

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**GRISEL ALONSO, AS RECEIVER FOR ELM TREE INVESTMENT
ADVISORS, LLC, ELM TREE INVESTMENT FUND, LP, ELM TREE
'e' CONOMY FUND, LP, ELM TREE MOTION OPPORTUNITY, LP,
and ETOPIA, LP**

Plaintiff

- and -

TED GREENWALD

Defendant

**REPLY AFFIDAVIT OF CHRISTOPHER C. CAVALLO
SWORN 10 JANUARY 2019**

I, Christopher C. Cavallo, of the City of Miami, Florida, United States of America,
MAKE OATH AND SAY AS FOLLOWS:

1. I am Of Counsel with the law firm Nelson Mullins Broad and Cassel, lawyers for the Plaintiff, Grisel Alonso (the "Receiver"), in the United States. I have knowledge of the matters sworn to in this affidavit. In making this affidavit, I do not intend to waive any lawyer/client, litigation, work product, or other applicable privilege.
2. I am a graduate of the University of Miami, School of Law, and duly admitted to practice law in the State of Florida. I am a member in good standing of that bar and have never been subject to any professional disciplinary proceedings. I have been employed by Nelson Mullins Broad and Cassel – and a predecessor firm, Broad and Cassel LLP – since 2011.

3. On January 7, 2019, the Defendant, Ted Greenwald ("Greenwald"), filed an affidavit on this motion. This reply affidavit is meant only to respond to the affidavit filed by Ted Greenwald.
4. On November 15, 2016, the Receiver filed her Amended Complaint in the U.S. District Court for the Southern District of Florida (the "U.S. District Court"), which included claims against Greenwald, among others.
5. On February 6, 2017, Greenwald filed a motion to dismiss the Amended Complaint, which was denied by the U.S. District Court.
6. On June 1, 2017, Greenwald filed his Answer and Affirmative Defenses in the U.S. District Court.
7. On December 27, 2017, the Receiver filed her Motion for Summary Judgment against Greenwald in the U.S. District Court.
8. On February 12, 2018, the U.S. District Court entered summary judgment against Greenwald (the "SJ Order"), finding liability as to Greenwald. A copy of the SJ Order is attached as **Exhibit "A"**.
9. In connection with the SJ Order, the U.S. District Court referred the determination of damages to United States Magistrate Judge Snow (the "U.S. Magistrate Judge"). A hearing to determine damages before the U.S. Magistrate Judge was set for March 27, 2018 (the "Damages Hearing").
10. The Receiver and her counsel only sought the damages identified in the Amended Complaint, which, based on information available to the Receiver and her counsel, was a fair assessment of damages.
11. Prior to the Damages Hearing, on or about March 16, 2018, Greenwald called me. During that call, he told me that he did not receive the U.S. \$110,000.00 from the entities over which the Receiver was appointed (the "Receivership Entities"), as alleged by the Receiver in the Amended Complaint. He also told me that he was going to send me the evidence he had to demonstrate same.

12. Later that same day, March 16, 2018, Greenwald sent me an email, attached hereto as **Exhibit "B"**, which included several attachments. Nothing Greenwald sent me on March 16, 2018 proved that he did not receive the full U.S. \$110,000.00.
13. At the Damages Hearing, Greenwald appeared on his own behalf to argue that he did not receive U.S. \$110,000.00 from the Receivership Entities. Greenwald argued that he had evidence that he did not receive the full U.S. \$110,000.00. However, nothing he presented to the Court on that day led the Court to reach that conclusion, and it appeared the U.S. Magistrate Judge would be entering a Report and Recommendation for U.S. \$110,000.00 in damages.
14. On April 4, 2018, the U.S. Magistrate Judge entered an order, *sua sponte*, a copy of which is attached hereto as **Exhibit "C"**. In the April 4, 2018 order, the U.S. Magistrate Judge granted Greenwald additional time to support his arguments, and stated as follows:

Mr. Greenwald appeared at the hearing on his own behalf, at which time he explained that he is in possession of evidence that demonstrates that he never received the \$110,000.00 the Plaintiff/Receiver seeks to "claw back" from him. According to Mr. Greenwald, he provided this evidence to his attorney who did not utilize it to defend him in this matter.

[...]

