IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC,

Plaintiff,

v.

BUTLER SNOW LLP et al.,

Defendants.

Case No. 3:18-cv-00866-CWR-BWR

Hon. Carlton W. Reeves

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT FILED BY ALEXANDER SEAWRIGHT, LLC JON SEAWRIGHT, AND BRENT ALEXANDER

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INTRODUCTION

The Court has already determined the exact damages for which Alexander Seawright, LLC ("ASLLC"), Brent Alexander ("Alexander"), and Jon Seawright ("Seawright") (collectively the "Alexander Seawright Defendants") were responsible, and Alexander and Seawright paid those damages in restitution. In fact, the Receiver presently holds more than $977,000 that Alexander and Seawright paid to her for the benefit of the members of Alexander Seawright Timber Fund I, LLC ("ASTFI"). The Court should reject the Receiver's claims that seek to hold the Alexander Seawright Defendants responsible for additional damages to other people with whom Alexander and Seawright never had contact or a connection. The Alexander Seawright Defendants did not cause the losses incurred by any other Madison Timber investors.

Moreover, the Receiver stands in the shoes of Lamar Adams ("Adams") himself, and his Ponzi scheme vehicle, Madison Timber. Yet she seeks to recover damages on behalf of Adams and Madison Timber against the Alexander Seawright Defendants. The law does not allow such a recovery. The Receiver's claims are plainly barred by the affirmative defense of *in pari delicto*.

Even if the claims were not barred, discovery has concluded, and the evidence shows the Receiver cannot meet her burdens of proof for her claims against the Alexander Seawright Defendants. First, the Receiver's claims for negligence, recklessness, and gross negligence fail because the Alexander Seawright Defendants had no duty to Adams or Madison Timber. The only duty identified to date has been a duty owed to act with ordinary care among parties to a joint venture. However, the Receiver cannot show a joint venture or partnership existed, and therefore, cannot prove the elements of a claim for negligence, recklessness or gross negligence.

Moreover, the Receiver's claims of conspiracy and aiding-and-abetting fail because they require actual knowledge of fraud, which the Alexander Seawright Defendants never had. Though Alexander and Seawright plead guilty to failing to conduct the due diligence that the

members of ASTFI expected, there is no evidence that they knew Madison Timber was a Ponzi scheme. They did not know Madison Timber was a fraud. Only Adams knew he was perpetuating fraud, as he has admitted several times.

To the extent the Receiver has any claims that can survive summary judgement, those claims should be limited to Alexander Seawright, LLC, and not against Jon Seawright or Brent Alexander individually. The Receiver's assertion that Alexander Seawright, LLC is the "alter ego" of Alexander and Seawright is simply not supported by the facts of the summary judgment record and is aimed only at attempting to pierce the corporate veil. The Receiver cannot satisfy the requirements for an alter ego claim.[1]

FACTUAL BACKGROUND

Adams operated a Ponzi scheme through Madison Timber Properties, LLC ("Madison Timber"). *See* AC at 2. Adams told investors, including Alexander Seawright and ASTFI, that Adams would use their loaned funds to acquire rights to timber tracts, and he would sell the timber to lumber mills at a profit. *Id.* But everything was a fabrication, and Adams was operating Madison Timber as a Ponzi scheme. *Id.* at 2.

Adams admitted repeatedly on record that only he knew Madison Timber was a fraud. Ex. 3[2] (McHenry Trial) at 130:11–12; Ex. 2 (FBI Interview) at 11:21–12:7; Ex. 4 (Adams Dep.) at 18:3–20:24. He surrendered to federal authorities in April 2018 and "admit[ted] to all of the conduct of the entire scheme and artifice to defraud." AC ¶ 24. After being appointed by the Court, the Receiver filed this and other lawsuits to recover Madison Timber's damages. Alexander and Seawright have consistently maintained that they did not know Madison Timber

[1] This Court has already dismissed the Receiver's RICO claims, and the Receiver has not attempted to re-urge those claims.

[2] All references to exhibits in this memorandum are references to the exhibits filed in support of Baker Donelson's Motion for Summary Judgment, unless specifically noted otherwise.

was a Ponzi scheme, and they did not know Adams was a fraudster, and there is no evidence to the contrary. Ex. 11 (Alexander Dep.) at 113:20–114:2; Ex. 13 (Seawright Dep.) at 131:23–132:16; Ex. 12 (Alexander Decl.) ¶ 8; Ex. 14 (Seawright Decl.) ¶ 9.

