UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ROBERT D. GORDON, Receiver of Legisi Marketing, Inc., Gregory N. McKnight and Legisi Holdings, LLC,

Plaintiff,

Case No. 2:09-cv-11770-VAR-EAS

Hon. Victoria A. Roberts

vs.

ROYAL PALM REAL ESTATE INVESTMENT FUND, I, LLLP, a Florida Limited Liability Limited Partnership, **ROYAL PALM INVESTMENT MANAGEMENT COMPANY, LLC**, a Florida Limited Liability Company, **ROYAL MARKETING SERVICES, LLC**, a Florida Limited Liability Company, **ROBERT ROSETTO**, **ROXANNE ROSETTO**, and **BRUCE ROSETTO,**

Defendants.

PLAINTIFF'S TRIAL BRIEF

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SUMMARY OF PLAINTIFF'S CLAIMS AND REQUESTED RELIEF

In this action, Plaintiff, Robert D. Gordon, Receiver, pursues claims for fraudulent transfers under the Michigan Uniform Fraudulent Transfer Act, and breach of statutory duties under the Florida Limited Partnership Act. More specifically, Mr. Gordon seeks a judgment on a jury verdict as follows:

- Fraudulent Transfers under M.C.L. § 566.34(1)(a) against Royal Palm Realty Investment Fund I, LLLP ("Realty Fund") and Bruce Rosetto (based on veil-piercing): $9,440,068.55.

- Fraudulent Transfers under M.C.L. § 566.34(1)(a) against Roxanne Rosetto, as subsequent transferee: $243,093.14.

- Fraudulent Transfers under M.C.L. § 566.34(1)(a) against Robert Rosetto, as subsequent transferee: $358,748.

- Breach of Statutory Duties of care, loyalty, and good faith and fair dealing under Florida law, Fla. Stat. § 620.1408 against Royal Palm Investment Management Company, LLC and Bruce Rosetto (based on veil-piercing): $404,070.

BACKGROUND FACTS

Mr. Gordon expects the evidence to establish the following facts:

I. The Legisi Ponzi Scheme

Plaintiff, Robert D. Gordon, is the Receiver of the Estates of Legisi Holdings, LLC, Legisi Marketing, Inc., Gregory McKnight, and others affiliated with one of the largest Ponzi Schemes in this district's history, "Legisi."

Greg McKnight, of Swartz Creek, was an electrician at General Motors who dabbled in internet investing and multilevel marketing schemes. He professed to be

an expert on high-yield investment programs, or "HYIPs" offered on the internet. "HYIPs" offered high rates of return, attracted investment, then disappeared. In December 2005, McKnight decided to start his own investment program, Legisi, that similarly offered very high rates of return (7.5% - 15% *per month*). In early 2006, McKnight organized Legisi Holdings, LLC, a Nevis-based company that McKnight used as the entity to attract money for the Legisi scheme.

McKnight sought to differentiate Legisi from what he called "filthy, scamming HYIPs" by posting his picture and contact information, implying that Legisi was a "legitimate" program. Although he operated in the open, Legisi was just as "filthy" and "scamming" as the other HYIPs. Ironically, McKnight invested some of his early revenues into HYIPs, and promptly lost money. McKnight then had to pay his investors with new investor money, and thus Legisi was a Ponzi Scheme from its inception.

Judge Steeh has held in related cases that Legisi was a Ponzi Scheme, which has burden-of-proof-shifting implications for Mr. Gordon's fraudulent transfer claims in this case. *Gordon v. Mazu Publishing, Inc.,* Case No. 09-13953; *Securities and Exchange Comm. v. Gagnon,* Case No. 10-11891 [ECF No. 66, PageID.2557].

McKnight's business acquaintance, Matt Gagnon, operated a popular investment and "business opportunity" website, Mazu.com. In exchange for referral fees, Gagnon endorsed Legisi and included a link to Legisi.com on his Mazu.com

website. *Id.* With Gagnon's influencer promotion, McKnight attracted more money than he knew what to do with.

II. Sierra and Bruce Rosetto Identify Legisi as an Easy Mark

In January 2007, McKnight formed Legisi Marketing, Inc., a Michigan corporation with a U.S. tax ID, to invest the funds attracted by the Legisi scheme. McKnight invested in high-risk foreign currencies and commodities through Florida-based brokers. Word spread in the investment broker community that McKnight had a lot of money to invest. Marsha Friedman, an unlicensed representative of "Elite Consulting" in Hallandale, Florida, gave McKnight's name to Alan Goddard of Boca Raton-based Sierra Equity Group. According to Goddard's journal, Friedman told Goddard that McKnight was "extremely wealthy" Friedman gave the lead to Sierra as an incentive to merge with Elite. Sierra decided not to combine with Elite but followed up with McKnight.

Sierra's Michael Lichtenstein cold-called McKnight on March 13, 2007, signed up Legisi Marketing as a customer, and offered several investments. Lichtenstein was not licensed to offer securities in Michigan, but he did so anyway and named his Sierra colleague Alan Goddard as account representative.

