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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION

In re
REED E. SLATKIN,

Debtor.

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

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

Plaintiff,

TRUSTEE'S NOTICE OF MOTION
AND MOTION FOR PARTIAL
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES

v.

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

Defendants.

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

32/4

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 17, 2002, at 10 a.m. in Courtroom
3 201, Plaintiff R. Todd Neilson will move the Court for Partial Summary Judgment on
4 the issue of Actual Intent to Defraud. This issue relates to all counts alleged in the
5 Trustee's complaint in which actual fraud is an element. This Motion will be
6 supported by this Notice and Memorandum of Points and Authorities; the concurrently
7 served Statement of Uncontroverted Facts and Conclusions of Law In Support of
8 Trustee's Motion for Partial Summary Judgment, the Declaration of R. Alexander
9 Pilmer In Support of Trustee's Motion for Partial Summary Judgment, and the Request
10 for Judicial Notice; all pleadings, papers and other matters on file with the Court; and
11 such other and further matters as may be presented to the Court at the time of hearing.

12 As discussed further in the accompanying Memorandum of Points and
13 Authorities, the Motion for Partial Summary Judgment should be granted because
14 there is no triable issue of fact with respect to whether Reed Slatkin possessed "actual
15 intent to hinder, delay, or defraud" any of his creditors under Cal. Civ. Code
16 § 3439.04(a). There can be no triable issue of fact on that issue because Reed Slatkin
17 pled guilty and confessed that he had actual intent to defraud his creditors from about
18 1986 to May 1, 2001.

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The Court-specific rules require an opposition to this Motion on or before December 20, 2002, 28 days before the date set for the hearing. The opposition must conform to Local Bankruptcy Rule 9013-1(e).

Dated: November 18, 2002

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Chapter 11 Trustee

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By: Mark T. Cramer
Richard L. Wynne
R. Alexander Pilmer
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Special Litigation Counsel for
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1 investments; (4) investments would be held in Slatkin's name or in the names of
2 companies, partnerships, and other entities that Slatkin owned or controlled; and (5)
3 Slatkin would maintain an accurate accounting of individual investor portfolios. See
4 id. ¶ 27.

5 Slatkin generally did not purchase the securities he represented he was
6 purchasing on his investors' behalf. He invested only a small percentage of investor
7 funds, typically on speculative and ultimately unprofitable ventures he never disclosed
8 to the investors. Slatkin also misappropriated investor funds and used them for his
9 own benefit and the benefit of his family, friends, and business associates. See id.
10 ¶¶ 23, 24

11 Because Slatkin's investments did not generate sufficient income to meet
12 investors' periodic requests for payments, Slatkin used newly-invested funds from
13 some investors to pay other investors. Slatkin intended these payments to induce
14 existing investors to entrust him with new funds and to expand his pool of investors
15 through referrals. See id. ¶ 26. Slatkin did not maintain separate accounts for
16 investors; he commingled investors' funds and treated them as his personal funds. See
17 id.

18 Slatkin sent quarterly account statements to investors which listed the account
19 number, any deposits and withdrawals for the quarter, and the ending balance. Some
20 investors also received annual statements which purported to show the itemized
21 securities they held, the proceeds from the purchase and sale of those securities, and
22 the overall performance of their portfolio. The account statements were misleading,
23 deceptive, and inaccurate. The account statements falsely represented that Slatkin held
24 a large portfolio of securities on behalf of his investors. See id. ¶¶ 24, 25. Slatkin
25 fabricated the percentage of return represented to various investors and devised a false
26 trading history for various securities.

27 In or about November 1999, the SEC initiated a formal investigation of Slatkin's
28 investment activities. In order to obstruct the SEC investigation, and to conceal the

1 fact that he was operating a massive Ponzi scheme, Slatkin, and others at his direction,
2 provided materially false information to the SEC. See id. at 31.

