

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Case No. 3:14-CV-513

JOSEPH W. GRIER, III, in his capacity as the court-appointed Receiver for James H. Mason, The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP) and Forex Trading At Home,

Plaintiff,

v.

STEPHEN H. GALLAGHER and LYNN J. GALLAGHER, both individually and in their capacity as Trustees of The Gallagher Family Trust,

Defendants.

**PLAINTIFF’S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR
PREJUDGMENT ATTACHMENT,
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiff Joseph W. Grier, III (“Plaintiff”), in his capacity as receiver for James H. Mason, The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP), Forex Trading At Home and related/affiliated entities (the “Receivership Entities”), by and through counsel, hereby files this *Memorandum of Law* in support of *Plaintiff’s Motion for Prejudgment Attachment, Temporary Restraining Order and Preliminary Injunction* (the “Motion”), and respectfully represent as follows:

I. INTRODUCTION

James H. Mason (“Mason”), from at least mid-2010 until March of 2013, operated a Ponzi Scheme under the guise of an off-exchange foreign currency trading venture through the Receivership Entities.

Stephen H. Gallagher and Lynn J. Gallagher (the “Gallaghers”), the largest “net winners” in Mason’s Ponzi Scheme, developed a close friendship with Mason during the course of Mason’s Ponzi Scheme and aided Mason in recruiting new victims for the scheme. Mason

professed to other investors that he loved the Gallaghers and would “do anything in [his] power to assist” the Gallaghers.

In July of 2012, Mason, through the Receivership Entities, misappropriated funds from innocent investors in order to purchase a new home for the Gallaghers located at 1835 Canyon Court, Allen, Texas 75013-4743 (the “Real Property”), which, until a couple weeks ago, was titled in the name of The Gallagher Family Trust (the “Gallagher Trust”). Mason also paid off car loans for the Gallaghers and outright purchased a new car for the Gallaghers while his Ponzi Scheme was in full swing. All in all, the Gallaghers deposited a total of \$86,150.00 with the Receivership Entities and withdrew \$362,150.00, resulting in \$276,000.00 of net winnings.

After his appointment as receiver for the Receivership Entities, Plaintiff, through counsel, has communicated with most of the net winners in Mason’s Ponzi Scheme—including the Gallaghers—in order to resolve Plaintiff’s claims against them without formal litigation. However, after negotiations with the Gallaghers stalled, Plaintiff informed the Gallaghers in early August that formal litigation appeared necessary to resolve Plaintiff’s claims.

Within weeks of Plaintiff’s indication that litigation would be necessary, the Gallaghers transferred the Real Property out of the Gallagher Trust and into their individual names for no apparent consideration. On information and belief, the Gallaghers completed such a transfer for the purpose of being able to claim a homestead exemption in the Real Property and thereby severely hinder Plaintiff’s ability to execute on a monetary judgment against the Gallaghers and the Gallagher Trust. In addition, within weeks of transferring the Real Property from the Gallagher Trust to the Gallaghers, the Gallaghers borrowed, upon information and belief, hundreds of thousands of dollars against the Real Property and executed a deed of trust in favor

of Generation Mortgage Company (“Generation Mortgage”), again for the purpose of disrupting Plaintiff’s ability to obtain a meaningful recovery for the Ponzi Scheme’s net losers.

While a motion seeking authority to sue net winners was pending before this Court, the Gallaghers fraudulently transformed unexempt Real Property encumbered only by a constructive trust in favor of Plaintiff and turned the same into property subject to a substantial lien and, arguably, protected by a homestead exemption. Plaintiff is informed and believes that the Gallaghers will continue to expend, waste and otherwise dispose of the proceeds from the Generation Mortgage loan (the “Mortgage Proceeds”) and other assets in an effort to thwart Plaintiff’s efforts to recover funds stolen from Mason’s victims.

Therefore, a writ of attachment should be imposed on the Real Property and any proceeds therefrom, including the Mortgage Proceeds, and any currently existing deposit accounts owned by the Gallaghers, including any deposit accounts held in the name of the Gallagher Trust (the “Deposit Accounts”), in order to preserve the status quo pending a final resolution of this matter. In addition or in the alternative, the Court should enter a temporary restraining order and preliminary injunction barring the Gallaghers from further dissipating the assets of, and otherwise hindering Plaintiff’s administration of, the estate of the Receivership Entities, including, without limitation, the Real Property, the Mortgage Proceeds and any funds or other assets traceable to the Receivership Entities.

