

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

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

Plaintiff,

-against-

BOTFLY, LLC, DAVID R. LEWALSKI, JON J.  
HAMMILL, and JON J. HAMMILL P.A.,

Defendants.

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

**REQUEST FOR EMERGENCY TELEPHONE HEARING**

COMES NOW, Defendants David R. Lewalski (“Lewalski”) and Botfly L.L.C. (“Botfly”) (collectively “Defendants”), by and through undersigned counsel, to respectfully request an emergency telephone hearing to permit “Mr. K”<sup>1</sup> to contribute \$50,000 as an advanced fee deposit to cover legal fees, expenses and costs related to Lewalski and Botfly’s defense of this action.

**BACKGROUND**

As you know, the Florida Office of the Attorney General (“OAG”) sought an ex parte temporary injunction sequestering and freezing the Defendants’ assets and enjoining the Defendants from (a) transferring, conveying, encumbering or disposing of their assets, (b) receiving money or property from any investors or lenders, (c) soliciting any person or entity to

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<sup>1</sup> For the purposes of this application, the individual offering to contribute to the legal defense of Lewalski and Botfly has asked that his name and any information that could be used to identify him be redacted from the record and, to the extent that the Court requires that this application and the Affidavit voluntarily executed by Mr. K on August 4, 2010 (the “Affidavit”) (a redacted copy of which is attached hereto as Exhibit A) be filed in the future, that it be done under seal pursuant to the Protective Order entered on April 1, 2010. An unredacted version of the Affidavit revealing the identity of “Mr. K” has already been provided to the OAG and Receiver and will be furnished to the Court for *in camera* review upon request.

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invest or make a loan to Botfly, and (d) destroying or mutilating any books, records, papers, computers or computer disks. On April 1, 2010, the Court granted the Temporary Injunction on the basis of the OAG's unchallenged papers. To date, the Temporary Injunction has largely prevented Lewalski and Botfly from defending this action. This point was recently highlighted in Defendant Jon Hammill's Motion to Modify the Temporary Injunction, filed on May 24, 2010 and argued on July 16, 2010. On August 6, 2010, this Court issued an Order Modifying the Temporary Injunction ("Modifying Order") wherein the Court ruled that Defendant Hammill would be permitted to solicit and receive funds from investors or lenders who are his family or personal friends so long as he complied with the conditions set forth in the Order. In light of this Modifying Order and several discussions counsel have had with the OAG and counsel for the Receiver, Defendants make the current Application.

#### THE APPLICATION

On this Application, a personal friend of Lewalski who has previously loaned money to Botfly has made the informed decision to provide \$50,000 to counsel to cover the legal fees and expenses of Lewalski and Botfly. As a condition of accepting those fees, Lewalski and Botfly have asked that Mr. K confer with both their counsel and Mr. K's own personal counsel, as well as review the pleadings in this case, before making his final decision to advance any fees. After a full and complete discussion with Defendants' counsel and his own personal lawyer, Mr. K has agreed to provide the funds and has sworn out an Affidavit which is also approved as to form by his personal lawyer.

In the Affidavit, Mr. K acknowledges that he is aware of the above-captioned litigation, the allegations made against Lewalski and Botfly, and has reviewed the Receiver's website, the Amended Complaint, the Temporary Injunction and the Order Appointing Receiver filed therein.

(See Affidavit ¶ 5.) Mr. K further states that the funds he is willing to advance come solely from the earnings of his medical practice and are not derived from the Defendants or any other entity or individual restrained by the Temporary Injunction. (See Affidavit ¶¶ 6, 8.) Mr. K further understands that: (1) the Defendants have made no representations or warranties as to the outcome of the above-reference litigation or the impact it may have on Mr. K's loan or the funds that he is advancing to the Defendants for their legal fees and expenses (See Affidavit ¶ 10); and (2) that that he will not have a Receivership claim based on the funds he advances to pay Defendants' legal expenses.<sup>2</sup>

A copy of the Affidavit was provided to the OAG and the Receiver on August 12, 2010 and Defendants sought to resolve any issues that may exist and obtain their consent to this application. Notwithstanding the Affidavit's full and complete compliance and consistency with the Modifying Order, on August 18, 2010, counsel for the Receiver objected to Mr. K's Affidavit and the OAG subsequently joined in the objection. The Receiver contends that Mr. K's Affidavit is deficient because it fails to disclose all circumstances under which Mr. K agreed to advance the funds to cover Lewalski and Botfly's legal fees and that one of the important functions of the Temporary Injunction was to protect the "investors and lenders from being further victimized by the persuasive skills that are obviously possessed by Mr. Lewalski" – without full disclosure of the circumstances surrounding Mr. K's decision to advance these legal fees, the protections would be circumvented.

