UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION and OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS,

Plaintiffs,

v. **Case No: 6:16-cv-982-Orl-41GJK**

LIFE MANAGEMENT SERVICES OF ORANGE COUNTY, LLC, LOYAL FINANCIAL & CREDIT SERVICES, LLC, IVD RECOVERY, LLC, KWP SERVICES, LLC, KWP SERVICES OF FLORIDA LLC, LPSOFFLA LLC, LPSOFFLORIDA L.L.C., PW&F CONSULTANTS OF FLORIDA LLC, UAD SECURE SERVICES LLC, UAD SECURE SERVICE OF FL LLC, URB MANAGEMENT, LLC, YCC SOLUTIONS LLC, YFP SOLUTIONS LLC, KEVIN W. GUICE, CHASE P. JACKOWSKI, LINDA N. MCNEALY, CLARENCE H. WAHL, KAREN M. WAHL, ROBERT GUICE and TIMOTHY WOODS,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Receiver's Motion for Relief from Order ("Reconsideration Motion," Doc. 293) to which Defendant Kevin Guice, and his spouse, Shannon Guice (collectively, "the Guices")[1] filed a Response[2] (Doc. 298). Receiver also filed an Emergency Supplement to Receiver's Motion for Relief from Order (Doc. 354). For the reasons stated herein, the Reconsideration Motion will be granted.

I. BACKGROUND

The background of this case is set forth in detail in the Court's Order and Permanent Injunction (Doc. 225). (*Id.* at 2–4). Generally, the case involves Defendants' operation of a fraudulent enterprise engaged in selling debt-elimination services to consumers who had credit card debt, resulting in multiple violations of Section 5 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. § 53(b), the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201 *et. seq.*, and the Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.1 *et seq.* (*See generally id.*). Kevin "was the ringleader of [this enterprise]." (Sept. 24, 2019 Order, Doc. 292, at 2).

Just after inception of the case, the Court appointed a Receiver, granting Receiver "with the full power of an equity receiver" regarding the assets of the Corporate Defendants. (Temporary Restraining Order, Doc. 36, at 18). As part of his duties, Receiver filed a Motion to Compel Disgorgement of Assets from Kevin Guice and His Spouse, Shannon Guice, [and] to Impose a Constructive Trust ("Motion to Compel Disgorgement," Doc. 198). Therein, Receiver argues that Kevin obtained $8,593,352.60 as a result of the fraudulent enterprise in this case, which was

[1] Because Kevin Guice and Shannon Guice share a last name, the Court will hereinafter refer to these parties by their first names.

[2] The Response is signed by Shannon alone, but it is purportedly filed on behalf of Kevin and Shannon.

transferred to Kevin and Shannon's joint bank account and used to purchase, among other things, "a Porsche, [two] jet skis, their homestead, approximately [twenty] luxury watches, [two] guns, and other property." (*Id.* at 2). Receiver requests an order from this Court:

> (i) compelling the Defendant, Kevin Guice and his spouse, Shannon Guice, to return or disgorge $8,593,352.60 that they received from the Receivership Defendants, (ii) imposing a constructive trust over assets of the Guices, including their homestead property, (iii) compelling the Guices to turn over to the Receiver the assets over which the Court would impose a constructive trust, and (iv) authorizing the Receiver to liquidate the assets over which the Court has imposed the constructive trust.

(*Id.* at 1).

While the Motion to Compel Disgorgement was pending, this Court granted summary judgment in favor of Plaintiffs and against Kevin in the amount of $23,099,878.02 for his individual role in the fraudulent enterprise. (Doc. 225 at 36; Judgment in a Civil Case, Doc. 226, at 2). Along with the entry of judgment, the Court authorized Receiver to take possession of and liquidate a list of Kevin's personal property. (Doc. 225 at 39, 42).