Mr. Goddard handled the investment banking aspect of Sierra's business by raising capital for various small company-issuers in exchange for placement agent fees. In most instances, those same issuers were represented by Defendant Bruce

Rosetto, a lawyer then of the Boca Raton office of the Blank Rome law firm. Bruce Rosetto was also legal counsel for Sierra and Alan Goddard personally.

III. Bruce Rosetto's Real Estate Fund Concept

Bruce Rosetto's family hailed from New Jersey, where they were active in real estate. Bruce Rosetto longed to start his own real estate private equity fund in Florida. He knew that Alan Goddard was skilled at raising capital and could do so for a real estate fund if incentivized. Although he was a full-time corporate and securities lawyer, Bruce's wife Roxanne, a realtor and former administrative assistant, could handle office administration and his son, Robert, then 23 years of age, could perform any legwork required.

In February 2007, Bruce Rosetto prepared financial projections for a hypothetical real estate fund and shared them with Alan Goddard:

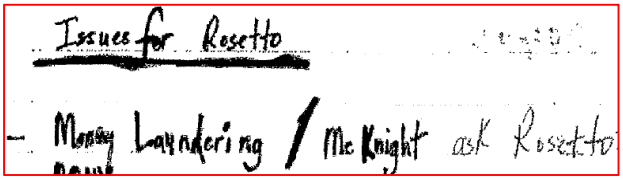
> I drew up a projection with a million assumptions to try to forecast what even a small effort of doing three deals per year over a five year period might look like. Give me your thoughts. I think the property appreciation number could be much higher because of our plan to renovate properties and increase rents more than the normal few percentage points per year, but I tried to provide a conservative assumption. It really generates great cash flow especially after year two. On top of that management fees, your banker fees, and any money earned on commissions, etc could be substantial for our respective businesses. If we go the nest step and do an S-11 registration statement so we can solicit on a general basis and raise much larger capital funds, this can be a phenomenal opportunity for all involved

Bruce Rosetto's real estate fund was just a dream until opportunity knocked with Lichtenstein's cold-call to McKnight and McKnight's willingness to invest the proceeds of the Legisi scheme as fast as he could. On March 22, 2007, Goddard emailed Bruce that *"we need to get on the stick with the real estate as i am going*

out to flint michigan on tuesday to see a new client that has indicated committing $5-10mm in our real estate partnerships in the next few weeks." As of March 22, 2007, neither the real estate fund nor its management company had even been formally organized. Nor had Bruce prepared any required offering materials regarding an investment in the Defendants' incipient real estate fund.

IV. Bruce Rosetto's Advice, Tainted by His "Inherent Conflict of Interest," That Sierra Could Accept Legisi's Money

On March 27-28, 2007, Goddard and Lichtenstein visited McKnight in Flint, where McKnight explained the Legisi program. Goddard recognized that there were potential issues with accepting funds from Legisi, including money laundering. Goddard wrote in his journal:



To resolve his concerns, Goddard consulted Sierra's attorney, Bruce Rosetto, on whether Sierra could accept Legisi's money. After examining the Legisi website only, Bruce advised Sierra that there was "no basis upon which [Sierra] couldn't accept this person's money, because apparently nothing's showing up that would give us any red flags."

Of course, there were many "red flags" about Legisi and McKnight, beginning with the Legisi website itself. Bruce Rosetto admitted at deposition that the Legisi

investment and its promised returns were "stupid" and constituted an "untenable business proposition." But he ignored those and other red flags. The reason is simple: Bruce's judgment was impaired by the prospect of funding his real estate venture, as to which he later admitted he had an "inherent conflict of interest."

V. Defendants' Bad Faith Acceptance and Total Loss of Legisi's $9.44 Million Ponzi Scheme Money

With Legisi's investment in his real estate fund on the horizon, Bruce Rosetto organized Defendant Royal Palm Investment Management Company, LLC ("Management Company") and Defendant Royal Palm Realty Investment Fund I, LLLP ("Realty Fund") on April 25 and 26, 2007, respectively. Bruce "signed" his son Robert's name on the organization documents. *Id.* Bruce named Royal Marketing Services, LLC ("Royal Marketing"), nominally owned by his wife Roxanne and son Robert, as the managing member of the Management Company. Legisi made 22 transfers to the Realty Fund over seven weeks, from April 30 through June 19, 2007. During that period, more red flags were brought to Bruce's attention and appeared in the public domain, eliminating any possible "good faith" acceptance of Legisi's transfers:

- **April 12, 2007:** Sierra asks its compliance company, ACA, to look into McKnight and Legisi. ACA personnel note that McKnight "is way to [sic] eager to say yes to every deal, regardless of risk … firm doesn't know if they should keep doing business with guy, file [Suspicious Activity Report] for all private placement purchases etc. I googled the guy … involved in crazy investment schemes … check out further and let me know what you think.

"https://www.legisi.com/"

- ***April 30, 2007: Legisi's first transfer for the benefit of the Realty Fund: $100,000*** for earnest money deposits for two properties that the Fund had contracted to purchase.

- **May 4, 2007:** The U.S. Treasury Department freezes Legisi's accounts in e-Gold, valued at $1.77 million [ECF No. 158-23]. Soon thereafter, McKnight announces on the Legisi website that "Egold's current court case has now become Legisi's problem also." Baca Declaration [ECF 158-24].

