

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

DAVID H. MARION, as Receiver : CIVIL ACTION  
for Bentley Financial Services, :  
Inc. :  
 :  
v. :  
 :  
TDI, INC. (f/k/a Traders and :  
Dealers, Inc., f/k/a The :  
Trading Desk, Inc. and f/k/a :  
U.S. Central Securities, Inc.), :  
SOUTHEASTERN SECURITIES, INC., :  
SFG FINANCIAL SERVICES, INC., :  
PENINSULA BANK, THEODORE :  
BENGHIAI, CASTO EDWIN RIVERA, :  
JERRY MANNING, JOHN STRINE, :  
JEFFREY WILSON and :  
JOSEPH MARZOUCA : NO. 02-7032

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DAVID H. MARION, as Receiver : CIVIL ACTION  
for Bentley Financial Services, :  
Inc. :  
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v. :  
 :  
S.D. GOLDFINE & COMPANY and :  
SANFORD GOLDFINE : NO. 02-7076

MEMORANDUM AND ORDER

Fullam, Sr. J.

December 14, 2006

At a ten-day jury trial, plaintiff, David H. Marion, Receiver for Bentley Financial Services, Inc., recovered substantial jury verdicts against two sets of defendants, the "Peninsula Bank Defendants" and the "Benghiat Defendants." Now pending are defendants' renewed motions for judgment as a matter of law or for a new trial, and plaintiff's motion to mold the verdicts.

The underlying facts are well known to the parties and need not be set forth in detail. Briefly, a gentleman named Robert Bentley conducted an elaborate Ponzi scheme, and bilked many investors of millions of dollars. On October 23, 2001, the Securities and Exchange Commission filed an action in this court which had the effect of immediately closing down Mr. Bentley's operations. The SEC obtained the appointment of Mr. Marion as receiver for all of the Bentley entities. The SEC's motion succinctly described the scheme, as follows:

"Defendants [Robert L. Bentley, Bentley Financial Services, Inc. And Entrust Group], operating as an unregistered broker-dealer, are fraudulently representing that they are selling FDIC-insured bank-issued CDs when in fact they are issuing private notes. Rather than an insured bank standing behind the defendants' promise to pay back principal to investors on maturity, it is only their own ability to find more victims that allows them to pay principal to investors when due. Also, a large number of CDs that defendants buy with investor funds are callable. Because defendants have refused to comply with subpoenas issued by the SEC, plaintiff cannot determine if defendants in fact hold actual CDs for every note they have issued. There are currently at least \$318 million of such fraudulently-issued notes outstanding in the hands of more than 3,000 investors nationwide. Most of the investors are small credit unions, banks, and savings and loan institutions."

Mr. Marion, in his capacity as receiver, alleged in the present action that the defendants conspired with or aided and abetted the fraudulent scheme. The evidence at the trial permitted the

jury to find that, between April 1999 and October 23, 2001 (the date when the SEC closed down the Bentley operations), the defendants provided Mr. Bentley with approximately \$10 million in financing, thus enabling Mr. Bentley to prolong the life of the Ponzi scheme. During that period, Mr. Bentley's scheme obtained additional investments from defrauded investors totaling \$269,455,213. While some of these investments resulted in the purchase of actual CDs which were still on hand when the scheme was shut down, the principal amount of CDs on hand as of October 23, 2001 was approximately \$23 million less than the principal amount the investors had purchased, and that figure does not include \$9,440,000 in unpaid (and unpayable) interest. Thus, it was the Receiver's contention that the defendants' assistance to Mr. Bentley caused additional losses to the investors totaling \$32,774,330.

The crucial issue at trial was whether the defendants knew that Mr. Bentley was engaged in a fraudulent scheme, when they provided the funds which enabled him to continue in business. There was, in my view, ample evidence which permitted the jury to find that the defendants either had actual knowledge of the Ponzi scheme itself, actual knowledge of facts which demonstrated that Mr. Bentley was defrauding investors, or were chargeable with willful blindness. Moreover, it is undisputed that, between July 1998 and August 2000, Mr. Bentley was a

registered representative employed by the Benghiat firm. Thus, the Benghiat defendants had an obligation to supervise Mr. Bentley's activities, and could properly be held liable for failing to do so.

