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9 Chapter 11 Trustee

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19 Chapter 11 Trustee

20 UNITED STATES BANKRUPTCY COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 NORTHERN DIVISION

23 In re
24 REED E. SLATKIN,
25 Debtor.

CASE NO. ND 01-11549-RR
CHAPTER 11
A.P. NO. 02-1166

26 R. TODD NEILSON, Trustee of the
27 Chapter 11 Bankruptcy Estate of Reed E.
28 Slatkin,
Plaintiff,

STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF TRUSTEE'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

Individual, and DOES

Defendants.

Date: January 17, 2003
Time: 10 a.m.
Place: 1415 State Street
Courtroom 201
Santa Barbara, CA 93101
[Judge Riblet]

33/4

STATEMENT OF UNCONTROVERTED FACTS

Fact

Source

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8 | 1. On or about March 26, 2002, Reed E. Slatkin executed a "Plea Agreement for Defendant Reed E. Slatkin." It was filed in the United States District Court, Central District of California, Case No. CR 02-313, the same day. | Request for Judicial Notice, Ex. 1 ("Plea Agreement"), p.25. |
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11 | 2. In the Plea Agreement, Slatkin agreed to "plead guilty to a fifteen-count Information," which was attached to the Plea Agreement. | Plea Agreement, ¶ 2. |
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17 | 3. In the Plea Agreement, Slatkin pled guilty to five counts of violating 18 U.S.C. §§ 1341 and 1342, each of which contain as elements that Slatkin created and executed a fraudulent scheme, and that Slatkin acted with intent to defraud. | Plea Agreement, ¶ 3(a). |
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23 | 4. In the Plea Agreement, Slatkin pled guilty to three counts of violating 18 U.S.C. §§ 1343 and 1342, each of which contain as elements that Slatkin created and executed a fraudulent scheme, and that Slatkin acted with intent to defraud. | Plea Agreement, ¶ 3(b). |
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26 | 5. As part of the Plea Agreement, the United States Attorney's Office and Slatkin stipulated to the attached Statement of Facts. | Plea Agreement ¶ 7. |
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28 | 6. The Statement of Facts to the Plea Agreement includes Slatkin's admission that Slatkin | Plea Agreement, 23: 23-26. |

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Fact

Source

“operate[d] a massive ‘Ponzi’ scheme whereby he defrauded his investors by paying them returns largely with funds raised from other investors.”

7. The Statement of Facts to the Plea Agreement includes Slatkin’s admission that from 1986 to May 2001, Slatkin “knowingly and with intent to defraud, planned an executed a scheme to defraud approximately 800 investors throughout the United States of over \$593 million . . .”

Plea Agreement, 25: 21 - 25.

8. On or about April 29, 2002, Slatkin appeared with counsel before Judge Morrow for arraignment.

Request for Judicial Notice, Ex. 4 (“Minutes”); Request for Judicial Notice, Ex. 3 (“Designation”).

9. At his arraignment, the court gave Slatkin a Statement of Defendant’s Constitutional Rights (“Statement”). The Statement listed Slatkin’s constitutional rights and informed him that, if he pled guilty, the court would question him to ascertain whether his plea was voluntary. The Statement also cautioned Slatkin not to plead guilty unless he was, in fact, guilty of the changes made against him in the information. Slatkin and signed an acknowledgment that he read and understood the information in the Statement. Slatkin’s attorney, Brian Sun, also signed the Statement

Request for Judicial Notice, Ex. 2 (“Statement”).

Fact

Source

to acknowledge that he was satisfied that
Slatkin read and understood the statement.

10. Slatkin pled guilty to five counts of mail fraud, three counts of wire fraud, and all other counts listed in the Information. Minutes.

11. The court accepted Slatkin's guilty plea after finding that the plea was voluntary and knowledgeable. Minutes.

CONCLUSIONS OF LAW

Jurisdiction and Venue

1. This Court has jurisdiction of this action under 28 U.S.C. § 1334 in that this proceeding arises in a case under title 11, In re Reed E. Slatkin, Case No. ND 01-11549-RR, a chapter 11 case pending in the United States Bankruptcy Court for the Central District of California, Northern Division, and the claims asserted herein arise under title 11.

2. This is a core proceeding under 28 U.S.C. § 157.

3. Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).

Standard for Summary Judgment

4. Summary judgment lies when no material issue of fact exists. Fed. R. Civ. P. 56(c) (incorporated by Fed. R. Bankr. P. 7056).

5. Partial summary judgment is also appropriate for part of a claim. Fed. R. Civ. P. 56(a).

Slatkin's Actual Intent to Defraud

6. An element of California's fraudulent transfer law is actual intent to hinder, delay, or defraud. See Cal. Civ. Code § 3439.04(a).

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1 7. Mail fraud, 18 U.S.C. §§ 1341 and 1342, includes as elements the creation
2 and execution of a fraudulent scheme and intent to defraud. See Schreiber Distributing
3 Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1400 (9th Cir. 1986).

4 8. Wire fraud, 18 U.S.C. §§ 1343 and 1342, includes as elements the
5 creation and execution of a fraudulent scheme and intent to defraud. See id.

6 9. A guilty plea is a criminal conviction and, like a jury verdict, is conclusive
7 of every element of the crimes charged. See Boykin v. Alabama, 395 U.S. 238, 242
8 (1969) (“A plea of guilty is more than a confession which admits that the accused did
9 various acts; it is itself a conviction.”); Sieling v. Eyman, 478 F.2d 211, 213 (9th Cir.
10 1973) (“A plea of guilty is itself a conviction. Like a verdict of a jury it is conclusive.”
11 (internal quotation marks omitted)); People v. Jones, 52 Cal. 2d 636, 651 (1959).