Alexander and Seawright formed Alexander Seawright, LLC to pursue investment opportunities outside of their employment with Baker Donelson. Ex. 11 (Alexander Dep.) at 39:20–41:18; Ex. 14 (Seawright Decl.) ¶¶ 1–2. One such opportunity was lending money to Madison Timber. To facilitate the loans and the capital raise needed to fund the loans, Alexander Seawright formed ASTFI. AC ¶¶ 73, 77. ASTFI raised capital from investors in exchange for an equity interest in ASTFI. *Id.* ¶ 77. The capital raised was used to fund loans made to Madison Timber to be used to acquire rights to timber. *Id.* In exchange, Madison Timber agreed to pay ASTFI principal and interest over the term of the loan and granted a security interest in assets it purported to own. *Id.* ¶¶ 18–19. None of the Alexander Seawright Defendants or ASTFI had an ownership interest in Madison Timber, the rights to any profits of Madison Timber, or the ability to control Madison Timber. *See id.* ¶ 24.

Neither Alexander nor Seawright knew Adams was engaged in fraud. Ex. 11 (Alexander Dep.) at 113:20–114:2; Ex. 13 (Seawright Dep.) at 131:23–132:16; Ex. 12 (Alexander Decl.) ¶ 8; Ex. 14 (Seawright Decl.) ¶ 9; *see also* Ex. 2 (Adams FBI Interview) at 11:21–12:7 ("Q: So who else did know? A: Nobody. Q: Nobody in the world? A: No. I have fooled the people that work for me. I have fooled my family. I have fooled banks . . ."). Alexander and Seawright each eventually pleaded guilty to a count of conspiracy to commit wire fraud on the grounds that they misled investors about the extent of their due diligence into Madison Timber. *See* Information (Case No. 3:22-cr-84); Plea Agreement (Case No. 3:22-cr-84); Information (Case No. 3:23-cr-37); Plea Agreement (Case No. 3:23-cr-37). They were not charged with, and did not plead

guilty to, knowing complicity in Adams's Ponzi scheme. The evidence clearly establishes that they had no such knowledge.

The Receiver errantly seeks to recover from the Alexander Seawright Defendants all losses sustained by any and all investors in Madison Timber, including not only the investors in ASTFI, but also all other persons who directly invested in Madison Timber and who had no affiliation whatsoever with Alexander or Seawright. AC at 50.

According to the Receiver, the remaining net losses to investors in ASTFI are approximately $596,775. Ex. 63 at 5. Alexander and Seawright collectively paid $977,044 in criminal restitution as ordered by this Court, which the Receiver is holding, presumably for the benefit of the ASTFI investors as such restitution would make them whole. ECF No. 424 at 4 (Case No. 3:18-cv-252).

LEGAL STANDARD

Summary judgment is warranted where "there is no genuine dispute as to any material fact" and the moving party is "entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c).

ARGUMENT

I. THE RECEIVER CANNOT PROVE ADDITIONAL DAMAGES AGAINST THE ALEXANDER SEAWRIGHT DEFENDANTS.

A. The Receiver Cannot Recover the Debts of the Estate as Damages.

The Receiver claims the amounts that the Receivership Estate—that is, Lamar Adams and Madison Timber—owes on loans to third parties are recoverable "damages." In the Fifth Circuit, that is called a theory of "deepening insolvency," which is "not a valid theory of damages." *In re SI Restructuring, Inc.*, 532 F.3d 355, 363 (5th Cir. 2008) (this "theory of damages has been criticized and rejected by many courts").

Deepening insolvency "has been defined as prolonging an insolvent corporation's life through bad debt, causing the dissipation of corporate assets[.]" *Id.* Here, Adams continued to extend promissory notes to investors, taking in additional funds to prolong the life of the Ponzi scheme. But taking on debt and receiving money is not an injury to the lender. Because the insolvent company never repaid the debt, it is a net beneficiary. *See Kirschner v. Grant Thornton LLP*, 2009 WL 1286326, at *8 (SDNY Apr. 14, 2009), *aff'd*, 626 F.3d 673 (2d Cir. 2010). The only persons harmed were the investors, but that is not who the Receiver represents in this case. The Receivership Estate itself was not harmed when Adams secured additional loans to give to himself; it was harmed when Adams stole those funds from investors, including ASTFI, instead of investing the funds in timber tracts as promised.

B. Any Damages Attributable to the Alexander Seawright Defendants Would Be Limited to the ASTFI Investors' Losses.

"[P]roximate causation" requires that damages are foreseeable—i.e., that they are of "the type, or within the classification, of damage the negligent actor should reasonably expect (or foresee) to result from the negligent act." *Glover v. Jackson State Univ.*, 968 So.2d 1267, 1277 (Miss. 2007). "The claims for conspiracy and aiding and abetting, like the negligence claim, have a proximate cause requirement." ECF No. 135 at 15.