United States Magistrate Judge Thomas B. Smith then issued a Report and Recommendation ("R&R," Doc. 239) in which he recommended that the Court grant the Motion to Compel Disgorgement. (*Id.* at 21). The Guices filed an Objection (Doc. 246), and Receiver filed a Response (Doc. 249). Prior to the Court ruling on the R&R, Shannon filed a Chapter 13 Bankruptcy Petition.[3] (Suggestion of Bankruptcy, Doc. 241, at 1). "Once an individual files a bankruptcy petition, all proceedings against the bankrupt estate are stayed during the pendency of the bankruptcy proceedings." *Sussman v. Estate of Gaffney (In re Sussman)*, 816 F. App'x 410, 414 (11th Cir. 2020) (citing 11 U.S.C. § 362). Accordingly, the Court denied without prejudice

[3] The Guices state that on July 1, 2019, Shannon's bankruptcy was converted to a Chapter 7 bankruptcy. (Doc. 298 at 2). This does not impact the issues currently before this Court.

the Motion to Compel Disgorgement insofar as the assets involved could implicate the interests of Shannon.[4] (Doc. 292 at 2). The Court indicated that Receiver could renew the Motion to Compel Disgorgement "upon the conclusion of the bankruptcy proceedings." (*Id.*).

Thereafter, Receiver filed the Reconsideration Motion, requesting relief from the Court's Order denying the Motion to Compel Disgorgement based upon the Bankruptcy Court's Order Granting Motion for Relief from Automatic Stay ("Bankruptcy Order," Doc. 293-2), wherein the Bankruptcy Judge orders that:

> The automatic stay is hereby modified to permit the district court to proceed to final adjudication with respect to the issues raised in and by the Receiver's Motion to Compel Disgorgement of Assets in the Enforcement Action; PROVIDED THAT, nothing herein shall operate to permit the Receiver to execute against any property of the Debtor's bankruptcy estate.

(*Id.* at 2 (emphasis in original)). Accordingly, the Court now finds it appropriate to reconsider its previous Order denying the Motion to Compel Disgorgement.

II. LEGAL STANDARD

District courts are afforded considerable discretion to reconsider prior decisions. *See Harper v. Lawrence Cnty.*, 592 F.3d 1227, 1231–32 (11th Cir. 2010) (discussing reconsideration of interlocutory orders); *Lamar Advert. of Mobile, Inc. v. City of Lakeland*, 189 F.R.D. 480, 488–89, 492 (M.D. Fla. 1999) (discussing reconsideration generally and under Federal Rule of Civil Procedure 54(b)); *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994) (discussing reconsideration under Rule 59(e) and Rule 60(b)). Courts in this District recognize "three grounds justifying reconsideration of an order: (1) an intervening change in controlling law;

[4] The Court also denied as moot the Motion to Compel Disgorgement insofar as it related to Kevin's individual assets because those assets were addressed by the Court's Order on summary judgment. (Doc. 292 at 2).

(2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." *McGuire v. Ryland Grp., Inc.*, 497 F. Supp. 2d 1356, 1358 (M.D. Fla. 2007) (quotation omitted); *Montgomery v. Fla. First Fin. Grp., Inc.*, No. 6:06-cv-1639-Orl-31KRS, 2007 WL 2096975, at *1 (M.D. Fla. July 20, 2007).

III. ANALYSIS

A. Opposition to the Reconsideration Motion

1. Local Rule 3.01(g)

As an initial matter, the Guices argue that the Reconsideration Motion should be denied because "Receiver did not make any attempts to contact" them to comply with Local Rule 3.01(g) prior to filing the Reconsideration Motion. (Doc. 298 at 1). Local Rule 3.01(g) commands that, subject to enumerated exceptions that do not apply here, "any motion in a civil case" shall contain a certification that the moving party conferred with the opposing party "in a good faith effort to resolve the issues raised by the motion."

