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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES H. DONELL, RECEIVER)	Case No. CV 11-10517 DDP (AJWx)
FOR NEWPOINT FINANCIAL)	
SERVICES, INC.,)	ORDER DENYING MOTION FOR SUMMARY
)	JUDGMENT
Plaintiff,)	
)	[Dkt. No. 17]
v.)	
)	
TAHMINEH RASHIDI GHARDAN)	
aka TAHMINEH RASHIDI and)	
FRUIT ATLANTIC, LLC, a)	
California limited liability)	
company,)	
)	
Defendants.)	
)	
_____)	

Presently before the court is a Motion for Summary Judgment brought by Plaintiff James. H. Donell, Receiver for NewPoint Financial Services Inc. ("Donell" or "the Receiver"). Having considered the parties' submissions¹ and heard oral argument, the court adopts the following order.

I. BACKGROUND

The following facts are not in dispute. John Farahi was the co-owner, president, secretary, and treasurer of NewPoint Financial

¹ The Opposition was due on February 4 but filed at 12 am on February 5.

1 Services, Inc. ("NewPoint"). (Decl. Davidson, Exh. D, Plea
2 Agreement for Defendant John Farahi ("Farahi Plea Agreement"), at
3 28.) NewPoint, controlled by Farahi, offered and sold millions of
4 dollars of debentures to numerous investors. (Id. at 29.)

5 Farahi generally used investor funds to make interest and
6 principal repayments to previous investors, to pay personal
7 expenses, and to finance higher-risk futures options. (Id. at 30.)
8 In other words, Farahi was engaged in a Ponzi scheme, which is "any
9 sort of fraudulent arrangement that uses later acquired funds or
10 products to pay off previous investors." (Decl. Grobstein ¶ 13; In
11 re Agricultural Research Technology Group, Inc., 916 F.2d 528, 531
12 (9th Cir. 1990).) As a result of the Ponzi scheme and fraud,
13 NewPoint Entity investors lost millions of dollars.

14 In his plea agreement, Farahi admitted that the scheme began
15 "on a date unknown but at least as early as in or about November
16 2005." (Farahi Plea Agreement at 28.) In the fall of 2008, Farahi
17 suffered approximately \$30 million in losses resulting from options
18 trading. (Id. at 30.) Farahi continued to use investors funds to
19 pay back prior investors, among other things. (Id.)

20 Defendant Tahmineh Rashidi Ghadrddan ("Ghadrddan") invested a
21 total of one million dollars between 2002 and 2003. Between 2003
22 and 2005, she received payments totaling \$1,134,481.10, with the
23 last payment being made on January 24, 2005. (Exh. 4.) On November
24 11, 2008, she invested \$200,000 with Parsi Investments LLC, one of
25 the entities through which Farahi conducted the fraud. (Reply Exh.
26 3.) Between 2008 and 2009, Ghadrddan received payments totaling
27 \$206,468.15, including a payment of \$198,856.39 on June 4, 2009.
28 Additionally, Defendant's company Fruit Atlantic, LLC ("Fruit"),

1 also a Defendant, received payments totaling \$4,590.31, although it
2 had made no investment. (Decl. Grobstein ¶ 16., Exh. 2.)

3 This court appointed Donell as Receiver of NewPoint and its
4 affiliates and subsidiaries on January 8, 2010.

5 **II. LEGAL STANDARD**

6 Summary judgment is appropriate where the pleadings,
7 depositions, answers to interrogatories, and admissions on file,
8 together with the affidavits, if any, show "that there is no
9 genuine dispute as to any material fact and the movant is entitled
10 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
11 seeking summary judgment bears the initial burden of informing the
12 court of the basis for its motion and of identifying those portions
13 of the pleadings and discovery responses that demonstrate the
14 absence of a genuine dispute of material fact. Celotex Corp. v.
15 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
16 the evidence must be drawn in favor of the nonmoving party. See
17 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986).

18 If the moving party does not bear the burden of proof at trial, it
19 is entitled to summary judgment if it can demonstrate that "there
20 is an absence of evidence to support the nonmoving party's case."
21 Celotex, 477 U.S. at 323.

22 Once the moving party meets its burden, the burden shifts to
23 the nonmoving party opposing the motion, who must "set forth
24 specific facts showing that there is a genuine issue for trial."
25 Anderson, 477 U.S. at 256. Summary judgment is warranted if a
26 party "fails to make a showing sufficient to establish the
27 existence of an element essential to that party's case, and on
28 which that party will bear the burden of proof at trial." Celotex,

1 477 U.S. at 322. A genuine issue exists if "the evidence is such
2 that a reasonable jury could return a verdict for the nonmoving
3 party," and material facts are those "that might affect the outcome
4 of the suit under the governing law." Anderson, 477 U.S. at 248.
5 There is no genuine issue of fact "[w]here the record taken as a
6 whole could not lead a rational trier of fact to find for the non-
7 moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
8 475 U.S. 574, 587 (1986).

9 It is not the court's task "to scour the record in search of a
10 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,
11 1278 (9th Cir. 1996). Counsel has an obligation to lay out their
12 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d
13 1026, 1031 (9th Cir. 2001). The court "need not examine the entire
14 file for evidence establishing a genuine issue of fact, where the
15 evidence is not set forth in the opposition papers with adequate
16 references so that it could conveniently be found." Id.

