

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.

**NOTICE OF OPPORTUNITY TO OBJECT
AND FOR HEARING**

The Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files an objection within 14 days from the date this paper is entered on the docket. If you object to the relief requested in this paper, you must file your objection with the Clerk of Court at the West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida, 34654, and serve a copy on the movant's attorney, Karen Cox, Esq., Bush Ross, P.A., 1801 N. Highland Avenue, Tampa, FL 33602.

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

**RECEIVER'S MOTION TO APPROVE SETTLEMENT WITH
DEFENDANT WENDY LAPOINTE IN SUPPLEMENTAL PROCEEDING**

Michael E. Moecker, the Receiver for Botfly L.L.C. ("Botfly"), David R. Lewalski, and Jon J. Hammill and all other entities operated, controlled or otherwise associated with the Defendants' activities, by and through undersigned counsel (collectively, the "Receivership

Entities”), moves for the entry of an order approving a Settlement Agreement reached with Wendy J. LaPointe (the “**Defendant**”). In support of this Motion, the Receiver states as follows:

A. Background

1. On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs, State of Florida, initiated this action to halt the perpetration of an ongoing fraud perpetrated by Lewalski, Jon J. Hammill and others on investors and potential investors in Botfly, LLC.

2. That same day, the Court appointed Michael E. Moecker to be the Receiver.

3. Pursuant to the Order Appointing Receiver, the Receiver has the power and duty to marshal, preserve, protect, maintain, manage and safeguard the assets of the Receivership Entities in a reasonable, prudent, diligent, and efficient manner.

4. The Order Appointing Receiver requires the Receiver to collect and reduce to money the assets of the Receivership Entities either by suit, in any court of competent jurisdiction, or by public or private sale and specifically authorizes him to file suit to recover property of the Receivership Entities including, but not limited to, fraudulent conveyances and other claims and causes of actions of the Receivership Entities.

5. The Case Management Order further requires that all settlements in the Supplemental Proceedings are subject to Court approval and that the Receiver must file a Motion to Approve the Settlement on negative notice to the parties in the Main Case. Further, the Receiver must post a copy of the Motion to Approve the Settlement Agreement to the Receivership website at www.botflyreceivership.com. The Settlement Agreement is only enforceable upon approval of the Court. The funds subject to this agreement must be held in trust until the Court enters an order approving the Settlement Agreement at issue.

B. The Dispute

6. David Lewalski rented a townhome located in Gainesville Florida from the Defendant. He paid a security deposit of \$410 and prepaid the rent for the townhome through January 31, 2011.

7. In July 2010, the Receiver relinquished possession of the townhome to the Defendant and demanded a refund of the security deposit and the prepaid rent from the turnover date until the end of the lease term.

8. On or about December 18, 2012, the Receiver filed a Supplemental Proceeding against Defendant in the Pasco County Circuit Case No.: 51-2012-CA-008234-WS/G (the “**Supplemental Proceeding**”) to recover the security deposit and the prepaid rent.

9. The Defendant filed an answer and affirmative defenses and denies liability for the amount demanded.

C. The Compromise

10. A Settlement Agreement has been reached between the Receiver and Defendant resolving their disputes concerning whether all or any portion of the funds received from the Receivership Entities should be refunded to the Receivership. That settlement is embodied in a written agreement, a copy of which is attached hereto as Exhibit A (the “**Settlement Agreement**”).

11. The funds subject to the Settlement Agreement have been paid to the Receiver’s counsel, Bush Ross PA, and will be held in trust until the Court enters an order approving the Settlement Agreement.

12. This Motion will be posted to the Receivership website www.botflyreceivership.com. as required by this court’s Case Management Order.

13. The Settlement Agreement generally provides that, subject to the approval of the Court, the Receiver will dismiss the Supplemental Proceeding in return for the payment of \$5,000 by the Defendant.

14. By this motion, the Receiver seeks entry of an order approving the settlement and compromise and granting related relief, all in accordance with the terms of the Settlement Agreement.

D. Interests of the Estate

15. Resolution of the claim set forth in the Settlement Agreement is in the best interest of the Receivership, the Botfly investors, and Defendant. Litigation of the claim would require an investment of time by the Receiver and his counsel, incurring additional legal fees, costs and other expenses.

WHEREFORE, the Receiver moves the Court to approve the settlement reflected by the attached Settlement Agreement and granting such other and further relief as the Court deems just and proper.

Dated: June 11, 2013

BUSH ROSS, P.A.
Post Office Box 3913
Tampa, Florida 33601-3913
(813) 224-9255 (telephone)
(813) 223-9620 (facsimile)
Attorneys for the Receiver

By: /s/ Karen Cox
Karen Cox, FBN 456667
Primary E-Mail: kcox@bushross.com
Secondary E-Mail: mmedley@bushross.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Receiver's Motion to Approve Settlement with Defendant in Supplemental Proceeding has been delivered this 11th day of June, 2013 to the following as indicated:

Via Electronic Transmission:

Shelly May Johnson, Esq.
shelly@smilaw.net
sunny@smilaw.net

Via Electronic Transmission:

Gregory S. Slempp, Esq.
Greg.Slempp@myfloridalegal.com

/s/ Karen Cox _____

Karen Cox, Esq.

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

MICHAEL E. MOECKER, as Receiver for
BOTFLY, LLC, DAVID R. LEWALSKI,
and JON J. HAMMILL,
Plaintiff,

Case No.: 51-2012-CA-8234-WS/G

v.

WENDY J. LAPOINTE,
Defendant.

