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S.C. SUPREME COURT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

BY: *Angela [Signature]*
DEPUTY CLERK

Beattie B. Ashmore, *in his capacity as*)
court-appointed receiver for Ronnie Gene)
Wilson and Atlantic Bullion and Coin, Inc.,)
)
Plaintiff,)
)
v.)
)
Jim Dodds,)
)
Defendant.)

Civil Action No.: 8:15-cv-00561-JMC

ORDER



By a July 5, 2017 order, the court reserved decision on the claims brought by Plaintiff Beattie B. Ashmore (the “Receiver”), in his capacity as court-appointed receiver for Ronnie Gene Wilson (“Wilson”) and Atlantic Bullion and Coin, Inc. (“AB&C”), against Defendant Jim Dodds (“Defendant” or “Dodds”) for fraudulent conveyance and unjust enrichment, after concluding that the court would certify questions of law to the South Carolina Supreme Court, pursuant to South Carolina Appellate Court Rule 244, regarding the choice of law rules South Carolina applies to such claims. (See ECF No. 95 at 23-37.) The court thereafter directed the parties to consult and submit to the court a joint statement regarding the facts, the nature of the controversy, and the questions to be answered that should be incorporated into the court’s certification order. (See ECF No. 95.) The parties have since filed their joint statement, and, based largely on their submission,¹ the court enters this certification order.

I. STANDARD

Rule 244 provides that the South Carolina Supreme Court

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¹ The court commends the parties for their excellent submission.

S.C. SUPREME COURT

in its discretion may answer questions of law certified to it by any federal court of the United States . . . when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

S.C. App. Ct. R. 244(a). The certification order must set forth: (1) “a statement showing fully the nature of the controversy in which the questions arose,” (2) “all findings of fact relevant to the questions certified,” and (3) “the questions of law to be answered.” S.C. App. Ct. R. 244(b).

II. NATURE OF THE CONTROVERSY

The United States filed a criminal complaint in the United States District Court for the District of South Carolina against Wilson and AB&C on April 4, 2012. *See United States v. Wilson* (“*Wilson I*”), No. 8:12-cr-00320-JMC, ECF Nos. 1, 1-1 (D.S.C.). According to the criminal complaint, based upon an investigation by the United States Secret Service, Wilson and/or AB&C would encourage clients to invest in silver investment accounts wherein clients would not take physical possession of the precious metals purchased, but rather Wilson/AB&C would purportedly hold the client’s silver at a Delaware depository. *Id.* Records revealed that Wilson was not actually purchasing a sufficient amount of silver to cover the orders placed by his clients and would also alter client account statements to reflect trades of silver that never occurred, thereby resulting in fraudulent account statements showing that clients owned large quantities of silver when, in fact, no silver had been purchased and no silver trades had occurred. *Id.*

On July 30, 2012, Wilson and AB&C pled guilty to two counts of mail fraud stemming from their involvement in a criminal Ponzi scheme involving hundreds of victims and millions of dollars. *See id.*, ECF Nos 44, 45. On November 13, 2012, Wilson was sentenced to a 235 month term of imprisonment. *See id.*, ECF Nos. 61, 67. On that same date, AB&C was sentenced to a five year term of probation and a fine was imposed. *See id.*, ECF Nos. 64, 68. Wilson and AB&C

were ordered to pay restitution in the amount of \$57,401,009.00. *See id.*, ECF Nos. 61, 64. On August 12, 2014, Wilson was indicted on one count of obstruction of justice related to his efforts to secrete assets from the government and the court-appointed Receiver. *See United States v. Wilson* (“*Wilson II*”), No. 6:14-cr-00571-JMC, ECF No. 1 (D.S.C.). On October 6, 2014, Wilson entered another guilty plea, and on December 10, 2014 was sentenced to an additional term of imprisonment. *See id.*, ECF Nos. 50, 51, 74.

In an action related to the criminal prosecutions against Wilson and AB&C, the court entered an order, originally by text order on June 13, 2012 and amended on July 25, 2012, October 17, 2012, February 14, 2013 and October 29, 2015 (“appointment order”) appointing the Receiver and setting forth the duties of the Receiver related to Wilson and AB&C and other so-defined AB&C receivership entities. *See Wilson I*, No. 8:12-cr-00320-JMC, ECF No. 31; *In re Receiver for Ronnie Gene Wilson & Atlantic Bullion & Coin, Inc.*, No. 8:12-cv-02078-JMC, ECF Nos. 1, 21, 43, 164. The appointment authorizes the Receiver, among other things, to locate and manage assets previously acquired by and/or in the name/possession of the AB&C receivership entities and to proceed against individuals and others that the Receiver may claim to have “wrongfully, illegally, or otherwise improperly be in possession of . . . proceeds directly or indirectly traceable from investors in the Ponzi scheme.” *In re Receiver*, No. 8:12-cv-02078-JMC, ECF No. 164. The Receiver filed the appointment order on August 6, 2012 in the United State District Court for the Southern District of Florida pursuant to 28 U.S.C. § 754.

The Receiver filed the instant action on February 6, 2015 against Defendant to recover all profits received by Defendant on his purported silver investments with AB&C. (*See* ECF No. 1.). The Receiver asserts claims for fraudulent conveyance pursuant to the Statute of Elizabeth, S.C.