II. PROCEDURAL AND FACTUAL BACKGROUND¹

Since the middle of 2010, Mason operated a classic Ponzi Scheme through the Receivership Entities, which have always been insolvent. *See* Martinez Aff., ¶ 5. In addition to Plaintiff’s attorney reaching this conclusion, the U.S. Commodity Futures Trading Commission,

¹ In addition to the verified Complaint initiating this action, the factual allegations in the Motion and this memorandum of law are supported by the *Affidavit of Michael L. Martinez* in support of the Motion filed contemporaneously herewith (the “Martinez Aff.”).

the North Carolina Department of the Secretary of State and the Office of the U.S. Attorney have determined that Mason was operating a Ponzi Scheme through the Receivership Entities. Further, as discussed below, Mason pled guilty to criminal charges arising out of his criminally fraudulent activities.

On March 27, 2013, the U.S. Commodity Futures Trading Commission filed a civil complaint (the “CFTC Complaint”) against Mason, as defendant, and The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP) and Forex Trading At Home, as relief defendants, initiating case number 3:13-cv-196 (the “CFTC Action”), in the United States District Court for the Western District of North Carolina (this “Court”).

In the CFTC Complaint, Mason is alleged to have fraudulently solicited, accepted and pooled funds to trade off-exchange foreign currency contracts and ultimately misappropriated a significant portion of those funds for purposes other than trading off-exchange foreign currency, in a typical Ponzi Scheme fashion, all in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.*

Also on March 27, 2013, this Court entered a Statutory Restraining Order in the CFTC Action (the “Restraining Order”) appointing Plaintiff as temporary receiver for the Receivership Entities. On May 22, 2013, this Court entered an Order of Preliminary Injunction in the CFTC Action (the “Preliminary Injunction”) appointing Plaintiff as receiver for the Receivership Entities.

On April 5, 2013, a criminal complaint was filed against Mason charging Mason with criminal fraud based on the same facts and circumstances alleged in the CFTC Complaint. Mason pled guilty to these charges on June 27, 2014.

Both the Restraining Order and Preliminary Injunction provide the following:

all [] persons or entities served with a copy of [the Restraining Order or Preliminary Injunction] shall cooperate fully with and assist [Plaintiff] in the performance of his duties. This cooperation and assistance shall include, but not be limited to, providing any information to [Plaintiff] that [Plaintiff] deems necessary to exercising the authority and discharging the responsibilities of [Plaintiff] under [the Restraining Order or Preliminary Injunction], [and] providing all keys, entry codes, PIN numbers, and combinations to locks necessary to gain access to any of the assets or documents of [the Receivership Entities].

The Gallaghers received copies of the Restraining Order on or around February 18, 2014 and again on May 9, 2014. *See* Martinez Aff., ¶¶ 7, 10.

During the negotiations between Plaintiff's attorney and the Gallaghers' attorney regarding Plaintiff's claims against the Gallaghers, the Gallaghers' attorney assured Plaintiff's attorney that the Real Property would not be transferred while the attorneys were working to resolve this matter. *See* Martinez Aff., ¶ 13.

In addition, Plaintiff and the Gallaghers subsequently executed an agreement whereby the parties agreed to "preserve the status quo between them as of June 30, 2014" (the "Tolling Agreement"). *See* Martinez Aff., ¶ 14.

Furthermore, shortly after the Gallaghers retained an attorney to represent them in their negotiations with Plaintiff, Plaintiff's attorney disclosed all, or a significant portion, of the email correspondence between Mason and the Gallaghers evidencing transfers to and from the Gallaghers and the Receivership Entities, including email correspondence relating to the purchase of the Real Property. *See* Martinez Aff., ¶ 12. Copies of most of such email correspondence were attached as exhibits to the verified Complaint.

Notwithstanding the foregoing, on July 30, 2014, the Gallagher Trust executed a general warranty deed transferring the Real Property to the Gallaghers in their individual capacity. *See* Martinez Aff., ¶ 6.