The Receiver claims the Alexander Seawright Defendants are responsible for the losses of all the investors in Madison Timber. That is simply not the case. The Alexander Seawright Defendants facilitated loans to Madison Timber exclusively from ASTFI. The Alexander Seawright Defendants did not originate, assist, facilitate any other loans to Madison Timber, and they had no other connection to Madison Timber.

Only a minority of investors in Madison Timber invested through ASTFI; the substantial majority did not. *See* Ex. 9 (Receiver's Accounting of Madison Timber Promissory Notes); Ex.

10 (Receiver's Accounting of Alexander Seawright Timber Fund). The Receiver cannot prove the conduct of Alexander and/or Seawright is the proximate cause of any losses sustained by the direct Madison Timber investors, who indisputably had no connection to ASTFI. With one exception (an individual who initially invested through ASTFI, but independently and without the knowledge of Alexander and Seawright, met Adams and decided to invest directly with him), *see* Ex. 46 at 144:13–145:23, there is no evidence any direct investors in Madison Timber had any contact with Alexander or Seawright. None of those investors even knew Alexander or Seawright existed. *See, e.g.*, Ex. 56 (Investor 4 Dep.) at 46:16–24, 50:1–9; Ex. 57 (Investor 13 Dep.) at 192:4–196:13; Ex. 58 (Investor 29 Dep.) at 65:7–70:12; Ex. 19 (Investor 115 Dep.) at 187:15–191:8; Ex. 20 (Investor 121 Dep.) at 38:14–39:9; Ex. 59 (Investor 41 Dep.) at 73:5–20.

And Alexander and Seawright were unaware that more than a handful of direct Madison Timber investors existed. April 2018 was "the first time [Seawright] [was] aware of there being a large number of investors" in Madison Timber outside of the loans extended by ASTFI. Ex. 13 (Seawright Dep.) at 60:21–61:19, Alexander was unaware there were any other investors. Ex. 11 (Alexander Dep.) at 66:25–68:12. Alexander and Seawright were aware of the loans ASTFI extended to Madison Timber and could reasonably have foreseen ASTFI investors could suffer losses if Adams failed to make payments on the loans. But losses incurred by other investors on other loans, which were never disclosed to Alexander or Seawright, are not "the type, or within the classification, of damage the negligent actor should reasonably expect (or foresee)." *Glover*, 968 So. 2d at 1277.

Indeed, the Court has already determined the exact amount of damages for which the Alexander Seawright Defendants were responsible, and Alexander and Seawright have paid those damages in restitution back to the Court, and thus to the Receiver. The Receiver is holding

more than $977,000 that Alexander and Seawright paid back as ordered. ECF No. 424 (Case No. 3:18-cv-252) at 4 ("The Court ordered Seawright and Alexander to together pay $977,044 in restitution, which the U.S. Attorney's Office already collected and tendered to the Receivership Estate."). That amount is consistent with the losses of the ASTFI investors but far smaller than the losses of direct investors in Madison Timber. The Receiver cannot prove that the Alexander Seawright Defendants are responsible for any additional damages.

Once the Receiver properly distributes this already collected restitution to the ASTFI investors, they will be made whole and the Receiver cannot recover further. *See City of Jackson v. Estate of Stewart*, 908 So. 2d 703, 712 (Miss. 2005) ("double recovery for the same harm is not permissible"); *Turner v. Pickens*, 711 So. 2d 891 (Miss. 1998) ("a plaintiff is only entitled to one satisfaction"); *Evans v. Sharpley*, 607 So. 2d 1210, 1213 (Miss. 1992) ("There can be but one satisfaction of the amount due the plaintiff for his damages."); *Garris v. Smith's G&G, LLC*, 941 So. 2d 228, 232 (Miss. Ct. App. 2006) ("A party is not entitled to a recovery of damages if it would constitute a windfall or 'double recovery.'").

II. THE RECEIVER'S CLAIMS ARE BARRED BY *IN PARI DELICTO*.

In denying the Alexander Seawright Defendants' prior motion to dismiss, the Court issued its ruling "without prejudice to their re-urging at the summary judgment stage." Completion of discovery has shown that Adams and Madison timber were the perpetrators of the Ponzi scheme, preventing the Receiver's recovery under *in pari delicto*.

"In pari delicto is an equitable, affirmative defense, which is controlled by state common law." *Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 965 (5th Cir. 2012) (citing *Pinter v. Dahl*, 486 U.S. 622, 632 (1988). As shown above, the Alexander Seawright Defendants were not parties to any criminal acts or conspiracies with Madison Timber or Adams, but even if they were, the "court will not extend aid to either the parties to a criminal act or listen to their

complaints against each other but will leave them where their own acts have placed them." *Id.* "The *in pari delicto* defense has repeatedly been used to bar the actions of 'bankruptcy trustee[s] against third parties who participated in or facilitated wrongful conduct of the debtor[s].'" *In re Fair Fin. Co.*, 834 F.3d 651, 676 (6th Cir. 2016) (quoting *Mosier v. Callister, Nebeker & McCullough*, 546 F.3d 1271, 1276 (10th Cir. 2008) (collecting cases)). Like bankruptcy trustees, the Receiver in this action stands in the shoes of the debtors—Adams and Madison Timber.