Code Ann. § 27-23-10 (2014) and/or the Florida Uniform Fraudulent Transfer Act (“FUFTA”), Fla. Stat. Ann. § 726.101 to 726.21, and unjust enrichment. (*See id.*)

Currently before the court are cross-motions for summary judgment related to the Receiver’s claims for relief under the Statute of Elizabeth, the FUFTA, and unjust enrichment. (*See* ECF Nos. 70, 71.) The Receiver, in his motion and response to Defendant’s motion, argues that under South Carolina choice of law rules, South Carolina law applies to both his claims for fraudulent conveyance and unjust enrichment. (*See* ECF Nos. 70, 73, 79.) Defendant, on the other hand, argues that under South Carolina choice of law rules Florida law governs both claims. (*See* ECF Nos. 71, 74, 77.) The court’s July 5, 2017 order addressed seven of the arguments raised by Defendant in his motion, but reserved decision on Defendant’s remaining arguments and on the Receiver’s motion in its entirety until the court could seek certification to the South Carolina Supreme Court on choice of law rules needed to determine if the substantive law of Florida or South Carolina applies. (*See* ECF No. 95.)

III. RELEVANT FINDINGS OF FACT

The relevant facts related to the certification of questions to the South Carolina Supreme Court include:

1. Dodds was living in Greenville, South Carolina, when he first met Wilson.
2. Dodds decided to invest in an individual silver account with AB&C in 1996, while he was a resident of Florida.
3. The account was in Dodds’ name, and AB&C would mail statements to Dodds’ address in Florida or Michigan.
4. Dodds moved from South Carolina to Florida sometime in the mid to late 1980s, prior to his first investment with or withdrawal from AB&C, and he is currently a resident of Florida.

5. Dodds' first two deposits (made on February 29, 1996, and December 20, 2000) were made by checks written from a Wachovia account in Greenville, South Carolina. The subsequent deposits were made from outside of South Carolina.

6. Dodds would either write or call AB&C or Wilson from outside of South Carolina to request a withdrawal of funds, and the funds would be mailed to Dodds in the form of a check.

7. Dodds on occasion would meet with Wilson in Wilson's office after Dodds' first investment, mostly for personal reasons, although on at least one occasion he instructed Wilson to buy more silver.

8. AB&C, at all times relevant, was owned by Wilson and operated out of an office located at 203 and 205 Siloam Road, Easley, South Carolina.

9. AB&C's operating account, at all times relevant, was either at Regions Bank in Greenville, South Carolina (from 1993 to 2005), Southern First in Greenville, South Carolina (from 2005 to 2012), or Cornerstone National Bank in Easley South Carolina (in 2011).

10. The vast majority of Dodds' withdrawals were deposited in Florida, and all of Dodds' accounts in which his AB&C withdrawals were deposited were accounts outside of South Carolina, including Northern Trust Bank, Wells Fargo in Florida, and Morgan Keegan.

11. The last withdrawal check requested by Dodds from AB&C was made payable and sent to American Opinion Foundation and deposited into a bank account outside of South Carolina.

12. Dodds was not required to fill out or initiate any paperwork when a withdrawal from the AB&C account was requested or when it was made.

IV. CERTIFIED QUESTIONS OF LAW

In its July 5, 2017 order, the court concluded that the question of which law—that of Florida or South Carolina—should apply to the Receiver's fraudulent conveyance claim under South

Carolina choice of law rules is a question of South Carolina state law that may be determinative of the fraudulent conveyance claim pending in this matter and that it appears that there is no controlling precedent on the question in the decisions of the South Carolina Supreme Court. (*See* ECF No. 95 at 23-30.) The court likewise concluded that the question of which law—that of Florida or South Carolina—should apply to the Receiver’s unjust enrichment claim under South Carolina choice of law rules is a question of South Carolina state law that may be determinative of the unjust enrichment claim pending in this matter and that it appears that there is no controlling precedent on the question in the Supreme Court’s decisions. (*See id.* at 30-36.) Based upon the foregoing, the court respectfully requests the South Carolina Supreme Court to address the following certified questions:

1. Under South Carolina choice of law rules, the substantive and procedural law of which jurisdiction applies to the Receiver’s fraudulent conveyance claim?
2. Under South Carolina choice of law rules, the substantive and procedural law of which jurisdiction applies to the Receiver’s unjust enrichment claim?

V. CONCLUSION

Based on the foregoing, the court **CERTIFIES** the foregoing questions to the South Carolina Supreme Court. The clerk is **DIRECTED** to forward a copy of this order to the South Carolina Supreme Court under this court’s official seal, together with copies of any portions of the record requested by the South Carolina Supreme Court.

IT IS SO ORDERED.



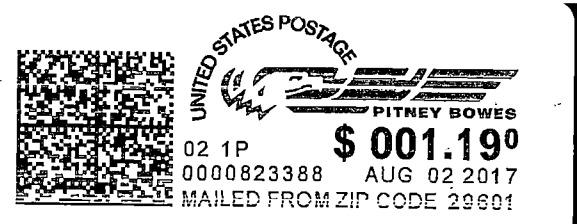
United States District Court Judge

August 2, 2017
Columbia, South Carolina

UNITED STATES DISTRICT COURT

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