

The below described is **SIGNED**.

Dated: February 9, 2015



JOEL T. MARKER
U.S. Bankruptcy Judge



Michael R. Johnson, Esq. (A7070)

Douglas M. Monson (A2293)

RAY QUINNEY & NEBEKER P.C.

36 South State Street, 14th Floor

Salt Lake City, Utah 84111

Telephone: (801) 532-1500

Facsimile: (801) 532-7543

Email: mjohnson@rqn.com

Email: dmonson@rqn.com

Counsel for Gil A. Miller, Post-Confirmation Trustee of the Consolidated Estate

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

<p>In re:</p> <p>DEE ALLEN RANDALL, et al.,</p> <p>Debtors.</p>	<p>Bankruptcy Case No. 10-37546</p> <p>(Substantively Consolidated with Case Nos. 11-34826, 11-34830, 11-34831, 11-34833 and 11-34834)</p> <p>Chapter 11</p> <p>Honorable Joel T. Marker</p>
<p>GIL A. MILLER, Post-Confirmation Trustee of the substantively consolidated and confirmed estate of Dee Allen Randall, et al.</p> <p>Plaintiff,</p> <p>v.</p> <p>JACK DAVID HATCH, TRUSTEE OF THE JACK DAVID HATCH REVOCABLE TRUST DATED MARCH 1, 2005,</p> <p>Defendant.</p>	<p>Adversary No. 12-02468</p> <p>(Filed via ECF)</p>

ORDER GRANTING IN PART AND DENYING IN PART TRUSTEE'S MOTION FOR PARTIAL SUMMARY JUDGMENT [Doc. 16]

This matter came before the Court on Tuesday, December 23, 2014, for a hearing on the Trustee Gil A. Miller's *Motion for Partial Summary Judgment* (the "**Motion**") [Doc. 16], filed in the above-entitled adversary proceeding. At the hearing, James A. Sorenson represented Plaintiff Gil A. Miller, the former Chapter 11 trustee and now the post-confirmation trustee and representative of the substantively consolidated estates of Dee Allen Randall ("**Randall**"), Horizon Auto Funding, LLC, Independent Commercial Lending, LLC, Horizon Financial Center I, LLC, Horizon Mortgage and Investment Inc. and Horizon Financial & Insurance Group Inc. (collectively, the "**Debtors**"). Defendant Jack David Hatch, Trustee of the Jack David Hatch Revocable Trust Dated March 1, 2005 ("**Defendant**"), did not appear at the hearing, although he did file a written opposition to the Motion and he made a request to the Court in connection with his opposition to the Motion that he be excused from appearing at the hearing.

Prior to the hearing, the Court carefully considered the Defendant's written opposition to the Motion and the papers and pleadings filed by the parties in support of and in opposition to the Motion. At the hearing, the Court carefully considered the arguments and representations of counsel. At the conclusion of the hearing, the Court granted the Motion in part and denied the Motion in part, and hereby enters the following **FINDINGS OF FACT**, determining that such facts are undisputed:

1. On December 20, 2010 (the "**Randall Petition Date**"), Randall filed a voluntary petition for relief under Chapter 11 of the title 11 of the United States Code with the United States Bankruptcy Court for the District of Utah (the "**Bankruptcy Court**"). [See Doc. 1 in Case No. 10-37546.]
2. The Trustee was appointed by this Court as Chapter 11 Trustee in the Randall case on September 29, 2011. (See Order Granting United States Trustee's Motion to Appoint a Chapter 11 Trustee [Doc. 248 in Case No. 10-37546].)

3. On October 12, 2011 (the “**Corporate Debtors Petition Date**”), the Trustee, in his capacity as Chapter 11 trustee in the Randall Case, caused the following petitions to be filed by the following entities owned by Randall (the “**Corporate Debtors**”) under Chapter 11 of Title 11 of the United States Code:

- A. In re Horizon Auto Funding, LLC, Case No. 11-34826;
- B. In re Independent Commercial Lending, LLC (“**Independent Commercial Lending**”), Case No. 11-34830;
- C. In re Horizon Financial Center I, LLC, Case No. 11-34831;
- D. In re Horizon Mortgage and Investment Inc. dba Independent Financial & Investment (“**Horizon Mortgage**”), Case No. 11-34833; and
- E. In re Horizon Financial & Insurance Group Inc. (“**Horizon Financial**”), Case No. 11-34834.

