



**ORDERED in the Southern District of Florida on November 22, 2013.**

A handwritten signature in cursive script that reads "A. Jay Cristol".

**A. Jay Cristol, Judge  
United States Bankruptcy Court**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

In re:

FISHER ISLAND INVESTMENTS, INC.,

Alleged Debtor.

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Case No.: 11-17047-AJC

Chapter 11 (Involuntary)

In re:

MUTUAL BENEFITS OFFSHORE FUND,  
LTD.,

Alleged Debtor.

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Case No.: 11-17051-AJC

Chapter 11 (Involuntary)

In re:

LITTLE REST TWELVE, INC.,

Alleged Debtor.

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Case No.: 11-17061-AJC

Chapter 11 (Involuntary)

FISHER ISLAND INVESTMENTS, INC.,  
MUTUAL BENEFITS OFFSHORE FUND,

Adv Pro. No.: 13-1835-AJC  
13-1836-AJC

LTD., and LITTLE REST TWELVE, INC.,

13-1837-AJC

Plaintiffs,

v.

AREAL PLUS GROUP, SOLBY +  
WESTBRAE PARTNERS, 19 SHC, CORP.,  
601/1700 NBC, LLC, and THE ABRAMSON  
LAW GROUP, PLLC,

Defendants.

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**ORDER GRANTING ALLEGED DEBTORS' EMERGENCY MOTION FOR  
PRELIMINARY INJUNCTION PURSUANT TO 11 U.S.C. §105 AND F.R.B.P. 7065**

THIS MATTER came before the Court for hearing on Thursday, November 21, 2013, at 2:00 p.m. ("Hearing") upon the *Emergency Motion for Temporary Restraining Order and Preliminary Injunction Pursuant to Fed. R. Bankr. P. 7065* [ECF No. 2] ("Motion")<sup>1</sup> filed by Plaintiffs and Alleged Debtors, Fisher Island Investments, Inc., Little Rest Twelve, Inc. and Mutual Benefits Offshore Fund, Ltd., as represented by Patricia Redmond, Esq., John O'Sullivan, Esq., and Martin Russo, Esq., pursuant to 11 U.S.C. § 105, Bankruptcy Rule 7065, incorporated into this proceeding by Civil Rule 65, and Local Bankruptcy Rule 9075-1.

In the Motion, the Alleged Debtors sought entry of an order temporarily restraining and preliminarily enjoining Defendants, Areal Plus Group, Solby + Westbrae Partners, 19 SHC, CORP., 601/1700 NBC, LLC, and The Abramson Law Group, PLLC from seeking to enforce in other courts the alleged debts that form the basis of the involuntary petitions against Alleged Debtors. Underscoring the emergency nature of the Motion, the Alleged Debtors' brought to the Court's attention a post-petition judgment entered against them in New York, which was based

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<sup>1</sup> All other capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

upon the same alleged debts, and which was obtained by the Defendants without notice to the Court or to the Alleged Debtors.

At the Hearing, the Court heard argument from counsel for the Plaintiffs and counsel for the Defendants, the Note Holding Petitioning Creditors, Areal Plus Group, and representatives of The Abramson Law Group, PLLC, Mitchell B. Shenkman and David Abramson. The Court, having reviewed the Motion and the Exhibits thereto, having considered the arguments of counsel, and being fully apprised of the record in this Adversary Proceeding and the Main Cases (and having reviewed documents filed in the Main Cases),<sup>2</sup>

**FINDS AND CONCLUDES** as follows:

A. The Note Holding Petitioning Creditors filed involuntary petitions against each of the Alleged Debtors on March 17, 2011. Main Case ECF No. 1.<sup>3</sup>

B. The debts underlying the Note Holding Petitioning Creditors' claims were based on (1) an alleged negotiable promissory note dated January 9, 2009 between (among other entities) the Alleged Debtors as makers, and an entity named Areal Plus Group, as "holder," in the amount of \$28,500,000, and (2) an alleged irrevocable assignment thereof from Areal Plus Group to the Note Holding Petitioning Creditors. *See* Main Case ECF Nos. 1, 27.