- ***May 7, 2007: Legisi's second transfer: $1,000,000.07 to the Realty Fund account at Sun American Bank.***

- **May 8, 2007:** CNNMoney.com article titled "Sniffing Out A Possible Scam" advises readers not to invest in Legisi because it has all the trappings of a Ponzi scheme. The article quotes a securities regulator who, *based on the Legisi.com website alone,* identifies red flags that Bruce Rosetto ignored:

- **Legisi promises lofty returns.** "They're offering ridiculously high interest rates that you cannot get in any legitimate market," said Borg.
- **Legisi requests that people lend it money via the Web sites e-gold.com or e-Bullion.com**, two Internet payment systems said to be backed by gold. Scammers in the past, said Borg, have requested alternate forms of payment in attempts to avoid mail fraud charges and to make money harder to trace. (On Tuesday, Legisi's Web site said it was "temporarily" not accepting funds from e-gold.)
- **The parent company is said to be based on the Caribbean island of Nevis.** Although there are legitimate businesses in Nevis, said Borg, to sell securities to a U.S. state resident they still must be licensed. Very few - if any - are, said Borg. "The safety net of securities regulation is not present off shore," said Borg.
- **Legisi pays referral fees of 5 percent,but only to members who have invested their own money.** "A lot of Ponzi and pyramid schemes will require you to be a member before you can get referral fees," said Borg. That gives people a greater incentive to keep the scams going, he said: "You're tied to the organization. Psychologically, you're part of the group."
- **Legisi demands that account holders promise they are not an informant** or associated with such government organizations as the IRS, FBI, CIA or "The Intelligence Services of Great Britain." Such requests, said Borg, are common to international "prime bank" and foreign currency exchange schemes. "It's done to psychologically intimidate folks into thinking they have some liability if they complain to authorities, under the theory they could be sued for damages," said Borg. "As a practical matter, that never happens."
- **Legisi insists that members are not investing in the company, but lending money to it.** That tactic has been used in the past, said Borg, by companies hoping to avoid securities regulation - not always successfully. "Even loan transactions can be securities, depending how they're done," Borg says.

The article noted that the commentator, a state securities regulation official, would bring Legisi to the attention of Michigan regulators.

- **May 11, 2007:** Sun American Bank (another Bruce Rosetto law client) asks questions of Robert Rosetto that "don't stop" about the source of funds that Robert is using to open an account for the Realty Fund. With Bruce's coaching, Robert sends an email to Sohaila Torrez of Sun American Bank:

"Legisi is a [sic] Institutional Fund that invests money. . . . I don't know or care where Legisi got there [sic] money, all that matters is that they are depositing money into our account. . . . to be honest my father and I are getting fed up with all the questions and do not want this to happen every time we have money deposited into our accounts." Bruce is copied on the email but says nothing.

- **May 11, 2007:** NASD (predecessor to FINRA) inquires of Sierra about Legisi and the source of funds for the Fund and Sierra's owner, Eric Bloom, responds [ECF 158-29]. Goddard provides the email between Robert and Ms. Torrez of Sun American Bank. [ECF No. 158-30].

- **May 11, 2007:** NASD asks Sierra to provide the offering memorandum for the Fund and names of the investors and amounts.

- **May 15, 2007:** Legisi receives a subpoena from the Michigan Office of Financial and Insurance Services. NASD requests Sierra to forward new account and all other paperwork for Legisi.

- **May 16, 2007:** Sierra's owner, Eric Bloom, files a Suspicious Activity Report ("SAR") regarding Legisi. Bruce opines to Goddard that it was "foolish to file" the SAR. Goddard Dep. II, p. 114 [ECF No. 158-40].

- **May 17, 2007:** Two law enforcement agents interview McKnight about Legisi. Within hours of the interview, an announcement appeared on the Legisi website stating that the Legisi program was closed to new investors, effective immediately. McKnight also cut off public access to the Legisi website by requiring a login and password. Baca Declaration [ECF No. 158-24].

- **May 18, 2007:** *At Sierra's suggestion*, McKnight and Legisi retain New York-based Roth Law Firm in connection with the Investigation of the State of Michigan Department of Labor and Economic Growth. McKnight Dep., pp. 291-92 [ECF No. 158-8]; emails between Goddard and Roth [ECF No. 158-43]. The same day, the Roth Law Firm begins identifying "Possible compliance issues that the Michigan Department of Labor and Economic Growth . . . may be investigating under the Michigan Uniform Securities Act," including "fraud in offering or selling a security." [ECF No. 158-44].