SETTLEMENT AGREEMENT

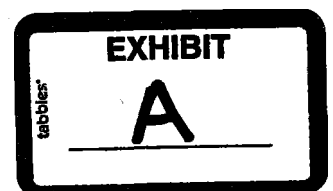
WHEREAS, by order dated April 1, 2010, the Court in *Office of the Attorney General, Department of Legal Affairs, State of Florida v. Botfly, L.L.C.*, et al., Case No. 51-2010-CA-2912-WS/G, in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida (the "**Receivership Court**") appointed Michael E. Moecker, as Receiver for Botfly L.L.C. ("**Botfly**"), David R. Lewalski, and Jon J. Hammill;

WHEREAS, the Receiver filed a complaint against Defendant Wendy J. LaPointe demanding the return of the deposit and prepaid rent received from Botfly for the lease of a residential town home by Lewalski (the "**Lawsuit**"); and

WHEREAS, Defendant, without admitting liability, wishes to resolve these matters amicably;
and

WHEREAS the parties acknowledge that this Agreement is entered into subject to court approval pursuant to the Case Management Order entered in the case styled *Office of the Attorney General, Department of Legal Affairs, State of Florida vs. Botfly, LLC, David R. Lewalski, Jon J. Hammill, and Jon J. Hammill, P.A.*, Pasco County Circuit Case No.: 51-2010-CA-2912-WS/G (the "**Main Case**").¹

¹ Paragraph ten of the Case Management Order states in pertinent part that "[a] Settlement Agreement will only be enforceable upon approval of the Court. Settlement funds shall be held in trust until the Court enters an order approving the Settlement Agreement at issue. Upon approval of the Settlement Agreement by the Court, settlement funds shall be transferred to the Receivership's Estate, and the Receiver shall file a motion to voluntarily dismiss the Supplemental Proceeding with prejudice."



NOW, THEREFORE, Defendant has agreed to pay and the Receiver has agreed to accept a total of \$5,000 (the "**Settlement Payment**") in full settlement of the claims asserted in the Lawsuit. The Settlement Payment represents full settlement of the claims asserted in the Lawsuit and is to be made in the form of a certified check or money order payable to "BUSH ROSS, P.A. TRUST ACCOUNT" and be delivered to Karen Cox, Esquire, BUSH ROSS, P.A., P.O. Box 3913, Tampa, Florida 33601-3913. Defendant shall make the Settlement Payment to Receiver on or before June 14, 2013.

Upon receipt the Settlement Payment, and the entry of an order approving this Agreement, the Parties shall be deemed to have released and forever discharged each other and their respective successors and assigns of and from any and all claims, demands, rights, promises, and obligations arising from or related in any way to the claims and defenses raised in the Lawsuit.

Each party to this Agreement represents and warrants that it has neither sold, assigned, nor otherwise transferred any interest in the claims, demands, actions, rights and causes of action which are the subject of this Agreement. Each party further represents and warrants that the individual executing this Agreement is duly authorized to so act and it is the intent of each party to be bound by this Agreement by the signing hereof.

The Receiver and the Defendant understand and agree that, subject to the approval of the court in the Main Case, the payment of the Settlement Amount and waiver of claims is in full accord and satisfaction of and in compromise of disputed claims, and the payment and waiver are not an admission of liability, which is expressly denied, but are made for the purpose of terminating the dispute and avoiding litigation.

After execution of this Settlement Agreement by all parties and receipt of the Settlement Amount, the Receiver will promptly move the Receivership Court for approval of this settlement. Thereafter, upon entry of an order approving the Settlement Agreement, the Receiver will file a motion to voluntarily dismiss the Lawsuit.

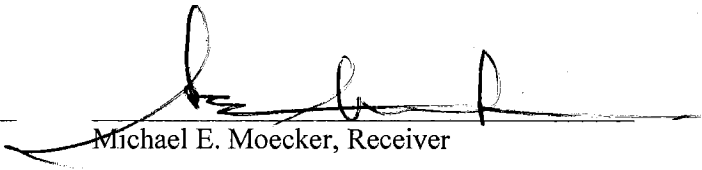
Defendant understands and agrees that each party shall bear their own individual costs and attorney fees incurred in the resolution.

The Receiver and the Defendant agree that this Settlement Agreement shall be governed by and be enforceable under Florida law in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida and that the Settlement Agreement may be executed in several counterparts and through the exchange of facsimile or PDF signature papers and, as executed, shall constitute one Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective this _____ day of June, 2013.

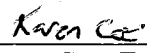
By:

Wendy J. LaPointe, Defendant



Michael E. Moecker, Receiver

Shelly May Johnson, Esquire
Florida Bar No. 0091405
SHELLY MAY JOHNSON, PA
7241 Little Road
New Port Richey, FL 34654
Telephone: (727) 376-7300
Facsimile: (727) 376-7337
Counsel for the Defendant

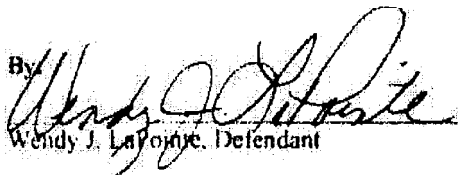


Karen Cox, Esquire
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Counsel for the Receiver

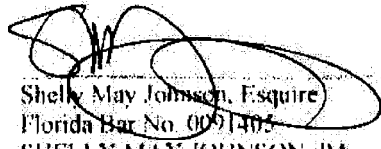
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By 
Wendy J. LaPorte, Defendant

Michael E. Moecker, Receiver


Shelly May Johnson, Esquire
Florida Bar No. 0091405
SHELLY MAY JOHNSON, PA
7241 Little Road
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Counsel for the Defendant

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