

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 AMENDED MOTION
TO APPROVE SETTLEMENT WITH DEFENDANTS
THOMAS STEAD AND DIANE STEAD IN SUPPLEMENTAL PROCEEDING
(Amended to provide additional time for objection)**

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, moves for the entry of an order approving A Settlement Agreement reached with Thomas Stead and Diane Stead (the "Steads"). The Receiver filed a motion to approve the settlement agreement on May 15, 2014, but problems with the Receivership's website caused the motion not to be posted. Accordingly, the motion has been amended to allow for the requisite notice required via publication on the website. 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. Thomas Stead and David Lewalski are second cousins. Thomas Stead and Diane Stead have been married for more than twenty years.

7. Beginning in June 2006 through March 2010, Thomas and Diane Stead together received \$531,050.00 in payments directly from Botfly (the “Botfly Payments”). Both admit that the payments included commissions for the investment of others. By his own estimates, Mr. Stead referred “probably 40-ish so, maybe 50” new investors to Botfly.

8. Of the Botfly Payments, Thomas Stead claims that \$350,000.00 constituted a loan by Lewalski for the purchase of Fairway Golf Carts, LLC (“**Fairway**”). In December 2009 and February 2010, Mr. Stead made two payments to Fairway with money acquired through the Botfly Payments and thereby acquired 100% of Fairway’s assets, primarily its book of business including its customers, goodwill, relationships and contacts. Mr. Stead admits that he has not made any repayment of the \$350,000 that he used for the purchase of Fairway and asserts that there are no agreed terms for repayment or written loan agreement.

9. In addition, using a bank account opened by Thomas Stead for Fairway Golf Carts as a conduit, the Defendants received \$50,000.00 of funds that originated from the Botfly fraudulent securities scheme.

10. On or about February 24, 2012, the Receiver filed a Supplemental Proceeding against the Steads in the Pasco County Circuit Court, Case No.: 51-2012-CA-1373-WS/G (the “**Supplemental Proceeding**”) for the return of the payments received by the Steads directly from Botfly and of payments received by Steads from Fairway with funds paid by Botfly.

11. The Receiver has demanded that the Steads repay the money received by them from Botfly to the Receivership.

12. The Supplemental Proceeding is set for jury trial during the week of June 23, 2014. The disputed issues to be resolved at trial include the Stead's contention that a \$30,000 payment made to Botfly in December 2005 should be used to set off the Steads' liability to the Receiver for payments received from Botfly, and Mr. Stead's contention that he gave value for the \$50,000 paid to him by Fairway of funds and, therefore the payments are not subject to recovery by the Receivership.

C. The Compromise

13. A Settlement Agreement has been reached between the Receiver and the Steads resolving the dispute concerning the amount of their indebtedness to the Receivership. That settlement is embodied in a written agreement, a copy of which is attached hereto as Exhibit A (the "**Settlement Agreement**").

14. The payments made pursuant to the Settlement Agreement will be held in trust by the Stead's counsel until the Court enters an order approving the Settlement Agreement.

15. This Motion will be posted to the Receivership website www.botflyreceivership.com. as required by this Court's Case Management Order.

16. The Settlement Agreement generally provides that, subject to the approval of the Court, upon receipt of payment in full of an agreed amount, the Receiver will dismiss the Supplemental Proceeding with prejudice.

17. 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

18. Resolution of the claim set forth in the Settlement Agreement is in the best interest of the Receivership, the Botfly investors, and the Steads, and will avoid litigation to resolve the dispute, and conserves the Receivership assets and judicial resources. 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 10, 2014

BUSH ROSS, P.A.
P.O. Box 3913
Tampa, FL 33601-3913
Telephone: (813) 224-9255
Facsimile: (813) 223-9620
Counsel for the Receiver

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

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Receiver's Amended Motion to Approve Settlement with Defendants Thomas Stead and Diane Stead in Supplemental Proceeding has been delivered this 10th day of June, 2014 to the below named parties in the manner of service as indicated:

Via E-Mail:

Gregory S. Slemp, Esq.
Greg.slemp@myfloridalegal.com

Via E-Mail:

Gabriel Mazzeo, Esq.
Gmazzeo11@gmail.com

Via E-Mail:

Jeremy T. Simons, Esq.
Rachel S. Green, Esq.
service@simonslawfirm.com
jo@simonslawfirm.com
rsg@simonslawfirm.com

/s/ Karen Cox

Karen Cox, Esq.