

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED

FEB 13 2019

Clerk, U.S. District Court
Texas Eastern

JENNIFER ECKLUND, RECEIVER

Plaintiff

§

§

§

v.

§

Ancillary Civil Action No.

§

4:18-cv-00359

ROBERT AND SANDRA BAILEY, et. al.

Defendants

§

§

**DEFENDANT TERESA EZELL'S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

TERESA K. EZELL ("EZELL"), Defendant herein, moves this Court for summary judgment on Plaintiff's claims pursuant to Federal Rule of Civil Procedure 56(c). In support of this motion, Defendant EZELL would sow as follows:

UNDISPUTED FACTS

1. Plaintiff filed her complaint against the Defendants, collectively named by Plaintiff "Winning Investors," seeking an order that the "Winning Investors" return funds received from BUCF and Wammel. Plaintiff alleges Defendants benefited from fraudulent transfer, constructive fraudulent transfer, unjust enrichment and constructive trust.

2. This Court issued a Memorandum Opinion and Order on August 15, 2017, saying “the Court finds that this is sufficient evidence to establish a Ponzi scheme” with regard to the alleged actions and evidence of activity by the defendants in the underlying case, *SEC v. Thurman P. Bryant, III, et al.*, Case No. 04:17-cv-00336-ALM.

3. The Plaintiff, as Receiver appointed in the course of *SEC v. Thurman P. Bryant, III, et al.*, established that more than \$44 million was raised from Bryant investors and Wammel investors.

4. Some investors in the BUCF and Wammel group profited from their investments, and are identified by the Plaintiff as “Winning Investors.” Plaintiff has included EZELL in the list of those so identified. “Winning Investors” are any individual investors who received sums equal to their initial investment principal, plus payments in excess of their respective initial investment principal.

5. Plaintiff alleges that these “Winning Investors” received funds in fraudulent transfers, as the funds received as returns or interest payments on the initial investment principal were actually principal funds received by the controlling entities – BUCF and Wammel – from other unwitting investors.

ARGUMENT

6. Rule 56(a) of the Federal Rules of Civil Procedure permits the entry of summary judgment “if the movant shows that there is no genuine dispute as to any

material fact and that the [movant] is entitled to judgment as a matter of law.” Because the Plaintiff, as non-movant, will bear the burden of proof at trial, Defendant EZELL in this motion only need show the Court that there is an absence of evidence to support the Plaintiff’s case – that is, the evidence is insufficient to establish an essential element of the Plaintiff’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Once the movant discharges its burden of identifying the basis of its contention of a right to judgment as a matter of law, the nonmoving party is not otherwise entitled to judgment as a matter of law. *Celotex*, at 324-326. Indeed, summary judgment must be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, at 322.

7. Plaintiff’s complaint names Defendant EZELL as a “Winning Investor,” which is not true. EZELL admits that she and her husband opened two accounts with the Bryant Defendants, as the alleged perpetrators are identified in the Plaintiff’s complaint, but that over the course of their business dealings with the Bryant Defendants these accounts bore a net loss of \$15,000.00. Since no payments were received “over and above the amounts they initially invested” (Complaint, ¶6) or “in excess of their respective investments” (Complaint, ¶7), Defendant EZELL cannot be correctly identified as a “Winning Investor” under the definition set forth by Plaintiff.

8. Two accounts were opened by Defendant EZELL and her husband, one with an initial principal balance of \$200,000.00 and the other with an initial principal balance of \$100,000.00, for a total of \$300,000.00 placed with the Bryant Defendants by EZELL and her husband.

9. Over the course of their contractual relationship with the Bryant Defendants, EZELL and her husband received a total of \$135,000.00 in earned returns, withdrew \$50,000.00 from the principal in the first account, and received the original \$100,000.00 in principal upon closure of the second account. Their initial deposits totaled \$300,000.00, but their returns – between returned principal and earned interest payments – only totaled \$285,000.00, for a net loss of \$15,000.00.

10. There are no net profits to be recovered, and so EZELL should not have been named a “Winning Investor” and should not be a Defendant in the instant matter. With a net loss there are no “transfers over and above their principal investment” (Complaint, ¶41) to be retrieved, and so Defendant EZELL should be dismissed from the instant lawsuit.