4. On January 27, 2012, this Court entered its Order substantively consolidating the separate bankruptcy estates of Randall and each of the Corporate Debtors, with all cases being consolidated with and into the Randall case effective as of the date of the Court’s consolidation order. [Doc. 449 in Case No. 10-37546.]

5. The Defendant placed funds with the Corporate Debtors prior to the Randall Petition Date and is an “**Investor**” as that term is defined in the Trustee’s memorandum in support of the Motion.

6. Prior to the Trustee’s appointment on September 29, 2011, Randall controlled and operated each of the Corporate Debtors.

7. At all material times since at least 1997, Randall operated the Corporate Debtors as a “Ponzi scheme,” and engaged in a continuing fraud.

8. As a result of the Court’s finding that Randall was operating the Corporate Debtors as a Ponzi scheme, the Trustee is entitled to the Ponzi presumption that Randall’s intent to

hinder, delay or defraud his creditors by making transfers of property to Investors is established as a matter of law.

9. Randall and the Corporate Debtors were insolvent from at least 1997 until the Randall Petition Date and the Corporate Debtors Petition Date, respectively.

10. Between January 1, 2003 and December 31, 2009, Defendant invested with or transferred money to the following Corporate Debtors: (a) Horizon Mortgage, and (b) Independent Commercial Lending (collectively referred to herein as the “**Hatch Investments**”).

11. The Hatch Investments were documented by promissory notes from the Corporate Debtors Horizon Mortgage and Independent Commercial Lending (the “**Notes**”). These Notes were dated as follows, in the following amounts:

- a. Promissory Note, dated May 2, 2003 with Horizon Mortgage as Maker and Jack and/or Elena Hatch, WFF as Payees, in an amount of \$63,000;
- b. Promissory Note, dated December 28, 2007 with Horizon Mortgage as Maker and Jack David Hatch Revocable Trust as Payee, in an amount of \$46,240.07;
- c. Promissory Note, dated October 30, 2008 with Independent Commercial Lending as Maker and American Pension Services/FUB Custodian for Jack D. Hatch, IRA, as Payee, in an amount of \$78,312.53; and
- d. Promissory Note, dated May 13, 2009 with Independent Commercial Lending, as Maker and American Pension Services/FUB Custodian for Jack Hatch, IRA Acct#, as Payee, in an amount of \$64,308.67.

12. Prior to the Randall Petition Date, the Defendant placed funds with one or more of the Corporate Debtors, which funds are referred to herein as the **“Loan Principal.”**

13. Prior to the Randall Petition Date, and in conjunction with a purported investment by Defendant, Randall executed and delivered to the Defendant a Warranty Deed, dated December 19, 2007, purporting to convey and warrant to the Defendant an undivided 7.1% interest in the Property. The Deed was recorded with the Davis County, Utah Recorder on December 28, 2007 as Entry No. 2331023 in Book 4438 at Page 1449.

14. Randall, personally, was the record owner of the Property.

In addition to the findings of the facts entered by the Court, **IT IS HEREBY ORDERED** as follows:

A. All other relief in the Motion is hereby DENIED without prejudice.

*****END OF DOCUMENT*****

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2015, a true and correct copy of the foregoing was served upon the following via first class mail, postage prepaid, addressed as follows:

Jack David Hatch, Trustee
Jack David Hatch Revocable Living
Trust dated March 1, 2005
273 Eagle Ridge Drive
Valparaiso, IN 46385-8791

and that all attorneys of record in this case also were served the foregoing electronically via the Court's electronic noticing system.

/s/ Dianne Burton