C. The authenticity and validity of the Note, the Assignment and the purported "Confessions" were disputed from the outset of the Main Cases. *See* Main Case ECF Nos. 28 and 45.

D. The Court appointed an independent fiduciary, an examiner, to investigate the bona fides of the Note Holding Petitioning Creditors' claims. Main Case ECF No. 55.

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<sup>2</sup> Case Nos. 11-17047-BKC-AJC, 11-17051-BKC-AJC and 11-17061-BKC-AJC ("Main Cases").

<sup>3</sup> For ease of reference, only the record for Case No. 11-17047 ("Main Case") is cited. Parallel citations are also available for Case Nos. 11-17051 and 11-17061.

E. On November 18, 2011, the Examiner issued his report and concluded that, among other things:

It is undisputed that none of the Alleged Debtors' books and records reflect the claimed debt or a disclosure of the guarantees. No records of any other affiliate have been produced that reflect this indebtedness, nor is there evidence that interest or principal payments have ever been made to the original holder of the Promissory Note or to any assignee of the Promissory Note. The existence of the Noteholders' debt is also belied by the complete lack of third-party extrinsic evidence to support the existence of this debt.

Main Case ECF No. 338:84.<sup>4</sup>

F. On November 29, 2011, the Note Holding Petitioning Creditors, through The Abramson Law Group, PLLC, sought to record certain "Confessions" purportedly executed by the Zeltser Alleged Debtors that admitted the alleged debts and consented to the entry of judgment against the Alleged Debtors in New York without notice to the Alleged Debtors, and without notice to this Court. *See* Affidavits of Confession of Judgment attached to the Complaint as Exhibits B (FII) and C (LR12). Defendants did not notify the Alleged Debtors or the Court that they were seeking to enforce the Note in another jurisdiction.

G. The "Confessions" were rejected by the New York clerk of court, and thereafter, Defendant, The Abramson Law Group, PLLC, sued the New York clerk of court in its own name, seeking to compel the clerk to accept the "Confessions." *See* 12/20/2011 Verified Petition, attached to the Complaint as Exhibit D. The Defendants did not notify the Alleged Debtors or this Court of its attempt to compel the New York clerk of court to accept the "Confessions".

H. The Abramson Law Group, PLLC reached a stipulation with the clerk, whereby the Clerk would accept copies of the "Confessions" and would record the "Confessions" in the

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<sup>4</sup> The Court notes the Examiner's fees investigating the issues relating to this alleged Note have already exceeded \$500,000.00.

name of Areal Plus Group, not the Note Holding Petitioning Creditors. *See* 5/1/2012 Stipulation, attached to the Complaint as Exhibit E. The Defendants did not notify the Alleged Debtors or the Court that it reached a stipulation with the New York clerk of court that would allow for the recording of the “Confessions” against the Alleged Debtors.

I. On May 30, 2012, Judgment was entered in favor of Areal Plus Group and against the Alleged Debtors in the amount of \$32,846,670.21. *See* 5/30/2012 Judgment, attached to the Complaint. The Defendants did not notify the Alleged Debtors or the Court that a Judgment was entered against the Alleged Debtors based on the same debts alleged in the involuntary petitions.

J. At no point did the Defendants give notice to this Court or the Alleged Debtors that they were seeking to enforce the same debts in another Court.

K. At no point did the Defendants give notice to the New York court that the bona fides of the alleged debts were the subject of dispute in this Court.

L. Bankruptcy Rule 7065, incorporated into this Adversary Proceeding by Civil Rule 65, governs injunctions. *See* Fed. R. Bankr. P. 7065.

M. Bankruptcy Rule 7065(a) permits issuance of a preliminary injunction with notice.

N. The Motion and Notice of Hearing were served on counsel of record for the Note Holding Petitioning Creditors and Areal Plus Group, as well as the Defendants, individually. *See* ECF No. 6. Proper notice was evidenced by the appearances and presentations of counsel for the Note Holding Petitioning Creditors and Areal Plus Group, as well as representatives from The Abramson Law Group, PLLC.