3 Ultimately, Slatkin's fraud was discovered and his scheme collapsed. The Ponzi
4 scheme came to an end on May 1, 2001, when Slatkin filed for bankruptcy. The
5 Trustee was appointed on or about May 16, 2001.

6 On March 26, 2002, Slatkin executed a "Plea Agreement for Defendant Reed E.
7 Slatkin" which was filed in the United States District Court, Central District of
8 California the same day. See SUF 1.

9 On April 29, 2002, Slatkin appeared with his attorneys before Judge Morrow for
10 arraignment. See SUF 8. Judge Morrow gave Slatkin a written statement outlining
11 Slatkin's constitutional rights and informing him that, if he pled guilty, the court would
12 question him to confirm his plea was voluntary. The statement also cautioned Slatkin
13 not to plead guilty unless he was, in fact, guilty of the charges against him. Slatkin
14 acknowledged in writing that he read and understood his rights and the information in
15 the statement. Slatkin's attorney, Brian Sun, also acknowledged in writing that he was
16 satisfied Slatkin read and understood the statement. See SUF 9.

17 Slatkin pled guilty in open court to the charges against him. See SUF 10. The
18 court found the plea was voluntary and knowledgeable and accepted Slatkin's guilty
19 plea to all charges. See SUF 11.

20 ARGUMENT

21 Federal Rule of Bankruptcy Procedure 7056 incorporates in its entirety Federal
22 Rule of Civil Procedure 56. That rule authorizes the entry of summary judgment when
23 "there is no genuine issue as to any material fact and . . . the moving party is entitled to
24

25
26 The Trustee requests that the Court take judicial notice of Slatkin's plea agreement.
27 See Fed. R. Evid. 201; see, e.g., Scholes v. Ichman, 56 F. 3d 750, 762 (7th Cir.
28 1995) (approving district court's judicial notice of Ponzi scheme principal's plea
agreement).

1 judgment as a matter of law.” Fed. R. Civ. P. 56(e). The Court may also award
2 summary judgment for part of a claim. Fed. R. Civ. P. 56(a).

3 After Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the burden on the party
4 moving for summary judgment is only to demonstrate that the record does not disclose
5 a genuine dispute with regard to a material fact. Once this is done, the movant’s
6 burden is discharged, and it is then the respondent’s burden to set forth affirmative
7 evidence and specific facts showing that there is a genuine dispute on a material issue.
8 Celotex, 477 U.S. at 322-23. If the respondent fails to carry that burden, summary
9 judgment should be granted. A mere showing by the opposing party that there is some
10 “metaphysical doubt as to one of the material facts” is insufficient. Matsushita Elec.
11 Industry Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

12 **I. THE TRUSTEE HAS PROVEN ACTUAL INTENT TO DEFRAUD**
13 **UNDER CALIFORNIA CIVIL CODE SECTION 3439.04(A).**

14 **A. California Law Applies To The Fraudulent Transfers At Issue In The**
15 **Trustee’s Adversary Proceedings.**

16 Bankruptcy Code § 544(b) empowers the bankruptcy trustee with the state law
17 avoidance rights of a creditor. See 11 U.S.C. § 544(b); In re United Energy Corp., 944
18 F.2d 589, 593 (9th Cir. 1991) (“A bankruptcy trustee has the power to avoid fraudulent
19 transfers pursuant to state law and/or the provisions of the Bankruptcy Code”).

20 Accordingly, the Trustee may utilize California state law to avoid Slatkin’s fraudulent
21 transfers.

22 **B. Slatkin’s Guilty Plea Re Fraudulent Intent Is Dispositive.**

23 A transfer made by a debtor “with actual intent to hinder, delay, or defraud any
24 creditor of the debtor,” is a fraudulent transfer. See Cal. Civ. Code § 3439.04(a). The
25 test for determining actual intent requires an inquiry into the debtor’s subjective state
26 of mind. See In re Cohen, 199 B.R. 709, 716 (BAP 9th Cir. 1996). Actual intent can
27 be established through direct evidence or circumstantial evidence.