MOTIONS FOR JUDGMENT AS A MATTER OF LAW

Defendants advance three principal arguments in support of their motions for judgment as a matter of law. They contend (1) that the evidence was insufficient to support the jury's verdict; (2) that Mr. Marion lacked standing to pursue this action; and (3) that the doctrine of *in pari delicto* precludes recovery.

As discussed above, I am satisfied that the evidence amply supported the jury's verdict. It was clear that the defendants supplied funds to Mr. Bentley and his organizations in the knowledge that they desperately needed cash. But, if Mr. Bentley and Bentley Financial Services were acting properly in their role as CD brokers, and if Entrust Group really was acting as independent custodian, it is inconceivable that they would have needed to borrow money from defendants in order to satisfy their investors. Moreover, Mr. Bentley himself testified that all of the defendants were at least aware that the CDs he actually purchased did not "match" the CDs his investors thought they were obtaining. Mr. Bentley's testimony alone would suffice

for the imposition of liability in this case, and the jury was entitled to credit that testimony.

Defendants also contend that they are entitled to judgment as a matter of law because Mr. Marion lacked standing to pursue this litigation, and because the entities for which he is Receiver were wrongdoers who primarily caused the losses, recovery of which is now being sought. At an earlier stage, I rejected these arguments in denying defendants' motion to dismiss and, notwithstanding defendants' earnest arguments, I remain persuaded that Mr. Marion has standing to pursue these claims, and is not barred by the *in pari delicto* doctrine.

I recognize that a trustee in bankruptcy would not have standing to pursue claims on behalf of creditors defrauded by the debtor and others acting in concert with the debtor. If the debtor was a wrongdoer, the *in pari delicto* doctrine would preclude recovery. And, in any event, the claims belong to the defrauded creditors, not the bankrupt estate. But a bankruptcy proceeding differs significantly from an equity receivership imposed at the request of a government agency such as the SEC. The whole purpose of the SEC proceeding is to remedy violations of the securities laws for the benefit of investors.

The order appointing Mr. Marion as Receiver provided that he "shall have complete jurisdiction over, and control of all the property, real, personal or mixed, including any assets

or funds, wherever located, of all defendants." One of these entities was Bentley Financial Services, Inc., a corporation. Thus, Mr. Marion has the right to pursue the cause of action which was the property of Bentley Financial Services - i.e., a claim that its officer, Mr. Bentley, breached his fiduciary duty to the corporation by subjecting it to liability for fraud, and that the Peninsula Bank and Benghiat Defendants assisted him in doing so.

As everyone recognizes, Mr. Marion is pursuing this litigation on behalf of the defrauded investors, not Mr. Bentley. Neither Mr. Marion nor the investors are wrongdoers; the *in pari delicto* doctrine does not bar the recoveries being sought in this case.

In addition to the three issues discussed above, the defendants have included an argument to the effect that there was no basis for the jury's conclusion that the funds advanced to Mr. Bentley by the defendants caused the Ponzi scheme to continue longer than it otherwise would have. The contention is, as I understand it, that even if the defendants had not advanced Mr. Bentley the \$10 million, the Ponzi scheme might well have continued in existence: Mr. Bentley could simply have liquidated some of the CDs he had on hand, and thus continued to operate his scheme. In other words, defendants should not be held liable for knowingly assisting Mr. Bentley in perpetuating the scheme

because he might have been able to obtain financing from sources unaware of the nature of the scheme (or from other wrongdoers). The fallacy of this argument is, I believe, self-evident.

MOTION FOR A NEW TRIAL

For the reasons thus far discussed, I have concluded that the defendants are not entitled to a new trial on the theory that the verdict was against the weight of the evidence. The defendants advance the further argument that a new trial should be ordered because the defendants were prejudiced by the admission of evidence charging them with negligence in failing to learn that "Entrust Group" was not a corporation but merely a sole proprietorship owned by Mr. Bentley. The evidence in question was admissible, however, on the issue of whether the defendants were chargeable with willful blindness. The jury was specifically, and repeatedly, instructed that the defendants could not be held liable unless the jury was satisfied that they either had actual knowledge of the fraudulent nature of Mr. Bentley's activities which they were assisting in, or entertained suspicions which they intentionally chose not to pursue because they did not want to learn the facts.

