

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,
JON J. HAMMILL, and JON J. HAMMILL, P.A.,

Defendants.

**RECEIVER'S AMENDED MOTION FOR AUTHORIZATION
TO SELL CERTAIN JEWELRY AND BICYCLES ON EBAY**

Michael E. Moecker, as Receiver of Botfly L.L.C., David R. Lewalski (“Lewalski”), and Jon J. Hammill and all other entities operated, controlled or otherwise associated with the Defendants’ activities, by and through undersigned counsel, moves the Court for authorization to sell certain jewelry on EBay.

BACKGROUND

On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs, State of Florida initiated this action to prevent the defendants from further defrauding investors of Botfly, LLC. That same day, the Court appointed Michael E. Moecker to be the Receiver. In accordance with the Order Appointing Receiver, the Receiver has taken possession or control of the personal property located in premises occupied by the Defendants and of personal property in possession of third parties. In June 2011, the Court granted authorization to the Receiver to liquidate, donate or otherwise dispose of personal property that had a resale value of \$5,000 or less. Much of the property has been sold at public auction either or on EBay.

The Receiver's investigation revealed that Lewalski expended Botfly investor funds for the purchase of watches and expensive jewelry. In fact, records obtained during the Receivership proceeding reflect expenditures of almost \$200,000 at Cartier and approximately \$28,000 at Gause and Sons Jewelers. The Receiver has gone to substantial efforts to locate and recover the jewelry purchased by Lewalski with Botfly funds and has gained possession of three watches, three sets of cufflinks, three ladies bracelets, a black pearl necklace and earrings, and a 1.64 ct. Cartier diamond ring. The Cartier diamond ring was recovered from Mr. Lewalski's former fiancé, Melinda Colbeth, and had been given to her as an engagement ring.

The Receiver has also determined that several of the watches purchased by Lewalski were sold by his brother Martin Lewalski after the entry of the injunction. In particular, during August and September 2010, Martin Lewalski sold two mens Omega watches and two mens Cartier watches to Haille Jewelry and loans. One other Cartier watch purchased by Lewalski was given to a childhood friend, Jeffrey Collins. That watch was also sold after the entry of the injunction in this case.

The Receiver has obtained appraisals of the jewelry from two appraisers and has determined that certain items likely have a resale value of \$5,000 or more. Those items are described as follows:

- Mens 18KYG Rolex President with a diamond bezel;
- Ladies 18KRG Cartier Tank Americaine set with a double row of diamonds and with a diamond accent on the crown (purchased for \$39,100 plus tax at the Cartier, Las Vegas Wynn, in January 2010);

- Ladies 18KWG and diamond Cartier Panthere collection bracelet, set with approximately 340 pave set diamonds and an emerald (purchased for \$38,500 plus tax at the Cartier, Las Vegas Wynn, in December 2009);
- Ladies 17” 18KWG and Tahitian black Tahitian pearl necklace by Mikimoto (purchased for \$7,800 at Gause and Son in October 2009); and
- Ladies platinum and diamond ring by Cartier (purchased for \$35,450 plus tax at the Cartier, Las Vegas Wynn, in September 2009).

The Receiver has also recovered several bicycles purchase by Lewalski that likely have a resale value of \$5,000 or more. Those bicycles are described as follows:

- Rapha Condor Leggero style racing cycle;
- Pinarello Prince Torayca carbon 50 hm1k racing cycle; and
- Colnago Eps carbon fiber racing cycle.

By this motion, the Receiver seeks the Court’s permission to sell the above-described jewelry and bicycles on EBay subject to a minimum sale price determined by the information provided by the appraisals.

MEMORANDUM OF LAW

The Order Appointing Receiver authorizes the Receiver to apply to this Court for further or other instructions or powers, whenever such instructions or additional powers shall be deemed necessary in order to enable him to perform properly and legally the duties of the office of Receiver and to maintain, operate, preserve and protect the Receivership Estate. Sale of the jewelry is necessary and appropriate in order to pay claims of defrauded investors. The manner of sale describe herein has been determined by the Receiver to potentially maximize the amount recovered for these assets. Accordingly, the relief requested herein is consistent with the Court’s

discretion in a receivership matter to issue orders as are necessary and proper for the property and interests of those concerned. *See City of Kissimmee v. Department of Environmental Regulation*, 753 so.2d 770 (Fla. 5th DCA 2000).

WHEREFORE, the Receiver moves the Court to grant this motion and for such other relief as is just and appropriate.

Dated: Tampa, Florida
March 9, 2012

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Receiver's Motion for Authorization to Sell Certain Assets on EBay has been delivered this 6/12 day of March, 2012 to the below named parties in the manner indicated below:

Via E-Mail and U.S. Mail
Gregory S. Slemp, Esq.
R. Scott Palmer, Esq.
Nicholas J. Weilhammer, Esq.
PL-01: The Capitol
Tallahassee, Florida 32399-1050

Karen Cox
Karen Cox, Esq.