- ***May 18, 2007: Legisi's third transfer: $500,000.17.***

- **May 22, 2007:** The SEC sends Sierra a letter regarding a non-public inquiry into Legisi. The SEC seeks specified documents regarding Legisi, McKnight, Mazu, Mazu.com, and Matt Gagnon.
- ***May 23, 2007: Legisi's fourth transfer: $250,000.23.***
- **May 24, 2007:** Sierra's owner, Eric Bloom forwards to Bruce Rosetto the SEC's May 22, 2007 non-public inquiry letter.
- ***May 24, 2007 through June 19, 2007: Legisi makes 18 additional transfers to the Realty Fund, totaling $7,590,069, for a grand total of $9,440,069.*** **Stipulated Fact 46.**

Legisi was the *only* investor in the Realty Fund. In spite of all of the red flags about Legisi that were brought to Bruce Rosetto's attention and in the public domain, the Defendants failed to return Legisi's Ponzi Scheme money. Instead, they doubled down. From July through September 2007, the Realty Fund acquired three commercial properties in Florida using a combination of a portion of Legisi's cash and mortgage financing.

The Defendants' motives in forming the Realty Fund were evident from Bruce Rosetto's May 22, 2007 email to Goddard with financial projections showing that the venture was a boon to the Rosettos and Sierra, but a dud for its investor:

From: Rosetto, Bruce C. <Rosetto@BlankRome.com>
Sent: Tuesday, May 22, 2007 7:58 AM
To: Alan Goddard; robertrosetto@comcast.net
Subject: Royal palm_Real Estate Fund Projections.XLS
Attachments: Royal palm_Real Estate Fund Projections.XLS

Please review the pro forma financial projections I prepared. We need for part of our bank presentations. I assumed that we raise $6 million/year for 5 years and borrowed money at a loan to value ratio of 75%. Obviously Alan, if you are suscessful in raising more money than my assumptions, it would accelerate the rates of returns. The weakness in the analysis is that the rate of return to the investors is very slim after deducting the 3% managemnt fee, 13% placement agent fees, 2% real estate commissions, and 50% profit split. Essentially after 5 years the investors only realize an aggregate 20% return on their initial investment. From our side of the fence, this is an excellent rate of return for the General Partner

Bruce's projections (never shared with McKnight) confirm that the overarching purpose of the Realty Fund was to enrich the principals of the General Partner (which invested $0 in the Realty Fund) in the form of management fees, placement agent fees, and commissions, in addition to legal fees for Bruce Rosetto's law firm. Meanwhile, the limited partner/investor (Legisi) stood to gain a paltry 4% per year, at a time when one could have earned 5% in a bank account.

Even Bruce's "very slim" projection for Legisi turned out to be overstated: Legisi received *nothing* for its $9.4 million investment. All of the properties were total losses; the Defendants surrendered them with deeds in lieu of foreclosure or via short sales that spared the Defendants from personal liability.

VI. The SEC Civil Enforcement Action and Mr. Gordon's Appointment as Receiver

On May 5, 2008, the United States Securities and Exchange Commission commenced a civil enforcement action in the Eastern District of Michigan, Case No. 08-11887, against Legisi Holdings, LLC, Legisi Marketing, Inc., McKnight, and various "relief defendants." The SEC's Complaint [ECF No. 5] alleged that from December 2005 through at least November 2007, Legisi raised approximately $72 million from 3,000 to 4,000 members of the public from all 50 states and several foreign countries, but returned only $27.5 million to investors. McKnight invested $33 million and had net realized losses of $3.6 million. The SEC alleged various

violations of U.S securities laws, including securities fraud. McKnight admitted these allegations in his February 16, 2012 Rule 11 Plea Agreement.

The Court issued an Asset Freeze Order on May 5, 2008. The Asset Freeze Order was sent to Bruce Rosetto on May 6, 2008. On the SEC's motion, the Court appointed Mr. Gordon as Receiver, with powers, *inter alia*, to take possession and recover assets of the Receivership Estates and bring legal actions as he deems appropriate in discharging his duties as Receiver. After his appointment, Mr. Gordon recovered and liquidated Receivership assets, filed legal actions as appropriate, and implemented a victims claim-validation and restitution process. Mr. Gordon has made restitution payments to Legisi victims totaling approximately $16.34 million, or approximately 37% of allowed claims.

McKnight was charged with and pled guilty to wire fraud. Case No. 12-cr-20101. Judge Goldsmith imposed a 188-month sentence.

VII. Significant Procedural Events

On May 7, 2009, Mr. Gordon commenced this action against the Defendants and Sierra, Goddard, Lichtenstein, and Bloom (the "Sierra Parties"). Because of an arbitration provision in the account agreement with Sierra, the Court required Mr. Gordon to arbitrate his claims against the Sierra Parties through FINRA. On these Defendants' motion, the action was stayed during the pendency of the FINRA

arbitration against the Sierra Parties. Following a settlement with the Sierra Parties, this case was re-opened on December 9, 2016 [ECF No. 81].

On November 7, 2017, Mr. Gordon filed a Second Amended Complaint [ECF No. 101] ("SAC"). The Defendants moved to dismiss all counts of the SAC [ECF No. 106]. On May 25, 2018, the Court granted in part and denied in part the Defendants' Motion to Dismiss [ECF No. 123] ("MTD Opinion"). Among other things, the MTD Opinion recognized that the SAC had sufficiently pled Bruce's (but not Roxanne's or Robert's) liability based on a veil-piercing theory: "The allegations in [the] Complaint, as a whole, sufficiently state a plausible claim that Bruce Rosetto dominated and controlled the Management Company to such an extent that its independent existence was non-existent. See ¶¶ 43; 82-83; 107; 113-14; 199." [ECF No. 123 PageID.3433].

