

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 MOTOR VEHICLES**

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 (the "**Motor Vehicles**"). In support of the 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 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. Since appointment the Receiver has come into possession of the following motor vehicles purchased with Botfly LLC's funds which pursuant to this Court's order are registered to Michael E. Moecker, as Receiver of Botfly L.L.C., David R. Lewalski, and Jon J. Hammill free and clear of all liens:

- 2008 Ferrari F430, VIN ZFFEW59A580160515
- 2002 Porsche 911 Turbo, VIN WPOAB29962S686581.

5. In addition, the Receiver identified the following two additional motor vehicles purchased with Botfly LLC's funds which pursuant to this Court's order are registered to Michael E. Moecker, as Receiver of Botfly L.L.C., David R. Lewalski, and Jon J. Hammill free and clear of all liens:

- 2010 Corvette ZR1, VIN 1G1YN2DT6A5800190
- 2008 Porsche 911 Coupe, VIN WP0CD29958S788224.

6. The Receiver has identified but not located the following two vehicles which are registered to Botfly LLC and for which no lienholder is found in the public record:

- 2010 Land Rover, VIN SALMF1D42AA313686
- 2008 Toyota Tundra, VIN 5TBRV58118S481669.

7. The Receiver has come into possession of a motor vehicle registered to David R. Lewalski and purchased with funds from Botfly LLC. The description of the motor vehicle is contained in Exhibit "B" to the Initial Report of the Receiver (filed under seal pursuant to court order).

8. The Receiver has determined that the Motor Vehicles are not necessary for Botfly LLC's operations and a cost is incurred by the Receivership estate to insure, house and maintain those Motor Vehicles in the Receiver's possession.

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

10. The Receiver seeks authority to employ a licensed auctioneer specializing in high-end vehicles, to sell the motor vehicles at an auction to be conducted according industry standards and subject to governing Florida rules and regulations.

11. Sale of the Motor Vehicles on the basis set forth herein will be in the best interest of the Receivership Estate.

12. Counsel for the Office of the Attorney General has no objection to the requested relief.

**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 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 Motor Vehicles is reasonable.

WHEREFORE, the Receiver moves the Court to allow the sale of the Motor Vehicles.

Dated: Tampa, Florida  
September 24, 2010

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of September, 2010 a true and correct copy of the foregoing has been mailed to the following addresses:

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