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PUBLISHED BY SALLY RAMAGE
COPEHALE, COPPENHALL, STAFFORD,
UNITED KINGDOM
TEL 01785 - 211370
FAX 01785 - 228281

WWW.SALLYRAMAGE.NET

Ponzi Scheme- *Madoff*- developments in this case as compared to other criminal ponzi schemes involving banks' fiduciary duties

Sally Ramage

Bank's custodial role

A group of two investors and their attorney sued a bank for the loss suffered due to investing in the Madoff Firm which had carried out the biggest Ponzi fraud in American history.

The case was *Susan Antilla Faye Albert, and Steve Gard v Westport National Bank* [2013].

On Wednesday 17 July 2013, Westport National Bank and its parent company, Connecticut Community Bank, were found by the court not to be liable for the losses of these two investors in Bernard Madoff's vast Ponzi scheme in the bank's role as a *custodial bank*.

A federal jury in Hartford, Connecticut, United States, had heard eight days of evidence in this case with Justice Vanessa Bryant sitting at the United States District Court for the District of Connecticut. The case was *Susan Antilla, Faye Albert, and Steve Gard v Westport National Bank* [2013]. Westport National Bank and its parent company, Connecticut Community Bank were the 'custodial bank'.

No fiduciary duty owed by the bank to these Madoff investors

The jury's decision was that since the bank was not a fiduciary in the investments made in the Madoff firm, the bank therefore owed no fiduciary duty to the three plaintiffs. There were two other separate lawsuits against the Connecticut Community Bank. Before this jury's decision that the bank was not liable, the other two cases had been settled by the Connecticut Community Bank which must now pay compensation of just $7.5 million to 240 investors; that is, a mere $31,250 to each of the 240 investors.

Wilfully concealing evidence Toronto Dominion Banki ('TD') was sanctioned together with law practice firm Greenberg Traurig LLP by a federal judge, Justice Marcia Cooke in a

Miami court for wilfully concealing evidence relevant to a trial alleging that TD aided a $1.2 billion Ponzi scheme by ex-attorney Scott Rothstein. The 2012 case was Coquina Investments v. Rothstein, 10-cv-60786, U.S. District Court, Southern District of Florida (Miami).

The law firm Greenberg Traurig was also sanctioned for negligently failing to disclose documents relating to Coquina Investments. On 18 January 2012, TD Bank was ordered to pay Coquina Investments $67 million in a separate case against the bank. In her summing up Justice Cooke said that the bank and the law firm had abused the exchange of evidence known as discovery, and that this was unfair to the oil company Corpus Christi, the name of Texas-based Coquina Justice Cooke also ordered TD Bank and law firm Greenberg Traurig to pay Coquina's attorney's fees on its sanctions motion. These discovery violations resulted in Coquina's reduced ability to prove that TD Bank's actions were unreasonable and that it had knowledge of fraud. Justice Cooke stated: 'This sanction serves to compensate Coquina for the added expense caused by Greenberg Traurig's and TD Bank's discovery violations and abusive conduct'.

50 years for conspiracy to commit fraud

Justice Cooke sentenced Rothstein, the co-founder of the Fort Lauderdale- based firm Rothstein, Rosenfeldt & Adler, to a 50-year prison sentence for 'conspiracy to commit fraud'. Investigators said that his $1.2 billion Ponzi scheme is the largest in Florida's history. Rothstein sold investors stakes in sex- and employment- discrimination cases that turned out to be non-existent. When Rothstein's Ponzi scheme collapsed in October 2009, Rothstein cooperated with investigators before fleeing the country. At least eight associates of Rothstein have been accused of assisting Rothstein to defraud investors. Justice Cooke stated that she had found a ‘pattern of discovery abuses before, during, and after trial.’ She did not however sanction individual lawyers at Greenberg Traurig whose ‘handling of this case left much to be desired’, she stated. These attorneys’ errors in producing documents were simply incredible but they had not acted wilfully or in bad faith, Justice Cooke ruled. TD Bank planned to appeal this court decision whilst the law firm Greenberg Traurig, which employed over 200 attorneys to fight this case, accepted the decision.

