

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CIVIL DIVISION**

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

**Plaintiff,**

**Case No.: 51-2010-CA-2912-WS/G**

v.

**BOTFLY, LLC, DAVID R. LEWALSKI,  
and JON J. HAMMILL,**

**Defendants.**

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**RECEIVER'S MOTION FOR APPROVAL  
OF DISPOSITION OF TOYOTA TUNDRA AND LAND ROVER**

Michael E. Moecker, as Receiver of Botfly L.L.C., David R. Lewalski, and Jon J. Hammill and all other entities operated, controlled or otherwise associated with the Defendants' activities, pursuant to paragraph 4(i) of the Amended Order Appointing Receiver and by and through undersigned counsel, files this Motion for Approval of Disposition of certain motor vehicles which are further described herein. In support of this motion the Receiver states as follows:

1. On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs, State of Florida filed a complaint (the "**Complaint**") against Botfly, LLC, a Florida limited liability company ("**Botfly**"), David R. Lewalski, the manager of Botfly ("**Lewalski**"), and Jon J. Hammill, a representative and agent of Botfly ("**Hammill**"), for violations of the Florida Securities and Investor Protection Act, Fla. Stat. §§ 517.011 et seq., and the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq. The Complaint is

founded on the allegation that Lewalski and Hammill utilized Botfly to perpetrate a Ponzi scheme and that funds obtained by Botfly from loans with investors, promising payment of interest at the rate of as much as ten percent (10%) compounded monthly, were principally used for Lewalski and Hammill's personal benefit and were not invested in the foreign currency exchange market as represented to the investors by Lewalski and Hammill.

2. By Order Appointing Receiver dated April 1, 2010, the Court appointed Michael E. Moecker or his designee employed by Michael Moecker & Associated, Inc. (the "Receiver") to be the Receiver of Botfly, Lewalski, and Hammill and all other entities operated, controlled, or otherwise associated with the Defendants' activities. The Court entered an Amended Order Appointing Receiver (the "Order") on April 14, 2010.

3. Paragraph 4(i) of the Order provides that among the Receiver's duties is the recovery and liquidation of assets: "The Receiver shall collect and reduce to money the Assets either by suit, in any court of competent jurisdiction, by public or private sale."

4. Previously, the Receiver sought the authority to sell certain motor vehicles that were purchased with Botfly LLC's funds.

5. On October 11, 2010, the Court entered the Order Approving Disposition of Motor Vehicles (the "Order") which authorized the Receiver to sell six motor vehicles including the 2008 Toyota Tundra (the "Tundra") and the 2010 Land Rover (the "Land Rover") at an auction conducted by a licensed auctioneer specializing in high-end vehicles.

6. When the Order was entered, the Receiver had determined that the Tundra and Land Rover were titled to Botfly but had been unable to locate either of them. The Receiver has since recovered both.

7. Pursuant to the Order, in January 2011, Mecum Auctions sold four of the motor vehicles., in particular, the 2008 Ferrari F430, the 2002 Porsche 911 Turbo, the 2010 Corvette ZR1, and the 2008 Porsche 911 Coupe at auctions conducted on January 27 and 29, 2011.<sup>1</sup>

8. The Tundra and the Land Rover are not necessary for Botfly LLC's operations and a cost is incurred by the Receivership estate to insure, house and maintain them.

9. The Receiver believes that the market value of the Tundra and the Land Rover will decline with the passage of time and, accordingly, they should be sold as expeditiously as possible to maximize recovery for the Receivership.

10. The Order granted the Receiver the authority to employ a licensed auctioneer specializing in high-end vehicles to sell the Tundra and the Land Rover. However, the make, model and condition of the vehicles do not make them candidates for entry into a high-end vehicle auction. The Land Rover is a Range Rover HSE model, however, it has sustained minor body damage in multiple locations.

11. By this motion, the Receiver requests authority to employ Cliff Shuler Auctioneers, 422 Julia Street, Titusville, Florida, to sell the Tundra and Land Rover at an auction to be conducted on March 20, 2011 for a commission of 10% of the sales price. Sale of the Tundra and the Land Rover on the basis set forth herein will be in the best interests of the Receivership Estate.

#### **MEMORANDUM OF LAW**

A court appointing a receiver may issue orders as are necessary and proper for the property and interests of those concerned. *City of Kissimmee v. Department of Environmental Regulation*, 753 So.2d 770 (Fla. 5<sup>th</sup> DCA 2000). A receiver may sell receivership property

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<sup>1</sup> The 2008 Ferrari F430, the 2002 Porsche 911 Turbo, the 2010 Corvette ZR1, and the 2008 Porsche 911 Coupe were sold for a total sales price of \$393,000.00. Auction entry and commission fees of \$26,080.00 were deducted from the sales price.

where the character of the property or surrounding circumstances are such as to render a sale necessary for the adequate protection of the rights of the parties. *See Arzuman v. Saud*, 964 So. 2d 809 (Fla. 4<sup>th</sup> DCA 2007). The proposed manner for sale of the Tundra and Land Rover is reasonable.

WHEREFORE, the Receiver moves the Court to authorize the employment of an auctioneer and to allow the sale of the Tundra and the Land Rover.

Dated: Tampa, Florida  
March 3, 2011

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Receiver's Motion for Approval of Disposition of Toyota Tundra and Range Rover has been delivered this **3<sup>rd</sup>** day of March, 2011 to the below named parties via regular U.S. Mail:

Gregory S. Slemp, Esq.  
R. Scott Palmer, Esq.  
Nicholas J. Weilhammer, Esq.  
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Jon J. Hammill  
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*Karen Cox*  
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Karen Cox, Esq.