Under Mississippi law, a plaintiff who is *in pari delicto* with the defendant may not recover against that defendant. *Sneed v. Ford Motor Co.*, 735 So. 2d 306, 308 (Miss. 1999) ("a wrongdoer is not entitled to compel contribution from a joint tortfeasor . . . if [they] are *in pari delicto*"). The *in pari delicto* doctrine enforces the longstanding "principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." *In Pari Delicto Doctrine*, Black's Law Dictionary (10th ed. 2014). The *in pari delicto* doctrine "applies where the plaintiff is equally or more culpable than the defendant or acts with the same or greater knowledge as to the illegality or wrongfulness of the transaction." *Latham v. Johnson*, 2018 WL 3121362, at *10 (Miss. Ct. App. June 26, 2018) (citing 27A Am. Jur. 2d, Equity § 103, p. 641 (2008)), *reh'g denied* (Oct. 9, 2018).

Discovery flatly confirmed that Adams and Madison Timber were the primary wrongdoers—far more culpable than the Alexander Seawright Defendants, who did not act with *any knowledge* as to the illegality or wrongfulness of Adams's fraudulent scheme. There can be no dispute that Adams's conduct was far more culpable than that of the Alexander Seawright Defendants. The Receiver has not shown and cannot show that the Alexander Seawright

Defendants knew about the fraud.[3] Again, Alexander Seawright only received commissions related to the ASTFI loans, and did not receive any additional funds from Madison Timber, particularly from the Madison Timber victims unrelated to ASTFI. AC ¶ 76. On the other hand, Adams perpetuated the entire Madison Timber scheme and was responsible for all losses.

III. THE ALEXANDER SEAWRIGHT DEFENDANTS HAD NO ACTUAL KNOWLEDGE OF ADAMS'S FRAUD.

The Receiver's claims for civil conspiracy and aiding and abetting require her to carry the burden of proving Seawright or Alexander had ***actual knowledge*** Madison Timber was a fraud. But it is undisputed Alexander and Seawright did not have actual knowledge of the Ponzi scheme; they raised capital on behalf of ASTFI, and in turn caused ASTFI to lend those funds to Madison Timber because they believed the timber business was real. AC ¶¶ 73, 92; Ex. 11 (Alexander Dep.) at 113:20–114:2; Ex. 13 (Seawright Dep.) at 131:23–132:16; Ex. 12 (Alexander Decl.) ¶ 8; Ex. 14 (Seawright Decl.) ¶ 9. Absent evidence of actual knowledge, Counts I and II asserted by the Receiver fail.

As to Count I for Civil Conspiracy, there must be a "meeting of the minds." *MultiPlan, Inc. v. Holland*, 937 F.3d 487, 495 (5th Cir. 2019). "[P]ersons must agree . . . in order for a conspiracy to exist." *Gallagher Bassett Servs., Inc. v. Jeffcoat*, 887 So. 2d 777, 786 (Miss. 2004). Alexander and Seawright did not know the nature of Adams's scheme, and thus they could not have agreed to enter a conspiracy to pursue it. The Receiver can set forth no evidence to show that Alexander or Seawright knew Adams was operating a fraudulent scheme.

The Receiver's so-called "red flags," *see* AC ¶¶ 101–107, are insufficient to establish an agreement or actual knowledge of the fraud, and they always have been. "[A]ctual knowledge"

[3] As argued by Baker Donelson in its motion, the Receiver cannot claim an "innocent successor" exception, or any other exception for that matter, to the doctrine of *in pari delicto*. The Alexander Seawright Defendants adopt and join Baker Donelson's arguments on that point.

of a fraud should not be "confuse[d] . . . with 'constructive knowledge.'" *Collier v. Trustmark Nat. Bank*, 678 So. 2d 693, 697 (Miss. 1996) (cited in MTD Op., ECF No. 70, at 9). It is not enough that a defendant "should have known of [another's] improprieties"; "actual knowledge" requires "express factual information" and "awareness at the moment" of the fraud. *Id.* (citations omitted). This authority makes clear that asserting Alexander and Seawright *should have known* of Adam's scheme is insufficient to find them liable for a civil conspiracy.

