubtedly encounter substantial difficulties in pursuing those assets against subsequent transferees, and possibly in multiple law suits.

Further, a creditor's claims against subsequent transferees are limited compared to those of initial transferees, like Laura Signore. FUFTA provides that "[a] transfer or obligation is not voidable under s. 726.105(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee," which would mean the Receiver would be deprived of his right to avoid transfers under FLA. STAT. §726.105(1)(a) made by Laura

Signore to any subsequent transferee or obligee.[2] Moreover, while an initial transferee may assert as an affirmative defense that he or she received the transfer "in good faith and *for a reasonably equivalent value*," a subsequent transferee may assert that he or she was "a good faith transferee who took *for value*." FLA. STAT. §726.109(1) and (2)(b) (emphasis added). In other words, in the absence of a preliminary injunction, the Receiver would be deprived of his right to proceed under Fla. Stat. §726.105(1)(a) and would be exposed to an affirmative defense as to the asset transferred that the recipient simply "took for value," as opposed to "for a reasonably equivalent value."

Based on the foregoing, the Receiver has no adequate remedy and will suffer irreparable harm if a preliminary injunction is not entered.

3. THE EQUITIES FAVOR THE RECEIVER OVER LAURA SIGNORE

The Receiver is required to prove that the threatened harm to the Receivership Estate far outweighs the harm a preliminary injunction would cause Laura Signore. *Bloomfield Institutional Opportunity Fund*, 2010 U.S. Dist. LEXIS at *20 (*citing MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1240 (11th Cir. 2005)). The Receiver has alleged that Defendants fraudulently transferred the Receivership's property to themselves and that the Receiver is entitled to the property Defendants hold that are traceable to the Receivership. The Receivership's claim of exclusive ownership of those assets is threatened by Laura Signore's continued possession and enjoyment of those assets. If Laura Signore is not enjoined from disposing of this property, to which she has no legitimate claim, the Receivership will suffer a total loss of those assets. On the other hand, the preliminary injunctive relief requested would simply maintain the status quo thereby ensuring Laura Signore will not have an opportunity to access or squander the assets

[2] The Receiver would still have other subsections under FUFTA available for bringing claims and seeking relief, but those subsections require separate elements of proof for liability.

remaining in her possession, custody, or control and frustrate the Receiver's court-ordered obligation to recover those assets. As such, the harm to the Receivership would far outweigh the harm to Laura Signore.

4. PUBLIC INTEREST

A preliminary injunction will not disserve the public interest under the circumstances. The Receiver is bringing this action not in his individual capacity, but as the Receiver for five (5) entities that were involved in a Ponzi scheme that raised approximately $80 million from about 1,800 investors. The chance for a recovery of the victims of Defendants' Ponzi scheme depends on the Receiver's ability to secure assets, like those that are the subject of this Motion and this action. As such, it is in the public's interest that a preliminary injunction issues.

It is also in the public's interest to prevent dissipation and conversion of another's assets, as provided under FLA. STAT. §726.108, and to ensure that litigants seeking a constructive trust are not irreparably injured by permitting funds to be transferred to another jurisdiction or otherwise wasted.

B. INJUNCTION AGAINST FURTHER DISSIPATION

In addition to entitlement to a restraining order and preliminary injunction under FED. R. CIV. P. 65, the Receiver is also entitled to an injunction against further disposition by Laura Signore in accordance with FED. R. CIV. P. 64 and FLA. STAT. §726.108(c).

Rule 64, FED. R. CIV. P., provides that "[a]t the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies." The applicable Florida law is the Florida Uniform Fraudulent Transfer Act ("FUFTA"), which is based on the Uniform Fraudulent Transfer Act.

FUFTA specifically provides that a plaintiff may obtain an "injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property. . . ." FLA. STAT. §726.108(c)(1). When an asset has already been transferred with intent to defraud creditors once, there is a heightened risk that it will be transferred again or otherwise removed from the creditors' reach. The UFTA's drafters recognized this risk and thus expressly included injunction against further disposition as an appropriate remedy under UFTA actions, "[s]ubject to the applicable principles of equity and in accordance with applicable rules of civil procedure." FLA. STAT. §726.108(1)(c). *See, e.g., Star Creations Inv. Co., Ltd. v. Alan Amron Development, Inc.*, No. CIV. A. 95-4328, 1995 WL 495126 at *19 (E.D. Pa. Aug. 18, 1995) (noting that UFTA "expressly recognize[s] the appropriateness of injunctive relief to prevent further dissipation and transfers of fraudulently conveyed property"); *Janvey v. Alguire*, 647 F.3d 585, 600, n.9 (5th Cir. 2011).