Child trafficking for prostitution

Sally Ramage

In the city of Alexandria in the state of Virginia, Mr Cooper Kweme, 31, was indicted by a federal grand jury of sex trafficking, transportation of a minor for prostitution, and production of child pornography. A young girl was led into sex trafficking and sex slavery through a social media website used by teenagers. Mr. Kweme was accused of recruiting girls through the Internet and other locations to work for his prostitution business.

Kweme allegedly operated a prostitution business in the District of Columbia, Maryland, and Virginia, and used the Internet to advertise women as prostitutes. In February 2011, Kweme was charged with recruiting a juvenile female to work as a prostitute after meeting her on an Online Social Network website used by teenagers. Later Kweme posted photographs of the teenage girl on the Internet. One of these was a sexually explicit photograph.

Sex trafficking and transportation of a minor for prostitution

In June 2011, Kweme was arrested by the Arlington County Police Department and later, he was charged in federal court. If convicted, Kweme faces a mandatory minimum of 10 years and a maximum of life in prison for the sex trafficking and transportation of a minor for prostitution charges. He faces a mandatory minimum of 15 years and a maximum of 30 years in prison for the production of child pornography charge.

Coventry City Football Club faces liquidation

League One side Coventry City says it faces liquidation. The 1987 FA Cup winners could begin tomorrow's season with a 15-point penalty after the stadium's owners refused to sign a deal that would have allowed the club to exit administration. TV News Central has been told that secret talks between Coventry City and the Ricoh Arena to try to keep the club in the city have failed. The two sides had a meeting on 2 August 2013 to discuss a deal for paying off its debt to Rioch Arena. The Football League's Chairman issued this statement:

> *'Once again, it is a source of immense frustration to everyone involved that the two parties in this dispute have failed to reach any agreement. The Board is dismayed at the level of intransigence being shown. Nonetheless, The League will continue with its efforts to get the two parties to enter into meaningful negotiations, so that Coventry City can return to Coventry at the earliest opportunity. The Board's decision means that these attempts can now be conducted against a backdrop of Coventry City as a continuing member of The Football League.'*

The offer

The Club decided against a Company Voluntary Agreement drawn up by the club's administrator during a brief meeting on 2 August 2013. If the agreement had been agreed, Coventry City owners would have paid a reduced rent fee of £590,000 instead of the full £1.3 million to Rioch Arena, allowing the club to exit administration. Ricoh Arena did not accept the offer made by Coventry Club to pay part of the £1.3 million in rents owed to it. If Rioch Arena had accepted the offer of payment of part of the Club's debt to Rioch Arena (ie, an offer to pay £600,000 out of £1.3million debt by the Club), Coventry would be able to come out of administration, and to buy more players. As the deal was rejected by Rioch Arena, the £1.3 million debt to it by Coventry Football Club remains unpaid to date; and the Club will be in administration for a longer period and will undergo a thorough inspection of its finances by the third party administrators. The Football League has expressed dismay over the continuing disagreement between the owners of the *Ricoh Arena* and the administrators of *Coventry City Football Club* which some reports state, have left the club on the brink of liquidation. Coventry was given a ten- point deduction from the Football League

Coventry City's 'Golden share' to be transferred to Otium

Coventry City FC Ltd, the part of the club expected to go into liquidation, will see its share of the club transferred to Otium. The transfer to the club's preferred bidder will take place on the basis that the club accepts a 10 point deduction for the 2013/14 season.

Sky Blue Trust-supporters Group

Coventry City supporters group, the Sky Blue Trust, have said they are appalled at the latest turn of events which has put the club on the brink of liquidation. The group also attacked the

Football League for their perceived failure to support the supporters of the club. Sky Blue Club issued this statement on 2 August 2013:

> *'The Sky Blue Trust is appalled at the latest turn of events. Liquidation poses the most serious threat to the future of our Club. Where today's liquidation leaves our club, we don't yet know. The Football League have not issued a verdict yet, but it has consistently failed to make decisions that have taken into account the views of the supporters and the community that sustain our Club'.*

The Sky Blue Trust has also announced its intention to build a new stadium within six-miles of Coventry city-centre.

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