As to Count II for Aiding and Abetting, again, actual knowledge is required. The claim requires the defendant "knows that the other's conduct constitutes a breach of duty[.]" Restatement (Second) of Torts § 876(b). It is insufficient to prove that a defendant "should have known" about the other party's fraud. *Dickens v. A-1 Auto Parts & Repair, Inc.*, 2018 WL 5726206, at *3 (S.D. Miss. Nov. 1, 2018). Thus, the claims fail as a matter of law.

IV. THE ALEXANDER SEAWRIGHT DEFENDANTS HAD NO DUTY TO ADAMS AND MADISON TIMBER.

The Receiver has failed to state a claim for negligence, gross negligence, or recklessness because she has failed to allege that the Alexander Seawright Defendants owed a duty to Adams and Madison Timber. "Whether a duty exists is a question of law." *Midwest Feeders, Inc. v. Bank of Franklin*, 886 F.3d 507, 515 (5th Cir. 2018) (citation omitted); *see also, e.g.*, *Brown ex rel. Ford v. J.J. Ferguson Sand & Gravel Co.*, 858 So. 2d 129, 131 (Miss. 2003). The Receiver discusses the plight of other investors who were duped by Adams, but the Receiver is not their representative. Instead, the Receiver stands only in the shoes of Adams and Madison Timber, and the Alexander Seawright Defendants did not owe any duty to Adams or Madison Timber.[4]

[4] *See* Order Appointing Receiver [Doc. 33], *SEC v. Adams*, No. 3:18-cv-252-CWR-FKB (S.D. Miss. June 22, 2018). It is black-letter law that the Receiver "has standing to assert only the claims of the entities in receivership and not the claims of the entities' investor-creditors." *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013); *see also Troelstrup v. Index Futures Grp., Inc.*, 130 F.3d 1274, 1276 (7th Cir. 1997) (receiver appointed for estate of fraudster "has no possible

The Court previously stated the defendants "had a duty to act with ordinary care." MTD Op. at 13. The Court further explained that the duty arises from the existence of a partnership, stating that a member of a joint venture has a duty to his fellow venturers "to refrain[] from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law" citing a Section of the Mississippi Uniform Partnership Act at § 79-13-404(c). *Id*. That duty only arises where there is a partnership, and the undisputed facts show no partnership existed between Madison Timber and any of the Alexander Seawright Defendants.

The undisputed facts show that none of the Alexander Seawright Defendants were co-owners of Madison Timber, nor did they receive any profits of Madison Timber (even if they had existed). Rather, the only payments made by Madison Timber to the Alexander Seawright Defendants were principal and interest paid pursuant to the loans from ASTFI and closing fees paid to Alexander Seawright, LLC in return for the services of originating and arranging the loans. Both of those are expressly excluded from being considered profits under the Mississippi Uniform Partnership Act. Therefore, none of the undisputed facts support finding that a partnership existed with Madison Timber, and thus the duty that might otherwise be established by Section 79-13-404 is inapplicable. As discussed in further detail below, there was no joint venture of any kind between Madison Timber and the Alexander Seawright Defendants.

Further, although parties may have a duty to act with ordinary care, it must be with respect to some obligation to act. The scope of that duty does not encompass an obligation owed by the Alexander Seawright Defendants to Adams and Madison Timber to prevent their criminal activity. Under Mississippi law, the foundation of a negligence claim is "[a] duty, or obligation, recognized by law, requiring the person to conform to a certain standard of conduct, for the

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claim against [a third-party brokerage house], or on behalf of the investors, the victims of the fraud, because he was not their receiver").

protection of others against unreasonable risks." *Carpenter v. Nobile*, 620 So. 2d 961, 964 (Miss. 1993). There is no duty to blow the whistle on a fraudster by disclosing his tortious conduct to the corporate entity that he created and used as an instrument of his fraud.

"In Mississippi, only those who 'take charge' of a third party have the duty to control that third party's criminal acts." *Doe v. Hunter Oaks Apartments, L.P.*, 105 So. 3d 422, 426 (Miss. Ct. App. 2013). No evidence shows that Alexander and Seawright controlled Madison Timber or Adams. To the contrary, Madison Timber was Adams' instrumentality, through which he operated a fraudulent scheme without anyone else's knowledge. *See* Ex. 3 (McHenry Trial) at 130:11–12; Ex. 2 (FBI Interview) at 11:21–12:7; Ex. 4 (Adams Dep.) at 18:3–20:24.

The Receiver's tort claims also fail because the Receiver is bringing the claims on behalf of Madison Timber and Lamar Adams, and *they* were not defrauded or targeted by fraud. Instead, they were fraudsters. Accordingly, Adams and Madison Timber cannot recover for tort claims predicated on fraud. Nor can they complain that Alexander and Seawright negligently failed to stop their fraud. *See also Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303, 1315 (11th Cir. 2024) (unanimous concurrence) and the arguments advanced by Baker Donelson; Restatement (Second) of Torts § 876 (requiring that a claim for aiding and abetting be brought by a "third person"); *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("[A] federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors.").