1 The direct evidence of Slatkin's state of mind is Slatkin's guilty plea and
2 confession that, beginning about 1986, he "knowingly and with intent to defraud,
3 planned and executed a scheme to defraud approximately 800 investors . . . of over
4 \$593 million." See SUF 7. Slatkin's guilty plea is a criminal conviction and, like a
5 jury verdict, is conclusive of every element of the crimes charged. See Boykin v.
6 Alabama, 395 U.S. 238, 242 (1969) ("A plea of guilty is more than a confession which
7 admits that the accused did various acts; it is itself a conviction "); Sieling v. Eyman,
8 478 F.2d 211, 213 (9th Cir. 1973) ("A plea of guilty is itself a conviction. Like a
9 verdict of a jury it is conclusive" (internal quotation marks omitted)); People v. Jones,
10 52 Cal. 2d 636, 651 (1959).²

11 The lesson of Boykin is the importance of insuring that constitutional safeguards
12 are properly administered by trial courts when taking guilty pleas. "What is at stake
13 for an accused facing death or imprisonment demands the utmost solicitude of which
14 courts are capable in canvassing the matter with the accused to make sure he has a full
15 understanding of what the plea connotes and of its consequence." Boykin, 395 U.S. at
16 243-44. Here, the district court followed the direction of the United States Supreme
17 Court and concluded that Slatkin's guilty plea was knowing and voluntary "When the
18 judge discharges that function, he leaves a record adequate for any review that may
19 later be sought . . . *and forestalls the spin-off of collateral proceedings that seek to*
20 *probe murky memories.*" Id. at 244 (emphasis added, citations omitted). Indeed, the
21 Supreme Court noted that "a majority of criminal convictions are obtained after a
22 guilty plea. If these convictions are to be insulated from attack, the trial court is best
23

24 ² This is consistent with the Federal Rules of Evidence, which provide that
25 "[e]vidence of a final judgment, entered after a trial or upon a plea of guilty" is
26 admissible as non-hearsay "to prove any fact essential to sustain the judgment."
27 See Fed. R. Evid. 803(22); see also Scholes, 56 F. 3d at 762 (stating that contents of
28 a Ponzi scheme principal's plea agreement are admissible as non-hearsay in civil
action against persons other than principal).

1 advised to conduct an examination” to ensure the defendant’s guilty plea is knowing
2 and voluntary. Id. at 244 n.7 (citations omitted).

3 The specifics of Slatkin’s guilty plea demonstrate that he had the subjective
4 intent necessary to satisfy Civil Code Section 3439.04(a). Slatkin pled guilty to crimes
5 including mail fraud and wire fraud, which both include “intent to defraud” as
6 elements. See 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud); Schreiber
7 Distributing Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1400 (9th Cir. 1986).
8 Furthermore, Slatkin’s Plea Agreement informed Slatkin that both mail fraud and wire
9 fraud include “intent to defraud” as an element. See Plea Agreement, ¶¶ 3(a) and (b).

10 Slatkin’s subjective intent to defraud was mirrored by the objective fraudulent
11 acts which he carried out. Slatkin admitted to a number of fraudulent acts in his Plea
12 Agreement. Those fraudulent acts include the following:

- 13 • Slatkin did not use the vast majority of investor funds to purchase securities
14 and cash instruments (See Plea Agreement, p. 27);
- 15 • Slatkin used investor funds for speculative business ventures or
16 misappropriated investor funds for his personal benefit and the benefit of his
17 family, friends, and business associates (See id.);
- 18 • Slatkin had to pay most investor withdrawals with funds solicited from other
19 investors (See id.);
- 20 • Slatkin sent account statements to investors which were misleading,
21 deceptive, and materially inaccurate (See id. at 26).

