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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE REED E. SLATKIN)	BANKRUPTCY COURT CASE
and substantively)	NUMBER
consolidated affiliates)	ND 01-11549 RR
TOPSIGHT OREGON, INC. and)	ADVERSARY NO. AD03-01132 RR
REED SLATKIN INVESTMENT)	
CLUB, L.P.)	
)	DISTRICT COURT CASE
Debtor,)	NUMBER
)	CV 08-4037 RSWL
<hr/>		
ROBERT RAKOW, an)	ORDER
individual; KAREN RAKOW, an)	
individual; THE HIGHLANDS)	
GROUP, INC.,)	
)	
Appellant,)	
)	
v.)	
)	
R. TODD NEILSON, Trustee of)	
the Chapter 11 Bankruptcy)	
Estate of Reed E. Slatkin,)	
)	
)	
Appellee.)	
)	

This is an appeal from the Bankruptcy Court's denial of Appellants Robert Rakow, Karen Rakow, and the Highlands Group, Inc.'s Motion for Partial Summary

1 Judgment and granting of Appellee Trustee of the
2 Chapter 11 Bankruptcy Estate of Reed E. Slatkin, R.
3 Todd Neilson's Motion for Summary Judgment [1].

4 On January 22, 2007, the United States Bankruptcy
5 Court denied Appellants' Motion for Partial Summary
6 Judgment on the issue of whether Appellants' transfer
7 of 250,000 shares of BID.COM stock offset supposed
8 profits.

9 On April 25, 2008, the United States Bankruptcy
10 Court granted Summary Judgment for Appellee in the
11 amount of \$3,350,000 plus pre- and post- judgment
12 interest. The Bankruptcy Court again rejected the
13 argument that the BID.COM Stock Transfer offset these
14 supposed gains.

15 Having reviewed all papers submitted pertaining to
16 this Appeal the Court, **NOW FINDS AND RULES AS FOLLOWS:**

17
18 **I. BACKGROUND**

19 This case arises out of the bankruptcy proceedings
20 of Reed E. Slatkin, the perpetrator of a large-scale
21 Ponzi scheme. Trustee of the Chapter 11 Bankruptcy
22 Estate of Reed E. Slatkin, R. Todd Neilson,
23 ("Appellee") sued Appellants Robert and Karen Rakow and
24 their company, Highlands Group, Inc., (collectively,
25 "Appellants") to avoid and recover fraudulent and/or
26 preferential transfers made to Appellants by Slatkin.

27 Sometime around February 1991, Appellants opened a
28 purported investment account with Slatkin called the

1 "Highlands Account." The account was named for a
2 corporation jointly owned by Robert and Karen Rakow.

3 According to Appellants, when the Highlands Account
4 was first opened, Appellant Robert Rakow was president
5 of Calvin Klein Jeans and drew a salary, thus, he
6 deposited mostly cash into the account. However, he
7 later left Calvin Klein Jeans and began consulting for
8 other companies. Instead of cash, he earned stock
9 options. In 1999, Appellant Robert Rakow transferred
10 250,000 shares of stock in BID.COM to Slatkin.
11 Therefore, Appellants contend that they used those
12 stock options to invest in what Appellants later
13 learned was a Ponzi scheme.

14 During the seven years before his bankruptcy,
15 Slatkin transferred \$3,350,000 to the Highlands Account
16 in furtherance of his Ponzi scheme ("Net Highlands
17 Account Transfers"). The Bankruptcy Court awarded
18 Appellee this amount, plus pre-judgment and post-
19 judgment interest, on Summary Judgment of Appellee's
20 First Claim For Relief.

21 Appellants main issue raised on appeal is whether
22 Appellants can evoke an affirmative defense of "setoff"
23 under 11 U.S.C. § 548 and CAL CIV. CODE § 3439.08(a).
24 Thus, Appellants claim that the 250,000 of transferred
25 BID.COM stock would setoff the \$3,350,000 in the
26 Highlands Account.