V. THE RECEIVER CANNOT PROVE JOINT VENTURE LIABILITY.

A joint venture "exists when two or more persons combine in a joint business enterprise for their mutual benefit with an understanding that they are to share in profits or losses and each to have a voice in its management." *Hults v. Tillman*, 480 So. 2d 1134, 1142 (Miss. 1985). The

Receiver argues that Alexander and Seawright formed a joint venture with Adams and Madison Timber. AC ¶ 175. The Court should reject that claim.

First, Alexander and Seawright did not know Adams was operating a Ponzi scheme. Ex. 11 (Alexander Dep.) at 113:20–114:2; Ex. 13 (Seawright Dep.) at 131:23–132:16; *see also* Ex. 2 (Adams FBI Interview) at 11:21–12:7. Because a "joint venture is a form of contract, and governed by contract law," both parties must have the same intent in forming their joint venture. *Hults*, 480 So. 2d at 1143. There was no common intent with Adams, since he alone knew of his fraud. In any event, Adams could not enforce any claim related to an alleged Ponzi scheme joint venture because Mississippi courts will not enforce an illegal contract. *Okoloise v. Yost*, 283 So. 3d 49, 63 (Miss. 2019) ("the law . . . will not aid either party to an illegal agreement").

But even if the Receiver could overcome those flaws, there is no evidence of any joint venture. Joint-venture liability requires "a joint proprietary interest and right of mutual control." *Adams v. Hughes*, 191 So.3d 1236, 1242 (Miss. 2016). Alexander and Seawright did not have any control over Madison Timber, nor did they make any business decisions about its business operations. Ex. 4 (Adams Dep.) at 18:3–20:24. ASTFI was just a lender that extended funds to Madison Timber. Alexander and Seawright did not manage "day-to-day operations" of Madison Timber. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549, 556 (5th Cir. 2007).

The other "main question" under Mississippi law is whether the parties "are to share in profits or losses and each to have a voice in its management.'" *Walker v. Williamson*, 2016 WL 2771792, at *2 (S.D. Miss. May 12, 2016).[5] The Alexander Seawright Defendants did not share

[5] In *Smith v. Redd*, 593 So. 2d 989, 994 (Miss. 1991), the Mississippi Supreme Court also identified these as rules of partnership formation. "Generally, a partnership exists when two or more persons join together with their money, goods, labor, or skill for purposes of carrying on a trade, profession or business with a community interest in the profits and losses." 593 So. 2d at 993. Clearly, that is not what happened with the Alexander Seawright Defendants in this case. They never acted with the purpose of joining Adams in the fraudulent scheme. They did not know it was a fraudulent scheme. They intended only to be paid fees on the loans they coordinated for Madison Timber. Surely, the Receiver does not contend that every entity

in any percentage of "profits" or "losses" as in a jointly-owned business. *See Walker*, 2016 WL 2771792, at *3-4 (finding plaintiff pleaded no facts to indicate defendants intended to establish a joint venture or controlled the relevant actions, other than conclusory assertions, and further finding that payment of fees did not establish a larger agreement to split profits, but even if the shared-profits element was established, it would not be enough to overcome the lack of intent and control). The Alexander Seawright Defendants did not receive "profits."

If payment to one of the parties "was in the nature of wages or compensation for services rendered, then no inference of a partnership should be made." *Hults*, 480 So. 2d at 1146. Alexander and Seawright received commissions, not profits, which were "in the nature of wages or compensation for services rendered." *Id.* They found investors and lent money secured by timber tracts. They did not own any equity or right to profit sharing in Madison Timber. The loan-origination fees were paid upfront at the time of lending, not as a distribution of profits that Adams claimed to have earned on the sale of timber. AC ¶ 76. As for the interest payments, such "interest or other charge on a loan" is expressly excluded from the definition of "profits" that give rise to joint ventures or partnerships. Miss. Code. Ann. § 79-13-202(c)(3); *see Hults*, 480 So. 2d at 1145 (holding the Uniform Partnership Act "applies to joint ventures"). For these reasons, the Receivers claim for joint venture liability fails. Similarly, the Receiver's claims for negligence, recklessness and gross negligence fail, because as shown above, no partnership existed between Adams and Madison Timber on the one hand and the Alexander Seawright Defendants on the other hand.

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that conducts business with another entity for profit becomes a joint venture. The Receiver cannot show that the Alexander Seawright Defendants had knowledge of Adams's fraud or that they intended to join it. She also does not even allege that they had any control over the actions of Adams and Madison Timber.

