

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

RALPH S. JANVEY,

Plaintiff,

v.

JAMES R. ALGUIRE, *et al.*,

Defendants.

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Civil Action No. 3:09-CV-724-N

ORDER

This Order addresses various Investor Defendants' motions to dismiss.¹ For the reasons that follow, the Court denies as moot their motions. Several of these Defendants also move to dismiss for lack of personal jurisdiction. *See* Motions of Wayland B. Alexander

¹Specifically, this Order addresses the following motions to dismiss for failure to state a claim: Patricia Allison [245]; Judy Varnado [246]; George and Diane Annison [247]; Azalea Rest Cemetery Inc., Azalea Rest Cemetery Inc. Irrevocable Trust, and George Annison, Trustee [248]; Barbara Anthony [249]; Hardee and Betty Jo Brian [250]; Murphy Buell [251]; Stephen Burnham [252]; The Davis Revocable Trust [253]; Dennis Childress [254]; Richard and Sue Devall [255]; Mary Gerry [256]; Sandra Harrell [257]; Michael Holcomb [258]; John Holguin [259]; Wayland Alexander [260]; John Cooper [261]; Daniel and Jilda Daigle [262]; Diane Dunn [263]; Phillip E. Lankford [264]; John and Audry Letard [265]; Jack and Dot Melder [266]; Herman J. Milligan [267]; Claude M. Needham [268]; Anthony G. Parker [269]; Jimmy Quebedeaux [270]; James D. Simmons [271]; Charles E. Smith [272]; Robert Soule [273]; Michael J. Timmons [274]; Edith Irma Watts [275]; Gary Wood [276]; Robert Young [277]; John Taylor [278]; Juanita Quinealty [279]; Tarral Daigle [280]; Jeff P. Purpera [281]; Robert and Alice Greer [282]; Michael and Betty Wheatley [283]; Kevin and Denise McKenzie [284]; Anthony Joseph Antinori, The Anthony Joseph Antinori Irrevocable Trust, and Steven James Antinori, Trustee [285]; Steven James Antinori, The Steven James Antinori Irrevocable Trust [286]; Thomas H. Turner [289]; Michael Asmer [290]; Gaines Adams [291]; Frances Neziyanya [292]; Clyde Anderson [293]; Johnnie A. Griffith [294]; Ronald W. Parker [295]; James Boring [297]; Gold Wing Partners [326]; Timothy Johnson [331]; Dorothy Duncan [332]; Lyda Tymiak and Lyda Tymiak Family Trust [333]; and Michael Drago [338].

[260]; John D. Cooper [261]; Daniel and Jilda Daigle [262]; Diane Dunn [263]; Phillip E. Lankford [264]; and John and Audry Letard [265]. The Court will address their personal jurisdiction arguments in due course in a separate order.

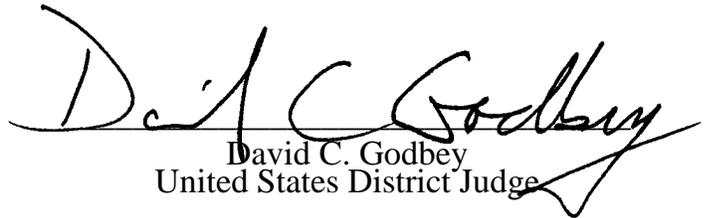
Defendants argue that the Court must dismiss them from this suit because they are not proper relief defendants. It is true that the Fifth Circuit held that Investor Defendants in this case are not proper relief defendants, or “nominal defendants.” *See Janvey v. Adams*, 588 F.3d 831, 834 (5th Cir. 2009). “[A] nominal defendant is part of a suit only as the holder of assets that must be recovered in order to afford complete relief; no cause of action is asserted against a nominal defendant.” *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 192 (4th Cir. 2002) (citation omitted), *cited in Janvey v. Adams*, 588 F.3d 831, 835 (5th Cir. 2009).

In response to the Fifth Circuit’s directive, the Receiver amended his complaint, indicating that he no longer seeks relief against the Investor Defendants as nominal defendants. *See First Am. Compl.* at 4 [128]. Now he seeks to recover against them as traditional defendants under two alternative theories of liability: fraudulent transfer and unjust enrichment. *Id.* In other words, the Receiver now seeks relief against Investor Defendants as traditional, rather than relief, defendants by asserting causes of action against them. Accordingly, the motions to dismiss Investor Defendants as relief defendants are moot.

Investor Defendants argue that “the Receiver continues to name Investors as ‘relief defendants.’” Def.’s Reply at 3 [369]. They point to “pleading defects” they claim must be remedied by “an amended complaint properly designating them as traditional defendants.”

Defs.' Reply at 3 [5]. Though the Investor Defendants note no specific "pleading defects," they seem to be referring to the caption of the first amended complaint (and other court papers), which still lists "James R. Alguire, et al." as "Relief Defendants." Despite this seeming typographical error in the caption, the Court is satisfied that the first amended complaint asserts claims against Investor Defendants only as "traditional defendants." To the extent, if any, that the Receiver still seeks relief against them as "relief defendants," the Court dismisses Investor Defendants from the suit in that capacity. However, the Court denies the motion to dismiss with respect to the Receiver's fraudulent-transfer and unjust-enrichment claims.

Signed June 24, 2010.


David C. Godbey
United States District Judge