

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES SECURITIES AND)
EXCHANGE COMMISSION,)

Plaintiff,)

v.)

INTERNATIONAL FIDUCIARY CORP., S.A.,)
DANIEL ERIC BYER,)
MALCOLM CAMERON BOYD STEVENSON,)
PRESTON DAVID PINKETT, II,)

Defendants,)

TERRY MARTIN, CD2E, INC., WINCHELL)
CORPORATION, M&M TECHNOLOGIES,)
ROBERT LOWREY, SZE COAST)
OPERATING CORP.,)

Relief Defendants.)

CASE NO. 1:06cv01354-GBL

Hon. Gerald Bruce Lee
United States District Judge

**RECEIVER'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
RECEIVER'S MOTION FOR SUBSTANTIVE CONSOLIDATION**

COMES NOW Roy M. Terry, Jr. as duly appointed receiver ("Receiver") for International Fiduciary Corp., S.A., and in response to this Court's Order entered October 15, 2007, submits this supplemental memorandum of law in support of the Receiver's Motion for Substantive Consolidation of International Fiduciary Corp., S.A. (Virginia) and International Fiduciary Corp., S.A. (Belize). In support thereof, the Receiver respectfully states as follows:

1. International Fiduciary Corp., S.A. was incorporated in Virginia on July 24, 2003 (hereinafter "IFC Virginia"). Upon information and belief, the officers are, or were, Preston Pinkett, II (CEO), and George Bright (President). The Receiver does not know who are, or were, the directors and shareholders.

2. Upon information and belief, International Fiduciary Corp., S.A. was also incorporated in Belize on September 17, 2004 (hereinafter "IFC Belize"). Upon information and belief, the officers are, or were, Preston Pinkett, II (CEO), and George Bright (President); the directors are, or were, McCandless & Company Law. Corp. (a Canadian corporation)(appointed 09/14/04, resigned 09/24/04), and Cyril Jones, Esq. (a Liberian national)(appointed 04/11/05); and the shareholders are, or were, McCandless & Company Law. Corp. (former holder of 50,000 shares, cert. B1 acquired 09/17/04, current status cancelled), bearer shares (unknown holder of 50,000 shares, cert. B-2, issued 04/20/05, still outstanding), and Pinnacle Holdings, Ltd. (a Belize International Business Corporation)(holder of 50,000 shares, issued 09/15/05, still outstanding).

3. On or about December 4, 2006, the United States Securities and Exchange Commission ("SEC") filed its Complaint (Docket No. 1).

4. Defendant International Fiduciary Corp., S.A. was served with process on December 5, 2006 by hand delivery upon counsel (Docket No. 29).

5. On or about April 10, 2007, the SEC filed its First Amended Complaint (the "Amended Complaint"), which expanded the definition of Defendant IFC to include both IFC Virginia and IFC Belize:

14. International Fiduciary Corp., S.A.: Defendant IFC is a Virginia Corporation with offices in Arlington, Virginia. IFC is also incorporated in Belize and has offices in Miami, Florida and Washington, D.C. Defendant Pinkett was a director, and also chairman

and CEO. IFC was incorporated [in Virginia] in July 2003. IFC maintained a password-protected website.

First Amended Complaint ¶ 14 (Docket No. 61).

6. On September 19, 2007, the Receiver filed his Motion for Entry of Amended Order Appointing Receiver Over Defendant International Fiduciary Corp., S.A. and for Substantive Consolidation of International Fiduciary Corp., S.A. Virginia and International Fiduciary Corp., S.A. Belize (the “Motion”)(Docket No. 112).

7. By Order entered October 15, 2007, the Court directed the Receiver to submit a supplementary memorandum of law, specifically addressing the following questions:

(1) whether a district court has the power to consolidate a United States corporation with a foreign corporation; and (2) whether substantial consolidation is necessary if the Court enters the proposed Amended Order Directing Appointment of Receiver over Defendant International Fiduciary Corp., S.A., which provides that Defendant International Fiduciary Corp. S.A. is incorporated in both Virginia and Belize and has offices in Arlington, Virginia, Washington, D.C., and Miami, Florida.

Order at 1 (E.D. Va. Oct. 17, 2007)(Docket No. 117).

ARGUMENT

I. THE COURT HAS THE EQUITABLE POWER TO SUBSTANTIVELY CONSOLIDATE A UNITED STATES CORPORATION WITH A FOREIGN CORPORATION

A. The District Court has the power in Securities cases, pursuant to its equitable powers, to consolidate the asset and liabilities of parties and other entities properly before the court if such relief is appropriate or necessary.