12 10. Partial summary judgment is warranted on the issue of Slatkin’s actual
13 intent to defraud. Slatkin had actual intent to defraud from about 1986 to May, 2001.
14 This issue is established based on Slatkin’s Plea Agreement.

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CLERK OF COURT

BY: JK DEPUTY

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20 **UNITED STATES BANKRUPTCY COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **NORTHERN DIVISION**

23 In re
24 REED E. SLATKIN,
25 Debtor.

26 R. TODD NEILSON, Trustee of the
27 Chapter 11 Bankruptcy Estate of Reed E.
28 Slatkin,

Plaintiff,

v.

LINDA ROSEN, an individual, and DOES
1-10,

Defendants.

CASE NO. ND 01-11549-RR

CHAPTER 11

A.P. NO. 02-1166

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF TRUSTEE'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: January 17, 2003
Time: 10:00 a.m.
Place: 1415 State Street
Courtroom 201
Santa Barbara, CA 93101
[Judge Riblet]

34/10

1 Plaintiff R. Todd Neilson, Trustee of the Chapter 11 Bankruptcy Estate of Reed
2 E. Slatkin, by and through his attorney, hereby requests the Court to take judicial
3 notice of the following facts pursuant to Federal Rule of Evidence 201:

4 1. On May 1, 2001, Slatkin commenced this bankruptcy proceeding by filing
5 a voluntary petition under chapter 11 of the Code.

6 2. The Trustee was appointed on or about May 16, 2001.

7 3. On or about March 26, 2002, the United States Attorney filed the Plea
8 Agreement for Defendant Reed E. Slatkin in the case United States of America v. Reed
9 E. Slatkin, Case No. CR 02-313 in the United States District Court for the Central
10 District of California, an accurate copy of which is attached to this Request as **Exhibit**
11 **1**.

12 4. On or about April 29, 2002, the Statement of Defendant's Constitutional
13 Rights ("Statement") was filed in the same case and court as mentioned in ¶ 1. An
14 accurate copy of the Statement is attached to this Request as **Exhibit 2**.

15 5. On or about April 29, 2002, the Designation and Appearance of Counsel
16 ("Designation") was filed in the same case and court as mentioned in ¶ 1. An accurate
17 copy of the Designation is attached to this Request as **Exhibit 3**.

18 6. On or about April 29, 2002, the United States District Court for the
19 Central District of California, Judge Mary M. Morrow presiding, filed Minutes of the
20 Arraignment on a Fifteen Count Information ("Minutes"). An accurate copy of the
21 Minutes is attached to this Request as **Exhibit 4**.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 Federal Rule of Evidence 201 allows courts to judicially notice a fact which "is
24 not subject to reasonable dispute in that it is . . . capable of accurate and ready
25 determination by resort to sources whose accuracy cannot reasonably be questioned."
26 Fed. R. Evid. 201(b)(2). "[T]he most frequent use of judicial notice of ascertainable
27 facts is in noticing the content of court records." 21 C. Wright & A. Miller, Federal
28 Practice and Procedure: Evidence § 5106. Courts in the Ninth Circuit are no

1 exception. See, e.g., Springate v. Weighmasters Murphy, Inc. Money Purchase
2 Pension Plan, 217 F. Supp. 2d 1007, 1013 (C.D. Cal. 2002) (citations omitted).

3 Here, the facts in ¶¶ 1-6 are not subject to reasonable dispute. First, the Court
4 can verify each of these facts by consulting PACER, its own internal docket system.
5 Second, the certification of the records mentioned in ¶¶ 2-6, including the Plea
6 Agreement, and submitted with this Request confirms that these are accurate copies of
7 the documents filed with the Court.

8 A guilty plea of a Ponzi scheme principal is a proper subject of judicial notice.
9 See Scholes v. Lehman, 56 F.3d 750, 762 (7th Cir. 1995). In that case, the circuit court
10 affirmed that the district court properly accepted into evidence the guilty plea of a
11 Ponzi scheme principal because the plea was admissible under Federal Rule of
12 Evidence 803(22) and the proper subject of judicial notice under Rule 201. The court
13 did so, in part, because of the “veracity safeguards” surrounding a plea agreement.

14 “Veracity safeguards” also surrounded Mr. Slatkin’s plea agreement. First, the
15 plea agreement itself binds Mr. Slatkin to tell the truth. For example, Mr. Slatkin
16 acknowledged in the Plea Agreement that “[a]ny knowingly false or misleading
17 statement by [me] will subject [me] to prosecution for false statement, obstruction of
18 justice, and perjury and will constitute a breach of this agreement.” Ex. 1. Plea
19 Agreement at ¶ 16(a).¹ In fact, a false statement in the Plea Agreement would subject
20 Mr. Slatkin to a double whammy — prosecution on the underlying crime and for the
21 false statement. See Id. at ¶ 17(a).

22 Second, Mr. Slatkin read and signed the Statement of Defendant’s Constitutional
23 Rights before making his guilty plea. See Ex. 2. That statement informed Mr. Slatkin
24 of the constitutional rights he would waive if he pleaded guilty. It also told Mr. Slatkin
25 that, “before accepting a plea of guilty, the Judge expects that you have discussed your
26 case fully with your lawyer and have been fully advised of all the defenses you may

27 ¹ Similar requirements on Slatkin to be truthful are found throughout the Plea
28 Agreement. See, e.g., ¶¶ 13(f) and (l), 17(a) and (c).