

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CIVIL DIVISION

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

Plaintiff,

Case No: 51-2010-CA-2912-WS/G

v.

**BOTFLY, LLC, DAVID R. LEWALSKI,  
and JON J. HAMMILL,**

Defendants.

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**JON HAMMILL'S MOTION TO MODIFY THE TEMPORARY INJUNCTION**

COMES NOW, Jon Hammill, by and through undersigned counsel, and, pursuant to the Temporary Injunction, moves this Court, pursuant to Rule 1.160(d), Fla. R. Civ. Proc., for an Order Modifying the Temporary Injunction and permitting him to receive money, property or accounts from investors or lenders of Botfly, LLC who are his family or close personal friends. In support thereof, Hammill would state:

1. On April 1, 2010, the Office of the Attorney General filed a complaint against Botfly, LLC., David R. Lewalski, and Jon J.Hammill alleging violations of the Florida Securities and Investor Protection Act (F.S. 517.011, et seq.), and the Florida Deceptive and Unfair Trade Practices Act (F.S. 501.201, et seq.)

2. Also on April 1, 2010, this Court issued a Temporary Injunction prohibiting Mr. Hammill, individually or through any other person acting on his behalf, from:

- a. "transferring, conveying, encumbering, disposing of or otherwise alienating automobiles, motorcycles, or any other persona property or real property owned by ... Jon J. Hammill." Para. 3.
- b. "receiving directly or indirectly any money, property or accounts from any investors or lenders [of Botfly, LLC] until further order of this Court." Para. 4.

3. On the same date this Court entered an Order Appointing Receiver, pursuant to which Michael E. Moecker was designated as receiver over Mr. Hammill, as a Defendant herein and, “all other entities operated, controlled, or otherwise associated with the Defendants’ activities...”

4. In conformity with the above Order the receiver has taken possession and control over all of Mr. Hammill’s “assets,” as defined in the Order.

5. As a result of the Temporary Injunction and the receivership Mr. Hammill, who has not yet had the opportunity to contest the validity of the allegations against him, has been left completely without financial means to pay for his daily living expenses or attorneys' fees.

6. All of Mr. Hammill's friends and family are investors in Botfly, LLC. As a result, and pursuant to the Temporary Injunction, Mr. Hammill is unable to request financial assistance from family and friends to help pay his daily living expenses and his attorneys' fees.

7. The undersigned has communicated with the attorney for the Receiver, Karen Cox, Esq. and the Attorney General, George Slemp, Esq., requesting a modification of the temporary injunction. Ms. Cox stated that the Receiver objects to this request. Mr. Slemp stated that the Attorney General objects to the request.

#### **INCORPORATED MEMORANDUM OF LAW**

Granting a temporary injunction and creating a receivership are equitable powers inherent in the Court and subject to the Court’s discretionary authority to be exercised according to the particular facts and circumstances of each case *Welch v. Gray Moss Bondholders Corp.*, 128 Fla. 722, 175 So. 529 (1937); *Harvey v. City of St. Petersburg*, 138 Fla. 597, 189 So. 861(1939); *Bayview Homes Co. v. Sanders*, 102 Fla. 516, 136 So. 234 (1931); *Edenfield v. Crisp*, 186 So. 2d 545 (Fla. DCA 2d 1966); *Insurance Management Inc. v. McCleod*, 194 So. 2d 16 (Fla. DCA 3d 1966). The court entering an injunction “may open or modify the same

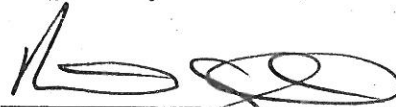
where the circumstances, and circumstances of the parties, are shown to have so changed as to make it just and equitable to do so.” *Seaboard Rendering Co. v. Conlon*, 152 S.2d 882 (Fla. 1943).

In the present case all of Mr. Hammill’s assets were frozen by injunction and summarily placed in receivership, effectively removing them from his control. This was accomplished without notice to him or a hearing. As a consequence, and without opportunity for his day in court, Mr. Hammill has been placed in a position of inability to meet his ordinary daily living expenses or pay his attorneys.

Currently, Mr. Hammill wishes to request financial assistance from friends and family until this matter can be resolved. However, all or most of Mr. Hammill’s family and friends are investors or lenders in Botfly, LLC. The Temporary Injunction’s prohibition on “receiving directly or indirectly any money, property or accounts from any investors or lenders” of Botfly, LLC has effectively crippled Hammill's ability to seek assistance from friends and family.

WHEREFORE based on the foregoing arguments and authorities Defendant Jon J. Hammill prays for an Order permitting him to receive money from investors or lenders who are his family or personal friends.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to: **R. Scott Palmer, Special Counsel**, and **Gregory S. Slemp, Assistant Attorney General**, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399; **Karen Cox, Esquire**, Bush Ross, 1801 N. Highland Avenue, Tampa, Florida 33602; and **David R. Lewalski, Individually and as Registered Agent of Botfly, LLC**, 2515 SW 35<sup>th</sup> Place, Apartment 112, Gainesville, Florida 32608 on this 24<sup>th</sup> day of May, 2010.



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