Then, on August 20, 2014, the Gallaghers executed a deed of trust encumbering the Real Property in favor of Generation Mortgage. *See* Martinez Aff., ¶ 6.

A substantial portion of the Mortgage Proceeds has already been spent by the Gallaghers, including by paying off unsecured debts owed by the Gallaghers to third parties. *See* Martinez Aff., ¶ 15.

Upon information and belief, the Gallaghers were insolvent, or became insolvent as a result of, the transfers from the Gallagher Trust to the Gallaghers and from the Gallaghers to Generation Mortgage. *See* Martinez Aff., ¶ 16.

On September 8, 2014, Plaintiff sent the Gallaghers yet another letter demanding immediate return of any assets held by the Gallaghers in trust for Plaintiff, including the Real Property and the Mortgage Proceeds. *See* Martinez Aff., ¶ 18. Plaintiff also reiterated in this letter that the Gallaghers' failure to cooperate with the Receiver's efforts to collect such assets—including the failure to freeze any further disposition of the Real Property or Mortgage Proceeds—could result in the Gallaghers being held in contempt of the Preliminary Injunction. *Id.* A copy of the Preliminary Injunction was enclosed with the letter. *Id.*

On September 9, 2014, this Court entered an *Order Reappointing Receiver and Authorizing Receiver to Initiate Actions Against Net Winners* in the CFTC Action (the "Reappointment Order") reappointing Plaintiff as receiver for the Receivership Entities and specifically authorizing Plaintiff to file lawsuits against any customer of Mason's who received withdrawals / distributions from the Receivership Entities in excess of the amount of principal paid to the Receivership Entities.

On September 10, 2014, copies of the CFTC Complaint and Reappointment Order were filed with the U.S. District Court for the Eastern District of Texas.

On September 17, 2014, Plaintiff filed his verified Complaint initiating the present action (the “Complaint”), seeking, *inter alia*, monetary damages for fraudulent transfers by the Gallaghers and a court order declaring that a constructive trust exists on (1) the Real Property, (2) the Mortgage Proceeds and (3) any other proceeds of transfers from the Receivership Entities. *See* Martinez Aff., ¶ 20. Plaintiff seeks damages in an amount not less than \$276,000.00. *Id.*

While the Gallaghers may dispute the specific amount of their liability, the Gallaghers have already admitted in writing to receiving more in value from the Receivership Entities than the Gallaghers ever deposited with the Receivership Entities. *See* Martinez Aff., ¶ 9.

The Gallaghers did not provide the Receivership Entities any legally sufficient value in exchange for their net winnings. *See* Martinez Aff., ¶¶ 5, 17.

Excluding the Real Property and the Mortgage Proceeds, the Gallaghers do not have assets available to satisfy a judgment entered against the Gallaghers in favor of Plaintiff. *See* Martinez Aff., ¶ 16.

The Mortgage Proceeds could have been transferred to any of the Deposit Accounts, including the Deposit Account at Compass Bank ending in . . . 8135.

III. ARGUMENT

A. JURISDICTION OVER THE REAL PROPERTY AND MORTGAGE PROCEEDS

1. Applicable Legal Standards

In federal receiverships, 28 U.S.C. §§ 754 and 1692 provide for extra-territorial service of process. *Quilling v. Grand Street Trust*, 2005 WL 1983879, at *2 (W.D.N.C. Aug. 12, 2005). Section 754 extends the territorial jurisdiction of the district court that appointed a receiver to any territory where property of the receivership estate is present so long as the filing

requirements of Section 754 are met. *Id.* Section 1692 then provides for service of process in any such district where Section 754 filings are properly made. *Id.* “The interaction of Sections 754 and 1692 provide the receivership court with *in rem* and *in personam* jurisdiction over all persons with minimum contacts to the districts where Section 754 filings are timely made.” *Quilling*, at *2; see also *S.E.C. v. Tanner*, 2006 WL 1128699, at *2 (2d Cir. Apr. 26, 2006) (determining that the purpose of 28 U.S.C. §§ 754 and 1692 is “to give the appointing court jurisdiction over property in the actual or constructive possession and control of the debtor, wherever such property may be located” (citing *Inland Empire Ins. Co. v. Freed*, 239 F.2d 289, 292 (10th Cir. 1956))).

