

This dispute arises out of a large, complex, and ongoing securities fraud case. The Securities Exchange Commission (“the Commission”) brought this action against various players in what it calls a “massive Ponzi scheme” controlled by Defendants R. Allen Stanford and James Davis. These players include various Stanford entities: Stanford International Bank, Stanford Group Company, and Stanford Capital Management (“the Stanford entities”).

Early in this case, the Court froze Defendants’ assets. The Court appointed Ralph S. Janvey as the Receiver of those assets, vesting him with the “full power of an equity receiver under common law as well as such powers as are enumerated herein in this order.” Am. Order Appointing Receiver [docket no. 157]. Part of the Court’s receivership order relates to secured creditors. The Court enjoined creditors from, among other things, acting to enforce liens against the receivership estate and exercising set-off rights against the estate. *Id.* at 8.

A. Trustmark, HPFS, and the Letters of Credit

Trustmark is not a garden-variety secured creditor. Trustmark issued letters of credit to various Stanford entities that are now in receivership, including one to Stanford Corporate Services (Venezuela), C.A. (“SCS”). A letter of credit is “an undertaking by an issuer (usually a financial institution) made at the request of an applicant (usually a customer of the financial institution) . . . which provides that the issuer will honor a documentary presentation by making payment as specified in the letter of credit.” 1 RICHARD A. LORD, WILLISTON ON

CONTRACTS §2:23 (4th ed. Westlaw 2009).² When Trustmark issued each of these letters of credit, it became a secured creditor with set-off rights against cash collateral in its possession. The collateral secures Trustmark's right to reimbursement in the event it becomes obligated to pay on one of the Stanford entities' letters of credit.

In the beginning, the Receiver allowed Trustmark to honor draw requests on two letters of credit and exercise its set-off rights. Trustmark, for its part, transferred excess cash collateral from those transactions to the Receiver for the benefit of the receivership estate. Around the end of March, though, the Receiver demanded that Trustmark stop honoring draw requests or exercising set-off rights on Stanford-related letters of credit. Around the same time, HPFS presented to Trustmark its letter of credit, which secured a computer-equipment lease agreement between HPFS and Stanford Corporate Services (Venezuela), C.A. ("SCS"), a Stanford-owned entity. SCS defaulted on the lease, so HPFS twice presented the letter of credit, which Trustmark twice refused to pay, citing the Court's receivership order.

Trustmark potentially faces a precarious position of having to choose between its contractual obligation to HPFS and its obligation under this Court's order. For this reason, Trustmark and HPFS seek to intervene in this case. Both want to know whether Trustmark may honor the Stanford-related letters of credit and exercise set-off rights. In addition to the right to intervene, Trustmark seeks an amendment to the receivership order permitting set-off against the cash collateral and the right to participate in the sale of any real-estate collateral.

²For a complete summary of the letters of credit Trustmark issued to Stanford-related entities, see App. to Trustmark's Mot. to Intervene, at 6.

HPFS, in addition to the right to intervene, seeks clarification that the receivership order does not prohibit draws on letters of credit issued to third-party beneficiaries.

II. THE COURT GRANTS IN PART TRUSTMARK AND HPFS'S MOTIONS TO INTERVENE

Trustmark and HPFS argue that they have a right to intervene under Federal Rule of Civil Procedure 24(a). The Court need not address this argument. Regardless of whether Trustmark and HPFS have a right to intervene under Rule 24(a), the Court would exercise its discretion to allow intervention under Rule 24(b).

Under Rule 24(b), a court may allow a party to intervene if it meets three requirements. (1) The movant must timely apply to intervene. (2) The movant must bring a claim or defense that shares a common question of law or fact with the main action. (3) "In exercising its discretion [under Rule 24(b),] the court must consider whether intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(1), (3).

First, the Court finds that Trustmark and HPFS's motions to intervene are timely. Whether a motion to intervene is timely is within the court's "sound discretion." *NAACP v. New York*, 413 U.S. 345, 365-66 (1973). Defendant R. Allen Stanford argues that Trustmark and HP's motions to intervene are not timely because the Receiver is still investigating the extent of estate assets. The Court is satisfied that intervention is not premature at this point. On October 28, 2009, the Receiver filed an interim report on asset collection [docket no. 859]. Further, the Fifth Circuit recently ruled on the Receiver's appeal concerning his "clawback" claims against investor accounts. *See Janvey v. Adams*, No. 09-10765 (5th Cir.

Nov. 13, 2009). In light of the Fifth Circuit's disposition of *Janvey* and the Receiver's status report, the Court finds it is not premature to allow Trustmark and HPFS to intervene.

Second, Trustmark and HPFS's claims share common questions of law and fact with the S.E.C. proceeding. Both parties ask the Court to clarify or modify its receivership order with regard to draws on letters of credit. Both parties argue that, under "independence principle," Trustmark is entitled to honor HPFS's letter of credit and exercise its set-off rights notwithstanding the receivership order. *See, e.g.*, Trustmark's Reply to Receiver's Consol. Resp. [571], at 1; HPFS's Mot. to Intervene [418], at 14. These issues overlap with issues the Court must determine in the main action.

Third, the Court finds that allowing intervention would fair and would not prejudice other parties. "Rule 24(b) necessarily vests broad discretion in the district court to determine the fairest and most efficient method of handling a case with multiple parties and claims." *S.E.C. v. Everest Mgmt. Co.*, 475 F.2d 1236, 1240 (2d Cir. 1972); *see also S.E.C. v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 671-72 (D. Kan. 2004) (allowing a single investor to intervene in an enforcement action to argue that his investment was not part of the alleged Ponzi scheme and should not be part of the receivership estate); *S.E.C. v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1043 (C.D. Cal. 2001) (denying 700 individual plaintiffs' motion to intervene because their only-partially-overlapping claims would unduly delay the main action). Here, the Court finds that "the fairest and most efficient method" of handling Trustmark and HPFS's claims is to permit intervention. Trustmark is not a typical secured creditor in this case. Trustmark faces competing claims to the cash collateral in its

possession. On one hand, it is contractually obligated to honor a properly presented letter of credit. On the other hand, it faces possible contempt of court if it does not comply with the receivership order. Absent guidance from the Court, Trustmark would be left in the untenable position of possibly having to guess who of the receivership or beneficiary creditor has a superior claim.

The Court finds that there will be no prejudice to existing parties in allowing Trustmark and HPFS to intervene. The Commission has filed no opposition to Trustmark and HPFS's motions to intervene. The Receiver and Defendant R. Allen Stanford express concerns that allowing intervention will prompt a flood of putative intervenors. These floodgate concerns are unfounded. The Court has already denied numerous motions to intervene in this case, both for individuals investors and secured creditors. *See* Orders Denying Mots. to Intervene [docket nos. 321, 530, 652]. The Court is not persuaded that allowing adjudication of Trustmark's relatively narrow claim will cause unnecessary delay in adjudicating the S.E.C. action.

CONCLUSION

For reasons stated above, the Court grants in part Trustmark and HPFS's motions to intervene. The Court will address Trustmark and HPFS's other requests in due course.

Signed January 5, 2010.


David C. Godbey
United States District Judge