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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MANAGEMENT SOLUTIONS, INC., a Texas Corporation; WENDELL A. JACOBSON; ALLEN R. JACOBSON,</p> <p>Defendants.</p>	<p>OPPOSITION TO MOTION TO INTERVENE BY MATTHEW A. NIELSON, JILL R. NIELSON, AND BLACK CLIFFS INVESTMENTS, LLC</p> <p>Civil Action No. 2:11-cv-01165</p> <p>Judge Bruce S. Jenkins</p>
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John A. Beckstead (the “Receiver”), as Receiver for Management Solutions, Inc. and related entities (collectively referred to as “MSI”), and the assets of Wendell A. Jacobson and Allen R. Jacobson, hereby submits his Opposition to the Motion to Intervene by Matthew A. Nielson, Jill R. Nielson, and Black Cliffs Investments, LLC (the Nielson Defendants”).

INTRODUCTION

The Receiver has filed a separate lawsuit against the Nielson Defendants alleging that they received payments from MSI in excess of the amounts they invested, and that those profits should be forfeited to the receivership estate because they were paid as part of a Ponzi scheme. (See Ex. 1 to the Nielson Defendants' Motion to Intervene.) The Receiver has filed lawsuits containing similar Ponzi allegations against dozens of other "net winners," that is, individuals whose payouts exceeded what they invested in the MSI scheme.

The Nielson Defendants seek to intervene in this action to be heard in opposition to the Receiver's Motion for Findings Regarding the Existence and Start Date of a Ponzi Scheme and for Approval to Pool Claims and Assets (the "Ponzi Motion"). (Dkt. No. 685.) The Nielson Defendants motion should be denied for two reasons.

First, the Nielson Defendants have not shown that they have an interest that may be "impaired or impeded" if they are not permitted to intervene. See *Elliott Indus. Ltd. P'ship v. BP America Production Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005). Although the Nielson Defendants presume that the Receiver would attempt to use a Ponzi scheme finding in this action against the Nielson Defendants in their separate action, the Receiver has not taken that position and the Nielson Defendants cite no law to suggest that is a possibility.

Second, if the Nielson Defendants are permitted to intervene, dozens of other defendants in ancillary lawsuits must also be permitted to intervene in this main action, filing complaints in intervention requiring responses from the Receiver, resulting in tremendous inefficiency. The Nielson Defendants' Motion should be denied.

ARGUMENT

The Nielson Defendants cite no authority to suggest that they would be bound by the Court's determination on the pending Ponzi Motion. "[I]ssue preclusion applies when (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action. *Park Lake Res. Ltd. Liab. Co. v. USDA*, 378 F.3d 1132, 1136 (10th Cir. Colo. 2004). In fact, the Nielson Defendants would only be bound by a finding on the Ponzi Motion in the event they are permitted to intervene. Otherwise, the doctrine could not be invoked against them by the Receiver because they are not a party to this action and do not appear to be in privity with a party and would not have had a full and fair opportunity to litigate the question in this action. *See id.* In other words, the Nielson Defendants will have the opportunity to challenge the Court's determination on the Ponzi Motion and/or litigate the Ponzi issue in the Receiver's separate lawsuit against them. Their concern about the binding effect of a Ponzi determination in this case is unfounded.

CONCLUSION

Because the Nielson Defendants have not shown that a determination of the Ponzi Motion would have preclusive effect in the Receiver's separate action against them, they have failed to demonstrate that any interest they have may be impaired or impeded if they are not permitted to intervene. Therefore, the Nielson Defendants' Motion to Intervene should be denied.

Dated: February 4, 2013.

Respectfully submitted,

/s/ J. Andrew Sjoblom

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I hereby certify that on the 4th day of February, 2013, I caused a true and correct copy of the foregoing to be served in the following manner upon the addressee(s) listed below:

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