

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: _____

JAMES D. SALLAH, not individually
but solely in his capacity as Corporate Monitor for
OM GLOBAL INVESTMENT FUND LLC and
OM GLOBAL LP,

Plaintiff,

v.

JAGDISH GANDHI,

Defendant.

COMPLAINT

James D. Sallah, not individually but solely in his capacity as the court-appointed Corporate Monitor (the “Corporate Monitor”) for OM Global Investment Fund LLC and OM Global LP (collectively, “OM Global”), hereby sues Defendant Jagdish Gandhi (“J. Gandhi”), and alleges:

Description of the Action

1. This action is brought pursuant to the Agreed Order Granting Plaintiff’s Unopposed Motion for Appointment of Corporate Monitor dated May 29, 2013 and the Agreed Order Granting the Corporate Monitor’s Emergency Motion to Expand Corporate Monitorship over OM Global LP dated August 17, 2013 (collectively, the “Appointment Orders”), issued by the Honorable Daryl E. Trawick in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, in *Chirag Amin v. Gignesh Movalia and OM Global Investment*

Fund LLC, Case No. 13-18620 CA 13 (the “Investor Action”), which, among other things, appointed the Corporate Monitor to marshal OM Global’s assets for the benefit of its investors who are currently owed money. Copies of the Appointment Orders are attached as Composite Exhibit A.

2. Pursuant to the Appointment Order dated May 29, 2013, the Corporate Monitor seeks to obtain a money judgment against J. Gandhi for fraudulent transfer, unjust enrichment and conversion.

Subject Matter Jurisdiction

3. Jurisdiction is proper in this Court because: (1) the Corporate Monitor sues to accomplish the ends sought in the Investor Action (*i.e.*, the marshaling of assets of investors) wherein his appointment was made and such an action is ancillary¹; (2) the Corporate Monitor files this ancillary action in the same Court wherein he was appointed; (3) the Corporate Monitor is obligated by the Appointment Orders entered in the Investor Action to take custody, control, and possession of OM Global’s assets by investigating and instituting actions (if necessary) against individuals or entities with possession of such assets; (4) the Corporate Monitor’s claims against J. Gandhi seek to recover such assets, pursuant to the Appointment Order dated May 29, 2013 entered in the Investor Action; and (5) the claims raised in this Complaint are so related to the claims involved in the Investor Action that they form part of the same case or controversy.

¹ If an action is filed by a receiver (or corporate monitor) in the Court in which the receiver (or corporate monitor) had been appointed, no independent jurisdictional grounds need be shown. *Baker v. Heller*, 571 F. Supp. 419 (S.D. Fla. 1983). “When an action is commenced by a receiver . . . to accomplish the ends sought and directed by the suit in which the appointment was made, such action or suit is regarded as ancillary . . . and . . . jurisdiction of these subordinate actions or suits is to be attributed to the jurisdiction upon which the main suit rested.” *Pope v. Louisville, New Albany & Chicago Ry. Co.*, 173 U.S. 573 (1899).

4. Pursuant to the Appointment Orders, the Corporate Monitor is obligated to take immediate possession of all of OM Global's property, assets and estate, and all other property of OM Global of every kind whatsoever and wheresoever located. In addition, the Corporate Monitor is authorized to sue third parties, such as J. Gandhi, on behalf of OM Global.

5. The Appointment Orders empower the Corporate Monitor to file actions and legal proceedings as the Corporate Monitor deems necessary against any individuals or entities with respect to transfers of monies or other proceeds directly or indirectly traceable from funds of OM Global. Such rights of action, as well as title to all property, real or personal of OM Global, wherever located within or without this State, are vested by operation of law in the Corporate Monitor.

Venue, Parties, and Personal Jurisdiction

6. Venue is proper in this Court because, as set forth more fully below, (1) J. Gandhi was the recipient of a transfer from Florida; (2) the agency relationship and subsequent business venture/scheme specifically giving rise to the Corporate Monitor's claims was created and continuously operated in and out of Florida; (3) the Investor Action, to which this suit is ancillary, is pending in this Court; (4) trying this ancillary action and the Investor Action before the same Court will avoid redundancy and preserve scarce judicial resources because this Court is already familiar with the general facts of the Investor Action; and (5) trying this action in this Court would not be so gravely difficult and inconvenient that J. Gandhi would, for all practical purposes, be deprived of his day in court.

