IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
vs.	
INTER GLOBAL TECHNOLOGIES, INC., and MICHAEL E. TOMAYKO	Civil Action No. 3-07-CV-1397-K
Defendants.	

PLAINTIFF'S UNOPPOSED MOTION TO AMEND FINAL INJUNCTION TO ADD ADDITIONAL INJUNCTIVE RELIEF AGAINST DEFENDANTS

Plaintiff Securities and Exchange Commission moves to amend the Final Judgment Granting Permanent Injunction and Other Relief as to Defendants Inter Global Technologies, Inc. and Michael E. Tomayko, entered May 27, 2008 (Docket No. 25) (the "Final Judgment"). As reflected in Defendants' Stipulation and Consent filed together with this Motion, Defendants do not oppose this relief.

A. Procedural Background

Plaintiff filed this securities fraud case on August 13, 2007, alleging that Defendants had illegally raised millions of dollars through an unregistered offering of securities to hundreds of investors worldwide. Plaintiff alleges that Defendants enticed investors with claims about supposedly lucrative refineries that Defendants and their foreign partners planned to build in Indonesia. Plaintiff further alleges Defendants told investors elaborate stories involving such exotic elements as massive underground vaults of jade and gold, and billion-dollar Swiss letters of credit that supposedly would collateralize the refineries' financing. Plaintiff alleges that

Defendants constantly assured investors and prospective investors that they had relationships with well-connected foreign nationals who Defendants claimed had special access to vast wealth that they were prepared to lavish on Defendants and their investors.

As Plaintiff's alleges, however, these claims were false and completely unfounded. Instead, Plaintiff alleges Defendants used investor funds to support Tomayko's international jet-setter lifestyle (as well as to cover his house payments and other personal expenses), or sent them to mysterious foreign nationals who provided no accountability for the funds they received. When Plaintiff filed this case, Defendants had wholly dissipated investor funds in this manner, with nothing tangible to show for it.

B. The Court enters the Final Judgment

Defendants ultimately agreed to settle Plaintiff's charges by consenting, on a no-admit/no-deny basis, to entry of the Final Judgment. *See* Stipulation and Consent to Final Judgment Granting Permanent and Other Relief (Docket No. 26). The Court entered the Final Judgment on May 27, 2008. The Final Judgment enjoined Defendants from violating the securities registration and antifraud provisions of the Securities Act of 1933[1] and the antifraud provisions of the Securities Exchange Act of 1934.[2] The Court also ordered Defendants to pay civil penalties of $50,000 each and disgorgement, with prejudgment interest, of $10,704,957.[3] The Court specifically retained "jurisdiction over this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court." *See* Final Judgment, ¶ VI.

[1] *See* 15 U.S.C § 77e(a) and (c) (prohibiting offers and sales of unregistered securities); 15 U.S.C. § 77q(a) (antifraud provisions).

[2] *See* 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

[3] Defendants have not paid, and have denied the ability to pay, anything on these amounts.

C. Defendants' continued wrongdoing after the Final Judgment

Through post-judgment discovery, Plaintiff has learned that, after the Final Judgment, Defendants continued to communicate with investors on a monthly, and even weekly, basis about supposed developments with the purported Indonesian refineries. Defendants used these continuing representations to raise at least an additional $1.7 million since May 2008. Defendants raised these funds primarily through sales of promissory notes to existing Inter Global shareholders, which were secured by shares of Defendant Tomayko's IGT stock.[4]

Defendants spent these funds almost as quickly as they got them, largely on personal items. The following reflects, in approximate amounts, the items on which Defendants spent investor funds between May 2008 and August 2009, as reflected in bank and credit card records Plaintiff has reviewed:

Description	**Amount**
Michael Tomayko personal expenses, including house payments, Mercedes lease payments, home utilities, lawn and pool maintenance, house cleaning, home pest control, furniture, country club dues, Las Colinas Four Seasons, luxury personal travel, etc.	$201,000
Michael Tomayko church donations	$25,000
Neiman Marcus, Saks, Cole-Haan, Polo/Ralph Lauren Store, de Boulle Jewellers	$36,500
Cash withdrawals, including checks to Michael Tomayko	$366,000
Michael Tomayko's attorneys	$52,500
Meals at various restaurants in Dallas-Fort Worth	$22,400

[4] Although some evidence suggests that Defendants sold stock directly to investors after the Final Judgment, Defendants have asserted that they merely pledged it as collateral for loans from investors. [*See* Letter from Michael E. Tomayko to David L. Peavler, dated October 19, 2009, attached as Exhibit A.] In any case, this is a distinction without a difference, since the Supreme Court has held that pledging stock to secure a loan constitutes a "sale" of securities under the Securities Act of 1933. *See Rubin v. U.S.*, 449 U.S. 424, 429 (1981); *see also Trust Co. of La. v. N.N.P. Inc.*, 104 F.3d 1478, 1490 (5th Cir. 1997) (same).

Description	Amount
Miscellaneous items, including gasoline, car washes, dry cleaning, groceries, snacks, concert tickets, hardware purchases and drugstore purchases.	$21,500

In total, Defendants spent over $720,000 (at least) on items that had nothing to do with Indonesian refineries but, rather, simply maintained Tomayko's house, car and lifestyle.[5]

Bank records also show that Defendants sent an additional $253,000 offshore to Inter Global's purported Indonesian partner and $98,000 to a pair of foreigners who were supposed to provide access to Swiss financing. As with similar offshore transfers before Plaintiff filed suit, none of the foreign recipients was accountable for these funds and neither Defendants nor their investors obtained any tangible benefit from these transfers. Plaintiff assumes that none of these funds are recoverable.

