

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KEVIN B. DUFF, as Receiver for)
CENTRAL SLEEP DIAGNOSTICS, et al.)

Plaintiffs,)

v.)

KEN DACHMAN, KATHERINE LYNN)
DACHMAN, JILLIAN DACHMAN,)
DAVID DACHMAN, GARY PARISI, and)
GINA PARISI,)

Defendants,)

DAVID and DAWN WHELDON d/b/a)
WAYNE HUMMER TRUST COMPANY,)
N.A. FKA WINTRUST ASSET)
MANAGEMENT CO., N.A.)
Successor Trustee to State Bank of)
Lakes, its Successor or Successors, as)
Trustee under a Trust Agreement,)

Ancillary Defendants.)

Case No. 10-cv-6162

Judge Rebecca R. Pallmeyer

PLAINTIFF’S MOTION FOR ENTRY OF JUDGMENT

Plaintiff, Kevin B. Duff as Receiver for Central Sleep Diagnostics, by and through his attorneys Gardiner, Koch, Weisberg & Wrona, requests this Court to enter judgment in his favor and against Defendants, Ken Dachman, Katherine Lynn Dachman, Jillian Dachman, David Dachman, Gary Parisi and Gina Parisi on Count I: Uniform Fraudulent Transfer Act; Count III: Breach of Fiduciary Duty; Count VII: Equitable Claims Against the Relief Defendants for Disgorgement; Count VIII: Illinois Security Fraud; Count IX: RICO, 18 U.S.C. 1962 and Count XI: Civil Conspiracy. In support of its motion, Plaintiff states as follows:

BACKGROUND

1. The present lawsuit was filed in the Circuit Court of Cook County on August 31, 2010 and was subsequently removed to this Court on September 27, 2010. The Receiver alleges that Defendants Ken Dachman and Katherine Lynn Dachman raised over \$2,500,000 by means of various false and misleading representations to investors, using CSD as an enterprise to enrich and engorge themselves and their family on the monies obtained by and from investors. This has been a pattern and practice of the Dachmans for twenty years. The Receiver asserts claims for violation of the Illinois Uniform Fraudulent Transfer Act, conversion, breach of fiduciary duty, Sections 10(b), 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, equitable claims for disgorgement, Illinois securities fraud, RICO, and for the imposition of a constructive trust.
2. On October 18, 2010, this Court entered a Consent Order for Preliminary and Permanent Injunction (“Consent Order”), whereby the Court, *inter alia*, reserved its right to appoint a Temporary Equity Receiver for CSD and its affiliates and subsidiaries.
3. On November 1, 2010, this Court appointed James E. Sullivan as Receiver for and on behalf of the investors and shareholders of CSD.
4. On April 21, 2011, this Court substituted-in Kevin B. Duff as the new Receiver of CSD, following the Illinois Supreme Court’s request that James E. Sullivan be reappointed as a Judge of the Circuit Court of Cook County, Illinois.
5. By order entered on May 12, 2011, this Court set the schedule for the filing and briefing of dispositive motions.
6. In accordance with the Court’s schedule, on May 26, 2011, Plaintiff timely filed its Motion for Summary Judgment with respect to Count I: Uniform Fraudulent Transfer Act; Count III: Breach of Fiduciary Duty; Count VII: Equitable Claims Against the

Relief Defendants for Disgorgement; Count VIII: Illinois Security Fraud; Count IX: RICO, 18 U.S.C. 1962 and Count XI: Civil Conspiracy.

7. Pursuant to the Court's May 12, 2011 order, Defendants responses were due by June 28, 2011.
8. All the Defendants have failed to file their responses to Plaintiff's Motion for Summary Judgment.
9. In that there are no responses to Plaintiff's Motion for Summary Judgment, the facts in Plaintiff's Motion for Summary Judgment are not refuted and, as a result, there are no genuine issues of material facts. The memorandum in support of Summary Judgment is supported by unanswered Requests to Admit, deposition testimony and authenticated exhibits.
10. Plaintiff requests the entry of judgment in its favor and against all Defendants with respect to the Motion for Summary Judgment as to Count I: Uniform Fraudulent Transfer Act; Count III: Breach of Fiduciary Duty; Count VII: Equitable Claims Against the Relief Defendants for Disgorgement; Count VIII: Illinois Security Fraud; Count IX: RICO, 18 U.S.C. 1962 and Count XI: Civil Conspiracy.
11. As stated in Plaintiff's Motion for Summary Judgment, Plaintiff is owed \$2,500,000, plus interest.
12. Plaintiff has attached a proposed order.

WHEREFORE, Plaintiff Kevin Duff as Receiver for Central Sleep Diagnostics requests the Court as follows:

- a. To grant Plaintiff's Motion for Summary Judgment with respect to Count I: Uniform Fraudulent Transfer Act; Count III: Breach of Fiduciary Duty; Count

VII: Equitable Claims Against the Relief Defendants for Disgorgement; Count VIII: Illinois Security Fraud; Count IX: RICO, 18 U.S.C. 1962 and Count XI: Civil Conspiracy;

- b. To enter judgment in Plaintiff's favor in the amount of \$2,500,000 and against Defendants Ken Dachman, Katherine Lynn Dachman, Jillian Dachman, David Dachman, Gary Parisi and Gina Parisi with respect to Plaintiff's Amended Complaint;
- c. To dismiss as moot Counts II, IV, V, VI and X of Plaintiff's Amended Complaint¹;
- d. To grant Plaintiff such further relief to which it may be entitled.

Respectfully Submitted,

By: /s/ James B. Koch
One of Its Attorneys

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¹ Counts II, IV, V, VI and X of Plaintiff's Amended Complaint were alternate theories and become moot upon the entry of judgment.