

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

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
Plaintiff,	§	
	§	CIV. ACTION NO.3-09CV0298-N
	§	
v.	§	
	§	
STANFORD INTERNATIONAL BANK,	§	
LTD., ET AL.,	§	
Defendants.	§	

DEFENDANT R. ALLEN STANFORD’S OPPOSITION TO RECEIVER’S MOTION TO APPROVE SALE OF HAWKER 600A AIRCRAFT (REC. DOC. 916)

COMES NOW, through undersigned counsel, Defendant R. Allen Stanford (“Mr. Stanford”), who files this Opposition to Receiver’s Motion to Approve Sale of Hawker 600A Aircraft, and respectfully shows the Court as follows:

ARGUMENT

The Receiver seeks approval for the sale of a Hawker 600A Aircraft (“Hawker”) which was purchased prior to the time period of the fraud alleged in the SEC’s First Amended Complaint, and is thus an untainted asset of the Receivership Estate (“Estate”) that belongs to Mr. Stanford. Because the Hawker is an untainted asset belonging to Mr. Stanford which should be released to Mr. Stanford for his use, the Receiver’s attempt to sell the vessel to a third party exceeds the authority granted to him in the Amended Receivership Order. Rec. Doc. 157. Moreover, the sale of this asset, and other Estate assets, in the Receiver’s current manner abrogates the Court’s ability to render a meaningful judgment, is not in the best interests, of the Estate, and should not occur until the case is resolved on its merits. Accordingly, the Receiver’s

motion should be denied and the Court should void the contract for sale of the Hawker and return the aircraft to Mr. Stanford.

1. The Receiver Attempts to Sell an Untainted Asset which Belongs to Defendant R. Allen Stanford

Based upon information and belief, Mr. Stanford purchased the Hawker in 1989 for approximately \$1 million. According to the SEC's First Amended Complaint, the SEC alleges that the fraud involving the defendants in this matter occurred between 1999 and 2009.¹ The purchase and possession of the Hawker clearly predates the fraud allegations made against the defendants made by the SEC and is thus an untainted asset of the Estate. The Receivership Order and the Court's rulings do not extend to the Receiver authority over untainted assets. Untainted assets are to be returned to Mr. Stanford.

In attempting to force through the sale of the Hawker, the Receiver fails to consider or outright ignores that the vessel in question is an untainted asset under the parameters of the SEC's First Amended Complaint. Instead, the Receiver relies upon the allegations made by Defendant James Davis in his plea agreement in the criminal matter that the so-called alleged Ponzi scheme existed at the time of the Mr. Stanford's purchase of the Hawker. These allegations, which Mr. Stanford denies, are simply not fact and have not been subjected to cross-examination or other scrutiny in any court to evaluate their veracity and reliability. Thus, the Receiver's reliance upon these declarations is clearly misguided and serves only as a convenient vehicle for the Receiver to continue his pattern of unencumbered fire sales of assets without regard for whether the sales are ultimately beneficial to the Estate, or in this case, whether the asset itself is amenable to sale. As the Court noted in its Order of July 1, 2009, it acknowledges that there may be Estate assets that are untainted by alleged fraud that may be used by Mr.

¹ See Rec. Doc. 48.

Stanford in his defense of this case. The Receiver has apparently circumvented this possibility through use of unsubstantiated and unreliable representations made by James Davis and has moved forward with the sale of the Hawker despite the fact that it was purchased prior to any alleged fraud by the defendants as claimed in the SEC's First Amended Complaint.

For the above-mentioned reasons, the Court should deny the Receiver's motion to approve the sale of the Hawker.

2. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits

Moreover, allowing the Receiver to continue to sell Estate assets will abrogate this Court's ability to render a meaningful judgment on the merits. A preliminary injunction preserves the status quo, prevents irreparable injury to the parties and preserves the court's ability to render a meaningful decision after a trial on the merits.² If the Receiver is able to sell many of the Estate's assets prior to adjudication on the merits, the Court's findings will have little or no value. If Mr. Stanford is victorious at a trial on the merits, that result will be diminished significantly if the Receiver is permitted to continue to dispose of Estate assets in a the manner. The Receiver should not be permitted to sell Estate assets without an adjudication of the merits of the underlying claims.³

² See *Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5th Cir. 1975).

³ See *Securities Exchange Commission v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001) (holding, "[i]t is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership."); *SEC v. Current Financial Services*, 783 F.Supp. 1441, 1445-46 (D.D.C. 1992)(agreeing to appoint a receiver after TRO granted but refusing to grant receiver the right to liquidate assets; stating, "[s]uch drastic measures are [not] appropriate prior to the entry of final judgment. The SEC may renew its motion to encompass such relief if necessary in the future").

3. Alternatively, the Receiver Has Not Satisfied His Fiduciary Obligations to the Estate By the Manner In Which He Has Conducted the Sale of the Hawker

Even assuming for the sake of argument the Hawker is an asset tainted by fraud, which it is not, the Receiver has shown no attempt to conduct the sale of the Hawker in a manner that would satisfy his fiduciary obligations to the Estate. The Receiver fails to provide the procedures and sale strategy used by him and the aircraft broker to market and sell the Hawker at the highest possible value. It is unclear from the Receiver's motion how long he and his broker marketed the Hawker and solicited bids, or how many bids it received for the aircraft. It appears that the broker may have received only one bid for the Hawker. With only a single offer over an unreported amount of time and without explaining his sale strategy, the Receiver fails to show this Court that he engaged in a competitive sale process that would ensure that the aircraft would be sold at a competitive price.

Further, the Receiver, in his rushed attempted sale of the Hawker, fails to comply to with the requirements for the sale of property set forth in 28 U.S.C. § 2004. This failure to comply with the statute further evidences the Receiver's interest in disposing of property in the most expedient manner rather than the most beneficial manner to the Estate.

CONCLUSION

Based on the foregoing reasons, the Receiver's attempt to sell the Hawker 600A Aircraft, an untainted asset, exceeds the scope of the Receivership Order and prevents the Court from rendering a meaningful judgment on the merits in this case. Accordingly, Defendant R. Allen Stanford respectfully requests that the Court deny the Receiver's Motion to Approve Sale of Hawker 600A Aircraft and order that said asset be returned to Mr. Stanford.

Dated: December 31, 2009

Respectfully submitted,

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ATTORNEY IN CHARGE

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on December 31, 2009.

/s/Ruth Brewer Schuster