8. It is axiomatic that in cases of securities law violations, a district court has “broad equitable power to fashion appropriate remedies.” SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1474 (2d Cir. 1996). Once the equity jurisdiction of a district court has been properly

invoked, the full panoply of equitable remedies is available to the Court to effectuate the statutory purpose. See J.I. Case Co. v. Borak, 377 U.S. 426, 433 (1964); SEC v. Materia, 745 F.2d 197, 200 (2d Cir. 1984).

9. Section 22(a) of the Securities Act of 1933 (15 U.S.C. § 77v(a)) and Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) confer upon district courts broad equitable powers, such as substantive consolidation, to “effectuate the purpose of the federal securities laws.” See SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1105 (2d Cir. 1972); see also SEC v. Materia, 745 F.2d 197, 200 (2d Cir. 1984); SEC v. Texas Gulf Sulphur Co., 446 F.2d 1301, 1307 (2d Cir. 1971).

10. Further, in 2002, as part of the Sarbanes-Oxley Act, Congress amended section 21(d) of the Securities Exchange Act of 1934 to clarify and strengthen the district court’s broad equitable powers in SEC enforcement actions: “In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, *any equitable relief that may be appropriate or necessary for the benefit of investors.*” 15 U.S.C. § 78u(d)(5) (emphasis added). The 2002 amendment is strong evidence of Congress’ intent that district courts should have broad equitable powers in securities law cases.

B. Substantive Consolidation is an equitable remedy.

11. Substantive consolidation is, at its core, an equitable remedy designed to combat the commission of fraud upon creditors, however, it has also been “used as a practical devise where the identity of assets and liabilities of separate entities were badly intermingled by poorly kept accounting records, disregard of corporate formalities and careless business practices in general.” In re Stone & Webster, Inc., 286 B.R. 532, 538 (Bankr. D. Del. 2002); In re Bonham,

26 B.R. 56, 77 (Bankr. D. Alaska 1998) (performing a detailed analysis of the history of substantive consolidation over more than sixty year period in circuit and lower court cases). At its core, the purpose of substantive consolidation is to ensure the equitable treatment of all creditors or investors. See United Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F.2d 515, 518 (2d Cir. 1988).

12. The Court should not be restricted by the corporate forms of IFC Virginia and IFC Belize nor permit them to be used as a shield for the fraud perpetuated by the Defendants in this case. See Stone v. Eacho, 127 F.2d 284, 188 (4th Cir. 1942), *cert denied* 317 U.S. 635 (1942).

13. Paragraphs 14-21 of the Receiver's Motion set forth the various legal standards, analysis, and facts which support consolidation of the estates of IFC Virginia and IFC Belize.

C. The Court has the power to Substantively Consolidate IFC Virginia (a United States corporation) with IFC Belize (a foreign corporation).

14. Because the district court has the power to substantively consolidate entities which are properly before the court and within the court's jurisdiction, *see* § A *supra*, the power of the Court to consolidate a United States corporation with a foreign corporation necessarily turns on whether the two corporations are within the court's jurisdiction.

15. The District Court has personal jurisdiction over both IFC Virginia and IFC Belize by both proper service and consent by IFC to the Court's jurisdiction. See Return of Service (Docket No. 29); Final Judgment as to Defendant International Fiduciary Corporation, S.A., p. 1 (Docket No. 106).

16. By opening multiple bank accounts, renting office space, and sending and receiving mail at a United States address, IFC Belize has sufficient minimum contacts with the United States to meet the due process requirements of the Fifth Amendment. See e.g. SEC v.

Carrillo, 115 F.3d 1540, 1542-1547 (11th Cir. 1997) (holding that foreign corporation had sufficient minimum contacts by placing advertising in magazines in two airlines operating in the United States, maintaining bank accounts in the United States, and mailing at least one stock certificate to a United States investor).

17. Because this Court has personal jurisdiction over both IFC Virginia and IFC Belize, it has the power to substantively consolidate the two entities for the purposes of the Receiver's appointment as set forth in the proposed Amended Order Directing Appointment of Receiver over Defendant International Fiduciary Corp., S.A. (the "Amended Appointment Order") attached to the Motion as Exhibit A.

II. SUBSTANTIVE CONSOLIDATION IS NECESSARY EVEN IF THE COURT ENTERS THE AMENDED APPOINTMENT ORDER.

18. Entry of the Amended Appointment Order is necessary to ensure that the Receiver's appointment conforms with the Amended Complaint and the Final Judgments, and to clarify the Receiver's appointment over both IFC Virginia and IFC Belize. As stated in the Motion, the Receiver is seeking entry of the Amended Appointment Order prospectively as he commences actions seeking recoveries from third parties who may have dealt solely with either IFC Virginia or IFC Belize and attempt to raise the distinction between the two in the planned litigations.