MOTION TO MOLD THE VERDICT

With the agreement of counsel for all the parties, the jury was asked to render its verdict by responding to interrogatories. Counsel participated in the drafting of these

interrogatories, and approved the final form submitted to the jury. The interrogatories, and the jury's responses, were as follows:

1. Do you find that the Peninsula Defendants (Peninsula Bank and Joseph Marzouca) either conspired with or aided and assisted Robert Bentley in his fraudulent activities?

Yes   x                        No       

a) If your answer is "Yes" to Interrogatory 1 above, what is the amount of damages the Peninsula Defendants caused the Receivership Estate to sustain?

\$13,109,732

2. Do you find that the Benghiat Defendants (Ted Benghiat, SFG and Southeastern) either conspired with or aided and assisted Robert Bentley in his fraudulent activities?

Yes   x                        No       

a) If your answer is "Yes" to Interrogatory 2 above, what is the amount of damages the Benghiat Defendants caused the Receivership Estate to sustain?

\$19,664,598

Plaintiff now contends that, since the jury found that the defendants were intentional wrongdoers, each set of defendants should be held liable for the total amount of damages found by the jury. Plaintiff seeks to have the verdict molded so as to represent a judgment against each set of defendants for the total amount, \$32,774,330. Defendants, understandably, contend that the court has no authority for increasing the judgment as to

each set of defendants, and that to do so would be inconsistent with defendants' constitutional right to a jury trial. Plaintiff counters with the argument that, in the discussions which preceded the submission of the case to the jury, when the issue of joint and several liability was mentioned, and when counsel expressly requested that the jury be asked to make separate damage findings against each set of defendants, defense counsel made statements which reflected a willingness to have the jury verdict molded if necessary, after the jury returned a verdict.

The record is very clear that both sides wanted the jury to make separate damage findings as to each set of defendants. Indeed, after the jury's answers to the interrogatories were read, in making sure that all of the jurors agreed with the answers, I stated:

"So, basically, you're saying that you have concluded that the Peninsula Defendants are liable in the total of \$13,109,732, and that the Benghiat Defendants are liable in the total amount of \$19,664,598. Do you all agree on that?" And the jury responded, "Yes, Your Honor."

The jury has spoken. I am not persuaded that there is any basis upon which this court would be justified in disregarding the jury's findings, and, in effect, increasing the liability of each set of defendants.

Plaintiff stresses the fact that the total of the amounts assessed against each set of defendants by the jury

coincides with the total amount of damages sought by plaintiff, as calculated by plaintiff's expert witness, Mr. Brulenski. But this was only one of several calculations which plaintiff submitted to the jury for their consideration. It is simply not possible at this point to determine precisely what the jury's reasoning may have been. There was evidence which would have permitted the jury to fix the damages at lower amounts than the amounts set forth in the answers to interrogatories, and there was evidence to support the notion that the defendants' conspiracy with and assistance to Mr. Bentley covered different periods of time, and may have had disparate impacts upon the continuation of the scheme.

Be that as it may, I am satisfied (1) that, if it was error not to instruct the jury about the joint liability of conspirators, the error was invited, and (2) that it would be necessary to grant a new trial, as to damages, to achieve the result now being sought by plaintiff's motion to mold the verdict. Plaintiff has not sought a new trial.

Finally, as a practical matter, given the size of the jury's verdict, and the arguments made by defense counsel about the limited resources of their respective clients, the difference between joint liability and individual liabilities may be academic.

#### CONCLUSIONS

The jury's verdict was amply supported by the evidence. There is no basis for granting a new trial, or for molding the verdict. An Order to that effect follows.

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ORDER

AND NOW, this 14<sup>th</sup> day of December 2006, IT IS ORDERED:

1. Defendants' motions for judgment as a matter of law, and/or for a new trial are DENIED.
2. Plaintiff's motion to mold the verdict is DENIED.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.