

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:

RMA STRATEGIC OPPORTUNITY
FUND, LLC,
Debtor.

CHAPTER 7
CASE NO. 17-13328-FJB

MARK G. DEGIACOMO, CHAPTER 7
TRUSTEE FOR THE ESTATE OF RMA
STRATEGIC OPPORTUNITY
FUND, LLC,

Plaintiff,

v.

18-01019-FJB

RAYMOND K. MONTOYA, ROSS P.
MONTOYA, ALMA U. MONTOYA, RYAN
J. MONTOYA, RESOURCE MANAGED
ASSETS, LLC, RESEARCH MAGNATE
ADVISORS, LLC and RMA GROUP, INC.,

Defendants,

CENTURY BANK AND TRUST COMPANY
and SANTANDER BANK, N.A.

Trustee Process
Defendants.

JOINT PRETRIAL MEMORANDUM

Mark G. DeGiacomo, Chapter 7 Trustee (the “Trustee”) of RMA Strategic Opportunity Fund, LLC (the “Debtor”), and defendants Raymond K. Montoya, Alma U. Montoya, Ross P. Montoya and Ryan J. Montoya (collectively the “Defendants”), hereby submit this joint pretrial statement in accordance with the Court’s Scheduling and Pretrial Order dated July 27, 2018.

I. Witnesses

A. Plaintiff

1. Witnesses Expected to be Called

- a. Mark G. DeGiacomo, chapter 7 trustee, Murtha Cullina LLP, 99 High Street, Boston, MA 02110.
 - b. George Bedarf, 301 Codman Hill Road, #26D, Boxborough, MA 01719.
 - c. Alma Montoya, 26 High Rock Way, Allston, MA 02134.
 - d. Ryan Montoya
 - e. Ross Montoya, 26 High Rock Way, Allston, MA 02134.
 - f. Gregory Serkin, 17527 Embassy Drive, Encino, CA 91316.
 - g. Amy J. Young, 2839 Canterbury Lane, Columbus, OH 43221.
 - h. William Gagnon, 43 Anthony Drive, Londonderry, NH 03053.
 - i. Arthur O' Connor, 205 East 78th St., Apt. 2C, New York, NY 10075.
 - j. Clarence Owens, 1009 Greenhurst Road, Winston-Salem, NC 27104.
 - k. Michael Sullivan, 2121 Strathshire Hall Lane, Powell, OH 43065.
 - l. Ann Louise Mullin, 2 Elm Street, Norwood, MA 02062.
 - m. Luisa Hiendlmayr, P.O. Box 1442, Glastonbury, CT 06033.
 - n. Brett Hiendlmayr, P.O. Box 1442, Glastonbury, CT 06033.
2. Witnesses Testimony Presented by Means of a Deposition
 - a. Raymond Montoya, Sr.— FCI Lompoc, 3600 Guard Road, Lompoc, CA 93436.
 - b. Plaintiff reserves the right to present deposition testimony should any witness who was deposed become unavailable.
 3. Expert Witnesses
 - a. Craig Jalbert, Verdolino & Lowey P.C., 124 Washington Street, Foxboro, MA 02035. Expert report was served on June 28, 2019.

B. Defendants

1. Witnesses Expected to be Called
 - a. Raymond K. Montoya, FCI Lompoc, contact through counsel for defendants.
 - b. Alma Montoya, 26 High Rock Way, Allston, MA, 617 480 1908.
 - c. Ross Montoya, 1605 Oakwood Rd, Northbrook, IL 60062, 617 417 2602.
 - d. Ryan Montoya, 1016 South Wayne St, Apt. 904, Arlington, VA 22204, 617 308 3438.
 - e. Mark DeGiacomo, 99 High St #20, Boston, MA 02110, 617 457 4039.
 - f. Neil J. Gallagher, Jr., 1 Courthouse Way, Suite 9200, Boston, MA 02210, 617 748 3397.

2. Witnesses Testimony Presented by Means of a Deposition – defendants reserve the right to present deposition testimony should any witness who was deposed become unavailable.
3. Expert Witnesses—none.