O. Bankruptcy Rule 7065(c) exempts the Alleged Debtors from the standard bond requirements. *See* Fed. R. Bankr. P. 7065 (c).

P. “Federal Rule of Bankruptcy Procedure, section 7065, incorporates Federal Rule of Civil Procedure section 65(b), and provides that a bankruptcy court may grant an applicant's request for a temporary restraining order or preliminary injunction if the requesting party indicates that: (1) there is a substantial likelihood that the movant will prevail on the merits; (2) the movant will suffer irreparable harm unless the injunction is granted; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; (4) the injunction, if granted, would not be adverse to public interest and (5) there is no adequate remedy at law.” *Kapila v. Clark (In re Trafford Distr. Ctr., Inc.)*, 414 B.R. 849, 856 (Bankr. S.D. Fla. 2009) (Olson, J.). Plaintiffs have satisfied the foregoing factors in the context of issuing a preliminary injunction.

Q. The Court has already expressed its doubts with respect to same. *See, e.g.*, Main Case ECF Nos. 28. Moreover, the fact that the Court has already ruled that the Zeltser Group, the parties that purportedly made the Note, do not and has not owned or controlled the Alleged Debtors, supports the substantial likelihood that the Alleged Debtors will prevail on the merits of their dispute as to the authenticity and validity of the Note Holding Petitioning Creditors' alleged debts. *See* Main Case ECF No. 443; *see also* ECF No. 653 and 654, Case No, 11-17051.

R. Plaintiffs will be harmed irreparably by the continued actions of Defendants with respect to these alleged debts in other jurisdictions.

S. Defendants, Note Holding Petitioning Creditors, will not be prejudiced by the entry of a preliminary injunction because they initiated these involuntary petitions in this Court seeking to collect the very same debts they are seeking to enforce in another jurisdiction. Defendants, Areal Plus Group and The Abramson Law Group, PLLC will not be prejudiced by the entry of a preliminary injunction as the validity of the alleged debts is before this Court and

will be adjudicated promptly. This Court will opine on the authenticity and validity of those alleged debts in due course. Entry of a preliminary injunction preserves the status quo until this Court has an opportunity to do so.

T. Policy also weighs in favor of allowing this Court to adjudicate the merits of the Note Holding Petitioning Creditors' claims.

U. The immediate issuance of a preliminary injunction against Defendants is necessary and appropriate under Bankruptcy Rule 7065, preliminarily enjoining the Defendants, their attorneys, agents, officers, directors, members, affiliates, subsidiaries and successors and assigns, or anyone acting through or in concert with them, from (a) seeking to enforce the Note, Assignment, "Confessions" and Judgment, and (b) proceeding in any litigation related to the Notes, or admitting the bona fides of the alleged debts, in any other forum.

Based upon the foregoing findings of fact and conclusions of law, and for the reasons stated on the record, which are incorporated herein by reference, the Court finds good cause to enter a preliminary injunction. Accordingly, it is –

**ORDERED AND ADJUDGED** as follows:

1. The Motion is **GRANTED**.
2. A preliminary injunction is **ISSUED** based upon findings of fact and conclusion of law set forth above ("Preliminary Injunction").
3. The Preliminary Injunction enjoins the Defendants, their attorneys, agents, officers, directors, members, affiliates, subsidiaries, successors and assigns, or anyone acting through or in concert with them, from (a) seeking to enforce the Note, Assignment, "Confessions" and Judgment, and (b) proceeding in any litigation related to the Notes, or admitting the bona fides of the alleged debts, in any forum.

4. The Preliminary Injunction shall last through the date which these involuntary bankruptcy cases have concluded, including (a) the Court's entry of a final non-appealable order on the validity and authenticity of the Note, Assignment and "Confessions", and (b) the Court's entry of a final non-appealable order with respect to any Section 303(i) damages.

5. The Court reserves jurisdiction over the parties, persons enjoined, and this matter for purposes of enforcing this Order and the Preliminary Injunction.

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Submitted by and Copy furnished to:

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(Attorney Redmond is directed to serve a conformed copy of this Order upon interested parties and file a Certificate of Service.)