7. OM Global Investment Fund LLC is a Florida limited liability company which had its principal place of business in Florida. Pursuant to the Appointment Order dated May 29, 2013, OM Global Investment Fund LLC was placed into corporate monitorship and the

Corporate Monitor was appointed to marshal its assets for the benefit of all of its investors.

8. OM Global LP is a Delaware limited partnership which had its principal place of business in Florida. OM Global LP was the continuation of OM Global Investment Fund LLC and was likewise placed into corporate monitorship. Therefore, the Corporate Monitor was appointed to marshal OM Global LP's assets for the benefit of all of its investors.

9. Defendant J. Gandhi is an individual who resides in San Jose, California. J. Gandhi was an investor in OM Global Investment Fund LLC, who improperly received a redemption from OM Global Investment Fund LLC that comprised monies belonging to OM Global Investment Fund LLC's other investors.

10. This Court has personal jurisdiction over J. Gandhi pursuant to not only the Appointment Order, but also Florida Statute § 48.193(1)(a) because J. Gandhi damaged OM Global Investment Fund LLC in Florida.

The Appointment Orders

11. The Court appointed the Corporate Monitor to, among other things, take immediate possession of all of OM Global's property wherever situated.

12. The Appointment Orders granted the Corporate Monitor various powers, including, but not limited to, the specific power to institute such actions and legal proceedings as the Corporate Monitor deems necessary in respect of transfers of monies or other proceeds directly or indirectly traceable from investors in OM Global.

13. The claims alleged herein all seek to recover money and property directly or indirectly traceable from investors in OM Global Investment Fund LLC, pursuant to the Appointment Order dated May 29, 2013. The claims alleged herein are also specifically contemplated by the Appointment Order.

Overview of OM Global Investment Fund LLC

14. OM Global Investment Fund LLC was a hedge fund operated by OM Investment Management, a privately-held investment and wealth management firm. OM Investment Management represented itself to investors as a registered investment advisor with the United States Securities and Exchange Commission (the “SEC”).

15. On April 1, 2010, OM Global Investment Fund LLC was launched as a new hedge fund of OM Investment Management. At all material times, Gignesh Movalia was the portfolio manager of OM Global Investment Fund LLC, and the founder and chairman of OM Investment Management. OM Global’s investors reside in, among other places, Florida, including Miami-Dade County.

16. Investor contributions in OM Global Investment Fund LLC were approximately \$21.3 million and redemptions were approximately \$6.7 million.

17. In addition, investor funds were commingled.

18. OM Global Investment Fund LLC suffered significant trading losses in Facebook (“FB”) and Proshares Ultra VIX Short-Term Futures ETF (“UVXY”). Preliminary analysis indicates the trading losses from UVXY trades exceeded \$5.2 million and FB trading losses were approximately \$7.1 million. However, when accounting for all investment activity in OM Global Investment Fund LLC beyond the FB and UVXY losses, the fund’s total trading losses were approximately \$8.9 million.

19. Moreover, OM Global Investment Fund LLC suffered from corporate mismanagement, such as the failure to operate the fund at all material times in compliance with regulations required by the SEC, including failing to timely file the necessary records registering OM Global Investment Fund LLC with the SEC.

20. As a result of the above, and with the agreement of Movalia, on May 29, 2013, the Corporate Monitor was appointed by the Court to serve as Corporate Monitor for OM Global Investment Fund LLC.

The SEC Sues Movalia for Securities Violations

21. On September 27, 2013, the SEC sued Movalia in the case styled *Securities and Exchange Commission v. OM Investment Management LLC, Gignesh Movalia and Edwin V. Gaw*, Case No. 13-cv-23486-MARTINEZ, pending in the Southern District of Florida. A copy of the SEC's Complaint is attached as Exhibit B.

22. The SEC alleged Movalia violated federal securities laws, including violations of the Securities Act of 1933, Rule 10b-5 of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940. In essence, Movalia was running a Ponzi scheme through OM Global Investment Fund LLC.

23. Movalia has consented to the entry of a permanent injunction restraining him from violating federal securities laws, an order directing him to pay disgorgement (amount to be determined), an order directing him to pay a civil monetary penalty (amount to be determined), and an order freezing his assets.