Under the Court's Scheduling Order, as amended, discovery was due by April 1, 2019 [ECF No. 138]. The dispositive motion cut-off date, as extended three times, was July 8, 2019 [ECF No. 149].

Both Plaintiff and Defendants engaged in extensive summary judgment practice. On July 5, 2019, Mr. Gordon moved for partial summary judgment [ECF No. 150], based on four categories of abusive transfers from the Realty Fund, including payment of legal fees to Bruce Rosetto's law firm for services unrelated to the Realty Fund, transfers to a family business owned by Bruce Rosetto and

Roxanne Rosetto, "loans" ordered by Bruce from the Realty Fund to a catering business started by the Defendants together with Robert's in-laws; and transfers from the Realty Fund to Defendants' second-generation fund, made after the SEC asset freeze and without Mr. Gordon's consent.

On July 8, 2019, the Defendants moved for summary judgment on all remaining claims in Mr. Gordon's SAC. [ECF No. 151]. With respect to the claims for breach of partnership agreement (Count V) and breach of statutory duty (Count VI), Defendants argued that the partnership agreement gave the Defendants *carte blanche* to use Legisi's money invested in the Realty Fund. They also argued that there was no basis for piercing the corporate veil to hold Bruce Rosetto personally liable for breaches of duty of the Realty Fund's general partner, Management Company. As to the fraudulent transfer claims (Counts X and XI), Defendants made an array of arguments, including the same standing argument that the Court rejected in the MTD Opinion [ECF No. 123 PageID.3431-32].

The parties filed extensive responses and replies, with voluminous exhibits, to the respective motions. [ECF Nos. 155, 158-161].

On May 31, 2020, Judge Tarnow issued his first Opinion and Order on the cross-motions [ECF #165], in which the Court denied Mr. Gordon's motion for partial summary judgment and granted in part and denied in part Defendants' motion. The Court dismissed the remaining securities claims and the breach of

partnership agreement and duty claims (Counts V and VI), but not the fraudulent transfer claims (Counts X and XI).

On June 12, 2020, Mr. Gordon moved for reconsideration of the Court's dismissal of Counts V and VI, on the basis that the Florida Revised Limited Partnership Act does *not* allow a partnership agreement to exonerate the general partner from statutory duties of care and loyalty [ECF No. 166].

On March 31, 2021, the Court granted in part and denied in part Mr. Gordon's motion for reconsideration [ECF No. 169]. The Court agreed with Mr. Gordon that the Florida statute does not allow a partnership agreement to authorize acts that violate statutory duties of care, loyalty, and good faith and fair dealing:

> Under FLA. STAT. § 620.1110, a partnership agreement may not "[e]liminate the duty of loyalty of a general partner . . . [u]nreasonably reduce the duty of care of a general partner . . . [e]liminate the obligation of good faith and fair dealing." **Therefore, despite any provision in the Partnership Agreement,** the Management Company, Royal Marketing Services, Robert Rosetto, Roxanne Rosetto, and Bruce Rosetto owed to Legisi and McKnight a statutory duty of care, FLA. STAT. § 620.1408 (3), a statutory duty of good faith and fair dealing, FLA. STAT. § 620.1110(2)(g), and a statutory duty of loyalty, Fla. Stat. § 620.1110(2)(e), and FLA. STAT. § 620.1408.

[ECF No. 169, PageID.7772] (emphasis added).

Moreover, Judge Tarnow amplified his MTD Opinion that Bruce Rosetto could be liable on a veil-piercing theory, holding that Mr. Gordon presented

sufficient evidence to create a jury-triable claim that Bruce Rosetto is personally liable based on veil-piercing:

> Plaintiff has presented a genuine dispute of fact as to whether these activities breached the duties of a general partner by failing [to disclose] material facts to McKnight such as the fact that Sunrise Catering was owned by the Rosettos and initiating unexplained transfers to separate entities. *See* (ECF No. 150 PageID.3876-78). Plaintiff has further presented a genuine dispute of fact as to whether Bruce Rosetto dominated the Management Company's operations such that piercing the corporate veil would be appropriate.
>
> . . . .
>
> Here, the Court finds that Plaintiff has presented sufficient evidence that Bruce Rosetto was the driving force behind the Company's operations while his wife and son were merely nominal owners such that a jury may decide if his conduct was sufficiently improper to hold him liable. See (ECF No. 150, PageID.3874-75)."

[ECF No. 169, PageID. 7773-74].

Following Judge Tarnow's passing and reassignment of the action, the Court scheduled trial to begin on May 24, 2022. In the meantime, the Court issued several rulings:

- April 1, 2022 Order Denying Defendants' Motion for Leave to File Second Summary Judgment Motion [ECF No. 177].
- May 5, 2022 Order Granting in Part and Denying in Part Defendants' Motion in Limine re Charles Porten [ECF No. 184].
- May 5, 2022 Order Granting Plaintiff's Motion in Limine to Exclude Evidence of Alleged Defamation and its Alleged Effects [ECF No. 185].