VI. THE RECEIVER CANNOT PIERCE THE LIMITED LIABILITY VEIL OF ALEXANDER SEAWRIGHT, LLC TO HOLD BRENT ALEXANDER AND JON SEAWRIGHT PERSONALLY LIABLE.

The Receiver asserts that Alexander Seawright is an alter ego of Alexander and Seawright in an attempt to pierce the corporate veil of the entity. However, the undisputed evidence provides no support for the elements of a finding that Alexander Seawright, LLC should be disregarded as an entity.

In Mississippi, "the three-prong test for piercing the veil of corporations, established in *Gray v. Edgewater Landing, Inc.*, 541 So. 2d 1044, 1047 (Miss. 1989), is also the appropriate test for piercing the veil of LLCs." *Rest. of Hattiesburg, LLC*, 84 So. 3d at 35. "When faced with other approaches for determining when limited liability should be disregarded, the Mississippi Supreme Court reiterated *Gray* is the test Mississippi courts must apply." *Id.* at 39.[6]

Under the three-prong test set forth in *Gray*, a court may disregard an entity's existence only if the plaintiff shows: "(a) some frustration of contractual expectations regarding the party to whom he looked for performance; (b) the flagrant disregard of corporate formalities by the defendant entity and its principals; and (c) a demonstration of fraud or other equivalent misfeasance on the part of the corporate shareholder." 541 So. 2d at 1047.[7] The undisputed facts offer no support for any of the required prongs of the *Gray* test for an alter ego theory to succeed.

[6] Contrary to the Receiver's claim, Alexander and Seawright are not "alter egos" of Alexander Seawright, LLC, but more importantly, that is not the test. The Mississippi Supreme Court has expressly refused to adopt the ten factors employed by the Fifth Circuit for its "alter ego" analysis. *See Buchanan v. Ameristar Casino Vicksburg, Inc.*, 957 So. 2d 969, 976-77 (Miss. 2007). In *Buchanan*, the Court stated that "[w]hile these ten factors are instructive on the alter ego theory, this Court has not adopted the factors as applied by the federal courts . . . . this Court has held a three-factor test for piercing the corporate veil and imposing liability on corporate shareholders." *Id.*

[7] This three-part test applies to tort as well as contract claims. *Penn. Nat. Gaming, Inc. v. Ratliff*, 954 So. 2d 427, 431-32 (Miss. 2007) (the Mississippi Supreme Court stated it had "never articulated whether a different standard applies to tort claims," and the Court adopted the three-part test, omitting the word "contractual" from the first prong).

A. Lamar Adams Knew He Was Dealing with Alexander Seawright, LLC.

To pierce the corporate veil, a plaintiff must prove that he had a reasonable expectation of performance from a person "behind the veil." *Carpenter Props., Inc. v. J.P. Morgan Chase Bank N.A.*, 647 F. App'x 444, 452 (5th Cir. 2016). The Receiver has not even alleged that Adams had an expectation of performance from Alexander and Seawright individually. Instead, the evidence shows that Alexander and Seawright acted through Alexander Seawright, LLC in all interactions with Adams and Madison Timber. *See* the Declaration of Jon Seawright, attached as Exhibit A to the Alexander Seawright Defendants' Motion for Summary Judgement. And Adams knew he was doing business with Alexander Seawright, LCC and ASTFI. Ex. 4 (Adams Tr.) at 144:21–22 ("A: And they had an LLC we made payments to."); *id.* at 129:24–130:2 (documents executed with and money paid to "Alexander/Seawright Timber Fund"), *id.* at 142:12–16 (promissory note extended to "Alexander/Seawright Timber Fund"), *id.* at 143:15–18 (deed transferred rights to "Alexander/Seawright Timber Fund").

The first *Gray* prong addresses which person or business entity Madison Timber expected to pay for the services and loans it received. In *Gray*, the Mississippi Supreme Court found Morris Gray failed to establish this prong because he "had no doubt that he was contracting with a corporate party, not Billy Stegall or Tom Bradley personally. As a businessman himself, Gray appreciated this distinction." *Gray*, 541 So. 2d at 1047. The inquiry therefore is whether Madison Timber knew it was contracting with a particular LLC, Alexander Seawright in the case of services, and ASTFI in the case of loans, rather than Alexander and Seawright as individuals. *See Rest of Hattiesburg*, 84 So. 2d at 40.