Here, the Reconsideration Motion states that Receiver "made a reasonable effort to confer with all parties who may be affected by the relief requested herein[, and that] Kevin and Shannon Guice advise that they object to the relief requested herein." (Doc. 293 at 9). While it is not clear what Receiver means by "a reasonable effort to confer," (*id.*), "Local Rule 3.01(g) requires an actual conference; an attempt to confer is not sufficient." *Maronda Homes, Inc. v. Progressive Express Ins. Co.*, No. 6:14-cv-1287-Orl-31TBS, 2015 U.S. Dist. LEXIS 860, at *8–9 (M.D. Fla. Jan. 6, 2015); *Brewer v. Bank of Am., N.A.*, No. 6:12-cv-1633-Orl-37GJK, 2013 U.S. Dist. LEXIS 55005, at *2 (M.D. Fla. Apr. 17, 2013). Receiver claims that this conferral occurred, while the Guices claim that it did not. The Court need not decide what actually happened because, based on the Guices' Response, it is clear that they oppose the Reconsideration Motion. (*See generally* Doc.

298). Further, based on the time that has passed since the filing of the Reconsideration Motion, the Guices could have requested an extension of time to respond if they needed it, and they have not argued that they were prejudiced by the alleged lack of conferral. "As such, this Court will overlook Local Rule 3.01(g) to promote judicial efficiency and in the interest of justice" and will consider the merits of the Reconsideration Motion. *Sala v. St. Petersburg Kennel Club, Inc.*, No. 8:09-cv-1304-T-17-TBM, 2010 U.S. Dist. LEXIS 24964, at *6 (M.D. Fla. Mar. 2, 2010).

2. Procedural Argument

The Guices appear to argue that the Reconsideration Motion should be denied because the Bankruptcy Order only lifts the automatic stay to the permit this Court to rule on the R&R, which was previously denied without prejudice, and does not allow the Court to rule on the Reconsideration Motion. (Doc. 298 at 2 (arguing that "the modified and temporary lift of the [a]utomatic [s]tay from the bankruptcy is no longer in [e]ffect")). This argument is entirely without merit. The Bankruptcy Order makes clear that "[t]he automatic stay is hereby modified to permit the district court to proceed to final adjudication *with respect to the issues raised in and by the Receiver's Motion to Compel Disgorgement of Assets in the Enforcement Action*." (Doc. 293-2 at 2 (emphasis added)). The stay has plainly been lifted by Order of the Bankruptcy Court as to *the issues* presented in the Motion to Compel Disgorgement. Thus, these issues are proper for this Court to consider regardless of the previous ruling on the R&R. And, a motion for reconsideration is proper based on, *inter alia*, "the availability of new evidence; [or] the need to correct clear error or manifest injustice." *McGuire*, 497 F. Supp. 2d at 1358 (quotation omitted). Whether the Court considers the Bankruptcy Order to be new evidence not previously before the Court or the need to correct a manifest injustice, Receiver has met its burden for this Court to reconsider its previous Order.

3. Substantive Argument

Finally, in opposition to the Reconsideration Motion, the Guices state that "Shannon Guice personally was not involved or a named party in the case." (Doc. 298 at 2). While they cite no legal authority related to this argument, the Court will consider it in the context of the Guices' Objection to the R&R, in which they argue that joint assets of the Guices should not be included in a disgorgement because Shannon was not a defendant in this case and therefore not liable for the judgment. This is not a basis to deny reconsideration.

B. Bankruptcy Estate

As a threshold matter, the Bankruptcy Court's Order only lifts the automatic stay for the Court to rule on the Motion to Compel Disgorgement "PROVIDED THAT, nothing herein shall operate to permit the Receiver to execute against any property of the Debtor's bankruptcy estate." (Doc. 293-2 at 2). Thus, this Court must first determine whether the property at issue in the Motion to Compel Disgorgement would involve "property of the Debtor's, [i.e., Shannon's], bankruptcy estate." (*Id.*).

"Section 541(a)(1) of the Bankruptcy Code provides that the bankruptcy estate contains 'all legal or equitable interests of the debtor in property as of the commencement of the case.'" *Meeks v. Nalley (In re Nalley)*, 507 B.R. 411, 417 (Bankr. S.D. Ga. 2014) (quoting 11 U.S.C. § 541 (a) (1)). Shannon's bankruptcy case commenced on January 23, 2019, (Doc. 241 at 1), so the Court must determine what property was included in Shannon's bankruptcy estate at that time.

