

IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO:

05-07189 CA 32

CASA CARIBE DEVELOPMENT CORPORATION,  
a Delaware corporation,

Plaintiff,

vs.

R. FULTON MACDONALD and BERENFELD  
SPRITZER SCHECTER & SHEER, C.P.A.'s a  
Florida General Partnership.

Defendants.

THE ORIGINAL FILED

ON APR 07 2005

IN THE OFFICE OF  
CIRCUIT COURT DADE CO. FL  
CIVIL DIVISION

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**EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

Pursuant to Fla. R. Civ. P. 1.610, Plaintiff, Casa Caribe Development Corporation ("Casa Caribe"), moves this Court to enter a temporary injunction against Defendant R. Fulton Macdonald ("Macdonald") to prevent further harm to Casa Caribe as a result of Macdonald's continuing fraud, breach of fiduciary duty and theft of Casa Caribe's assets. In support of this Motion, Casa Caribe states:

**I. FACTUAL BACKGROUND**

Casa Caribe was formed for the purpose of engaging in real estate development projects in the Dominican Republic. Macdonald first became associated with Casa Caribe in 2002 as a consultant, with responsibility for finance development and fund-raising. In December 2002, pursuant to his scheme to defraud Casa Caribe and its investors Macdonald injected himself as Casa Caribe's Chairman, President and CEO.

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In late 2003, Macdonald opened money market and checking accounts for Casa Caribe at Eagle National Bank ("Eagle Bank") in Miami, Florida and named himself as sole signatory on the accounts. Macdonald later fabricated corporate documents to name his wife as secretary to Casa Caribe and to give her access to the accounts. Beginning in early 2004, and continuing throughout the year, Casa Caribe raised approximately \$450,000 from sixteen or more individual investors. The investments ranged from \$3,000.00 to \$50,000.00. These funds were wired or otherwise deposited in Eagle Bank in Miami, Florida. The account was used to pay certain legitimate expenses of the Company, totaling approximately \$70,000.00 through 2004.

In mid to late 2004, Casa Caribe's directors became increasingly concerned with the lack of accountability by Macdonald evidenced by his failure to schedule any board meetings or otherwise provide tangible proof of legitimate business activity. Responding to pressure from the directors, Macdonald agreed to meet with the board of directors of Casa Caribe ("Board of Directors") in New York City on January 16, 2005. Prior to that meeting, Macdonald e-mailed and faxed to the Board of Directors extensive agendas and other material purportedly documenting Casa Caribe's progress. On January 15, 2005, Macdonald faxed to director Kayel DeAngelis a statement for the Eagle Bank accounts dated December 31, 2004 showing a combined balance of \$322,777.31 which was later determined to be fabricated; the actual account balance at the time was \$32,535.14 *See* Fabricated Account Statement at **Exhibit A** and Actual Account Statement provided by Eagle Bank at **Exhibit B**.

On January 15, 2005, the Casa Caribe Directors (with the exception of Macdonald) arrived in New York for the scheduled board meeting. However, Macdonald had canceled the room reservations and feigned a supposedly incapacitating accident in Philadelphia. The Board of Directors later learned no such accident had occurred. Upon discovering this falsehood, the Board of Directors removed Macdonald from his positions as Chairman, President and CEO of Casa Caribe

and began a more thorough investigation of his activities. *See* Minutes of Meeting and Resolution attached hereto as **Composite Exhibit C**.

The investigation revealed that Macdonald had stolen between \$450,000 and \$500,000 from the company. The diversion of funds included improper wire transfers to his wife and other business associates, transfers to offshore accounts, and payment of personal expenses by check and debit card. The drain of funds was consistent throughout 2004 and demonstrates a clear pattern of premeditated fraud.

On December 31, 2004, the Eagle Bank accounts had a combined balance of \$32,535.14 not \$322,777.31 as shown in the forged statements that Macdonald supplied to the Board of Directors. Knowing that Casa Caribe would soon discover the fraud, between January 1, 2005 and January 19, 2005, Macdonald drained the accounts to a combined value of approximately \$1,500.00.