J. Gandhi Receives an Improper Redemption of \$101,392

24. J. Gandhi made an investment of \$100,800 in OM Global Investment Fund LLC. In return, J. Gandhi purportedly received 3,200 shares in FB, whose stock went public in May 2012. J. Gandhi's purchase price per share of FB was \$31.50.

25. However, as of the end of 2012, Movalia had liquidated all FB stock which had been purchased for the benefit of investors (including J. Gandhi).

26. In February 2013, J. Gandhi ultimately received a total of \$101,392 as his

redemption from OM Global Investment Fund LLC for his FB stock (which, again, no longer existed). Therefore, he received back not only all of his principal investment but also a profit. Because J. Gandhi purportedly had 3,200 FB shares, his redemption price was \$31.685.

27. As of February 2013 (the month of J. Gandhi's redemption), the commingled fund – at the hands of Movalia – had suffered severe trading losses. For example, the commingled fund had suffered over 50% losses. Because the fund was comprised of commingled investor money, J. Gandhi, therefore, had no right to the redemption he received and, therefore, received an overpayment of at least 50% of his principal investment.

28. Moreover, as of February 2013 (the month of J. Gandhi's redemption), Movalia had already liquidated all FB stock, so there were no more FB shares for the benefit of investors (including J. Gandhi). Therefore, there was no actual redemption of FB stock by J. Gandhi.

29. Most investors never received any redemption from the fund. Specifically, over 70% of investors never received one penny as a redemption. The Corporate Monitor recently made a first distribution to investors with allowed claims in the amount of approximately 14% of each investor's principal investment amount. As stated above, J. Gandhi previously received 100% of his investment and an additional slight profit (which was more than seven times the first distribution amount).

30. J. Gandhi knew or should have known that Movalia was running a Ponzi scheme or, at a minimum, had doubts about the ways in which Movalia was conducting the fund.

31. For example, Movalia consistently failed to respond to J. Gandhi's questions, comply with his requests or send requested materials.

32. Moreover, J. Gandhi knew or should have known his redemption was improper. J. Gandhi's redemption price was \$31.685 per FB share. However, he received his redemption

on February 1, 2013. The high for FB that day was \$31.02 (which is obviously less than the \$31.685 he received).

33. As such, J. Gandhi is not an innocent investor and did not accept his redemption with a good faith belief that OM Global was a legitimate investment fund.

34. Moreover, Movalia transferred the funds to J. Gandhi at or near the time that the SEC contacted Movalia about investigating OM Global. Soon thereafter, Movalia decided that he would be ultimately shutting down the fund and ultimately agreed to the appointment of the Corporate Monitor.

35. J. Gandhi's principal investment was commingled with other investors' funds.

36. J. Gandhi's principal investment funds were lost, in part, by Movalia's trading and Movalia's payments of redemptions to other investors.

37. When investors, such as J. Gandhi, received redemptions, Movalia, in furtherance of the scheme, intentionally and wrongfully caused OM Global Investment Fund LLC to pay investors sums of money equivalent to more than, all of and/or part of the principal invested by those investors.

38. The redemptions, which Movalia caused OM Global Investment Fund LLC to make, were paid from the fruits of the scheme, further dissipated the assets of OM Global Investment Fund LLC, were not distributions of actual gains or of the recipients' principal investments and thus injured OM Global Investment Fund LLC (and its investors). In other words, J. Gandhi did not actually receive his principal funds; he received commingled funds of other investors.

39. At the time of the transfer to J. Gandhi, Movalia had the actual intent to hinder, delay, or defraud creditors and made the transfer to J. Gandhi to hinder, delay or defraud

creditors, including the Corporate Monitor and/or OM Global Investment Fund LLC.

40. Moreover, J. Gandhi did not provide fair value in exchange for the transfer because the redemption to J. Gandhi further dissipated the assets of OM Global Investment Fund LLC and further rendered it insolvent. And OM Global Investment Fund LLC was insolvent from its inception because Movalia used it to perpetuate a Ponzi scheme.

41. Given the foregoing, it is inequitable for J. Gandhi to reap the benefit of funds derived from OM Global Investment Fund LLC's investors for his own benefit, without fair value returned.

42. The Corporate Monitor has served a demand on J. Gandhi for return of the funds, but J. Gandhi has not returned any funds as of this filing.

