IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

OFFICIAL COMMITTEE OF UNSECURED CREDITORS	:	CIVIL ACTION
v.	:	
WILLIAM SHAPIRO, et al.	:	No. 99-526

MEMORANDUM

Ludwig, J. November 16, 2001

This securities fraud action[1] arises out of a Ponzi scheme alleged to have been conducted by defendants,[2] who occupied various relationships in respect to two now bankrupt lease financing corporations. Motions to dismiss claims against two of the defendants, an accounting firm and an underwriter, who were outside providers, were previously granted and the action against them severed. On October 9, 2001, the dismissals were affirmed on appeal by a divided panel that upheld the application of the doctrine of *in pari delicto* to the derivative claims of the two corporate debtors. On October 30, 2001, the remaining defendants moved for judgment on the pleadings,[3] Fed. R. Civ. P. 12 (c), and the controlling insider defendants to stay discovery

[1] The detailed history of this proceeding is set forth in Official Committee of Unsecured Creditors v. William Shapiro, et al., No. 99-526, slip op. (E.D.Pa. Sept. 8, 1999) aff'd, Official Committee of Unsecured Creditors v. R. F. Lafferty & Co., Inc., 267 F.3d 340, 362 (3d Cir. 2001) (dismissing claims against defendant R. F. Lafferty & Co. Inc). On February 14, 2001, claims against defendant Cogen Sklar, L.L.P. were also dismissed.

[2] Remaining defendants are William Schapiro, Kenneth S. Shapiro, Deljean Shapiro, Lester Shapiro, Nathan Tattar, John B. Orr, Adam Varrenti, Jr., Philip Bagley, The Law Offices of William Shapiro, Esq., P.C., and Liss Financial Services, Inc.

[3] The Rule 12 (c) standard is the same as a motion to dismiss under Rule 12(b)(6). Turbe v. Government of Virgin Islands, 938 F.2d 427, 428 (3d Cir. 1991). As with Rule 12(b)(6), all allegations in the complaint are accepted as true and all reasonable inferences drawn in favor of the plaintiff. Id. A complaint should be dismissed only if no relief could be granted under any set of facts. Turbe, 938 F.2d at 428 (citing Unger v. National Residents Matching Program, 928 F.2d 1392, 1394-95 (3d Cir.1991).

that was directed in a rigorous case management order entered August 1, 2001.[4] Jurisdiction is federal question and supplemental. 28 U.S.C. §§ 1331, 1334 (b), 1367. The motions will be denied.[5]

The recent opinion of our Court of Appeals panel majority does not justify or lead to reconsideration of the principled finding that: "Vis-a-vis their corporations, insiders cannot avoid the consequences of their own handiwork." Official Committee of Unsecured Creditors v. William Shapiro, et al., No. 99-526, slip op. at 12 (E.D.Pa. Sept. 8, 1999). The majority did not consider the effect of *in pari delicto* on corporate insiders.[6] It does not follow that because the claims against two outsider defendants were dismissed, the claims against the debtor corporations' officers and directors should also be dismissed. "*In pari delicto* bars claims against third parties, but does not apply to corporate insiders or partners." In re Granite Partners, L.P., 194 B.R. 318, 332 (S.D.N.Y. 1996). Unlike outside consultants and advisors, insiders exercise control over a corporation and should not benefit from *in pari delicto,* which is an equitable defense.

The motion for a stay pending the outcome of the motion for judgment on the pleadings will also be denied as moot.

Edmund V. Ludwig, J.

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[4]Only the "Shapiro Defendants," William and Kenneth Shapiro, in their individual capacities, and the Law Offices of William Shapiro, Esq., P.C., join in the filing of the "Motion for a Protective Order and/or Stay of Discovery."

[5] No ruling is made as to defendants The Law Offices of William Shapiro, Esq., P.C. and Liss Financial Services, Inc.

[6] Movants rely on the dissent in Official Committee of Unsecured Creditors v. R. F. Lafferty & Co., Inc., 267 F.3d 340, 362 (3d Cir. 2001), which criticized the majority's *in pari delicto* analysis as equally applicable to both outsiders and insiders.

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ORDER

AND NOW, this 16th day of November, 2001, in accordance with the accompanying memorandum, the following is ordered:

1. The motion by remaining defendants for judgment on the pleadings, Fed. R. Civ. P. 12 (c), is denied.

2. The motion by defendants William and Kenneth Shapiro, in their individual capacities, and The Law Offices of William Shapiro, Esq., P.C. for "a Protective Order and/or Stay of Discovery" is denied.

3. The case management order dated August 1, 2001 and all subsequent discovery directives issued by Special Master Seymour Kurland, Esq. shall remain in effect. The parties shall make full compliance.

4. The next Rule 16 Conference will be held on November 20, 2001 at 4:00 p.m. in Courtroom 12-A (changed from November 27, 2001 at 5:30 p.m.).

Edmund V. Ludwig, J.