2. This Court has Jurisdiction over the Real Property and the Mortgage Proceeds

On September 10, 2014, copies of the CFTC Complaint and Reappointment Order were filed with the U.S. District Court for the Eastern District of Texas, thereby vesting this Court with jurisdiction over persons who have minimum contacts with, and property located within, the Eastern District of Texas, including the Gallaghers, the Gallagher Trust, the Real Property and the Mortgage Proceeds.

B. WRIT OF ATTACHMENT

1. Applicable Legal Standards

Pursuant to Rule 64 of the Federal Rules of Civil Procedure, “[a]t the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs the extent it applies.” FED. R. CIV. P. 64(a). Rule 64 goes on to specifically include “attachment” as a remedy available in federal court if available in the forum state. *See* FED. R. CIV. P. 64(b). Accordingly, this Court must look to North Carolina

law² for guidance as to when pre-judgment interest is appropriate. *GMAC Mortgage, LLC v. Mathews*, 2011 WL 2694666, at *2 (W.D.N.C. Jul. 12, 2011).

In fraudulent transfer actions, the plaintiff may obtain a writ of attachment burdening the property transferred—or other property of the defendant—if the procedures set forth in Article 35 of Chapter 1 of the North Carolina General Statutes are followed. N.C. GEN. STAT. § 39-23.7(a)(2).³

Pursuant to Article 35 of Chapter 1 of the North Carolina General Statutes, attachment is appropriate where a defendant, “with intent to defraud his or its creditors . . . [h]as assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property.” N.C. GEN. STAT. § 1-440.3(5); *see also GMAC Mortgage*, at *2.⁴

Additionally, in order to obtain a writ of attachment, a plaintiff must meet the following procedural requirements:

- (1) post a bond—conditioned on either the dissolution of the writ of attachment or the plaintiff’s failure to obtain a judgment against the defendant—in an amount “deemed necessary by the court in order to afford reasonable protection to the defendant” but not less than \$200.00; and

² To the extent this Court desires to consider the attachment procedures provided under Texas law, the same are generally consistent with North Carolina’s attachment procedures, as shown in subsequent footnotes. The only material difference appears to be that Texas law requires a court hearing prior to entry of a writ of attachment.

³ In fraudulent transfer actions under Texas law, the plaintiff may obtain a writ of attachment burdening the property transferred—or other property of the defendant—if the procedures set forth in the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code are followed. TEX. BUZ. & COM. CODE § 24.008(a)(2).

⁴ Under Texas law, “[a] writ of original attachment is available to a plaintiff in a suit if: (1) the defendant is justly indebted to the plaintiff; (2) the attachment is not sought for the purpose of injuring or harassing the defendant; (3) the plaintiff will probably lose his debt unless the writ of attachment is issued; and (4) specific grounds for the writ exist under Section 61.002.” TEX. CIV. PRAC. & REM. CODE ANN. § 61.001 (Vernon 2013). Pursuant to Section 61.002 of the Texas Civil Practice and Remedies Code, attachment is appropriate where a defendant “has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors” or where a defendant “is about to convert all or part of his property into money for the purpose of placing it beyond the reach of his creditors.” TEX. CIV. PRAC. & REM. CODE ANN. § 61.002(7) & (8) (Vernon 2013).

(2) submit a verified complaint or affidavit demonstrating (A) the amount of the judgment sought; (B) the nature of the action; and (C) the grounds for the attachment.

N.C. GEN. STAT. §§ 1-440.10 & 1-440.11.⁵ In addition, the Court “shall have authority to fix and determine all necessary procedural details in all instances in which the statute fails to make definite provision as to such procedure.” N.C. GEN. STAT. § 1-440.9.

2. The Court Should Issue a Writ of Attachment Preserving the Real Property, the Mortgage Proceeds and the Deposit Accounts

As an initial matter, separate and apart from legal attachment procedures, the Real Property, the Mortgage Proceeds and any other proceeds of transfers from the Receivership Entities to the Gallaghers are, according to principles of equity, held by the Gallaghers as constructive trustees for the benefit of Plaintiff, as receiver for the Receivership Entities. As set forth more fully below, such assets, to which the Gallaghers currently hold bare legal title, are subject to immediate turnover under general principles of equity without having to resort to the legal process of attachment.