22 None of the defendants can dispute, with any amount of discovery, that Slatkin’s
23 guilty plea establishes that he had the subjective “intent to defraud” his creditors. See
24 In re Benskin, 161 B.R. 644, 648 (Bankr. W.D. Tenn. 1993) (in a trustee’s action to
25 recover transfers made by debtors involved in a Ponzi scheme, “[t]he debtors’ intent to
26 defraud creditors *was established* by the guilty pleas to the related criminal charges
27 and *preclusive effect* may be given to those guilty pleas as factual findings to the
28 extent that the debtors’ intent to defraud creditors is required in this adversary

1 proceeding" (emphasis added)); see also In re Randy, 189 B.R. 425, 439 (Bankr. N.D.
2 Ill. 1995) (holding that a criminal conviction for activities relating to a debtor's Ponzi
3 scheme was sufficient to establish the debtor's intent to defraud in subsequent civil
4 action by trustee).³

5 Slatkin's actual intent to defraud is proved also by his operation of a Ponzi
6 scheme. Importantly, however, the Trustee does not need to prove the existence of a
7 Ponzi scheme to prevail on this motion. Slatkin admitted to actually intending to
8 defraud creditors, separate from his operation of a Ponzi scheme.

9 Still, Slatkin's confession that he operated a Ponzi scheme confirms he had the
10 actual, subjective intent to defraud his creditors. See In re Agricultural Research and
11 Tech. Group, Inc., 916 F.2d at 535 ("The mere existence of a Ponzi scheme . . . has
12 been found to fulfill the requirement of actual intent on the part of the debtor.");
13 Conroy v. Shoff, 363 F.2d 90, 91-92 (6th Cir. 1966) (given a Ponzi scheme, the
14 "question of intent is not debatable."); In re Cohen, 199 B.R. at 717 ("Proof of a Ponzi
15 scheme is sufficient to establish the Ponzi operator's actual intent to hinder, delay, or
16 defraud creditors for purposes of actually fraudulent transfers . . ."); Floyd v. Dunson
17 (In re Ramirez Rodriguez), 209 B.R. 424, 433 (Bankr. S.D. Tex. 1997) ("As a matter
18 of law, the fraudulent transfers were made to the defendant with the actual intent to
19 hinder, delay or defraud later investors in debtors' scheme."); Martino v. Edison
20 Worldwide Capital (In re Randy), 189 B.R. 425, 439 (Bankr. N.D. Ill. 1995) (operation
21 of Ponzi scheme fulfills actual intent element); Emerson v. Maples (In re Benskin),
22 161 B.R. 644 (Bankr. W.D. Tenn. 1993) (same); In re Taubman, 160 B.R. 964, 983
23 (Bankr. S.D. Ohio 1993) ("It is appropriate to find actual intent from the Debtor's
24

25 Some of the defendants have at least acknowledged that Slatkin pled guilty to
26 "avoid certain criminal prosecution and prison time." See Pilmer Decl., Ex. 8
27 (Rosen Opp. To Writ of Attach. 18: 2). Slatkin's guilty plea did not allow him to
28 "avoid prison time." It sent him to jail, where he has been for more than six
months, and may remain for another decade.

1 active participation in a ponzi scheme.”); Merrill v. Abbott (In re Independent Clearing
2 House Co.), 77 B.R. 843, 860 (D. Utah 1987) (actual intent inferred from Ponzi
3 scheme -- “no other reasonable inference is possible.”); Scholes v. Lehman, 56 F. 3d
4 750, 762 (7th Cir. 1995) (“Taken together, the facts just recited, *most of which came*
5 *right out of Douglas’s plea agreement* . . . and of which the district court properly
6 took judicial notice . . . *established the defendants’ liability.* . . .”)