No evidence indicates Madison Timber or Adams was uncertain as to the parties it was contracting with and from whom it expected performance. *See* Ex. A. Most significantly, every check for the loan closing fees due to Alexander Seawright, LLC was prepared by Madison

Timber and Adams as payable to Alexander Seawright, LLC, not Alexander or Seawright individually. *See* Exhibit A. Likewise, all documents prepared by Madison Timber and Adams listed ASTFI as the lender and all payments were made payable to ASTFI. *Id.* Finally, when providing Forms 1099 in the normal course of its operations, they were issued by Madison Timber to Alexander Seawright, LLC and ASTFI. *Id.* The undisputed evidence indicates Madison Timber and Adams were clearly aware of the counterparties to the transactions with Alexander Seawright, LLC and ASTFI and whom they would look to for performance. As a result, the Receiver's assertion of alter ego liability fails the first requirement of the *Gray* test.

B. Alexander Seawright Did Not Flagrantly Disregard Corporate Formalities.

The Receiver has not shown that the Alexander Seawright Defendants flagrantly disregarded any corporate formalities of Alexander Seawright, LLC.[8] The Receiver has not alleged, much less offered evidence to prove, which formalities that she claims should have been followed by Alexander Seawright as an entity but were disregarded to the detriment of Madison Timber. On the contrary, the undisputed facts indicate all corporate formalities were followed and nothing indicates a flagrant disregard of corporate formalities.

The undisputed facts show (i) Alexander Seawright was properly organized as an entity; (ii) it maintained an operating agreement for its members; (iii) it maintained its own bank account; (iv) it filed annual tax returns; (v) it corresponded under its own letterhead; and (vi) it did not co-mingle its assets with those of its members. *See* Ex. A. Without any facts supporting the claim that Alexander Seawright flagrantly disregarded corporate formalities, the second required prong of the *Gray* test fails and the Receiver cannot succeed for a claim that Alexander Seawright is an alter ego of Alexander and Seawright.

[8] Of course, it is uniformly recognized that "failure to adhere to formalities" in the LLC context should be given far less consideration "because LLC statutes are designed to forgo the most burdensome formalities." Eric Fox, 62 Geo. Wash. L. Rev. 1143, 1168 (1994).

C. Alexander Seawright Was Not a Vehicle for Fraud, And Jon Seawright and Brent Alexander Did Not Use It for Fraudulent Means.

Last, and as discussed above at length, the Receiver cannot offer evidence to show that the Alexander Seawright Defendants knew about Adams's fraud or the fraudulent scheme he was operating under the guise of Madison Timber. Merely alleging that the LLC was involved to some degree in a fraud is insufficient to pierce the corporate veil in Mississippi.

Instead, there must be some evidence to show that the members of the LLC knew from the beginning about the fraud and intended to use the LLC to further the fraudulent scheme. *See, e.g.*, *Richardson v. Jenkins Builders, Inc.*, 737 So. 2d 1030, 1032 (Miss. Ct. App. 1999) (plaintiff "presented no evidence that [individual defendant], from the beginning, was intent on obtaining [plaintiff's] money for his own personal use . . . and that he used a shell corporation to shield himself from personal liability on the day of reckoning that was inevitably to come"); *In re England Motor Co.*, 426 B.R. 178, 192 (N.D. Miss. 2010) (plaintiff "failed to present any evidence whatsoever that [individual defendant] formed any of the [corporate] [e]ntities for fraudulent or wrongful purposes"); *Powertrain, Inc. v. Ma*, 88 F. Supp. 3d 679, 699 (N.D. Miss. 2015); *see also* cases from other jurisdictions, including *In re Evergreen Security, Ltd.*, 319 B.R. 245, 255–56 (M.D. Fl. 2003) (individual not personally liable although transactions through his corporation were voidable as fraudulent and he could not establish a good-faith defense because corporation was not created to perpetuate the fraud). No such evidence exists in this case.

Finally, Mississippi has a strong public policy favoring maintaining LLC entities and avoiding attempts to pierce the corporate veil. *Rest of Hattiesburg, LLC v. Hotel & Rest. Supply, Inc.*, 84 So. 3d 32, 39 (Miss. 2012) ((citing *Buchanan v. Ameristar Casino Vicksburg, Inc.*, 957 So. 2d 969, 977 (Miss. 2007)). For all of these reasons, the Court should reject the Receiver's errant attempt to attach further personal liability to Jon Seawright and Brent Alexander.

CONCLUSION

Alexander Seawright, LLC, Brent Alexander, and Jon Seawright respectfully request the Court grant summary judgment in their favor on all counts asserted against them by the Receiver.

Date: November 3, 2025.

Respectfully submitted,

ALEXANDER SEAWRIGHT, LLC; BRENT ALEXANDER; and JON SEAWRIGHT

By: */s/ Cody C. Bailey*
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CERTIFICATE OF SERVICE

I, Cody C. Bailey, hereby certify that on November 3, 2025, I caused the foregoing pleading to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and registered participants.

/s/ Cody C. Bailey
Cody C. Bailey