19. The result of entry of the Court entering the Amended Appointment Order without also substantively consolidating IFC Virginia and IFC Belize is that any plan of distribution would have to be crafted and carried out in such a way that assets and liabilities identified, administered and distributed separately for each entity.

20. As of the date hereof, the Receiver has recovered substantially all known assets held by IFC Virginia and IFC Belize as of the Court's freeze order. The Receiver has also spent significant time analyzing the financial and accounting records of IFC. The Receiver has determined that there were numerous intercompany transfers between IFC Virginia and IFC Belize which occurred without any recognition of corporate formalities, inter-company accounting, or other accounting standards regarding such transfers. The Receiver has determined that some of these transfers resulted in the commingling of funds within the Defendants' Ponzi scheme, while others may be traceable to a specific account. Without substantive consolidation, it is highly probable that difficult and expensive issues will arise as to whether a tracing claim should be allowed with respect to those funds.

21. The Receiver is unable to determine the full extent and complexity of the liabilities of IFC Virginia and IFC Belize until after the claims process has been completed. The Receiver nevertheless foresees that running separate claims processes would be difficult, because many investor victims are not aware of, or do not distinguish between, the two IFC entities, and frequently they do not know which IFC entity they intended to deal with.

22. While the Receiver believes he could, if necessary, draft a plan of distribution treating IFC Virginia and IFC Belize as separate entities, to do so would be substantially more complex and costly. The affairs of IFC Virginia and IFC Belize are so entangled that the Receiver and the Court would have to expend substantial resources to resolve the legal issues that are sure to arise. It also appears fundamentally equitable to treat IFC as a single scheme, and to treat all investors equally in the distribution of recovered assets.

WHEREFORE, for the reasons set forth above and in the Receiver's Motion, the Receiver respectfully requests that the court enter the Amended Appointment Order attached to the Motion as Exhibit A and enter an order substantively consolidated IFC Virginia and IFC Belize for the purposes of the Receiver's appointment as set forth in the Amended Appointment Order.

Respectfully submitted this th 25 day of October, 2007.



Roy M. Terry, Jr., VSB No. 17764
John C. Smith, VSB No. 44556
Elizabeth L. Gunn, VSB No. 71044
DuretteBradshaw, PLC
600 E. Main St., 20th Floor
Richmond, Virginia 23219
☎ 804.775.6900
☎ 804.775.6911
Counsel for Receiver

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2007, a true copy of the foregoing document was delivered by electronic means as indicated below:

A. David Williams, Esquire
U.S. Securities and Exchange Commission
Division of Enforcement
WilliamsDav@SEC.GOV
Assistant Chief Litigation Counsel for Securities and Exchange Commission

Larry P. Ellsworth, Esquire
Amy L. Tenney, Esquire
Jenner & Block, LLP
atenney@jenner.com
Counsel for Preston D. Pinkett, II and International Fiduciary Corp., S.A.

Daniel R. Kirshbaum, Esquire
Axelrod, Smith & Kirshbaum, P.C.
drkirshbaum@aol.com
Counsel for Preston D. Pinkett, II and International Fiduciary Corp., S.A.

Daniel Eric Byer
twoedged@shaw.ca
Defendant

Malcolm C. Stevenson
midiansal@shaw.ca
Defendant

And I hereby certify that I have mailed by first class mail, postage fully prepaid, to the parties listed below:

Terry Martin
810 E. Wiser Lake Road
Lynden, WA 98264-9671
Relief Defendant

Winchell Corporation
c/o Terry Martin
810 E. Wiser Lake Road
Lynden, WA 98264-9671
Relief Defendant

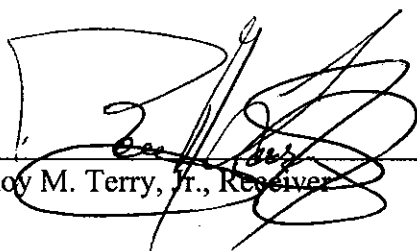
Winchell Corporation
c/o Craig Forhan
3491 Unick Road
Ferndale, WA 98248
Relief Defendant

M&M Technologies
c/o Terry Martin
810 E. Wiser Lake Road
Lynden, WA 98264-9671
Relief Defendant

M&M Technologies
6951 Hannegan Rd Ste 14
Lynden WA 98264-9058
Relief Defendant

Robert Lowery
37-21928-48 Ave
Langley BC V3A 8H1
CANADA
Relief Defendant

SZE Coast Operating Corp.
c/o Robert Lowery or Doug Loni
800-15355 24th Avenue Suite 377
Surrey BC V4P 1H5
CANADA
Relief Defendant


Roy M. Terry, Jr., Receiver