...As Mr. Greenwald claims to have evidence which may create an issue of material fact with respect to whether judgment should be entered against him, and in an abundance of caution, taking into consideration Mr. Greenwald's status as a *pro se* litigant, the Court will give him 30 days from the date of this Order to seek relief from the Court's order granting summary judgment against him.

ORDERED AND ADJUDGED that Ted Greenwald may, within (30) days of the date of this Order file a motion to reconsider the Court's order granting summary judgment against him. Failure to do so likely will result in a recommendation that the Court enter final judgment against him in the amount of \$110,000.00 plus prejudgment interest.

A copy of the April 4, 2018 order was furnished to Greenwald at his home address and was received by him on April 18, 2018. A copy of the postage receipt, which the Clerk of Court filed, is attached hereto as **Exhibit "D"**.

- 15. On May 17, 2018, over 50 days after the Damages Hearing, after, as far as we are aware, Greenwald failed to submit any evidence, the U.S. Magistrate Judge entered a Report and Recommendation recommending that summary judgment be entered against Greenwald in the amount of U.S. \$110,000.00.
- 16. On June 7, 2018, the U.S. District Court entered the U.S. Judgment against Greenwald in the amount of U.S. \$110,000.00 plus prejudgment interest. A copy of the U.S. Judgment is attached as **Exhibit "E"**.
- 17. Greenwald *never sought* reconsideration of the summary judgment against him and, to the best of my knowledge, *never submitted any additional evidence* to the U.S. District Court, despite the April 4, 2018 order stating that failure to do so would likely lead to a recommendation that final judgment in the amount of U.S. \$110,000 be entered against him.
- 18. Although Greenwald was furnished with a copy of the U.S. Judgment, we are not aware of Greenwald taking any steps to appeal it.
- 19. This affidavit is sworn in support of the Plaintiff's Motion for Summary Judgment and for no other or improper purpose

SWORN BEFORE ME at the)
 City of Miami, Florida, United States of)
 America, this 10th day of January, 2019)



CHRISTOPHER C. CAVALLO



 Notary Public)



CLAUDIA OROZCO DUNN
 Commission # GG 233423
 Expires June 28, 2022
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**THIS IS EXHIBIT "A" TO THE
REPLY AFFIDAVIT OF CHRISTOPHER C. CAVALLO
SWORN BEFORE ME ON
JANUARY 10, 2019**

C. Orozco

Notary Public



**CLAUDIA OROZCO DUNN
Commission # GG 233423
Expires June 28, 2022
Bonded Thru Budget Notary Services**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'conomy Fund, LP, and
Elm Tree Motion Opportunity, LP,

Case No. 16-62603-CIV-DIMITROULEAS
Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

JAMES BENVENUTO, an individual,
NGU INVESTORS, LLC, a Florida limited
liability company; JEAN BENVENUTO, an
individual, *et. al.*,

Defendants.

OMNIBUS ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court upon the Receiver's Motion for Summary Judgment as to Someswari Nukala [DE 166] and the Receiver's Motion for Summary Judgment as to Ted Greenwald [DE 168], both filed herein on December 27, 2017. The Court has carefully considered the Motions [DEs 166, 168] and is otherwise fully advised in the premises.

On December 27, 2017, the Receiver filed the instant Motions for Summary Judgment. [DEs 166, 168]. On January 22, 2018, the Court issued an Omnibus Order to Show Cause why Motions Should not be Granted [DE 173]. The Court's Order required Defendants to show cause on or before February 2, 2018, and cautioned that a failure to do so would likely result in the Court granting the Motions [DEs 166, 168]. Defendants failed to timely respond.

Apart from Defendants' default, the Court has carefully considered the Receiver's summary judgment motions and the evidence submitted in support thereof, and has ensured that the Motions are properly supported. *See United States v. One Piece of Property, 5800 S.W. 4th*

Ave., Miami, Fla., 363 F.3d 1099, 1101 (11th Cir. 2004). The Court agrees with the Receiver that there is no genuine issue of material fact in dispute. Accordingly, the Court finds that the Receiver is entitled to judgment in its favor as a matter of law.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motions [DEs 166, 168] are **GRANTED**; and
2. This matter is **REFERRED** to Magistrate Judge Snow for determination of damages.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,

this 12th day of February, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of record