D. Defendants' conduct since May 2008 violated the Final Judgment

Defendants' fundraising activities since May 27, 2008 violated the Final Judgment because they constituted "sales" of securities in violation of the prohibition against Defendants' unregistered offer and sale of securities.[6] The sale of promissory notes likewise violated these provisions, since Section 2(a)(1) of the Securities Act defines "security" to include "any note." *See* 15 U.S.C. § 77b(a)(1); *see also Reves v. Ernst & Young*, 494 U.S. 56, 63-66 (1990) (adopting presumption that notes are securities and holding that "[i]f the seller's purpose is to raise money for the general use of a business enterprise . . . and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a 'security'").

[5] There likely are additional personal expenditures, particularly on such things as meals, luxury hotels and consumer goods, since Plaintiff has not yet received complete and up-to-date records for all of Defendants' bank and credit card accounts. The totals for meals and miscellaneous on this table merely reflect amounts paid by bank debit cards.

[6] *See* Footnote 4, *supra.*

Defendants' representations to investors in raising these additional funds also violated the antifraud proscriptions in the Court's injunction. Among other things, Defendants continued to claim that wealthy foreign interests – including a Malaysian business tycoon – were standing by to fund the refineries and that the venture's success was always imminent. They continued to tell investors stories of impending funding from rich Swiss, Saudi and southeast Asian sources. And they continued to profess supposedly positive developments with the Indonesian government. But these stories simply rehashed the same baseless claims Defendants have been making to investors for years. The simple fact is that Defendants' purported plans to build Indonesian refineries are no closer to fruition today than they were when this case was filed or, for that matter, when Defendants first began soliciting investors a decade ago, facts that Defendants either know or have recklessly ignored.

E. Though Defendants have stopped fundraising, further injunctive relief is necessary to prevent future misconduct

Defendants have now stipulated in writing that they are not raising, and will not raise, further funds from investors. [*See* Letter from Michael E. Tomayko to David L. Peavler, dated October 19, 2009, attached as Exhibit A.] While this is good, it is not good enough. Defendants readily and frequently disobeyed the current injunction during the past 16 months, and Plaintiff submits that there is little likelihood they will obey it in the future, notwithstanding their latest stipulation. Instead, the only way to assure that Defendants stop all fundraising is to amend the Final Judgment to add affirmative prohibitions against Defendants' further offer or sale of securities of any sort, registered or otherwise. Specifically, Plaintiff proposes the following paragraph be included in an amended final judgment as paragraph I.E:

> Offering or selling securities, including notes, issued by Defendants or by an entity owned or controlled, directly or indirectly, by Defendant Tomayko.

Should Defendants defy this provision in the future, it will provide a plain basis for holding them in civil and criminal contempt.[7]

F. The Court is authorized to amend the Final Judgment under its inherent equitable powers and FRCP 60(b)(6)

The Court has "inherent jurisdiction in the exercise of its equitable discretion … to … modify its injunctions." *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1082 (E.D. Mo. 2007), *aff'd*, 580 F.3d 769 (8th Cir. 2009) (modifying terms of agreed injunction in FTC enforcement case that had been entered more than 10 years earlier); *see also Earth Islands Inst., Inc. v. Southern California Edison*, 166 F. Supp. 2d 1304, 1309 (S.D. Cal. 2001) (modifying terms of nine year old agreed injunction between private parties in environmental case, stating that the Court had "broad authority" to amend or modify its injunctions and that this power "is derived from principles of equity and exists independent from any express authorization in the" injunction or the parties' request). The Court is further empowered under Federal Rule of Civil Procedure 60(b)(6) to modify its orders "for any … reason justifying relief from the operation of the judgment." *See Neiswonger*, 494 F. Supp. 2d at 1082. Finally, Section 21(d)(5) of the Securities Exchange Act of 1934 expressly provides that, "[i]n any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, ***any*** equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5) (emphasis added).

Here, the Court expressly retained jurisdiction over this matter "for all purposes," including "entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court." Defendants' conduct since entry of the Final

[7] Plaintiff also proposes to amend the Final Judgment to remove the provision that allowed Defendants to pay the penalty and disgorgement ordered therein within one year, since that period has passed and Defendants have made no payments. Defendants consent to this change as well.

Judgment warrants "additional relief," namely, imposition of further injunctive proscriptions on Defendants' conduct. This relief is necessary to stop Defendants from continuing to raise money from investors.

As documented by their Stipulation and Consent filed simultaneously with this Motion, Defendants have consented to this relief. Plaintiff therefore requests that the Court enter the amended Final Judgment, the proposed form of which is attached to this motion as Exhibit B.

Dated: November 19, 2009

Respectfully submitted,

s/ David L. Peavler
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CERTIFICATE OF CONFERENCE

I certify that I have conferred with Richard M. Hewitt, Defendants' counsel, regarding the relief requested in this motion, and he has advised that Defendants do not oppose it. Therefore, this matter is presented as unopposed.

s/ David L. Peavler
David L. Peavler