Under Florida law, "a constructive trust arises as a matter of law when the facts giving rise to the fraud occur." *In re Gen. Coffee Corp.*, 828 F.2d 699, 701 (11th Cir. 1987); *id.* at 702 ("[T]he Florida Supreme Court [has] implicitly recognized that a constructive trust exists from the moment the fraudulent transaction giving rise to it takes place." (citing *Wilkins v. Wilkins*, 198 So. 335

(1940)); *Graybill v. Thomas*, 806 F. App'x 920, 926 (11th Cir. 2020))). Put another way, the defrauder only takes "possession of [the fraudulently obtained assets] in trust for the use and benefit of [the defrauded party] and its receiver." *In re Gen. Coffee Corp.*, 828 F.2d at 702 (quoting *City of Sarasota v. Dixon*, 1 So. 2d 198, 201 (1941)). Thus, if this Court finds that a constructive trust arose for the assets at issue then that trust would be effective, as a matter of law, at the time that the underlying fraud occurred. The $8,593,352.60 in funds at issue in the Motion to Compel Disgorgement were transferred between January 2, 2013, and June 8, 2016, (Transaction Details, Doc. Nos. 198-1–198-9), all prior to Shannon's bankruptcy petition, (Doc. 241 at 1). Accordingly, these funds and the property acquired with the funds, would not be encompassed within Shannon's bankruptcy estate.

Accordingly, the Court will reconsider its previous Order and address the merits of the Motion to Compel Disgorgement and the R&R thereon.

C. Objections to the R&R

The Guices assert several specific objections to the R&R. The Court will address each in turn.

1. Fraudulent Transfers

The R&R recommends that "all of the transfers at issue are constructively fraudulent under Florida law." (Doc. 239 at 8). As explained in the R&R, to prove a claim of constructive fraudulent transfer under Florida law, "the Receiver must show (1) that the Receivership Defendants transferred assets to the Guices; (2) that the Receivership Defendants did not receive a reasonably equivalent value in return for the assets they transferred to the Guices, and (3) that at the time of the transfers, the Receivership Defendants either (i) were engaged or about to engage in a business for which their remaining assets were unreasonably small in relation to the business, or (ii)

intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due." (*Id.* at 6–7; *see* Fla. Stat. § 726.105(1)(b)). The first objection asserts that none of the identified fraudulent transfers were made to Shannon, and therefore, that "the first element of a constructively fraudulent transfer has not been proven as to [Shannon]." (Doc. 246 at 7). For various reasons, the Guices object to each piece of evidence on the record cited by the Magistrate Judge in support of a finding that Shannon received the identified funds.

The Court need not look at each particular objection to the evidence cited because it is clear from the record evidence that Shannon did indeed receive and use these funds. While the Magistrate Judge relied, at least in part, on the statements of Receiver's counsel during a hearing on the Motion to Compel Disgorgement (Min. Entry, Doc. 228; Transcript, Doc. 230) in which counsel cited to portions of Shannon's deposition testimony, the Court now has the benefit of having Shannon's full deposition transcript on the record. (Doc. 239 at 10 (ordering Receiver to file Shannon's deposition transcript on the record); Shannon's Dep., Doc. 240-1). In her deposition, Shannon testified that her name was on the relevant bank accounts and that she received bank statements for those accounts and had the ability to—and indeed did—make transfers out of those bank accounts. (Doc. 240-1 at 31). And to the extent that the Guices argue that the record does not show that Shannon received each and every single transfer amounting to the total $8,593,352.60, this is unnecessary for a finding of constructive fraudulent transfer under Florida law. Under Florida's Uniform Fraudulent Transfer Act, "judgment [may] be entered against '[t]he first transferee of the asset *or the person for whose benefit the transfer was made.*'" *Perlman v. Five Corners Inv'rs I, LLC*, No. 09-81225-CIV, 2010 U.S. Dist. LEXIS 26915, at *11 (S.D. Fla. Mar. 15, 2010) (quoting Fla. Stat. § 726.109(2)(a)). Shannon admitted that she benefitted from the

funds. (Doc. 240-1 at 24, 26–27, 33, 38–41, 47–48, 50, 76–78). Therefore, this objection is overruled. For the reasons stated in the R&R, as supplemented here, Receiver has established the elements of constructive fraudulent transfer under Florida law.