With respect to attachment procedures, the Gallaghers manipulated their assets in a flagrant attempt to keep their assets out of the hands of Mason’s victims. The transfers from the Gallagher Trust to the Gallaghers and the Gallaghers to Generation Mortgage occurred after:

- (1) Plaintiff’s attorney had spoken with the Gallaghers and the Gallaghers’ attorney several times regarding Plaintiff’s claims against the Gallaghers;
- (2) Plaintiff’s attorney and the Gallaghers’ attorney had exchanged written correspondence regarding the merits of Plaintiff’s claims against the Gallaghers;
- (3) The Gallaghers’ attorney assured Plaintiff’s attorney that the Gallaghers would not transfer their interest in the Real Property;

⁵ In order to obtain a writ of attachment under Texas law, a plaintiff must also meet additional procedural requirements, including the obligations to: (a) submit an affidavit stating the specific facts supporting the issuance of the writ; (b) schedule a hearing, even if on an ex parte basis, for the court to hear and consider the merits of the attachment; and (c) post a bond in an amount established by the court. *See* TEX. R. CIV. P. 592.

(4) The Gallaghers had executed the Tolling Agreement promising to preserve the status quo between the Gallaghers and Plaintiff;

(5) Plaintiff filed a motion for authority to sue the Gallaghers before this Court;

(6) The Gallaghers had received several copies of the Restraining Order and Preliminary Injunction directing them to comply with Plaintiff's efforts to marshal assets of the estate of the Receivership Entities; and.

(7) Plaintiff delivered to the Gallaghers copies of the email correspondence between Mason and the Gallaghers evidencing transfers to and from the Gallaghers and the Receivership Entities, including email correspondence relating to the purchase of the Real Property.

See Martinez Aff., ¶¶ 7–14, 18.

Notwithstanding their agreement to preserve the status quo and assurances that the Real Property would not be transferred, the Gallaghers failed to disclose to Plaintiff or otherwise seek Plaintiff's approval of the transfers from the Gallagher Trust to the Gallaghers and from the Gallaghers to Generation Mortgage. *See* Martinez Aff., ¶ 6. Upon information and belief, the Gallaghers were insolvent, or became insolvent as a result of, the transfers from the Gallagher Trust to the Gallaghers and from the Gallaghers to Generation Mortgage. Martinez Aff., ¶ 16.

Based on the foregoing, the Gallaghers have assigned, disposed of and/or secreted the Real Property and Mortgage Proceeds for the blatant purpose of defrauding Plaintiff and, by extension, the true victims of Mason's Ponzi Scheme. If the Gallaghers continue to fraudulently deplete assets held in their name, there will be little to no property available for Plaintiff to levy upon entry of a judgment against the Gallaghers.

Furthermore, because the Gallaghers merely hold the Real Property and Mortgage Proceeds subject to a constructive trust in favor of Plaintiff, preserving the status quo as to the Real Property and Mortgage Proceeds cannot cause any undue hardship for the Gallaghers.

With respect to attaching funds in the Deposit Accounts not traceable to the Receivership Entities, the Gallaghers' need to access such funds is outweighed by the need to make Mason's entirely innocent victims whole from the Gallaghers' recent fraudulent transfers. Moreover, had the Gallaghers' refrained from misappropriating funds belonging to Mason's victims, the Gallaghers would have used the funds now existing in the Deposit Accounts to make the payments that were made using the Mortgage Proceeds. As a result, Plaintiff has a superior right to such funds, at least for the imminent future.

A writ of attachment must be issued in order to preserve the Real Property, the Mortgage Proceeds and the Deposit Accounts. Pursuant to the procedures set forth in Article 35 of Chapter 1 of the North Carolina General Statutes, Plaintiff has filed with this Court a verified Complaint and affidavit demonstrating the amount of the judgment sought against the Gallaghers, the nature of this action and the grounds for the attachment. Considering that Plaintiff's deposit account for the estate of the Receivership Entities is already subject to the oversight of this Court, a bond in the amount of \$200.00 is sufficient to protect the Gallaghers' interests if the writ of attachment is subsequently dissolved or if Plaintiff fails to obtain a judgment against the Gallaghers. The Gallaghers can recover any other damages suffered from the issuance of the writ from the Receivership Entities' deposit account, which, unlike the Gallaghers' Deposit Accounts, is not subject to immediate dissipation.

C. TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

1. Applicable Legal Standards

In order for a preliminary injunction to issue, a plaintiff must establish: (1) a likelihood of success on the merits; (2) that plaintiff is likely to suffer irreparable harm without the issuance of a preliminary injunction; (3) that the balance of the equities are in plaintiff's favor; and

(4) that the injunction is in the public interest. *West Virginia Association of Club Owners and Fraternal Services, Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (citing *Winter v. Natural Resource Defense Council, Inc.*, 555 U.S. 7, 20 (2008)).

2. **The Court Should Issue a Temporary Restraining Order and Preliminary Injunction Freezing the Real Property, the Mortgage Proceeds and any funds or other assets traceable to the Receivership Entities**

In addition or in the alternative to the writ of attachment, Plaintiff seeks a temporary restraining order and subsequently a preliminary injunction restraining and enjoining the Gallaghers and the Gallaghers' agents, servants, employees, family members, friends and any and all persons acting in aid of or conjunction with the Gallaghers from spending, transferring, encumbering, distributing, dissipating or otherwise disposing of the Real Property, the Mortgage Proceeds and any funds or other assets traceable to the Receivership Entities, including, without limitation, freezing any Deposit Accounts held by the Gallaghers until such time as Plaintiff can conduct an accounting thereof.

(a) **Plaintiff is Likely to Succeed on the Merits**

Considering not only that Mason pled guilty to the criminal charges against him, but also that the persons and entities who have reviewed the Receivership Entities' financial records have unanimously concluded that Mason was operating a Ponzi Scheme through the Receivership Entities, Plaintiff will have little difficulty in proving Mason's fraudulent intent in transferring funds to the Gallaghers and in proving the insolvency of the Receivership Entities at the time of the transfers to the Gallaghers. In addition, Plaintiff attached banking records evidencing the transfers to and from the Gallaghers with the verified Complaint. Essentially, Plaintiff has already documented a *prima facie* case against the Gallaghers, including the Gallagher Trust, for

fraudulent transfers from Mason and/or the Receivership Entities in excess of the deposits made with the Receivership Entities.⁶

Based on the foregoing, the Court is likely to ultimately enter a judgment that: (a) the Gallaghers are liable to Plaintiff for their \$276,000.00 in net winnings; and (b) the Real Property—and any other asset(s) traceable to funds coming from the Receivership Entities—are subject to a constructive trust in favor of Plaintiff.

(b) Plaintiff is Likely to Suffer Irreparable Harm Without an Injunction

Absent entry of an injunction preventing the further dissipation of the Real Property and Mortgage Proceeds, the Gallaghers will continue to spend money rightfully belonging to the victims of Mason's Ponzi Scheme for their own exclusive benefit. Given that the Gallaghers have represented that they have no assets other than the Real Property and Mortgage Proceeds from which to satisfy a judgment in Plaintiff's favor, without an injunction barring further depletion of the Real Property and Mortgage Proceeds, Plaintiff will be irreparably injured by the lack of any assets on which to levy when a monetary judgment is entered in Plaintiff's favor.

Similarly, the Real Property, Mortgage Proceeds and other assets traceable to the Receivership Entities that Plaintiff seeks to preserve through the Motion are subject to a constructive trust and, thus, rightfully belong to Plaintiff. If the Gallaghers are permitted to continue to breach that trust by further disposition of such assets, Plaintiff will be irreparably

⁶ The Gallaghers could avoid fraudulent transfer liability or imposition of a constructive trust by proving that they received the transfers from the Receivership Entities in good faith and for reasonably equivalent value; however, in reviewing the Receivership Entities' books and records, Plaintiff has not identified any legally sufficient value provided by the Gallaghers in exchange for their net winnings. Likewise, in all of the discussions between Plaintiff's counsel and the Gallaghers or the Gallaghers' attorney, not once have the Gallaghers offered Plaintiff any evidence of legally sufficient value provided by the Gallaghers in exchange for their net winnings. Furthermore, given the Gallaghers' close relationship to Mason, the Gallaghers' excessive earnings from Mason and that their son accused Mason of operating a fraudulent scheme shortly after the purchase of the Real Property, the Gallaghers would be hard-pressed to show that they did not know that something was amiss with Mason's venture.

injured by the substituting of previously available assets held in trust with nothing more than an uncollectible claim or judgment against the Gallaghers for breaching that trust.

