

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

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

CASE NO.: 51-2010-CA-2912-WS/G

Plaintiff,

VS.

BOTFLY, LLC, DAVID R. LEWALSKI,
JON J. HAMMILL, and
JON J. HAMMILL, P.A.,

Defendants.

**OBJECTION TO RECEIVER'S MOTION FOR APPROVAL OF
DISPOSITION OF VEHICLES AND WATERCRAFT**

COMES NOW the Defendants, JON HAMMILL and JON HAMMILL, P.A., by and through their undersigned attorneys, and responds and objects as follows to the Receiver's Motion for Approval of Disposition of Vehicles and Watercraft, as follows:

1. On April 1, 2010, this Court appointed MICHAEL E. MOECKER & ASSOCIATES, INC., as Receiver of the Defendants HAMMILL and JON HAMMILL, P.A. in addition to the co-defendants in this action.

2. The Receiver has discovered and currently hold possession of the following subject property belong to Defendants HAMMILL and JON HAMILL, P.A.:

A. 2009 waver runner trailer (VIN 1M5BA262991E51852) registered to
HAMMILL, no lien holder

- B. 2006 Lexus GS 300 (VIN JTHCH96S660017265) registered to HAMMILL and JON HAMMILL, P.A., no lien holder.
- C. 2004 Porsche 911 (VIN WP0CB29934S675579) registered to HAMMILL, lien held by Grow Financial FCU.
- D. 2006 26foot Edgewater Power Boat with two (2) 2009 Yamaha outboard motors, Hull No. DMA0124L506, registered to HAMMILL.
- E. 2001 10ft Yamaha Hull (Hull No. YAMA2340H001), registered to HAMMILL.
- F. 2001 10ft Yamaha Hull (Hull No. YAMA4185I001), registered to HAMMILL.

3. These items were purchased with funds belonging to each respective registered owner.

4. Plaintiff alleges that Defendants HAMMILL and JON HAMMILL, P.A. were actively and intentionally involved in an alleged ponzi scheme.

5. As such, the appointment of a Receiver was made for the purpose of preserving the assets of the Defendants during the pendency of this action.

6. The Receiver now seeks to sell these subject personal items belonging to Defendants HAMMILL and JON HAMMILL, P.A..

7. Allowing such sale of these items substantially prejudices the Defendants in this action and will result in irreparable harm.

8. Specifically, these items are unique in their make/model/condition. Should the Receiver be allowed to sell these items, Defendants lose possession and ownership of

these items regardless of any judicial determination made by this Court on the main issues of the action.

9. Because of the make/model/condition of the subject items, these items are not fungible in any manner. A monetary recovery from the sale of these items in the event of Receiver sale and a determination of non-liability by the Defendants will not place the Defendants in the same position pre-suit and will cause irreparable harm to Defendants. The costs to replace these items will likely exceed any monetary amount recovered from any auction held by Receiver.


10. Further, the Receiver states that it is in the best interest of the Estate to sell these vehicles and they impose a financial burden.

11. However, it is the Plaintiff who sought appointment of a Receiver in lieu of seeking an injunction prohibiting the disposal or sale of the subject items. Defendants do not oppose the imposition of this type of injunction.

12. Further, any bond posted by a Receiver or Plaintiff would not be adequate in the event Defendant HAMMILL and JON HAMMILL, P.A. are found to have no liability in any the alleged actions. Defendants conducted extensive searches to procure these specific items with specific characteristics such as mileage, previous owners, etc, which is not simply replaceable from funds procured at an auction sale.


WHEREFORE, Defendants JOHN HAMMILL and JON HAMMILL, P.A. respectfully request that this Court deny the Receiver's Motion for Approval of Disposition of Vehicles and Watercraft.

Respectfully submitted this 13th day of April 2011.



STEVE D. TRAN, Esquire
Florida Bar No.: 14822
2285 First Avenue North, Suite A
St. Petersburg, Florida 33713
(727) 644-7448/ 216-1568
Attorney for Defendants HAMMILL and
JON HAMMILL, P.A.

I HEREBY CERTIFY that a true and correct copy of the foregoing Response was furnished to DAVID LEWALSKI, c/o Pinellas County Jail, Cell Location/Status: CEN-6C1-UN01-08-003, 14400 49th Street North, Clearwater, Florida 33762; GREGORY S. SLEMP, Esquire PL-01: The Capitol, Tallahassee, Florida 32399; and KAREN COX, Esquire, P.O. Box 3913, Tampa, Florida 33601, by U.S. Mail and Facsimile this 13th day of April, 2011.



STEVE D. TRAN, Esquire
Florida Bar No.: 14822