2. Unjust Enrichment / Disgorgement

The R&R recommends that "Receiver has established all the requirements for application of the doctrine of unjust enrichment." (Doc. 239 at 11). As set out in the R&R, the "elements of unjust enrichment are that defendant knowingly received a benefit, accepted and retained the benefit, and equity requires the return of the benefit." (*Id.* at 8 (citing *Fito v. Attorneys' Title Insurance Fund, Inc.*, 83 So. 3d 755, 758 (Fla. 3d DCA 2011)). The Guices argue both that Shannon did not receive the transfers and that even if she did, she did not knowingly receive them, a required element of the claim.

At the outset, the Guices' argument appears to misinterpret the requirement for this element of an unjust enrichment claim. They argue that "Receiver has to prove that [Shannon] not only received transfers, but that she knowingly received them." (Doc. 246 at 8). This is incorrect. This element requires only that Shannon knowingly received a benefit, not that she knowingly received the actual transfers. *State Farm Mut. Auto. Ins. Co. v. A & J Med. Ctr., Inc.*, 20 F. Supp. 3d 1363, 1368 (S.D. Fla. 2014) ("[U]njust enrichment claims are not precluded merely because the benefit passed through an intermediary before being conferred on a defendant." (citing cases) (citations and quotations omitted)). Thus, even assuming *arguendo* that Shannon did not know about the specific transfers, for the reasons explained above, the record evidence supports a finding that Shannon knowingly benefitted from the funds at issue. (Doc. 240-1 at 31; *see also* Doc. 239 at 11 (noting the "large amounts of money involved" and "the absence of any articulated legitimate source of the income")). Therefore, this objection is overruled. For the reasons stated in the R&R,

as supplemented here, Receiver has established the elements of unjust enrichment under Florida law.

3. Constructive Trust

The R&R recommends that the Court order disgorgement of the $8,593,352.60 and impose a constructive trust over the Guices' property, including their homestead. (Doc. 239 at 21). The Guices object that the imposition of a constructive trust over all of the Guices' assets, regardless of traceability, is beyond the remedy permitted by law. Specifically, as to the statutory authority of the Florida Uniform Fraudulent Transfers Act ("FUFTA"), the Guices argue that a "constructive trust over all assets of a transferee is well in excess of the remedies allowed or envisioned under FUFTA." (Doc. 246 at 10). Relatedly, the Guices argue that "Florida law is clear that a constructive trust may be imposed only where the trust res is specific, identifiable property or if it can be clearly traced in assets of the defendant." (*Id.* (quoting *Absolute Activist Value Master Fund Ltd. v. Devine*, No. 2:15-cv-328-FtM-29MRM, 2017 U.S. Dist. LEXIS 115463, at *16 (M.D. Fla. July 25, 2017)).

As explained in the R&R, "[u]nder [FUFTA], the Court has broad powers to fashion appropriate relief." (Doc. 239 at 14). Among the remedies available under the Act, the Court may order "[a]ny other relief the circumstances may require." Fla. Stat. § 726.108(1)(c)(3). The Guices admit that this statute applies here, but they argue that the R&R has interpreted this provision too broadly and that this "provision is generally used to justify the entry of a money judgment." (Doc. 246 at 10). Assuming *arguendo* that this statutory provision *is generally* used as authority for entry of a money judgment, this argument certainly does not preclude its application to the order of an equitable remedy. The plain language of the statutory provision is simply not so limited. *Amador v. Town of Palm Beach*, 517 F. App'x 834, 836 (11th Cir. 2013) ("As a general rule, statutory

interpretation begins with the plain meaning of the statute." (quoting *Fla. Birth-Related Neurological Injury Comp. Ass'n v. Dep't of Admin. Hearings*, 29 So. 3d 992, 997 (Fla. 2010))).