Respectfully, the Receiver's concerns are unfounded here given the attached Affidavit and Mr. K's independent counsel on his decision. More importantly, such a disclosure is not required by the express terms of the Modifying Order and would improperly impede Defendants'

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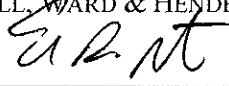
<sup>2</sup> Defendants have offered to obtain a letter from Mr. K's counsel expressly containing this acknowledgement; however, the Receiver's counsel has indicated that it would still not satisfy them and lead to their consent.

ability to solicit the funds necessary to cover their mounting legal fees. Lewalski and Botfly's ability to capably defend this action has already been hampered by the Temporary Injunction, and the Plaintiff and the Receiver should not be permitted to unilaterally impose stricter standards than those imposed by the Court on Hammill. Upon compliance with the Temporary Injunction and Modifying Order, the Plaintiff and Receiver should be precluded from imposing additional impediments to the payment of Lewalski and Botfly's legal fees and the further impediment of their defense.

WHEREFORE, based on the foregoing arguments, Defendants Lewalski and Botfly respectfully request an emergency telephone hearing and pray for an Order overruling the objection of the Plaintiff and Receiver to Mr. K's Affidavit and precluding the Plaintiff and Receiver from placing additional restrictions on the advancement of legal fees on behalf of Lewalski and Botfly.

Dated: August 26, 2010  
Tampa, Florida

HILL, WARD & HENDERSON, P.A.

  
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*Of Counsel:*

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ALSTON & BIRD LLP  
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Atlanta, Georgia 30309

*Counsel for David R. Lewalski and Botfly, L.L.C.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished  
via U.S. Mail and electronic transmission on this 26<sup>th</sup> day of August, 2010:

Karen Cox, Esq.  
Bush Ross, P.A.  
1801 North Highland Avenue  
Tampa, Florida 33602-2656  
kcox@bushross.com  
*Counsel for the Receiver*

Gregory S. Slempp, Esq.  
Assistant Attorney General  
Office of the Attorney General  
PL-01; The Capitol  
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Greg.Slempp@myfloridalegal.com  
*Counsel for the Plaintiff*

Jon J. Hammill  
P.O. Box 530181  
St. Petersburg, Florida 33747  
jonhammill@yahoo.com  
*Pro Se Defendant*

  
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# EXHIBIT A



6. Both my attorney and I have also had the opportunity to speak with counsel at A&B. A&B has made clear that: (a) they would not accept my funds if they were derived in any way from Botfly, Mr. Lewalski, Mr. Hammill or any other Receivership Entity as defined in the Court's Orders; and, (b) the Court, upon the review of this affidavit, must approve my payment of the \$50,000 advance fee deposit to A&B. It is my decision, and my decision alone, whether to provide funds for the representation of Botfly and Mr. Lewalski, and A&B has not made any representation or warranty as to the outcome of the above-reference litigation or the impact it may have on my loan to Botfly.

7. The funds I am providing to A&B are not derived, in any way, from the assets of Botfly, Mr. Lewalski, Mr. Hammill, any Receivership Entity or any other source restrained by the Temporary Injunction.

8. The funds come solely from my personal earnings from my medical practice.

9. I understand and acknowledge that despite my agreement to advance these funds for the representation of Botfly and Mr. Lewalski, an attorney-client relationship does not exist between me and A&B. A&B's sole professional obligation will be to Botfly and Mr. Lewalski. I realize that I have no legal relationship with A&B, and I have no right to direct, regulate, interfere with or influence A&B's representation of Botfly or Mr. Lewalski. I further understand that A&B is not required to disclose legal strategy, theory, plan or action or the like to me.

10. I also understand that any agreement I have to advance these funds is between myself, Botfly and Mr. Lewalski. I have not entered into any agreements with A&B; who is acting as counsel to Botfly and Mr. Lewalski and accepting fees on their behalf. As such, I recognize that I have no right of action against A&B for the return of these funds so long as they are used to pay for the legal fees and expenses of Botfly and Mr. Lewalski. I also understand



that I have no right of action against A&B for the manner in which it undertakes the legal representation of Botfly and Mr. Lewalski.

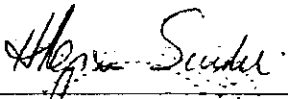
11. I further understand that neither A&B, Mr. Lewalski, nor Botfly are making any representations or warranties concerning the funds that I am advancing to A&B, except that the money will only be used for Botfly and Mr. Lewalski's legal fees and related expenses. If any portion of the funds are unused in the representation of Botfly and Mr. Lewalski, the unused balance will be returned to me.

12. Finally, I understand that this Affidavit will be provided to the Court, the Receiver and the Florida Attorney General. I ask that if the affidavit is filed publicly with the Court, that my name and the amounts I have invested with and received from Botfly be redacted from the public record pursuant to the Protective Order entered in this ~~matter~~.

K

K

Subscribed and sworn to before me  
this 4th day of August, 2010.



Notary public

H. REGINA SCUDERI

**REDACTED**

APPROVED AS TO FORM,

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ATTORNEY FOR K