Sumeswari Nukala
7076 Walworth Court
Mississauga, ON L5N 7L4
Canada

Ted Greenwald
3505 S. Ocean Dr., Unit 216
Hollywood, FL 33019

**THIS IS EXHIBIT "B" TO THE
REPLY AFFIDAVIT OF CHRISTOPHER C. CAVALLO
SWORN BEFORE ME ON
JANUARY 10, 2019**



Notary Public



CLAUDIA OROZCO DUNN
Commission # GG 233423
Expires June 28, 2022
Bonded Thru Budget Notary Services

[REDACTED]

[REDACTED]

From: Ted (Rogers) <tgreenwald@rogers.com>
Sent: March 16, 2018 12:49 PM
To: 'ccavallo@broadandcassel.com'
Subject: Emails from Fred Elmaleh
Attachments: Re: Wire; Re: Wire; Re: Wire; Re: Wire; Re: Wire; Re: Wire transfer; Re: Wire transsfer; Re: Returned deposit; Re: Release; Re: Release; Re: Release; Re: Release; Re: Release; Re: Release; Re: Release; Re: Release; Re: Release; Release

Hello Christopher

Thanks again for calling back today. As I have told you I am including emails that I received and sent to Fred Elmaleh back in May to July 2014 which pertain to the wire transfer of 55,000.00 that Fred was supposed to send me as partial repayment of a real-estate deal that we purchased together back in 2008. As the emails clearly show I never received any funds from either one of the wire transfers. That is why I had such a hard time to find any transactions in my bank about these alleged wire transfers because they never hit my account. I will be appearing in court on Mar 27, 2018 at 1:30 in Fort Lauderdale when you present your case for damages. If you examine the account that the alleged wire transfers came from you will note that on the same day or a couple of days later there are funds going back into the account which are the funds from the rejected wire transfers less Bank charges and on the first wire transfer less the double conversion from US to Canadian and back to US funds.

I am confident that with these emails and an examination of the account I will be able to prove that your client has not suffered any damages of which I was the beneficiary.

Ted Greenwald
Consultant
Microcomp Computer Services
416-580-2349

THIS IS EXHIBIT "C" TO THE
REPLY AFFIDAVIT OF CHRISTOPHER C. CAVALLO
SWORN BEFORE ME ON
JANUARY 10, 2019



Notary Public



CLAUDIA OROZCO DUNN
Commission # GG 233423
Expires June 28, 2022
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-62603-CIV-DIMITROULEAS/Snow

GRISEL ALONSO, Receiver for Elm Tree Investment
Advisors, LLC and Elm Tree Investment Fund LP,

Plaintiffs,

v.

JAMES BENVENUTO, an individual, *et al.*,

Defendants.

ORDER

THIS CAUSE is before the Court following a March 27, 2018 hearing on damages following the Court's entry of summary judgment against Someswari Nukala¹ and Ted Greenwald and in favor of the Plaintiff/Receiver.

Mr. Greenwald appeared at the hearing on his own behalf, at which time he explained that he is in possession of evidence that demonstrates that he never received the \$110,000.00 the Plaintiff/Receiver seeks to "claw back" from him. According to Mr. Greenwald, he provided this evidence to his attorney who did not utilize it to defend him in this matter. After Mr. Greenwald fired his attorney, summary judgment was entered against him. He reported that he received the Plaintiff/Receiver's motion for summary judgment and an order to show cause why it should not be granted approximately five days before the Court granted the motion, but that was not enough time for him to act.

¹ This Order deals only with the Plaintiff/Receiver's claimed damages against Ted Greenwald. A Report and Recommendation will be submitted as to damages with respect to Someswari Nukala.

It has come to the Court's attention that Mr. Greenwald was not at fault for failing to timely respond to the Plaintiff/Receiver's motion for summary judgment, based on the following facts:

1. On January 9, 2017, Mr. Greenwald filed a *pro se* Motion for Extension of Time to Respond to the Complaint. (ECF No. 13) Within his motion, he listed his address as 7 Townsgate Dr., Unit 216, Thornhill, Ont. L4J 8T3 with an additional address at 3505 S. Ocean Dr., Unit 216, Hollywood, Florida 33019, which he indicated he would be renting until March 31, 2017.

2. For purposes of the docket, the Clerk's Office listed Mr. Greenwald's address as 3505 S. Ocean Drive, Unit 216, Hollywood, FL 33019. Chambers staff has since learned that only one address per party can be entered into CM/ECF.