APPLICATION OF EXPECTED EVIDENCE TO MR. GORDON'S CLAIMS

I. Fraudulent Transfers

The parties have stipulated that Legisi was a Ponzi Scheme and that all funds invested by Legisi into the Realty Fund were the proceeds of the Ponzi Scheme. **Stipulated Facts 26, 47.** McKnight so admitted in his plea agreement and in his deposition testimony. Judge Steeh has so held in related cases. *Gordon v. Mazu Publishing, Inc.*, Case No. 09-13953; *Securities and Exchange Comm. v. Gagnon*, Case No. 10-11891 [ECF No. 66, PageID.2557]. As a result, Judge Tarnow recognized that the Ponzi Scheme Presumption establishes Legisi's actual intent to defraud within the meaning of M.C.L. § 566.34(1)(a). May 31, 2020 Opinion and Order on Motions for Summary Judgment [ECF No. 165, PageID.7722]. The Court decided not to revisit Judge Tarnow's ruling [ECF No. 188, PageID.8137].

When actual intent to defraud is established, the burden shifts to the transferees to establish *both* that they accepted the transfers in good faith and that they gave reasonably equivalent value in exchange. M.C.L. § 566.38(1); *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006); *Terry v. June*, 432 F. Supp. 2d 635, 641 (W.D. Va. 2006) (applying Michigan and Florida law and collecting cases); *In re Bernard L. Madoff Inv. Securities LLC*, 458 B.R. 87, 105 n.10 (Bankr. S.D.N.Y. 2011); *Armstrong v. Collins*, 2010 WL 1141158, *19 (S.D.N.Y. Mar. 24 2010). This

burden-shifting applies to subsequent transferees. *In re Agricultural Research and Technology Group, Inc.*, 916 F.2d 528 (9th Cir. 1990).

The evidence will show that none of the Defendants can carry their burden of proving good faith and reasonably equivalent value. Defendant Bruce Rosetto dominated and controlled, and acted as the attorney, for the Realty Fund and related entities. The overwhelming documentary evidence and testimony will show that Bruce Rosetto ignored many "red flags" and failed to follow up regarding Legisi's criminal activities. Defendants Roxanne Rosetto and Robert Rosetto did not know or care where Legisi obtained its money and failed completely to perform any due diligence on Legisi. Their willful ignorance cannot satisfy good faith.

Nor can the Defendants establish reasonably equivalent value. The investment interest offered by the Realty Fund was nowhere close to being "reasonably equivalent value" in exchange for the $9.44 million in cash transferred by Legisi during the period April 30 through June 19, 2007. Mr. Gordon's experts, Glenn Sheets of Stout, and Charles Porten, will testify that because of the economic structure of the Realty Fund, Legisi's limited partner interest in the Realty Fund was of very little value at the time of the transfers.

Defendants Roxanne and Robert Rosetto cannot establish that they gave reasonably equivalent value for the hundreds of thousands of dollars they received in "management fees" from the Realty Fund. Neither was qualified to serve as a

fund manager for a private equity real estate fund. They functioned as bookkeeper and property manager, respectively, while Bruce Rosetto dominated and controlled all material business of the Realty Fund.

II. Breach of Statutory Duties Under Fla. Stat. § 620.1408

Mr. Gordon will prove that the general partner of the Realty Fund, Management Company, breached its statutory duties of care, loyalty, and good faith and fair dealing under Florida law by effectuating five self-dealing transactions that benefitted neither the Realty Fund nor Legisi:

(a) Billing and paying legal fees to Bruce Rosetto's law firm for services rendered to clients other than the Royal Palm Realty Investment Fund;

(b) Making loans to Sunrise Catering of Deerfield Beach, LLC on terms that were not fair relative to general industry standards, and as a substitute for the Rosetto family's capital contributions as owners;

(c) Paying Rosetto & Associates, LLC for services that did not benefit the Royal Palm Realty Investment Fund;

(d) Transferring funds from Royal Palm Realty Investment Fund I, LLLP to a new real estate fund organized by the Defendants, Royal Palm Realty Investment Fund II, LLLP; and

(e) Paying a lawyer to represent Bruce Rosetto in a deposition at which he testified in an individual capacity.

Under applicable Florida law, the question of duty is one for the court, rather than the jury. *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla.1992); *Marriott, Int'l, Inc. v. Perez–Melendez*, 855 So. 2d 624, 628 (Fla. 5th DCA 2003); *L.A. Fitness Intern., LLC v. Mayer*, 980 So.2d 550, 557 (Fla. 4th DCA 2008); *Sells v. CSX Transp., Inc.*, 170 So. 3d 27, 33 (Fla. 1st DCA 2015).

Defendants argue that the partnership agreement eliminated the duties of care, loyalty, and good faith and fair dealing by giving the general partner broad authority and discretion to conduct the business of the Realty Fund. In that regard, Defendants rely on Fla. Stat. § 620.1110(1), which says: "(1) Except as otherwise provided in subsection (2), the partnership agreement governs relations among the partners and between the partners and the partnership."

