

09-10761

**IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT**

RALPH S. JANVEY,

Plaintiff – Appellant–Cross-Appellee

v.

JAMES R. ALGUIRE; VICTORIA ANCTIL; SYLVIA AQUINO, JONATHAN BARRACK; NORMAN BLAKE; ET AL.; JAY STUART BELL; GREGORY ALAN MADDUX; DAVID JONATHAN DREW; ANDRUW RUDOLF BERNARDO JONES; CARLOS FELIPE PENA; JOHNNY DAVID DAMON; BERNABE WILLIAMS; GAINES D. ADAMS; NEN FAMILY TRUST; JEFF P. PURPERA, JR.; CHERAY ZAUDERER HODGES; LUTHER HARTWELL HODGES; ET AL 1; JOSEPH BECKER; TERRY BEVEN; KENNETH BIRD; JAMES BROWN; MURPHY BUELL, ET AL 2; JAMES RONALD LAWSON; DIVO HADDED MILAN; SINGAPORE PUNTAMITA PTE., LTD.; NUMA L. MARQUETTE; GAIL G. MARQUETTE,

Defendants – Appellees–Cross-Appellants

TIFFANY ANGELLE; MARIE BAUTISTA; TERAL BENNETT; SUSANA CISNEROS; RON CLAYTON; ET AL 3; HANK MILLS; ROBERTO ULLOA; CHRISTOPHER ALLRED; PATRICIA A. THOMAS

Defendants – Appellees

Consolidated with

09-10765

RALPH S. JANVEY, in His Capacity as Court-Appointed Receiver,

Plaintiff – Appellant

v.

JIM LETSOS, FELIPE GONZALEZ, CHARLOTTE HUNTON, RICHARD O. HUNTON; CHARLES HUNTON,

Defendants – Appellees

On Appeal from the United States District Court for the Northern District of Texas,
Dallas Division C.A. No. 3:09-CV-0724-N

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For additional interested parties, please see the attached Exhibit A. In addition to the parties listed in Exhibit A attached hereto, the undersigned counsel believes that there are other investors whose identities are not known but who will be affected by the outcome of this proceeding.

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STATEMENT REGARDING ORAL ARGUMENT

The adjudication of the issues presented in this appeal would be significantly aided by oral argument. The Receiver has pursued claw back claims and asset freezes in disregard of both the law relating to relief defendants and the requirements of due process. Because the Receiver is seeking to expand exponentially the ability of a common law receiver to sue the wholly innocent victims of a Ponzi scheme, and to do so over the objections of the SEC, Appellees Patricia A. Thomas and Christopher Allred respectfully submit that oral argument is warranted.

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STATEMENT OF JURISDICTION

Pursuant to Federal Rule of Appellate Procedure 28(i), Appellees Patricia A. Thomas and Christopher Allred adopt by reference the Statement of Jurisdiction contained in the brief of Intervenor John J. Little, Court-Appointed Examiner. Additionally, and in the alternative, Appellees Thomas and Allred also adopt by reference the jurisdictional statement contained in the brief of Appellees Gaines D. Adams, et. al.

STATEMENT OF THE ISSUES

Pursuant to Federal Rule of Appellate Procedure 28(i), Appellees Thomas and Allred adopt by reference the Statement of the Issues contained in the brief of Intervenor John J. Little, Court-Appointed Examiner. Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference the Statement of the Issues contained in the brief of Appellees Jay Stuart Bell, Gregory Alan Maddux, David Jonathon Drew, Andruw Rudolf Bernardo Jones, Johnny David Damon, and Bernabe Williams. Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference issue one, three and four of the Statement of the Issues contained in the brief of Appellees Gaines D. Adams, et. al. Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference issues two and six of the Statement of the Issues contained in the brief of Appellees Joseph Becker, et al.