3. On February 6, 2017, attorney Jonathan Lewis filed a Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 27) on Mr. Greenwald's behalf, at which time Mr. Lewis' address, phone number, facsimile number and e-mail address were entered into CM/ECF.

4. On November 6, 2017, Mr. Greenwald's attorney, Jonathan Lewis, moved to withdraw. (ECF No. 161) The motion advised that all further pleadings and papers should be sent to Ted Greenwald at 7 Townsgate Drive, Thornhill, Canada L4J 7Z9. On November 7, 2017, the Court deferred ruling on the motion to withdraw until November 13, 2017 and ordered Jonathan Lewis, Esquire to serve a copy of the Court's Order (ECF No. 162) upon Ted Greenwald by U.S. mail and e-mail on or before November 9, 2017. On November 9, 2017, Jonathan Lewis, Esquire filed a Notice of Compliance stating he had served a copy of the Court's Order on Ted Greenwald via U.S. mail and e-mail. Neither the Court's Order deferring ruling nor the Notice of Compliance reference Mr. Greenwald's Ontario address or e-mail address. On November 15, 2017, the Court granted the motion to withdraw (ECF No. 165) which was furnished to counsel of record via e-mail and to Ted Greenwald at the Hollywood, Florida address via U.S. Mail listed in CM/ECF.

5. On December 27, 2017, the Plaintiff/Receiver filed a Motion for Summary Judgment (ECF No. 168) as to Ted Greenwald which certifies that it was served "via electronic transmission or U.S. Mail on all counsel or parties of record."

6. Because Mr. Greenwald did not respond to the Plaintiff/Receiver's Motion for Summary Judgment, on January 19, 2018, the Court entered an Order (ECF No. 173) giving Mr. Greenwald until February 2, 2018 to show cause why it should not be granted. The Order was sent via U.S. mail to Mr. Greenwald's Hollywood address listed in CM/ECF. The Court granted the Plaintiff/Receiver's Motion for Summary Judgment on February 12, 2018 (ECF No. 177) and the Order was sent via U.S. mail to Mr. Greenwald at the Hollywood address. The Order on summary judgment was returned as undeliverable on March 1, 2018 and March 13, 2018. (ECF Nos. 179 and 181). At some point the Clerk's Office should have been prompted by the two undeliverable documents (ECF Nos. 179 and 181) and checked for an updated address. Jonathan Lewis filed a Motion to Withdraw as Counsel (ECF No. 161) providing Mr. Greenwald's Ontario address and opposing counsel filed a Notice to Clerk (ECF No. 182) indicating Mr. Greenwald's address should be updated with the Ontario address.

Although it appears that Mr. Greenwald eventually did receive the Plaintiff/Receiver's Motion for Summary Judgment, he was left with very little time to address it through no fault of his own. As Mr. Greenwald claims to have evidence which may create an issue of material fact with respect to whether judgment should be entered against him, and in an abundance of caution, taking into consideration Mr. Greenwald's status as a *pro se* litigant, the Court will give him 30 days from the date of this Order to seek relief from the Court's order granting summary judgment against him. Accordingly, it is hereby

ORDERED AND ADJUDGED that Ted Greenwald may, within (30) days of the date of this Order file a motion to reconsider the Court's order granting summary judgment against him.

Failure to do so likely will result in a recommendation that the Court enter final judgment against him in the amount of \$110,000.00 plus prejudgment interest.

DONE AND ORDERED at Fort Lauderdale, Florida, this 4th day of April, 2018.


LURANA S. SNOW
UNITED STATES MAGISTRATE JUDGE

Copies to:

Counsel of Record and/or pro se parties

Mr. Ted Greenwald (Via Return Receipt International Mail)
7 Townsgate Dr.
Unit 216
Thornhill, Ontario, Canada L4J 7Z9