17 **III. DISCUSSION**

18 **A. Defendants' Liability**

19 The Ninth Circuit has adopted a two-step approach to determine
20 how much, if anything, a receiver can recover from a "winning" but
21 innocent investor in a Ponzi scheme. Donell v. Kowell, 533 F.3d
22 762, 771 (9th Cir. 2008). Step one determines the investor's
23 liability with the "netting rule": "Amounts transferred by the
24 Ponzi scheme perpetrator to the investor are netted against the
25 initial amounts invested by that individual. If the net is
26 positive, the receiver has established liability, and the court
27 determines the actual amount of liability, which may or may not be
28 equal to the net gain, depending on factors such as whether

1 transfers were made within the limitations period or whether the
2 investor lacked good faith." Id. In step two, "to determine the
3 actual amount of liability, the court permits good faith investors
4 to retain payments up to the amount invested, and requires
5 disgorgement of only the 'profits' paid to them by the Ponzi
6 scheme." Id. at 772.

7 Both parties agree that this is the rule that should be
8 applied, but they differ on which transfers should be considered.
9 The Receiver argues that Ghadrnan invested a total of \$1,200,000.00
10 and received payments on the investment totaling \$1,340,949.25,
11 with a net profit of \$140,949.25. (Decl. Grobstein ¶ 17.) Donell
12 argues that because Ghadrnan received payments from Farahi within
13 the four-year statute of limitations period totaling more than
14 \$140,949.25, he should be able to recover the full amount.

15 Ghadrnan asserts that there is no evidence that Farahi was
16 running a Ponzi scheme at the time of her initial investment in
17 2002-03 or at the time of Farahi's initial payments to her totaling
18 \$134,481.10 as of January 2005. Farahi pled that he began to
19 defraud investors "[b]eginning on a date unkonwn but at least as
20 early as in or about November 2005." (Farahi Plea Agreement at 28.)
21 The Receiver presents no evidence an earlier date of the beginning
22 of the scheme. Thus, she argues, the netting should cover only the
23 payments she received after the scheme began, meaning only the
24 \$11,058.46 she received subsequent to her later investment of
25 \$200,000.

26 The court agrees with Ghadrnan that there is a question of
27 fact as to when the Ponzi scheme began. It is possible that
28 Farahi's scheme was legitimate for several years before becoming a

1 Ponzi scheme. If that is the case, Ghadrddan may be entitled to
2 keep the profits from her initial investment, if, for instance,
3 both the investment and that return on the investment took place
4 while the fund was legitimate. Since her initial investment was
5 \$1,000,000 and by January 2-5, she had received payments totaling
6 \$1,134,481.10, she appears to have been totally divested at that
7 point. If the scheme did not become fraudulent until several
8 months later, then it appears that she should be able to keep the
9 profits from that initial investment. This is not a question of
10 "tracing," which involves tracing transfers and demonstrating
11 whether the "payments that took place within the statute of
12 limitations periods were return of principal or profit." Kowell,
13 533 F.3d at 773. Here, the issue is whether Ghadrddan's initial
14 investment of one million dollars was an investment into a Ponzi
15 scheme at all, and whether the profits she had received by January
16 2005 were not real profits but instead capital investments of new
17 investors.

18 Alternatively, it is possible that the scheme was a Ponzi
19 scheme at an earlier date than the one admitted to by Farahi. The
20 Receiver may be able to present records of NewPoint transactions
21 that indicate its fraudulent scheme had already commenced at the
22 time of Ghadrddan's initial investment. The plea agreement is not
23 conclusive evidence for either party in this respect, but it does
24 create an issue of fact that makes summary judgment improper.

25 [There is no factual dispute regarding Ghadrddan's investment
26 of \$200,000 in 2008. Ghadrddan does not contest the fact that she
27 received \$6,468.15 in payments in addition to the return of her
28 investment or that her company Fruit received \$4,590.31 although it

1 had not made any investment.² These profits are subject to the
2 netting rule, meaning that Ghadrnan and Fruit would appear to be
3 liable to the Receiver for \$11,058.46. SHOULD THIS BE INCLUDED IF
4 NOT AT ISSUE?]

5 Because Defendants have demonstrated that there are material
6 issues of fact and law, the court DENIES the Motion for Summary
7 Judgment.

8 **B. Receiver's Standing to Sue**

9 Defendants argue that the Receiver does not have standing to
10 sue them. This is contradicted by explicit Ninth Circuit authority
11 and is incorrect. See, e.g. Kowell, 533 F.3d at 777 ("The Receiver
12 has standing to bring this suit because, although the losing
13 investors will ultimately benefit from the asset recovery, the
14 Receiver is in fact suing to redress injuries that Wallenbrock [the
15 entity for which it is receiver] suffered when its managers caused
16 Wallenbrock to commit waste and fraud.").

17 **IV. CONCLUSION**

18 For these reasons, the Motion is DENIED.
19 IT IS SO ORDERED.

20
21 Dated: February 26, 2013


22 DEAN D. PREGERSON
23 United States District Judge
24
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27 ² These payments came from Parsi Investments, LLC, which was
28 one of the entities through which Farahi conducted the fraud.
Parsi is a receivership entity. See Reply Exh. 3.