7 **II. THE TRUSTEE’S MOTION IS PROCEDURALLY PROPER**

8 **A. Partial Summary Judgment Is Proper When There Can Be No** 9 **Disputed Fact Regarding A Particular Issue.**

10 The Federal Rules of Civil Procedure acknowledge and contemplate summary
11 adjudication of narrow issues like the one presented in this motion. See Fed. R. Civ. P.
12 56(a) (permitting a party to move for summary judgment “upon all or any part” of a
13 claim). “Partial summary judgment that falls short of a final determination, even of a
14 single claim, is authorized by Rule 56 in order to limit the issues to be tried.” See
15 State Farm Fire & Cas. Co. v. Geary, 699 F. Supp. 756, 759 (N.D. Cal. 1987) (citing
16 Lines v. Farrell Lines, Inc., 641 F.2d 765, 768-69 & n.3 (9th Cir. 1981)). Motions like
17 this one “should have an economical effect in that ‘the length and complexity of trial
18 on the remaining issues are lessened, all to the advantage of the litigants, the courts,
19 those waiting in line for trial, and the American public in general.’” Moore’s Federal
20 Practice Guide 3d, § 56.40[2] (Matthew Bender 2002) (quoting Calpetco 1981 v.
21 Marshall Exploration, Inc., 989 F.2d 1408, 1415 (5th Cir. 1993)).

22 Here, one element of the Trustee’s actual fraudulent transfer claims is whether
23 Slatkin had the actual intent to defraud. Because there can be no dispute regarding that
24 issue, partial summary judgment should be granted. To hold a trial on whether Slatkin
25 subjectively intended to defraud his creditors would be an inefficient use of time and
26 resources for the Court, the estate, and the defendants.

27 **B. The Motion Is Timely.**

1 The defendants -- although they will argue to the contrary, because they must --
2 know that Slatkin was a fraud. In short, they don't even believe the story they will tell
3 this Court. See Pilmer Decl., Ex. 7(Gorham Letter) (calling Slatkin "an admitted liar
4 and felon").

5 Defendants Rosen, Hutchins, Henman-Laufer and Lonstein⁵ have even argued to
6 this Court that Slatkin was a fraud. For example, in support of her argument that no
7 *constructive* fraud is present, Rosen argues that "Slatkin was liable to investors *for*
8 *fraud*. . . His payments partially satisfied these obligations. [¶] Under California law,
9 Slatkin's investors had claims against him in tort and contract . . . California courts
10 recognize that tort damages are permitted in contract cases *where the contract was*
11 *fraudulently induced*. Under California law, the *false reports* from Slatkin to
12 investors constituted an account stated to each investor . . . [¶] Under California law,
13 *defrauded investors* have valid claims against Slatkin . . ." See Pilmer Decl., Ex. 8
14 Rosen Opp. To Writ of Attachment at 20: 17 - 21:16) (emphasis added and citations
15 omitted).⁶ This argument Rosen makes was the precursor to a lawsuit she, and 26
16 other net debtors, filed against Slatkin just ten days ago. See Pilmer Decl., Ex. 11
17 ("Complaint for Money Due - Account Stated").

18
19 ⁵ The Trustee moved for Right to Attach Orders and Orders for Issuance of Writs of
20 Attachment against these defendants. These defendants are represented by
21 Danning, Gill, Diamond & Kollitz, L.L.P., which represents the defendants in at
22 least 28 of the actions in which this motion for partial summary judgment is
23 brought. See Trustee v. William W. and Anne Hutchins, Adv. Proc. No. 02-1164;
24 Trustee v. Henman-Laufer, Adv. Proc. No. 02-1165; Trustee v. Lonstein, Adv.
25 Proc. No. 02-1176.

26 Hutchins, Henman-Laufer, and Lonstein make the identical arguments. See
27 Hutchins Opp. to Writ of Attachment at 16:17-17:16; Henman-Laufer Opp. to Writ
28 of Attachment at 16:22-17:22; Lonstein Opp. to Writ of Attachment at 17:13-18:12.
The language used in each of these oppositions regarding Slatkin's fraud is
identical to the Rosen opposition. For the convenience of the Court, copies of these
additional identical sections will not be submitted with this motion.