CONCLUSION AND PRAYER

11. Plaintiff's complaint fails to present evidence to establish an essential element of the claim against Defendant EZELL. Defendant EZELL should not be named as a “Winning Investor” due to her having received no payments “over and above the amounts they initially invested,” and actually having suffered a net loss

in her business relationship to the Bryant Defendants, and so the claims against Defendant EZELL fail and Defendant EZELL is entitled to summary judgment and dismissal from this lawsuit.

WHEREFORE, Defendant TERESA K. EZELL prays that the Court dismiss all of Plaintiff's claims against Defendant EZELL, and for such other and further relief to which she may show herself to be justly entitled.

Respectfully submitted this 11 day of February, 2019.



TERESA K. EZELL
6830 Alpine Street
Houston, Texas 77061
(81) 201-6859
tkezell000@aol.com

DEFENDANT PRO SE

CERTIFICATE OF SERVICE

I declare under penalty of perjury that I have mailed or delivered a copy of this motion to the following on this 11 of February, 2019:

Timothy E. Hudson
Thompson & Knight
1722 Roth Street, Suite 1500
Dallas, Texas 75201
tim.hudson@tklaw.com
Attorney for Plaintiff



TERESA K. EZELL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JENNIFER ECKLUND, RECEIVER	§	
<i>Plaintiff</i>	§	
	§	
v.	§	Ancillary Civil Action No.
	§	4:18-cv-00359
ROBERT AND SANDRA BAILEY, et. al.	§	
<i>Defendants</i>	§	

DEFENDANT TERESA EZELL'S AFFIDAVIT IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this date personally appeared the undersigned who, being first duly sworn hereby, did state as follows:

1. "My name is TERESA K. EZELL. I am over the age of 18 years and no laboring under any disabilities. I have personal knowledge of the facts and matters herein contained.
2. "My husband and I opened two accounts with the Bryant Defendants, as the alleged perpetrators are identified in the Plaintiff's complaint, one with an initial principal balance of \$200,000.00 and the other with an initial principal balance of \$100,000.00, for a total of \$300,000.00 placed with the Bryant Defendants by my husband and me.

3. “Over the course of our contractual relationship with the Bryant Defendants, my husband and I received a total of \$135,000.00 in earned returns.

4. “My husband and I withdrew \$50,000.00 from the principal in the first account, which had the original principal balance of \$200,000.00. The remaining principal balance of \$150,000.00 was never repaid and will never be returned.

5. “My husband and I received the original \$100,000.00 in principal upon closure of the second account.

6. “Our initial deposits totaled \$300,000.00, but our returns – between returned principal and earned interest payments – only totaled \$285,000.00, for a net loss of \$15,000.00.

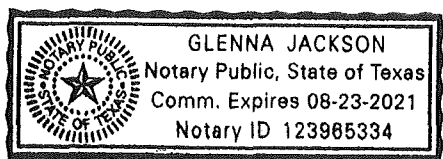
7. “There are no net profits to be recovered, and so I should not have been named a ‘Winning Investor’ by the Plaintiff’s definition, as set forth in the Complaint.”


FURTHER AFFIANT SAYETH NAUGHT.


TERESA K. EZELL

STATE OF TEXAS §
COUNTY OF HARRIS §

SUBSCRIBED and SWORN TO before me this 11th day of February, 2019, by TERESA K. EZELL.




Notary Public in and for the State of Texas

TERESA K. EZELL
6830 Alpine
Houston, Texas 77061
tkezell000@aol.com
Tel. (713) 201-6859

February 11, 2019

CM/rrr 7017 2620 0000 6735 2792
United States District Clerk
Civil Division
Paul Brown United States Courthouse
101 East Pecan St., Room 216
Sherman, Texas 75090

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FEB 13 2019

Clerk, U.S. District Court
Texas Eastern

RE: Cause No. 4:18-cv-359; Jennifer Ecklund, Receiver v. Robert and Sandra Bailey, et al.

Dear Clerk:

Enclosed you will find Defendant Teresa Ezell's Motion for Summary Judgment to be filed in the above entitled and numbered cause.

Please file this document with the other pleadings under this cause number.

I have enclosed a copy of the pleading and a self-addressed, stamped envelope and would respectfully request that you return my copy, file stamped, in the provided envelope for my records.

Thank you for your assistance in this matter.

Sincerely,

/s/ Teresa K. Ezell
Teresa K. Ezell

Encl.
Cc:
Timothy E. Hudson
CM/rrr 7017 2620 0000 6734 9686

Teresa K. Ezell
6830 Alpine Dr.
Houston, Texas 77061



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