Since that time, undeterred by his removal from his positions as Chairman, President and CEO of Casa Caribe, Macdonald has continued to speak to investors in Casa Caribe, publicize himself on Casa Caribe's website, and otherwise act as a representative of Casa Caribe, causing continuing harm and potential liability for Casa Caribe. *See* Webpage printout at **Exhibit D** showing Macdonald at a March meeting supposedly representing Casa Caribe.

Casa Caribe seeks an immediate injunction to protect it from further harm.

## **II. CASA CARIBE IS ENTITLED TO AN INJUNCTION TO PREVENT FURTHER BREACHES OF FIDUCIARY DUTY AND CIVIL THEFT**

Casa Caribe is entitled to a temporary injunction on its breach of fiduciary duty and civil theft counts of its Complaint. The attached documents demonstrate that Macdonald breached his fiduciary duty by sending false bank statements and embezzling funds. Casa Caribe, therefore, has a clear legal right and a substantial likelihood of success on the merits of its claims. Further, Casa Caribe will be irreparably harmed if this Court does not enter the requested injunction preventing

Macdonald from further breaches of duty. *Vargas v. Vargas*, 771 So.2d 594, 595 (Fla. 3rd DCA 2000).<sup>1</sup> Macdonald's theft also entitles Casa Caribe to an injunction under Florida Statutes §812.035.

Florida Statutes § 812.035 provides the authority for this Court to act by:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise, including real estate.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of the provisions of §§ 812.012-812.037 or § 812.081.

Here, this Court should exercise its authority and enter an order:

- 1) Enjoining Macdonald from any further breaches, including ordering Macdonald to cease and desist from holding himself out as an officer, employee or representative of Casa Caribe including, without limitation, ceasing all internet promotions and using or controlling the company website;
- 2) Ordering the immediate transfer to Casa Caribe of all rights to and control of Casa Caribe's website and domain name;

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<sup>1</sup>Florida Statutes § 812.035 also provides that:

(6) Any aggrieved person may institute a proceeding under subsection (1). **In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made.** Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

As such, even absent a showing of irreparable damage, in light of the indisputable evidence of Macdonald's embezzlement, Casa Caribe is entitled to an injunction.

- 3) Ordering all money taken for personal use immediately returned;
- 4) Ordering the immediate return of all company records, including the location of all company assets and funds and the records indicating to whom the funds were paid or transferred;
- 5) Prohibiting Macdonald from engaging in any enterprise similar to Casa Caribe;
- 6) Awarding Casa Caribe attorneys fees and costs together with such other and further relief as the Court deems appropriate under the circumstances.

**WHEREFORE**, Plaintiffs respectfully request that this Court grant Plaintiff the relief set forth above.

Respectfully submitted,

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GENERAL JURISDICTION DIVISION

CASE NO: 05-07189 CA (09)

CASA CARIBE DEVELOPMENT CORPORATION,  
a Delaware corporation,

Plaintiff,

vs.

R. FULTON MACDONALD,

Defendants.

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**ORDER GRANTING MOTION FOR TEMPORARY INJUNCTION**

THIS MATTER came before the Court on Plaintiff, Casa Caribe Development Corporation's ("Casa Caribe"), Emergency Motion For Temporary Injunction. This Court has reviewed the motion, considered the evidence presented, and being otherwise fully advised, does hereby FIND AND CONCLUDE that:

1. On April 7, 2005, Plaintiff, Casa Caribe, filed its Complaint against Defendant R. Fulton Macdonald alleging that he embezzled approximately \$500,000 of Plaintiff's assets. Together with the Complaint, Plaintiff filed an emergency motion for temporary injunction.
2. Casa Caribe is a Delaware corporation authorized to conduct business in Florida. Casa Caribe was formed for the purpose of engaging in development projects in the Dominican Republic.
3. In late 2003, Macdonald opened money market and checking accounts for Casa Caribe at Eagle National Bank in Miami, Florida.