As to the traceability argument, the Guices' objection is well-taken. "It is well settled that Florida courts will impress property with a constructive trust only if the trust res is specific, identifiable property or if it can be clearly traced in assets of the defendant which are claimed by the party seeking such relief." *Bender v. Centrust Mortg. Corp.*, 51 F.3d 1027, 1030 (11th Cir. 1995) (quoting *Finkelstein v. Se. Bank, N.A.*, 490 So. 2d 976, 983 (Fla. 4th DCA 1986)). Thus, the Court cannot rely on Florida law to impose a constructive trust unless the property covered by the trust can be traced to the ill-gotten funds.

The legal authority cited in Receiver's Response does not support a contrary conclusion. First, Receiver cites a provision of FUFTA that permits "[a]n attachment or other provisional remedy against the asset transferred *or other property of the transferee* in accordance with applicable law." Fla. Stat. § 726.108 (emphasis added). However, this provision is qualified such that it must still be "in accordance with applicable law." *Id.* The applicable law—Florida law—does not permit a constructive trust absent the tracing element. *Bender*, 51 F.3d at 1030. Second, Receiver cites *SEC v. Lauer*, 445 F. Supp. 2d 1362 (S.D. Fla. 2006). But *Lauer* relies on the Exchange Act, 15 U.S.C. § 78u(d)(5), and federal common law for the authority to freeze assets, not Florida common law. *Id.* at 1367. Here, Receiver has asserted two claims in support of its request for a constructive trust—constructive fraudulent transfer and unjust enrichment—both of which are state law claims. Therefore, as Receiver's request is currently couched in Florida law, the Court may not order a constructive trust over all of the Guices' assets unless those assets can be traced to money obtained through the fraudulent scheme. *Bender*, 51 F.3d at 1030.

4. Homestead

The R&R recommends that "[t]he Court has good cause to impose an equitable lien and constructive trust on the homestead and any other property the Guices own as tenants by the entirety." (Doc. 239 at 20). The Guices assert several objections related to their homestead. First, they object that "[n]one of the other evidence in the record shows funds travelling from the Defendants into the homestead." (Doc. 246 at 13). Second, the Guices assert that even if the funds are traceable, Kevin did not act egregiously, and therefore, the homestead cannot be reached. Finally, the Guices argue that their homestead is protected because they hold it as a tenancy by the entirety.

"Under Florida law, an equitable lien may be imposed on a homestead 'where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.'" *Graybill*, 806 F. App'x at 926 (quoting *Havoco of Am., Ltd. v. Hill*, 790 So. 2d 1018, 1028 (Fla. 2001), *opinion after certified question answered*, 255 F.3d 1321 (11th Cir. 2001)). Thus, this Court can certainly impose an equitable lien on the homestead. The only requirements are that the funds must have been "obtained through fraud or egregious conduct" and used to purchase the homestead. As to the first element, the summary judgment Order explains: "[Kevin] has formed multiple corporate entities to facilitate and attempt to conceal his violations, he has continuously denied any wrongdoing, and his violations were egregious and recurrent over several years, despite numerous consumer complaints, as well as investigations and inquiries by state authorities." (Doc. 225 at 34 (citation and internal quotations omitted)). This element is met. As to the traceability element, Receiver asserts that it "has traced 'dirty money' into the Guices' homestead through June 8, 2016, the date of the Receiver's appointment," and relies on its declaration in support.

(Doc. 249 at 12). Receiver's Declaration[5] (Doc. 199-1) traces the money from the fraudulent activity into the Guices' bank accounts. (*See generally id.*). The Guices then withdrew $207,000 from their account on the day they purchased their homestead. (*Id.* at 7). Thus, Receiver has sufficiently traced the money gained by Kevin's fraudulent activities and used to purchase the Guices' homestead.[6]

As to the objection regarding tenancy by the entirety, the Guices continue to argue that Shannon was an innocent spouse and therefore her interest in the homestead cannot be reached. As explained above and in the R&R, Shannon was not an innocent spouse in terms of benefitting from the proceeds of the fraudulent activity. (Doc. 240-1 at 31; *see also* Doc. 239 at 11 (noting the "large amounts of money involved" and "the absence of any articulated legitimate source of the income")). This argument fails, and the remaining arguments on this objection have been fully addressed above and in the R&R. The homestead can be included in the constructive trust.