Count I
Fraudulent Transfer under § 726.105(1)(a)

43. The Corporate Monitor realleges and reincorporates paragraphs 1 through 42 above as if fully set forth herein.

44. J. Gandhi received and/or benefitted from a return of \$101,392.

45. As of February 2013 (the month of J. Gandhi's redemption), the commingled fund had suffered severe trading losses. For example, the commingled fund had suffered over 50% losses. Because the fund was comprised of commingled investor money, J. Gandhi, therefore, had no right to the redemption he received and, therefore, received an overpayment of over 50% of his principal investment.

46. At the time of the transfer, Movalia was violating federal securities laws, including violations of the Securities Act of 1933, Rule 10b-5 of the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940. In

essence, Movalia was running a Ponzi scheme through OM Global Investment Fund LLC.

47. As such, Movalia had the actual intent to delay, hinder or defraud creditors and made a transfer, from which J. Gandhi ultimately benefitted, to delay, hinder or defraud creditors, including the Corporate Monitor and/or OM Global Investment Fund LLC. In addition, because Movalia was violating federal securities laws, defrauding investors and running a Ponzi scheme, OM Global Investment Fund LLC was *de facto* insolvent.

48. As a direct and proximate result of the transfer of duped victim funds, the OM Global corporate monitorship has been diminished. The remaining assets of OM Global Investment Fund LLC are insufficient to pay OM Global Investment Fund LLC's liabilities.

49. The transfer to J. Gandhi was made in contemplation of potential litigation; consisted of substantial assets; rendered OM Global Investment Fund LLC further insolvent; and was not made in exchange for fair value.

50. J. Gandhi knew or should have known that Movalia was running a Ponzi scheme or, at a minimum, had doubts about Movalia's operation. Moreover, J. Gandhi knew or should have known his redemption was improper.

51. Accordingly, the transfer to J. Gandhi is avoidable to the extent of his overpayment, pursuant to Chapter 726, Florida Statutes.

Count II **Conversion**

52. The Corporate Monitor realleges and reincorporates paragraphs 1 through 42 above as if fully set forth herein.

53. This is a claim for conversion against J. Gandhi.

54. OM Global Investment Fund LLC owns the duped victim funds that J. Gandhi

received and/or from which it benefitted.

55. J. Gandhi wrongfully exercised dominion and control over the funds to the detriment of, and inconsistent with, OM Global Investment Fund LLC's ownership rights thereto, when J. Gandhi received and/or used the funds for his own benefit.

56. J. Gandhi was not authorized by OM Global Investment Fund LLC to assert any control over, manage, or dispose of the funds and, notwithstanding, J. Gandhi has wrongfully and permanently deprived OM Global Investment Fund LLC of its property.

Count III
Unjust Enrichment

57. The Corporate Monitor realleges and reincorporates paragraphs 1 through 42 above as if fully set forth herein.

58. This is an equitable claim of unjust enrichment against J. Gandhi.

59. OM Global Investment Fund LLC, directly or indirectly, conferred a substantial direct benefit on J. Gandhi, namely he received and/or benefitted from duped victim funds for his own use.

60. J. Gandhi requested the benefit he obtained and knew or should have known that he wrongfully and unjustifiably received and/or benefitted from victim funds for his own use.

61. Notwithstanding, J. Gandhi voluntarily accepted and retained the funds transferred to him.

62. In receiving and utilizing the funds, J. Gandhi has unjustly retained a benefit to the detriment of the OM Global corporate monitorship and other investors.

63. It is inherently unjust, unfair, and inequitable that J. Gandhi be able to retain the benefit of receiving duped victim funds for his own use, under the above alleged circumstances.

64. Based on the above alleged circumstances, equity dictates that J. Gandhi return to the corporate monitorship, at least, the excessive amount of duped victim funds he received.

65. As a direct and proximate result of J. Gandhi's retention and use of the duped victim funds, the corporate monitorship has been diminished.

WHEREFORE, James D. Sallah, not individually but solely in his capacity as the court-appointed Corporate Monitor for OM Global Investment Fund LLC and OM Global LP, demands judgment as follows:

A. Setting aside the transfer to J. Gandhi, directly or indirectly, in the amount of, at least, the overpaid funds;

B. Entering a money judgment against J. Gandhi in the amount of, at least, the overpaid funds, together with interest thereon from the date of the transfer; and

C. Providing such other and further relief as the Court deems just and appropriate.

Dated: May 16, 2014.

Respectfully submitted,

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