1 Indeed, Rosen, Hutchins, Henman-Laufer, Lonstein all have declared under
2 penalty of perjury that "As an innocent investor without knowledge of or involvement
3 with any of Slatkin's misdeeds, Plaintiff is suing me when *I am clearly a victim of*
4 *Slatkin. . . . I am the victim.*" (Pilmer Decl., Ex. 9 (Rosen Decl. ¶ 11)).⁷ Rosen also
5 submitted a declaration from Jack Dirmann. Mr. Dirmann swore under oath that "the
6 purpose of [a particular] meeting was for me to confront Slatkin with the fact that
7 Slatkin *had been lying to investors* regarding their requests to withdraw their funds
8 from the investment group." (Pilmer Decl., Ex. 10 (Dirmann Decl. ¶ 5)).⁸

9 The Court can and should adjudicate now the narrow issue presented by this
10 motion to expedite the litigation process. If the Court does not grant this motion, it
11 will merely delay the inevitable -- namely, a finding that Slatkin had actual intent to
12 defraud his creditors -- and increase the likelihood that the defendants will hide or
13 otherwise dispose of assets that should be returned to the Estate.

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23 Hutchins Decl. ¶ 9; Henman-Laufer Decl. ¶ 9; Tony Lonstein Decl. ¶ 9, Daniel
24 Lonstein Decl. ¶ 9, Aviran Lonstein Decl. ¶ 9, David Lonstein Decl., ¶ 9. Each of
25 these paragraphs contains the language quoted from Rosen's ¶ 11 (with the
26 exception that the Henman-Laufer Decl. is written in the plural). For the
27 convenience of the Court, copies of these additional identical declarations will not
28 be submitted with this motion.

27 Hutchins, Henman-Laufer, and Lonstein also submitted the same declaration by Mr.
28 Dirmann in their oppositions to the Trustee's motion for a right to attach order.

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CONCLUSION

For all the reasons stated above, the Trustee respectfully requests that his motion for partial summary judgment be granted.

Dated: November 18, 2002

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Attorneys for R. Todd Neilson,
Chapter 11 Trustee

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Chapter 11 Trustee

12
13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **NORTHERN DIVISION**

16 In re
17 REED E. SLATKIN,
18 Debtor.

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

19
20 R. TODD NEILSON, Trustee of the
Chapter 11 Bankruptcy Estate of Reed E.
21 Slatkin,
22 Plaintiff,

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

23 v.

24 LINDA ROSEN, an individual, and DOES
1-10,
25 Defendants.

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

33/14

STATEMENT OF UNCONTROVERTED FACTS

Fact

Source

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.
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.
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).
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).
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.
6. The Statement of Facts to the Plea Agreement includes Slatkin's admission that Slatkin
Plea Agreement, 23: 23-26.

1 Federal Rule of Civil Procedure 56 expressly permits parties to move for
2 summary judgment early in the life of a case: “A party seeking to recover upon a
3 claim . . . may, at any time after the expiration of 20 days from the commencement of
4 the action . . . move with or without supporting affidavits for a summary judgment in
5 the party’s favor upon all or any part thereof.” Fed. R. Civ. P. 56(a). Under this rule,
6 the Trustee could have filed this motion before any of the defendants answered the
7 complaint, much less conducted discovery.

8 **C. No Amount Of Discovery Will Alter Slatkin’s Confession That He**
9 **Actually Intended To Defraud His Creditors.**

10 The Trustee recognizes that many times summary judgment motions are brought
11 after lengthy (and often expensive) discovery has been conducted. Protracted
12 discovery benefits the lawyers, but not the litigants. The Trustee further expects that
13 the defendants will oppose this motion under Rule 56(f), feigning a need for discovery.
14 Nothing defendants could learn in discovery, however, could make a difference to this
15 motion.

16 The issue raised by this motion is whether Slatkin subjectively intended to
17 defraud his creditors. The Trustee, based upon Slatkin’s plea agreement, submits that
18 Slatkin did have the subjective intent to defraud. To defeat this motion, therefore,
19 defendants would have to submit evidence that Slatkin did *not* have the subjective
20 intent to defraud. Because Slatkin’s plea agreement constitutes *direct evidence* of his
21 subjective intent, the defendants would need to come up with some direct evidence of
22 their own to demonstrate that Slatkin actually had pure intent.

23 Presumably, therefore, defendants would seek to have Slatkin admit that he lied
24 in his plea agreement when he confessed to having the actual intent to defraud, that he
25 lied in his plea agreement when he confessed to running a ponzi scheme, and that he
26
27
28

Fact

Source

1
2 “operate[d] a massive ‘Ponzi’ scheme
3 whereby he defrauded his investors by paying
4 them returns largely with funds raised from
5 other investors.”

6 7. The Statement of Facts to the Plea Agreement Plea Agreement, 25: 21 - 25.
7 includes Slatkin’s admission that from 1986 to
8 May 2001, Slatkin “knowingly and with intent
9 to defraud, planned an executed a scheme to
10 defraud approximately 800 investors
11 throughout the United States of over \$593
12 million . . .”

13 8. On or about April 29, 2002, Slatkin appeared Request for Judicial Notice, Ex. 4
14 with counsel before Judge Morrow for (“Minutes”); Request for Judicial
15 arraignment. Notice, Ex. 3 (“Designation”).

16 9. At his arraignment, the court gave Slatkin a Request for Judicial Notice, Ex. 2
17 Statement of Defendant’s Constitutional (“Statement”).
18 Rights (“Statement”). The Statement listed
19 Slatkin’s constitutional rights and informed
20 him that, if he pled guilty, the court would
21 question him to ascertain whether his plea was
22 voluntary. The Statement also cautioned
23 Slatkin not to plead guilty unless he was, in
24 fact, guilty of the charges made against him in
25 the information. Slatkin and signed an
26 acknowledgment that he read and understood
27 the information in the Statement. Slatkin’s
28 attorney, Brian Sun, also signed the 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(e) (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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20 **UNITED STATES BANKRUPTCY COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **NORTHERN DIVISION**

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

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

31 Plaintiff,

32 v.

33 LINDA ROSEN, an individual, and DOES
34 1-10,

35 Defendants.

36 CASE NO. ND 01-11549-RR

37 CHAPTER 11

38 A.P. NO. 02-1166

39 **REQUEST FOR JUDICIAL NOTICE**
40 **IN SUPPORT OF TRUSTEE'S**
41 **MOTION FOR PARTIAL SUMMARY**
42 **JUDGMENT**

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

3/1/03

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).

1 have." See id. Finally, the statement also cautioned Mr. Slatkin not to plead guilty
2 unless he was, in fact, guilty of the changes made against him. See id.

3 Third, Mr. Slatkin was represented by two attorneys when he made his guilty
4 plea. See Ex. 3.

5 Fourth, when the court accepted his guilty plea, it found that Mr. Slatkin's plea
6 was voluntary and knowledgeable. See Ex. 4.

7 * * *

8 The Court should take judicial notice of the commencement of this bankruptcy
9 proceeding, the appointment of the trustee, and the filing and contents of Exhibits 1-4
10 because those facts are not subject to reasonable dispute.

11
12 Dated: November 18, 2002

Respectfully submitted,

13 KIRKLAND & ELLIS
14

15
16 By: Mark T. Cramer

Richard L. Wynne

R. Alexander Pilmer

Mark T. Cramer

17 Special Litigation Counsel for R. Todd Neilson,
18 Chapter 11 Trustee
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