1 **II. LEGAL STANDARDS**

2 A. Standard of Review

3 District courts have jurisdiction to hear appeals
4 from final judgments, orders, and decrees entered by
5 the Bankruptcy Court. See 28 U.S.C. § 158(a).

6 District courts review the lower courts' conclusions of
7 law de novo and findings of fact for clear error. See
8 Nielson v. Chang, 253 F.3d 520, 526 (9th Cir. 2001).

9 B. Summary Judgment

10 Summary judgment is appropriate when there is no
11 genuine issue of material fact and the moving party is
12 entitled to judgment as a matter of law. Fed. R. Civ.
13 P. 56(c). "Bankruptcy Rule 7056 applies Rule 56 of the
14 Federal Rules of Civil Procedure to adversary
15 proceedings." In re Aubrey, 111 B.R. 268, 272 (9th
16 Cir. BAP 1990).

17 **III. DISCUSSION**

18 Appellants raise 5 issues on appeal: (1) the
19 Bankruptcy Court erred when it found that the purchase
20 of 250,000 shares of BID.COM was a so-called special
21 investment; (2) the Bankruptcy Court erred when it held
22 that special investments were separate transactions
23 unrelated to Slatkin's Ponzi scheme; (3) if the special
24 investments are separate transactions, which must be
25 treated as separate from Slatkin's Ponzi scheme, then
26 Appellee did not establish that any particular transfer
27 from Slatkin was part of the Ponzi scheme as opposed to
28 the special investments; (4) the Bankruptcy Court erred

1 in not granting Appellants' Motion for Partial Summary
2 Judgment regarding the BID.COM transaction; and, (5)
3 Appellee has produced no evidence to support a finding
4 of bad faith within the meaning of the fraudulent
5 transfer laws.

6 A. The Bankruptcy Court did not err in granting
7 Appellee's Motion for Summary Judgment.

8 The Court finds that the Bankruptcy Court did not
9 err in granting Appellee's Motion for Summary Judgment
10 because the Bankruptcy Court properly applied the "no
11 setoff" rule to this case. The "no setoff" rule states
12 that a fraudulent conveyance cannot be offset against
13 or exchanged for a general unsecured claim. See In re
14 Acequia, Inc., 34 F.3d 800, 817 (9th Cir. 1994). The
15 Bankruptcy Court properly evaluated the applicable case
16 law and correctly determined that the "no setoff rule"
17 applies to the case at bar. Accordingly, the
18 Bankruptcy Court correctly held that, as a matter of
19 law, the 250,000 of BID.COM stock could not setoff the
20 \$3,350,000 in the Highlands Account and, thus,
21 Appellee's Motion for Summary Judgment should be
22 granted.

23 As the affirmative defense of "setoff" under 11
24 U.S.C. § 548 and CAL CIV. CODE § 3439.08(a) was not
25 available to Defendants, issues (1), (2), (3), and (5)
26 were properly decided.

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28 ///

1 B. The Bankruptcy Court did not err in denying
2 Appellants' Motion for Partial Summary Judgment
3 regarding the BID.COM transaction.

4 Appellants were not entitled to Partial Summary
5 Judgment of the Third and Fifth claims for relief
6 because there are issues of material fact as to the
7 value of stock Appellants transferred to Slatkin.

8 Looking at the facts in a light most favorable to
9 Appellee, the 250,000 shares of BID.COM stock may not
10 have been worth \$5,120,760. This figure was based on
11 the closing sale price of BID.COM stock on April 8,
12 1999, when the stock certificate was allegedly sent to
13 Slatkin's broker. However, Appellee shows that Slatkin
14 did not receive the stock on April 8, 1999. The stock
15 was sent on April 8th via overnight delivery, thus, it
16 could not have been in the hands of the broker on April
17 8th. Furthermore, Appellee introduced evidence that on
18 May 6, 1999 "Highlands" deposited the 250,000 shares of
19 BID.COM stock into a securities brokerage account in
20 Slatkin's name. Thus, there is an issue of material
21 fact as to the exact monetary value of the BID.COM
22 stock.

