

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 12-61830-Civ-SCOLA

Federal Trade Commission,

Plaintiff,

vs.

IAB Marketing Associates, LP, *et al.*,

Defendants,

Avis S. Wood and Tressa K. Wood,

Relief Defendants.

ORDER GRANTING RECEIVER'S MOTION TO DISMISS COUNTERCLAIM

The Texas Receiver, Charlene Koonce, moves to dismiss the counterclaim filed against her by Defendant Gary D. Wood. Wood's counterclaim asks the Court to order the Receiver to return money that she took out of his account. (DE 129 at 11.) A receiver derives her authority solely from the court that appointed her and thus shares the judge's immunity from claims arising from the faithful execution of her duties. *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995); *New Alaska Development Corp. v. Guetschow*, 869 F.2d 1298, 1303-04 (9th Cir. 1989); *Kermit Construction Corp. v. Banco Credito Y Ahorro Ponceno*, 547 F.2d 1, 2-3 (1st Cir. 1976). Because the Receiver's act of taking possession and control of this money was done in accordance with her duties under the Preliminary Injunction,¹ she shares the judge's immunity. To state a valid claim against a receiver, a claimant must allege that the receiver lacks immunity. *New Alaska*, 869 F.2d at 1303-04. When a complaint lacks facts demonstrating that the receiver was not "faithfully and carefully carrying out the orders of the appointing judge," courts dismiss the counterclaim. *Kermit*, 547 F.2d at 3. Because Wood's counterclaim fails to allege that the Receiver lacks immunity and fails to allege facts showing that the Receiver was not faithfully

¹ Section XV(c) of the Preliminary Injunction authorizes the Receiver to "[t]ake exclusive custody, control, and possession of the Assets and income of the Individual IAB Non-Stipulating Defendants," a group that includes Gary Wood. (DE 72 at 23-24.)

and carefully carrying out her duties under the Preliminary Injunction, the Court **GRANTS** the Receiver's Motion (DE 146) and **DISMISSES** the Counterclaim.

DONE and ORDERED in chambers, at Miami, Florida, on September 18, 2013.

A handwritten signature in black ink, appearing to read "R. Scola, Jr.", written over a horizontal line.

ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE