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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. 02-1164

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

Plaintiff,

v.

WILLIAM W. and ANNE HUTCHINS,
individuals, and DOES 1-10,

Defendants.

**NOTICE OF MOTION AND MOTION
OF THE TRUSTEE FOR A RIGHT
TO ATTACH ORDER AND ORDER
FOR ISSUANCE OF WRIT OF
ATTACHMENT; MEMORANDUM
OF POINTS AND AUTHORITIES;
AND DECLARATIONS OF GRANT
NEWTON AND TIMOTHY B. JAFEK
IN SUPPORT THEREOF**

Date: October 25, 2002

Time: 10 a.m.

Place: 1415 State Street

Courtroom 201

Santa Barbara, CA 93101

[Judge Riblet]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 25, 2002, at 10 a.m. in Courtroom 201, plaintiff R. Todd Neilson will move the Court for a Right to Attach Order and Order for Issuance of Writ of Attachment. This Motion will be made upon this Notice, upon the grounds of good cause shown, upon the Memorandum of Points and Authorities and Declarations of Grant Newton and Timothy B. Jafek filed and served

1 herewith, upon the Notice of Application and Hearing for Right to Attach Order and
2 Writ of Attachment, upon the Application for Writ to Attach Order, etc., upon all
3 pleadings, papers and other matters on file with the Court, and upon such other and
4 further matters as may be presented to the Court at the time of hearing.

5 As discussed further in the accompanying memorandum of points and
6 authorities, the Right to Attach Order and Order for Issuance of Writ of Attachment
7 should be issued because defendants William W. and Anne Hutchins received net —
8 and fraudulent — transfers from Reed Slatkin of \$5,698,346.10 during the seven year
9 period prior to Slatkin's bankruptcy while Slatkin was running a Ponzi scheme.

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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **INTRODUCTION**

14 Beginning no later than 1986, and continuing into 2001, Reed Slatkin
15 ("Slatkin") obtained over \$500 million from hundreds of individuals under the
16 auspices of "investing" their money. In truth, Slatkin — as he has now admitted
17 was running an elaborate Ponzi scheme. Slatkin used the money obtained from
18 investors to, among other things, pay artificially high (and false) returns to earlier
19 investors. While Slatkin received approximately \$535 million from investors, a select
20 few of these "investors" (roughly 75 total) realized substantial profits, aggregating
21 approximately \$151 million. At the same time, the majority of the roughly 800
22 remaining investors lost most, if not all, of the money they entrusted to Slatkin.

23 Two of the "select few" investors who profited at the expense of the other
24 investors were William and Anne Hutchins (the "Hutchins"). Over the course of about
25 11 years, the Hutchins "invested" money with Slatkin. Slatkin paid the Hutchins
26 \$5,698,346.10 in net transfers (i.e., the total amount that Slatkin transferred to the
27 Hutchins, less the total amount that the Hutchins purportedly invested with Slatkin). In

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1 truth, these net transfers were not “profits” but were dollars that others had entrusted to
2 Slatkin to manage and invest on their behalf.

3 By accepting these “profits,” the Hutchins have received the fruits of a fraud.
4 As explained below, the transfers to the Hutchins were fraudulent, and thus under well-
5 established law must be returned to the bankruptcy estate. The Court should issue the
6 requested Right To Attach Order And Order for Issuance of Writ Of Attachment so
7 that the fruits of the fraud are not squandered or dissipated. The Trustee seeks to
8 attach \$5,698,346.10, the amount of net transfers to the Hutchins during the seven
9 years prior to Slatkin’s bankruptcy.

10 II.

11 STATEMENT OF FACTS

12 Slatkin engaged in a massive Ponzi scheme. See Newton Decl. at ¶ 4(a); Ex. 1
13 (Slatkin plea agreement). In or about September, 1990, the Hutchins began
14 “investing” with Slatkin, as part of this scam. See Newton Decl. at Ex. 2, transaction
15 3. Between the years 1990 and 2001, the Hutchins received net transfers from Slatkin
16 of \$5,698,346.10 See *id.* at ¶¶ 7 and 8. The money Slatkin paid to the Hutchins was
17 money Slatkin swindled from others as part of his Ponzi scheme.

18 The Trustee therefore filed the instant action. With this application, the Trustee
19 seeks a right to attach order and order authorizing a writ of attachment so that the
20 improperly-transferred funds can be returned to the Trustee and distributed among the
21 creditors.

22 III.

23 ARGUMENT

24 A right to attach order may issue upon a showing of the following:

- 25 • The claim upon which the attachment is based is one upon which an
26 attachment may be issued;
- 27 • The plaintiff has established the probable validity of the claim upon which
28 the attachment is based;

- The attachment is not sought for a purpose other than the recovery upon which the attachment is based; and
- The amount to be secured by the attachment is greater than zero.

See Cal. Code Civ. Proc. § 484.090(a).

A. Fraudulent transfers may be attached.

California's Uniform Fraudulent Transfers Act explicitly authorizes the provisional remedy of attachment in cases of fraudulent transfer. See Cal. Civ. Code § 3439.07(a)(2); see also Whitehouse v. Six Corp., 40 Cal. App. 4th 527, 532 (1995) ("A plaintiff who suspects that the defendant-debtor has fraudulently transferred assets in order to become judgment proof may also enforce its claim against the transferred property by way of a writ of attachment.") California law applies through Fed. R. Civ. Proc. 64.

B. The Trustee's claims are of probable validity.

To establish probable validity, the Trustee must merely show that "it is more likely than not that [it] will obtain a judgment against the defendant on that claim." Cal. Civ. Proc. Code § 481.190; Lorber Industries v. Turbulence, Inc., 175 Cal. App. 3d 532, 535 (1985). The Trustee has sued the Hutchins for various causes of action seeking to avoid fraudulent transfers of money and tangible personal property. The causes of action -- and the reasons for their validity -- are outlined in this section.¹

The Trustee may avoid transfers of money and tangible personal property by establishing that the debtor had an interest in the money transferred to the investor, and that the transfer was made with the "actual intent" to hinder, delay or defraud creditors. See Cal. Civ. Code § 3439.04(a); see also 11 U.S.C. § 548(a). Actual intent may be inferred from the mere existence of a Ponzi scheme, (see In re Agricultural Research and Technology Group, Inc., 916 F.2d 528, 535 (9th Cir. 1990); Scholes v. Lehman, 56

¹ The Trustee has brought causes of action for fraudulent transfers reaching back different periods of time (one, four, and seven years). See Complaint. The claims for each of these periods are \$327,489.94; \$4,992,981.04; and \$5,698,346.10; respectively. See Newton Decl. at ¶ 8; Ex. 2.

1 F.3d 750, 762 (7th Cir. 1995) (debtor's plea agreement, admitting charges of fraud,
2 was held admissible in a fraudulent transfer action against an investor)), or from "full
3 knowledge harm would come to the creditors." In re American Properties, Inc., 14
4 B.R. 637, 643 (Bankr. D. Kan. 1981).

5 Alternatively, the Trustee can recover under § 3439.04(b) by showing a
6 constructive fraud. In order to do so, the Trustee must show that: (1) the debtor had
7 an interest in the money transferred to the investor; (2) the transfers did not involve an
8 exchange of something of reasonably equal value; and (3) the debtor was engaged in a
9 business or transaction for which the remaining assets of the debtor were unreasonably
10 small in relation to the business or transaction, or the debtor intended or believed that it
11 would incur debts far greater than it would be able to pay when those debts became
12 due. See Cal. Civ. Code § 3439.04(b); see also 11 U.S.C. § 548 (allowing insolvency
13 as a third alternative element to (3) above).

14 The Trustee has demonstrated both actual and constructive fraud. As for the
15 first element of both (the debtor's interest in the money), Slatkin had an interest in the
16 transferred funds because "this money could have been used to pay other creditors,"
17 and its transfer "deprive[d] the bankruptcy estate of something which could otherwise
18 be used" to satisfy the claims of and antecedent debts owed to those other creditors. In
19 re Bullion Reserve, 836 F2d 1214, 1216-17 (9th Cir. 1988); see also In re M&L Bus.
20 Mach. Co., 160 B.R. 964, 982 (Bankr. D. Colo. 1993) ("possession" is sufficient).
21 This is evidenced by the fact that Slatkin paid the Hutchins net transfers of more than
22 \$5.6 million dollars, while depriving over 800 other "investors" of hundreds of
23 millions of dollars.

24 As for actual fraud, Slatkin has admitted repeatedly that he was running a Ponzi
25 scheme with the money he received from "investors." First, he did so in his plea
26 agreement with the United States Attorney. See Newton Decl. at ¶ 4(a); Ex. 1.
27 Second, he admitted to running a Ponzi scheme, and described it in more detail, in a
28 declaration filed in support of the Trustee's application for a right to attach order in a

1 different case. See Jafek Decl. at ¶ 2; Ex. 1, ¶¶ 3-7.² In any event, since Slatkin was
2 transferring money that others entrusted to him to invest on their behalf, he had to have
3 been working with full knowledge of the harm he was causing the creditors.

4 As for constructive fraud, Slatkin received no value, let alone “reasonably
5 equivalent” value for the “profits” he paid the Hutchins. See In re United Energy
6 Corp., 944 F2d 589, 595 n.6 (9th Cir 1991). Moreover, by virtue of running a Ponzi
7 scheme, and thereby paying the Hutchins and other investors high rates of “return,”
8 Slatkin knew that he was incurring debts far greater than he would be able to pay.

9 **C. The Trustee’s purpose for seeking the attachment is proper.**

10 The Trustee’s purpose in seeking an attachment is proper. The Trustee is
11 motivated solely by a desire to have any and all improperly-transferred property
12 returned to the Trustee, so that the moneys can be distributed fairly, appropriately, and
13 equitably among the legally-entitled creditors. The attachment, therefore, is sought
14 solely for the purpose of recovering on the claims upon which the attachment is based.
15 Plaintiffs harbor no improper purpose and are not motivated by any ill-will.

16 **D. The amount sought to be attached is greater than zero.**

17 The Trustee seeks to attach \$5,698,346.10, an amount greater than zero.

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27 ² This Court has already found that a writ of attachment is an appropriate provisional remedy in adversary proceedings
28 brought against those who profited from Slatkin’s Ponzi scheme. See Jafek Decl., ¶ 3, Ex. 2 (Right to Attach Order
and Order for Issuance of Writ of Attachment in R. Todd Neilson v. Anthony and Margaret Hitchman).

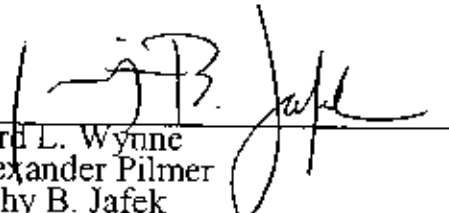
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IV.
CONCLUSION

For all the reasons stated above, the Trustee respectfully requests that this Court immediately issue a right to attach order and order for issuance of writ of attachment.

Dated: October 1, 2002

KIRKLAND & ELLIS

By: 
Richard L. Wynne
R. Alexander Pilmer
Timothy B. Jafek
Special Litigation Counsel for
R. Todd Neilson, Chapter 11 Trustee

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