

Because the Receiver makes no provision for her community property interest and failed to seek her consent or approval for the disposition of her community property, Susan Stanford objects to the Receiver's Motion to Approve Procedures for the Sale of the Vessel "Sea Eagle" and Sale of the Vessel Pursuant to Those Procedures [Doc. # 796] and the Receiver's Motion to Approve Sale of the Vessel "Little Eagle" [Doc. # 743].

ARGUMENT AND AUTHORITIES

State law governs the nature of a property interest. *See Morgan v. Commissioner*, 309 U.S. 78, 80 (1940) ("State law creates legal interests and rights."); *Wyly v. United States*, 610 F.2d 1282, 1287 (5th Cir. 1980). Under Texas law, "[p]roperty possessed by either spouse during or on dissolution of marriage is *presumed* to be community property." TEX. FAM. CODE § 3.003(a) (emphasis added); *see Wyly*, 610 F.2d at 1288 (noting that community property is all property that is acquired by a spouse during marriage). Thus, any income earned or assets acquired during a marriage are presumed to be community property. *See Osuna v. Quintana*, 993 S.W.2d 201, 205 (Tex. App.—Corpus Christi 1999). This is a constitutional right, protected by the Texas Constitution in Article 16, Section 15, as supplemented and enhanced by the Texas Family Code. *See Wyly*, 610 F.2d at 1288. Indeed, "the basic elements of Texas marital property law occupy a position above that of state statutes, and neither the legislature or affected parties may validly take steps which are inconsistent with them." *Id.*

Rebutting the presumption of community property requires clear and convincing proof. *See TEX. FAM. CODE § 3.003(b)* ("The degree of proof necessary to establish that property is separate property is clear and convincing evidence."); *see also McKinley v. McKinley*, 496 S.W.2d 540, 543 (Tex. 1973) (holding that property possessed during marriage is presumed community in character and a party must present clear and convincing evidence to prove otherwise). Clear and convincing evidence is defined as "the measure or degree of proof that

will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.” TEX. FAM. CODE § 101.007.

R. Allen Stanford purchased the Sea Eagle and the Little Eagle during his almost 35-year marriage with Susan Stanford, and thus the vessels are presumed to be community property. The Receiver has made no showing, much less a showing by clear and convincing evidence, that the vessels are not community property; indeed, the Receiver does not even attempt to prove otherwise.

Furthermore, Susan Stanford’s community property is not a Receivership Asset, subject to disposition by the Receiver. Mr. Janvey was appointed as Receiver for the Receivership Assets, defined as “the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located . . . of the Defendants and all entities they own or control.” Am. Order [Doc. # 157]. Susan Stanford is not one of the Defendants and is innocent of wrongdoing, and her personal community property is not part of the Receivership Assets. Despite this, in contravention of Susan Stanford’s property interests, the Receiver seeks to sell the vessels without Susan Stanford’s approval or consent and without compensating her. The Receiver has no authority to extinguish Susan Stanford’s property rights, and Susan Stanford is entitled to preserve her community property rights in assets seized by the Receiver. Any sale of the Sea Eagle and Little Eagle must compensate Susan Stanford for her community property interests.

As Susan Stanford acknowledged in her Motion for Leave to Intervene [Doc. # 409], she would not be entitled any property that R. Allen Stanford obtained through fraud as determined by a fact finder. But with regard to the Sea Eagle and the Little Eagle, (1) the vessels were acquired before the SEC’s fraud allegations in the Second Amended Complaint [Doc. # 952] and (2) there is no evidence that these vessels were purchased using funds tainted by any wrongdoing

alleged, much less proven so to a fact finder by evidence subject to cross examination. Clearly, the Receiver has made no effort to determine the timing and circumstances of acquisitions as they relate to the SEC's allegations. The Receiver seems to look at legal title, and ends the inquiry there. The Receiver, however, may not blithely disregard Susan Stanford's community property rights, which includes her community property interest in the Stanford entity relief defendants (R. Allen Stanford being the sole stockholder in all of them, and all formed during the existence of his almost 35-year marriage to Susan Stanford).

REQUEST FOR EVIDENTIARY HEARING

Susan Stanford respectfully requests an evidentiary hearing in order to confront and cross examine those who are claiming her community property interest in the Sea Eagle and Little Eagle is subject to seizure and sale, regardless of the evidence (or lack thereof) concerning the timing and circumstances of the acquisition of the vessels, and/or whether they were purchased with illegally obtained funds.

CONCLUSION

Susan Stanford respectfully requests that the Court deny the Receiver's Motion to Approve Procedures for the Sale of the Vessel "Sea Eagle" and Sale of the Vessel Pursuant to Those Procedures [Doc. # 796] and the Receiver's Motion to Approve Sale of the Vessel "Little Eagle" [Doc. # 743] unless and until such sales compensate Susan Stanford for her property interests in the vessels and further requests an evidentiary hearing.

Respectfully submitted,

/s/ Joe Kendall

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2010, I electronically filed the foregoing Objection to Receiver's Motions to Approve the Sale of Vessels and Request for Evidentiary Hearing with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record in this case who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Joe Kendall

JOE KENDALL