

II. ARGUMENT AND AUTHORITIES

The Stanford vessels are receivership assets.¹ In light of the overwhelming shortfall in assets available for potential distribution to wronged parties that is probable in this case, all of the Defendants' available assets should be preserved in anticipation of entry of an order requiring disgorgement and civil penalties. *See, e.g., SEC v. Musella*, 578 F. Supp. 425, 445 (S.D.N.Y. 1984) (asset freeze appropriate pending trial on the merits to ensure that any illegally obtained profits are available to satisfy any future disgorgement order); *Commodity Futures Trading Comm'n v. Hudgins*, 620 F. Supp.2nd 790, 794 (E.D. Tex. 2009) (allowing receiver to take possession of and sell condominium claimed as homestead by woman who received funds from defendant to pay off mortgage lien, noting that "[d]espite her innocence in the fraud, to allow her a homestead exemption would allow her to become unjustly enriched by the ponzi scheme at the expense of [the defendant's] victims.").

Even if Susan Stanford has a partial claim to the value of the vessels because they are, as she claims, "community property," community property is subject to tort liability of either spouse incurred during marriage. *See* TEX. FAM. CODE § 3.202(d); *cf. Federal Trade Comm'n v. Neiswonger*, 2009 WL 2998356, *2 (E.D. Mo., Sept. 15, 2009) (ordering spouse of defendant to facilitate transferring residence to the receiver, noting that under Nevada law community property is subject to a spouse's debt irrespective of whether both spouses were a party to the action, that the court's broad equitable powers to protect assets of the receivership estate allowed it to order non-parties to turn over receivership assets to the receiver, and that requiring

¹ *See generally*, for example, Receiver's Reply to Defendant R. Allen Stanford's Opposition to Receiver's Motion to Approve Procedures for the Sale of the Vessel "Sea Eagle" and the Sale of the Vessel Pursuant to Those Procedures (Docket No. 857).

independent litigation against the spouse would result in a multiplicity of actions that would only increase litigation costs while diminishing the size of the receivership estate).²

Regardless, Susan Stanford's claim against these receivership assets, if any, is not entitled to preferential treatment over the claims of investors. The Court has already provided her with ample protection by allowing her to intervene, considering her objections to the sale of the assets, and by requiring the Receiver to segregate half of the proceeds from selling the vessels. There is no reason to require the Receiver to undergo the cost (at investor expense) of litigating Susan Stanford's claim to those proceeds now, before a distribution plan and claims procedure have even been proposed.

Such unnecessary, piecemeal litigation impairs the Receiver's, and this Court's, ability to manage the receivership estate to maximize any potential recovery for investors. As the Court recognized in its Order granting the Department of Justice's motion to stay discovery in this case, "[t]o the extent that issues related to Defendants' liability are unnecessarily litigated more than once, receivership assets are wasted, leaving less money available for distribution to creditors and investors." [Docket. No. 948.] Indeed, allowing Susan Stanford to litigate now her argument that there is no evidence that the vessels are "tainted" by Stanford's fraud would be inconsistent with the current stay of discovery.³

² If, assuming for the sake of argument only, if there were certain "untainted" assets, Susan Stanford's request for an evidentiary hearing is premature. Therefore, the Commission has not addressed in detail her argument that she is entitled to a portion of any asset acquired during her marriage to Robert Allen Stanford, at least such assets not tainted by his fraud. It is worth noting, however, that the issue requires more analysis than simply whether the asset is tainted.

³ Nor has Susan Stanford demonstrated any value to an evidentiary hearing or demonstrated that the Receiver's evidence and argument in the initial moving papers will be further illuminated – or questioned – by an evidentiary hearing. It is well established that full plenary proceedings are not required to resolve issues related to the administration of an equity receivership. In any event, Susan Stanford admits, as she must, that she has no right to assets procured as a result of Stanford's fraudulent scheme. The evidence already on file in this and related proceedings establishes that, as of at least 1988, Stanford used his corporate entities to mask a massive securities fraud. [See, for example, Davis Plea Agreement, Docket No. 771.] There is no doubt that the vessels at issue here are tainted by this fraud.

**III.
CONCLUSION**

For the reasons outlined above, Susan Stanford's premature request for an evidentiary hearing should be denied. She may present her case, if any, for a share of the receivership estate at the same time as claims made by victims of Stanford's fraud.

Respectfully submitted,

s/ David B. Reece

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2010, I electronically filed the foregoing document with the Clerk of the court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send notification of such filing to all CM/ECF participants and counsel of record.

s/ David B. Reece _____