(c) The Balance of the Equities Weighs in Plaintiff's Favor

At the most basic level, the Gallaghers are net winners in a Ponzi Scheme who are playing games with assets titled in their name in an effort to prevent Plaintiff from maximizing the return for the net losers of the Ponzi Scheme. While the Gallaghers received \$362,150.00 on an investment of \$86,150.00, the vast majority of participants in Mason's Ponzi Scheme are net losers who will receive pennies per dollar on their investment with the Receivership Entities. In other words, while over 90% other investors are being permanently deprived of the use and enjoyment of most of their original investment with Mason, the entry of an injunction here would only temporarily deprive the Gallaghers of limited assets until Plaintiff can recover the ill-gotten profits exceeding the Gallaghers' original investment with Mason. Unlike other investors, the Gallaghers will be permitted to retain at least the value of the original principal invested with Mason.

In addition, by transferring interests in the Real Property and the Mortgage Proceeds, which are rightfully owned by Plaintiff as representative of the Receivership Entities, the Gallaghers: reneged on assurances to Plaintiff that they would not do so; violated certain provisions of the Restraining Order and Preliminary Injunction; breached a written contract entered into with Plaintiff to preserve the status quo; executed actually fraudulent transfers; and breach their duties as trustees of a constructive trust. The Gallaghers have engaged in inequitable and fraudulent conduct since Plaintiff reached out to try to resolve this matter with the Gallaghers and otherwise have unclean hands in their dealings with Mason, with the Receivership Entities and with Plaintiff.

Furthermore, because the Gallaghers merely hold the Real Property and Mortgage Proceeds subject to a constructive trust in favor of Plaintiff, preserving the status quo as to the Real Property and Mortgage Proceeds cannot cause any undue hardship for the Gallaghers. Accordingly, a balance of the equities weighs in favor of enjoining the Gallaghers from spending, transferring, encumbering, distributing, dissipating or otherwise disposing of the Real Property, the Mortgage Proceeds or any funds or other proceeds traceable to the Real Property and/or the Mortgage Proceeds, including, without limitation, freezing any Deposit Accounts until such time as Plaintiff can conduct an accounting thereof.

The Gallaghers, close friends of Mason's, who, upon information and belief, knew that Mason was operating a Ponzi Scheme through the Receivership Entities, should not be permitted to continue to spend money stolen from Mason's victims after already benefitting substantially from such stolen funds, including by buying the Real Property, paying off car loans and purchasing a new car. Therefore, the balance of the equities weighs in favor of entering the injunction sought by Plaintiff.

(d) Granting an Injunction Serves the Public Interest

Several important public policies would be served by the entry of the injunction sought by Plaintiff. First, entry of the injunction would discourage future fraudulent and opportunistic behavior by defendants holding property equitably belonging to another via a constructive trust or otherwise. Second and more generally, entry of the injunction would discourage future fraudulent and opportunistic behavior by any potential judgment debtor. Third, entry of the injunction would facilitate a more equitable distribution of assets to the victims of a Ponzi Scheme.

IV. CONCLUSION

Even if the Gallaghers did not know at first that their net winnings were derived from a Ponzi Scheme, their recent efforts to unduly disrupt Plaintiff's efforts to collect their net winnings by engaging in fraudulent transfers constitutes conduct nearly as culpable and conscience-shocking as Mason's operation of the Receivership Entities. For the reasons set forth herein, the Motion should be granted.

This is the 17th day of September, 2014.

/s/ Michael L. Martinez

Joseph W. Grier, III (N.C. State Bar No. 7764)
Anna S. Gorman (N.C. Bar No. 20987)
Michael L. Martinez (N.C. State Bar No. 39885)
Grier Furr & Crisp PA
101 North Tryon Street, Suite 1240
Charlotte, North Carolina 28246
704/375.3720 Telephone
704/332.0215 Fax
mmartinez@grierlaw.com

*Attorneys for Plaintiff Joseph W. Grier, III, as
Receiver for James H. Mason and related entities*