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4. Beginning in early 2004 and continuing throughout the year, Casa Caribe raised more than \$450,000 from sixteen or more individual investors. The investments ranged from \$3,000.00 to \$50,000.00. These funds were wired or otherwise deposited in Eagle Bank in Miami, Florida. Additional funds were raised in 2005 and deposited in other bank accounts inside and outside of Miami.

5. Throughout 2004, Macdonald systematically diverted the funds from Casa Caribe's Eagle Bank account for his own personal use leaving an account balance on January 19, 2005 of \$1,500.00

6. On January 15, 2005, Macdonald faxed to the Board of Directors a statement for the Eagle Bank accounts dated December 31, 2004 showing a combined balance of \$322,777.31 which was later learned to be fabricated, the actual account balance being \$32,535.14.

7. Macdonald has been properly removed from all positions with Casa Caribe including his position as CEO and President. Macdonald has also been properly removed from the Casa Caribe Board of Directors.

8. Macdonald, while an officer of Casa Caribe, owed Plaintiff a fiduciary duty of good faith, loyalty and honesty, and specifically owed to Plaintiff a duty to refrain from using corporate funds and his position for his own personal gain at the expense of Casa Caribe.

9. At his deposition, Macdonald invoked his Fifth Amendment privilege in response to all questions posed including his name, whether he used corporate assets for personal purposes, whether he engaged in a scheme of theft and fraud on the corporation and whether his actions were willful.

10. This Court may apply an adverse inference against Macdonald based upon his assertion of his rights under the Fifth Amendment.

11. Macdonald has improperly disbursed funds from Casa Caribe's accounts to other accounts controlled by him or his wife co-defendant or including Region's Bank Account No. 9660472359, Washington Mutual Bank Account No. 4904611244, USAA Bank Account No. 22254196, and Nova Savings Bank Account No. 036015265309.

It is hereby ORDERED AND ADJUDGED that:

The Court finds that Plaintiff is likely to succeed on its claims for breach of fiduciary duty, conversion, civil theft, and fraud as a result of Macdonald's use of corporate funds for his own use and therefore Plaintiff's Emergency Motion for Temporary Injunction is GRANTED. As such, the Court enjoins R. Fulton Macdonald as follows:

- A) Macdonald may not take any action on behalf of Casa Caribe;
- B) Macdonald is ordered to immediately cease and desist from holding himself out as a representative of Casa Caribe including, without limitation, ceasing all internet promotions, connection with the company website and contacts with company clients, investors, financial institutions and professional service firms;
- C) Macdonald shall turn over all Casa Caribe assets, of any kind or nature, in his possession, custody and control to the Receiver previously appointed, including all funds located in Region's Bank Account No. 9660472359, Washington Mutual Bank Account No. 4904611244, USAA Bank Account No. 22254196, and Nova Savings Bank Account No. 036015265309 within 24 hours.

D) All other accounts containing funds that may be traced to any Casa Caribe account are hereby frozen except as authorized by this Court, including but not limited to, Region's Bank Account No. 9660472359, Washington Mutual Bank Account No. 4904611244, and USAA Bank Account No. 22254196, Nova Savings Bank Account No. 036015265309,;

E) Macdonald is ordered to immediately turn over all company records, including documents indicating the location of all company assets and funds and the records indicating to whom the funds were paid or transferred;

F) Macdonald shall immediately transfer to Casa Caribe of all rights to and control of Casa Caribe's website and domain name;

G) Macdonald is prohibited from engaging in any commercial housing project or other enterprise similar to that engaged in by Casa Caribe in the Dominican Republic.

H) Macdonald is ordered to surrender all shares of stock in Casa Caribe;

I) Plaintiff shall post a bond in the amount of 100,000.00

DONE AND ORDERED in Chambers in Miami-Dade County, Florida, this 20 day of May, 2005.



The Honorable Roberto Pineiro

cc: Counsel of Record