23 Moreover, there is evidence that Appellants may
24 have only owned a portion of the 250,000 share value.
25 Slatkin testified that Appellants would split some of
26 the stock proceeds with Slatkin and Ronald Rakow.
27 Furthermore, Appellant Robert Rakow sent a fax to
28 Slatkin stating that the \$4.2 million in BID.COM

1 proceeds should be divided amongst Appellants, Slatkin,
2 and "other valuable associates."

3 Thus, evidence that the proceeds of the BID.COM
4 investment may not have been intended to be distributed
5 in whole to Appellants, plus evidence regarding the
6 exact date of transfer, raise enough of a question of
7 material fact to defeat a Partial Summary Judgment
8 Motion on the issue. Accordingly, the Bankruptcy Court
9 did not err in denying the Partial Summary Judgment
10 Motion and issue (4) was properly decided.

11 12 **IV. CONCLUSION**

13 The Bankruptcy Court properly found that the
14 affirmative defense of "setoff" under 11 U.S.C. § 548
15 and CAL CIV. CODE § 3439.08(a) was not available to
16 Defendants. Accordingly, the United States Bankruptcy
17 Court's April 25, 2008 granting of Summary Judgment for
18 Appellee in the amount of \$3,350,000 plus pre- and
19 post- judgment interest is **AFFIRMED**.

20 Appellee raised a question of material fact to
21 defeat Appellants' Partial Summary Judgment Motion.
22 There are issues of material fact as to the value of
23 the BID.COM stock in question, given conflicting
24 evidence of the exact date of transfer and questions as
25 to whether proceeds were intended to be distributed in
26 whole to Appellants. Thus, the Bankruptcy Court did
27 not err in denying the Partial Summary Judgment Motion.
28 Accordingly, the United States Bankruptcy Court's

1 January 22, 2007, denial of Appellants' Motion for
2 Partial Summary Judgment is **AFFIRMED**.

3

4 **IT IS SO ORDERED.**

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6 DATED: December 14, 2009

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RONALD S.W. LEW

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HONORABLE RONALD S.W. LEW
Senior, U.S. District Court Judge

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NOTICE PARTY SERVICE LIST

Case No. CV 08-4037-RSWL

Case Title IN RE: REED SLATKIN

Title of Document ORDER

ADR
BAP (Bankruptcy Appellate Panel)
BOP (Bureau of Prisons)
CA St Pub Defender (Calif. State PD)
CAAG (California Attorney General's Office - Keith H. Borjon, L.A. Death Penalty Coordinator)
Case Asgmt Admin (Case Assignment Administrator)
Chief Deputy Admin
Chief Deputy Ops
Clerk of Court
Death Penalty H/C (Law Clerks)
Dep In Chg E Div
Dep In Chg So Div
Federal Public Defender
Fiscal Section
Intake Section, Criminal LA
Intake Section, Criminal SA
Intake Supervisor, Civil
MDL Panel
Ninth Circuit Court of Appeal
PIA Clerk - Los Angeles (PIALA)
PIA Clerk - Riverside (PIAED)
PIA Clerk - Santa Ana (PIASA)
PSA - Los Angeles (PSALA)
PSA - Riverside (PSAED)
PSA - Santa Ana (PSASA)
Schnack, Randall (CJA Supervising Attorney)
Statistics Clerk

US Attorneys Office - Civil Division -L.A.
US Attorneys Office - Civil Division - S.A.
US Attorneys Office - Criminal Division -L.A.
US Attorneys Office - Criminal Division -S.A.
<input checked="" type="checkbox"/> US Bankruptcy Court
US Marshal Service - Los Angeles (USMLA)
US Marshal Service - Riverside (USMED)
US Marshal Service -Santa Ana (USMSA)
US Probation Office (USPO)
US Trustee's Office
Warden, San Quentin State Prison, CA

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*Fax No.:	

* For CIVIL cases only

	<p>JUDGE / MAGISTRATE JUDGE (list below):</p>

Initials of Deputy Clerk KD