5. Doctrine of In Pari Delicto

Finally, the Guices argue "that the *in pari delicto* doctrine 'bars recovery by a corporation whose shareholder is engaged in wrongdoing.'" (Doc. 246 at 15 (quoting *Wiand v. Waxenberg*, 611 F. Supp. 2d 1299, 1311 (M.D. Fla. 2009)). Specifically, the Guices argue that this doctrine applies to the Corporate Defendants, and therefore Receiver is also "taint[ed]." (*Id.*). This argument is incorrect. As explained in the R&R, "[a]fter a corporation, which was used by its principals to defraud investors, has been 'cleansed' through receivership the corporation has viable claims against the principals or the recipients of fraudulent transfers of corporate funds to recover

[5] To the extent that the Guices argue that Receiver's Declaration "is replete with hearsay," (Doc. 246 at 5), the Court has only relied on statements in the declaration supported by record evidence.

[6] Receiver has also appropriately traced the ill-gotten gains transferred into the Guices' bank accounts and used for improvements to the homestead.

assets rightfully belonging to the corporation and taken prior to the receivership." (Doc. 239 at 6 (quoting *Sallah ex rel. MRT LLC v. Worldwide Clearing LLC*, 860 F. Supp. 2d 1329, 1334 (S.D. Fla. 2011) (internal citation omitted))). And the legal authority cited by the Guices supports this exact conclusion—"the corporation was 'cleansed' by the appointment of the Receiver and was no longer the perpetrator's 'evil zombie.'" *Wiand*, 611 F. Supp. 2d at 1312 (citation omitted). Indeed, it is the appointment of Receiver that has cleansed the Corporate Defendants, and the Guices have presented no evidence whatsoever that Receiver has been tainted.

IV. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

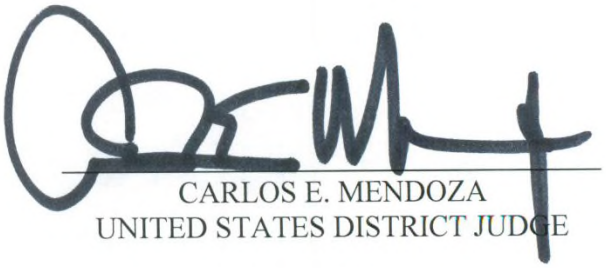
1. Receiver's Motion for Relief from Order (Doc. 293) is **GRANTED**.
2. The Court's September 24, 2019 Order (Doc. 292) is **VACATED** to the extent that it applied to the interests of Shannon Guice.
3. The Report and Recommendation (Doc. 239) is **ADOPTED** and **CONFIRMED in part** as identified herein.
4. Receiver's Motion to Compel Disgorgement of Assets from Defendant Kevin Guice and His Spouse, Shannon Guice, to Impose Constructive Trust, and for Other Equitable Relief (Doc. 198) is **GRANTED in part**.
    a. Kevin Guice and Shannon Guice, jointly and severally, **SHALL RETURN OR DISGORGE $8,593,352.60** that they received from the Receivership Defendants.
    b. On or before December 14, 2020, Kevin Guice **SHALL** update his financial disclosure.

c. A constructive trust is imposed over the Guices' homestead located at 3609 Oriskany Drive, Orlando, Florida 32820. Receiver is authorized to take control of the property for the purpose of liquidating it into cash.

d. As to any other property or assets of the Guices for which Receiver can trace the ill-gotten gains to the purchase of the property or assets, Receiver may file a motion detailing such tracing and this property can then be placed into the constructive trust to be liquidated.

e. The Motion is otherwise denied.

DONE and **ORDERED** in Orlando, Florida on November 30, 2020.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record