The legislature's inclusion of the phrase "or of other property" makes it clear that the statutory injunction can apply to Laura Signore's assets, whether or not the assets are proven to be the "asset [fraudulently] transferred" from the Receivership Estate to her. *Biliouris v. Sundance Resources, Inc.*, 559 F. Supp. 2d 733, 739 (N.D. Tex. 2008) (UFTA was "enacted to provide swift, effective, and uniform remedies" and "should be construed broadly to effect [its] purpose"); *Epperson v. Entertainment Express, Inc*., 338 F. Supp. 2d 328, 342 (D. Conn. 2004) ("UFTA gives the court broad authority to remedy fraud"). In other words, money is fungible and it makes no difference whether Laura Signore took the fraudulently transferred dollars and purchased any property, real or personal, so long as the property subject to the injunction is worth no more than the amount the Receiver may recover on his claims. *See Hoxworth v. Blinder, Robinson & Co., Inc*., 903 F.2d 186, 195-96 (3d Cir. 1990) (discussing injunction against disposition of defendant's

funds to ensure recovery in suit for money damages and noting that "[l]egally as well as economically, money is fungible") (internal quotations omitted).

In Florida, the general rule is that an injunction may not be entered to prevent a defendant "from using or disposing of *his* assets prior to the conclusion of a legal action." *Briceno v. Bryden Investments, Ltd.*, 973 So. 2d 614, 617 (Fla. 3d DCA 2008) (emphasis added). "An exception to this general rule, however, is that a trial court may enter a pretrial injunction to protect the res of a constructive trust.[3] *Id.* Indeed, "[o]ne such tool is the equitable authority to sequester and enjoin transfer of a trust res pending outcome of a suit involving a constructive trust." *ITT Community Development Corp. v. Barton*, 457 F. Supp. 224, 232 (M.D. Fla. August 18, 1978) (citing *Krusen Land and Timber Co. v. Tampa Suburban Corp*., 158 So. 712 (Fla. 1935). Here, the Receiver seeks the instant preliminary injunction to prevent dissipation and conversion of the Receivership's property, to which Defendants have no legitimate claim, and to protect the res of the Receiver's claim for a constructive trust, which is in danger of dissipation and conversion, as discussed herein.

C. BOND AMOUNT

Rule 65(c), FED. R. CIV. P., provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Reappointment Order provides, however, that "[n]o bond shall be required in connection with the reappointment of the Receiver." [SEC Case D.E. 173 at ¶22.] Because the Reappointment Order authorized the Receiver to "institute such actions and legal proceedings," including "seeking imposition of constructive trusts, disgorgement of profits,

[3] "[A] constructive trust is imposed by operation of law as an equity remedy in a situation where there is a wrongful taking of the property of another." *Abele v. Sawyer*, 747 So. 2d 415 (Fla. 4th DCA 1999) (citations omitted).

recovery and/or avoidance of fraudulent transfers under FLA. STAT. §726.01, *et seq.* or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order," [*Id.* at ¶2], and this action has been instituted in connection with the reappointment of the Receiver, the Receiver requests that the Court excuse the Receiver from providing security under FED. R. CIV. P. 65(c) based on Paragraph 22 of the Reappointment Order.

REQUEST FOR ORAL ARGUMENT

The Receiver requests a hearing on this matter. Further, for the Court's convenience, the Receiver has provided a proposed Order attached hereto as Exhibit "D."

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

The Receiver has not conferred with Defendants Joseph and Laura Signore prior to filing the instant Motion, as pre-filing conference is not required under Local Rule 7.1(a)(3).

WHEREFORE, the Receiver respectfully request that this Court:

1. issue a preliminary injunction enjoining Defendant Laura Signore, her agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service, mail, facsimile transmission or otherwise, from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of Laura Signore; withdrawing, transferring, assigning, selling, pledging, hypothecating, changing, wasting, converting, concealing, encumbering, or otherwise disposing of, in any manner Defendant Laura Signore's funds, wherever located;

2. order Defendant Laura Signore to provide the Receiver and the Court with a sworn accounting; and

3. grant any further relief as is fair and just.

Respectfully submitted,

SALLAH ASTARITA & COX, LLC
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 22, 2015, I electronically filed the foregoing using CM/ECF. I also certify that the foregoing document is being served this day on the *pro se* parties identified on the attached Service List by hand delivery in accordance with Fed. R. Civ. P. 5(b)(2)(A).

/s/Joshua A. Katz

SERVICE LIST

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