II. Exhibits.

- A. Exhibit List – The Plaintiff is still in the process of compiling his proposed exhibit list, which is voluminous, and requires additional time within which to do so. The parties have not yet exchanged or reviewed each other’s respective proposed exhibits. The parties intend to finalize their proposed exhibits list, and review and exchange their proposed exhibits in the coming weeks, and file same with the Court prior the final pretrial conference in this action.
- B. Business Records – The Plaintiff intends to offer into evidence various business records obtained in response to subpoenas to Citizens Bank and E*Trade Financial, which the Plaintiff asserts are admissible as records of regularly conducted business activity.

III. Statement as to Mediation

- A. Plaintiff—While the Trustee is willing to discuss a consensual settlement of the litigation, he does not believe that a formal mediation would be worthwhile or in the best interests of the bankruptcy estate.
- B. Defendants—Defendants are unwilling to resolve this dispute by mediation, but have been engaged in settlement negotiations with the Trustee.

IV. Stipulated Facts

The parties are in the process of compiling a list of stipulated facts, and intend to file a supplement to this pretrial statement prior to the final pretrial conference in this proceeding.

V. Facts to be Litigated

- A. Whether the alleged transfers were made with actual intent to defraud.
- B. Whether Alma Montoya received the alleged transfers made to her with actual fraudulent intent.
- C. Whether Raymond Montoya received the alleged transfers made to him with actual fraudulent intent.
- D. Whether the debtor was insolvent at the time of the alleged transfers.

- E. Whether the funds allegedly transferred were funds belonging to the debtor.
- F. Whether the debtor received reasonably equivalent value for the alleged transfers.
- G. Whether the debtor has been repaid for the alleged transfers.
- H. Whether the alleged transfers were made for a legitimate supervening purpose.

VI. Issues of Law

- A. Whether the alleged transfers to the defendants are avoidable as fraudulent transfers under the United States Bankruptcy and/or the Massachusetts Uniform Fraudulent Transfer Act.
- B. Whether Raymond Montoya breached his fiduciary duties to the Debtor.
- C. Whether Ross Montoya breached his fiduciary duties to the Debtor.
- D. Whether Raymond Montoya was unjustly enriched.
- E. Whether Ross Montoya was unjustly enriched.
- F. Whether Ryan Montoya was unjustly enriched.
- G. Whether Alma Montoya was unjustly enriched.

VII. Statement of the Case

A. Plaintiff's Statement of the Case

On March 25, 2019, United States District Court Judge O'Toole sentenced Raymond Montoya to 175 months in federal prison for his role in operating the Debtor as a fraudulent scheme. As part of that scheme, Montoya held the Debtor out to investors as a pooled hedge fund with more than \$4 billion in assets under management that consistently outperformed the Standard & Poor's 500 stock index. Montoya claimed his success was attributable to a proprietary software program that could predict minute-to-minute price movements in securities. In reality the Debtor was operated as a fraudulent scheme in which only a portion of investor

funds were ever invested. Instead, millions were diverted by Montoya for personal and family use and approximately \$26,000,000 was repaid to earlier investors which perpetuated the fraud for at least eight years and possibly longer. All the while, Montoya meticulously sent investors fictitious monthly account statements showing that their investments were safe and earning a healthy, if modest, return. Montoya stipulated in his criminal case that \$38,386,802.98 was the correct amount of loss suffered by the Debtor's victims as a result of his actions.

At least as early as March 2009 Ross Montoya was one of the Debtor's managers. He was also a manager of Resource Managed Assets which later became the Debtor's manager. In those roles Ross owed fiduciary duties to the Debtor, which he breached by, at a minimum, failing to inform himself of the Debtor's business and operation, and allegedly failing to ever notice or uncover the fact that the Debtor was being operated as a multi-million dollar fraudulent scheme. Ross's breaches of his fiduciary duties resulted in the fraud persisting until 2017 and resulting in total loss and damages of at least \$38,386,802.98, for which he is liable.