STATEMENT OF THE CASE

Pursuant to Federal Rule of Appellate Procedure 28(i), Appellees Thomas and Allred adopt by reference the Statement of the Case contained in the brief of Intervenor John J. Little, Court-Appointed Examiner. To the extent applicable to Appellees Thomas and Allred, they adopt by reference the Statement of the Case contained in the brief of Appellees Jay Stuart Bell, Gregory Alan Maddux, David Jonathon Drew, Andruw Rudolf Bernardo Jones, Johnny David Damon, and Bernabe Williams.

Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference the second paragraph of the Statement of the Case in the brief of Appellees Gaines D. Adams, et al. That paragraph notes that the District Court's order of June 29, 2009 directed the Receiver to assert any claims against investors and to seek "prejudgment attachment."

STATEMENT OF FACTS RELEVANT TO THE ISSUES

Pursuant to Federal Rule of Appellate Procedure 28(i), Appellees Thomas and Allred adopt by reference the Statement of Facts Relevant to the Issues contained in the brief of Intervenor John J. Little, Court-Appointed Examiner. To the extent applicable to Appellees Thomas and Allred, they adopt by reference the Statement of Facts Relevant to the Issues contained in the brief of Appellees Jay

Stuart Bell, Gregory Alan Maddux, David Jonathon Drew, Andruw Rudolf Bernardo Jones, Johnny David Damon, and Bernabe Williams.

Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference the Statement of Facts Relevant to the Issues contained in the brief of Appellees Gaines D. Adams, et. al.

SUMMARY OF THE ARGUMENT

Appellees Thomas and Allred argue that the district court lacks subject matter jurisdiction over the claw back claims filed against them by the Receiver; accordingly, Appellees Thomas and Allred seek dismissal of those claims. In the alternative, Appellees Thomas and Allred argue that the Receiver cannot prevail on his claw back claims against principal and that, consequentially, the district court's order denying the Receiver's request for an injunction extending the asset freeze as to principal should be upheld based on the district court's conclusion that, as a matter of law, innocent investors in this case who redeemed their investments before the Receivership are not liable for return of principal. In support of their arguments, Appellees Thomas and Allred adopt relevant portions of the briefing filed in this matter. Essentially, Appellees Thomas and Allred join the chorus of injured investors and maintain that the Receiver has no basis to claw back every payment made to every investor in a Ponzi scheme. Rather, innocent investors may keep all payments they received up to the amount of their principal

investment. Additionally, Appellees Thomas and Allred adopt the argument that this Court should give substantial deference to the position of the Securities and Exchange Commission ("SEC") in this matter, which is that the Receiver has no authority to bring claw back claims in defiance of the SEC's position that claw back claims for principal lodged against innocent investors are improper.

ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 28(i), Appellees Thomas and Allred adopt by reference sections I–III of the Argument and Authorities contained in the brief of Intervenor John J. Little, Court-Appointed Examiner.

Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference section I of the Argument contained in the brief of Appellees Jay Stuart Bell, Gregory Alan Maddux, David Jonathon Drew, Andruw Rudolf Bernardo Jones, Johnny David Damon, and Bernabe Williams.

Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference sections I, and III–IV of the Argument contained in the brief of Appellees Gaines D. Adams, et. al. Additionally, and in the alternative, Appellees Thomas and Allred adopt by reference sections B and E of the Argument and Authorities contained in the brief of Appellees Joseph Becker, et. al.

CONCLUSION

Appellees Thomas and Allred respectfully request that this court dismiss the Receiver's claw back claims for lack of subject matter jurisdiction. In the alternative, Appellees Thomas and Allred request that the Court affirm the district court's denial of an injunction as to principal and its conclusions of law regarding the Receiver's ability to claw-back principal, reverse the district court's grant of an injunction as to investment interest, and deny the Receiver's renewed request for a preliminary injunction continuing the asset freeze.

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I certify that a copy of the foregoing was served by U.S. mail on September 30, 2009 to the following counsel of record:

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). The brief contains 1,610 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 21(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in Times New Roman 14-point typeface.



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