THIS IS EXHIBIT "D" TO THE
REPLY AFFIDAVIT OF CHRISTOPHER C. CAVALLO
SWORN BEFORE ME ON
JANUARY 10, 2019



Notary Public



CLAUDIA OROZCO DUNN
Commission # GG 233423
Expires June 28, 2022
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Completed at destination (A compléter à destination)		Completed by the office of origin (A remplir par le bureau d'origine)	
Signature of Addressee (Signature du destinataire) <i>MCS</i>		Registered (Article/Envoyé enregistré) <input type="checkbox"/> Registered Mail (Article/Envoyé enregistré) <input checked="" type="checkbox"/> Registered Mail (Article/Envoyé enregistré) Printed Matter (Lettre imprimée) <input type="checkbox"/> Other (Autre) <input type="checkbox"/> Recorded Delivery (Envoi à livraison assurée) <input type="checkbox"/> Express Mail International (Envoi à livraison assurée internationale) <input type="checkbox"/>	
Signature of Addressee (Signature du destinataire) <i>MCS</i>		Insured (Valeur déclarée) <input type="checkbox"/> Insured (Valeur déclarée) <input type="checkbox"/> Insured (Valeur déclarée)	
Office of Destination Employee Signature (Signature de l'agent du bureau de destination) <i>[Signature]</i>		Office of Mailing (Bureau de dépôt) Date of Posting (Date de dépôt)	
Date <i>Apr 18/18</i>		Addressee Name or Firm (Nom ou raison sociale du destinataire) <i>Lurana S. Snow, United States Magistrate</i>	
Postmark of the office of destination (Timbre du bureau de destination)		Street and No. (Rue et No.) <i>299 E. Broward Blvd Room 204</i>	
The recipient must be signed by: (1) the addressee, or (2) a person authorized to sign under the regulations of the country of destination, or (3) those regulations so provide, by the employee of the office of destination. This signed form will be returned to the sender by the first mail. (Ce formulaire doit être signé par le destinataire ou par une personne autorisée en vertu des règlements du pays de destination, ou, à son absence, par l'agent du bureau de destination, et renvoyé par le premier courrier disponible à l'expéditeur.)		Place and Country (Localité et pays) <i>Fort Lauderdale, USA, FL 33301</i>	

Registered No. RA754206948US

Date Stamp: APR - 5 2018 0252 11

Postage \$ \$1.15	Extra Services & Fees (continued)
Extra Services & Fees	<input type="checkbox"/> Signature Confirmation
<input type="checkbox"/> Registered Mail \$15.50	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Return Receipt (hardcopy) \$4.00	
<input type="checkbox"/> Return Receipt (electronic) \$0.00	
<input type="checkbox"/> Restricted Delivery \$	Total Postage & Fees \$20.65

Customer Must Declare Full Value \$0.00

Received by: *[Signature]* 05/2018

Domestic insurance up to \$50,000 is included based upon the declared value. International indemnity is limited. (See Reverse).

OFFICIAL USE

PORT LAUDERDALE, FL 33301

FROM: *Lurana S. Snow*

U.S. DISTRICT COURT

299 E. Broward Blvd

Fort Lauderdale FL 33301

TO: *M.R. Ted. Greenwood*

Paradise Gate Drive

UNIT 216

Thornhill, Ontario Canada L4S 7Z9

PS Form 3806, Registered Mail Receipt
 April 2015, PSN 7530-02-000-9051
 Copy 1 - Customer
 (See information on Reverse, For domestic delivery information, visit our website at www.usps.com®)

**THIS IS EXHIBIT "E" TO THE
REPLY AFFIDAVIT OF CHRISTOPHER C. CAVALLO
SWORN BEFORE ME ON
JANUARY 10, 2019**



Notary Public



CLAUDIA OROZCO DUNN
Commission # GG 233423
Expires June 28, 2022
Bonded Thru Budget Notary Services

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'conomy Fund, LP, and
Elm Tree Motion Opportunity, LP,

Case No. 16-62603-CIV-DIMITROULEAS
Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

JAMES BENVENUTO, an individual,
NGU INVESTORS, LLC, a Florida limited
liability company; JEAN BENVENUTO, an
individual, *et. al.*,

Defendants.

FINAL JUDGMENT

THIS CAUSE is before the Court upon the Court's Order Adopting Report of Magistrate Judge, entered separately today. The Court enters this separate final judgment.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Judgment is entered on the Receiver's behalf against Ted Greenwald in the amount of \$110,000 plus prejudgment interest, for which sum let execution issue.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,

this 7th day of June, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of record

Ted Greenwald
7 Townsgate Dr., Unit 216
Thornhill, Ontario, Canada L4J7Z9