Initially, Judge Tarnow agreed with Defendants that the partnership agreement controlled and effectively eliminated the general partner's statutory duties. On reconsideration, however, Judge Tarnow recognized that the exceptions in Fla. Stat. § 620.1110(2) take precedence over the partnership agreement. In his March 31, 2021 Opinion and Order on reconsideration [ECF No. 169, PageID.7772] Judge Tarnow rejected, and this Court should reject, Defendants' argument that the partnership agreement diminished statutory duties of the Realty Fund's general partner, Management Company. Each of the three statutory duties are discussed below.

A. The Statutory Duty of Care

The duty of care is prescribed by Fla. Stat. § 620.1408(3):

> (3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."

Under Fla. Stat. § 620.1110(2)(f): "A partnership agreement may not: . . . Unreasonably reduce the duty of care of a general partner under § 620.1408(3)."

No authority located interprets what constitutes an "unreasonable reduction" of the duty of care under Florida law. Here, however, that issue is moot because the **partnership agreement does not purport to limit the general partner's duty of care.**[1] The partnership agreement simply does not address the scope of the duty of care, let alone expressly limit it. In fact, the statutory duty of care to refrain from committing "grossly negligent, reckless, intentional misconduct, or knowing violation of law" is reinforced by the partnership agreement's exceptions to indemnification for "fraud, willful misconduct, or gross negligence." Sections 9.01 and 9.02 of the partnership agreement provide, in relevant part:

> **Section 9.01 <u>Exculpation</u>**. No Indemnified Party[2] shall be liable, responsible or accountable in damages or

[1] Moreover, it is difficult to imagine how it could be reasonable for a general partner/fiduciary to be authorized to effectuate purely self-dealing transactions and not violate the duty of care.

[2] Section 1.01 of the Partnership Agreement defines the term "Indemnified Party" as: "the General Partner, the Limited Partners, and any officer, director, shareholder,

> otherwise to the Partnership or the Limited Partners for any act or omission of the Indemnified Party on behalf of the Partnership, **provided that the act or omission is not determined by a court to be due to such Indemnified Party's fraud, willful misconduct or gross negligence.**
>
> **Section 9.02 Indemnification**. The Partnership shall indemnify and hold harmless each Indemnified Party against any loss or damage (including attorneys' and other professional fees) incurred by the Indemnified Party on behalf of the Partnership or in furtherance of the Partnership's interests, **without relieving the Indemnified Party of liability for fraud, willful misconduct or gross negligence. . . .** (emphasis added).

The exceptions for "fraud, willful misconduct or gross negligence" very closely track the statutory duty of care to refrain from engaging in "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." Fla. Stat. § 620.1408(3). Therefore, the Court should conclude that the partnership agreement does not limit the duty of care in this case, and in fact confirms it.

B. The Statutory Duty of Loyalty

The statutory duty of loyalty is contained in Fla. Stat. § 620.1408(2):

> (2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:
>
> (a) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property,

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partner, member, manager or agent of the General Partner or a Limited Partner when any such Person is acting on behalf of the Partnership in accordance with this Agreement."

> including the appropriation of a limited partnership opportunity.
>
> (b) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership.
>
> (c) To refrain from competing with the limited partnership in the conduct of the limited partnership's activities.

As summed up recently by the U.S. District Court for the Middle District of Florida: "A fundamental aspect of the duty of loyalty is that a partner may not divert partnership assets to non-partnership uses." *Creative Choice Homes XXX, LLC, v. AmTax Holdings 690, LLC*, 2022 WL 1014063, at *10–11 (M.D. Fla. April 5, 2022) (collecting cases). This dimension is directly applicable to the five self-dealing transactions alleged by Mr. Gordon.

Under the Florida Limited Partnership Act, Fla. Stat. § 620.1110:

> (2) A partnership agreement may not:
>
> . . . .
>
> (e) Eliminate the duty of loyalty of a general partner under § 620.1408 but the partnership agreement may:
>
> 1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
>
> 2. Specify the number, percentage, class, or other type of partners that may authorize or ratify, after full disclosure to all partners of all material

> facts, a specific act or transaction that otherwise would violate the duty of loyalty[.]"

As with the duty of care, the Partnership Agreement contains no limitation on the duty of loyalty of the General Partner, Management Company. Nor is there any specification of categories or types of activities that would not violate the duty of loyalty, or any recitation of the procedure for authorization or ratification after full disclosure to all partners of all material facts. Further, Mr. Gordon submits that it would not be "reasonable" to excuse a general partner from violating the "fundamental aspect of the duty of loyalty . . . that a partner may not divert partnership assets to non-partnership uses." *Creative Choice*, *supra*.

C. The Statutory and Implied Duty of Good Faith and Fair Dealing

A general partner's duty of good faith and fair dealing is codified at Fla. Stat. 1408(4):

> (4) A general partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing."

The Limited Partnership Act provides that a partnership agreement **"may not":**

> (g) Eliminate the obligation of good faith and fair dealing under §§ 620.1305(2) and 620.1408(4), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable[.]"