In addition, Ross, Ryan and Alma all received numerous transfers of the Debtor's money within the four years prior to the Debtor's bankruptcy petition date. Each of the transfers in questions were made with actual intent to defraud evidenced by numerous badges of fraud. In addition, each of the transfers were made for less than reasonably equivalent value while the Debtor was insolvent. As such, each of transfers are avoidable and recoverable by the Trustee as fraudulent transfers either under the Bankruptcy Code or the Massachusetts Uniform Fraudulent Transfer Act.

B. Defendants' Statement of the Case

The plaintiff was formerly a small hedge fund, founded and run by defendant Raymond K. Montoya, with several dozen investors over the years. Although Raymond K.

Montoya has pled guilty to federal charges related to his actions in the management of the plaintiff, the plaintiff cannot establish all the required elements to avoid transfers from the defendants, nor were the defendants unjustly enriched at the plaintiff's expense. Raymond K. Montoya was the only party ever criminally charged involving these matters.

Ryan Montoya worked for the plaintiff as a consultant and all transfers to him were payments for which he provided reasonably equivalent value in services. His role was to make trading recommendations as to biotech and medical stocks. Although he was the son of the plaintiff's founder, he was engaged by a formal written contract and produced significant written work product. His expertise as a physician and former scientist enabled him to engage in timely and detailed analysis of medical companies, for which he was compensated consistent with industry standards. He also lost his own retirement account when the plaintiff was forced into bankruptcy. No transfers to Ryan Montoya by the plaintiff or any related company should be avoidable as fraudulent, nor was he unjustly enriched. He was never criminally charged involving these matters.

Ross Montoya worked for the plaintiff on-site as a full-time employee and all transfers to him were payments for which he provided reasonably equivalent value in services. His role was to oversee and implement a daily trading strategy, investing funds for short periods of time in various investments. He also had some managing and administrative duties. Whatever apparent authority he had as a manager of the plaintiff or related entities was in effect exercised by his father, Raymond K. Montoya. Although he was the son of the plaintiff's founder, he was engaged by a formal written contract and his trading produced significant gains for the plaintiff. His compensation was consistent with industry standards; it was initially a salary, but later became contingent on his performance. He has also made

substantial restitution to the United States Attorney's Office, District of Massachusetts on his father's behalf, going into personal debt to do so. No transfers to Ross Montoya by the plaintiff or any related company should be avoidable as fraudulent, nor was he unjustly enriched. He was never criminally charged involving these matters.

Alma Montoya worked for the plaintiff as a part-time office assistant, for which she received a salary. Although she was related to the founder of the plaintiff, she was engaged by a written employment contract. Much of the money allegedly transferred to her from the plaintiff was her money; although it passed through the plaintiff's accounts as a matter of convenience, it was wired from her relative Imee Malaban in the Philipines and was the proceeds of a real estate sale by her parents. Other money allegedly transferred to her by the plaintiff was repayments of loans she had made to the plaintiff. No transfers to Alma Montoya by the plaintiff or any related company should be avoidable as fraudulent, nor was she unjustly enriched. She was never criminally charged involving these matters.

Raymond K. Montoya was the founder and manager of the plaintiff. For his actions in this role, including commingling the plaintiff's funds with his own, he has pled guilty to federal charges and been sentenced to 175 months in prison. Many transfers to Raymond K. Montoya may be avoidable as fraudulent transfers and/or as unjust enrichment, but he has made restitution to the United States Attorney's Office, District of Massachusetts, for some of them, including by turning over motor vehicles and other valuables, and he should be justly credited for this.

Respectfully submitted,

MARK G. DEGIACOMO, CHAPTER 7
TRUSTEE OF THE ESTATE OF RMA
STRATEGIC OPPORTUNITY FUND,
LLC,

/s/ Jonathan M. Horne

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RAYMOND MONTOYA, ALMA
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By their attorney,

/s/ William C. Parks

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Dated: December 6, 2019