As with the duties of care and loyalty, the partnership agreement does not prescribe standards by which the performance of the obligation of good faith and fair dealing is to be measured. To the contrary, the partnership agreement reinforces the obligation of good faith and fair dealing by giving the General Partner wide discretion to do various acts; under Florida law, that discretion carries with it an implied duty of good faith and fair dealing:

> If a contract "appears by word or silence to invest one party with a degree of discretion" in the performance of its contractual duties, the implied covenant of good faith and fair dealing "limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party." The implied covenant of good faith and fair dealing does not, however, "vary the express terms of a contract," but, rather, "attaches to the performance of specific contractual obligations," *Centurion Air Cargo v. UPS Co.*, 420 F.3d 1146 (11th Cir. 2005).

Mount Sinai Medical Center of Greater Miami, Inc. v. Heidrick & Struggles, Inc., 188 Fed. Appx. 966, 970, 2006 WL 1914587, at *2 (11th Cir. 2006) (internal citations omitted).

Notwithstanding the partnership agreement's grant of broad discretion to the general partner to manage the Realty Fund, that discretion carried with it an implied obligation of good faith and fair dealing. Thus, whether required by statute or by operation of law, the General Partner, Management Company, owed the limited partner, Legisi Marketing, a duty of good faith and fair dealing. That duty was

breached when the Management Company, as directed by Bruce Rosetto, engaged in purely self-dealing transactions.

III. Bruce Rosetto's Liability on Veil-Piercing

Bruce's personal liability is coextensive with the Realty Fund and the Management Company because he dominated and controlled each of them for the improper purpose of enriching his family at the expense of the limited partner, Legisi. Under Florida law, the elements necessary to pierce the corporate veil or establish alter-ego liability are essentially the same: (i) domination and control; (ii) improper or fraudulent use of the corporate form; and (iii) injury to the claimant as a result of the fraudulent or improper use of the corporate form. *In re Fund. LongTerm Care, Inc.*, 507 B.R. 359, 373 (Bankr. M.D. Fla. 2014) (footnote omitted).

These principles apply here to hold Bruce Rosetto liable for the Realty Fund's fraudulent transfer acceptance and Management Company's breaches of statutory duties violations. Bruce dominated and controlled the Realty Fund and the Management Company by dictating every facet of marketing, financing, and administration. Goddard will testify by deposition that the Realty Fund was Bruce's idea and that Bruce was its driving force. Goddard II Dep., pp. 85-89; 100-103; 106.

It is of no consequence that Bruce did not formally designate himself an owner of the Realty Fund or the Management Company. Courts will deem a person an equitable owner where, as here, s/he exercises domination and control over an entity

and it is used for unjust purposes, particularly where the person sets up a relative as the nominal owner. See, e.g., *Freeman v. Complex Computing Co., Inc.*, 119 F.3d 1044, 1051 (2nd Cir. 1997); *Fontana v. TLD Builders, Inc.*, 840 N.E.2d 767 (Ill. App. Ct. 2005); *LaFond v. Basham*, 683 P.2d 367, 369-70 (Colo. App. 1984); *Premier Therapy, LLC v. Childs*, 75 N.E.3d 692, 716 (Ohio App. 2016); *Foodland Distributors v. Al-Naimi*, 220 Mich. App. 453, 457; 559 N.W.2d 379 (1996).

The evidence will show that Bruce Rosetto made all material decisions for the Realty Fund and Management Company. Roxanne Rosetto and Robert Rosetto were merely nominal managers of the Realty Fund who performed limited bookkeeping and facilities management services. Neither the Realty Fund nor the Management Company observed corporate formalities that would nullify the overwhelming evidence that Bruce controlled the Realty Fund and Management Company.

The evidence will further show that Bruce Rosetto's domination and control was for the improper purpose of unjustly enriching his family at Legisi's expense. The evidence will show that Bruce Rosetto's own projections showed that the Realty Fund would provide a "very slim" return to the limited partner-investor (Legisi), while providing an "excellent" return to the general partner and the professionals who rendered service to the Realty Fund. Further, Bruce Rosetto directed the five categories of improper transactions that constitutes Mr. Gordon's claim for breaches of statutory duties.

CONCLUSION/RELIEF REQUESTED

Based on the evidence and argument at trial, Mr. Gordon respectfully requests judgment on a jury verdict as follows:

- Claim for Fraudulent Transfers under M.C.L. § 566.34(1)(a) against Royal Palm Realty Investment Fund I, LLLP ("Realty Fund") and Bruce Rosetto (based on veil-piercing): $9,440,068.55.

- Claim for Fraudulent Transfers under M.C.L. § 566.34(1)(a) against Roxanne Rosetto, as subsequent transferee: $243,093.14.

- Claim for Fraudulent Transfers under M.C.L. § 566.34(1)(a) against Robert Rosetto, as subsequent transferee: $358,748.

- Claim for Breach of Statutory Duties of care, loyalty, and good faith and fair dealing under Florida law, Fla. Stat. § 620.1408 against Royal Palm Investment Management Company, LLC and Bruce Rosetto (based on veil-piercing): $404,070.

- Taxable costs.

- Interest on all of the foregoing in the full amount allowed by law.

Respectfully submitted,

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Date: May 17, 2022

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2022, my assistant electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the counsel on record.

Respectfully submitted,

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Date: May 17, 2022