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 AND BRIEF TO APPROVE PRIVATE SALE OF ASSETS IN PANAMA CITY, PANAMA (DOC. 976)

COMES NOW, Defendant R. Allen Stanford ("Mr. Stanford"), who files this Opposition to Receiver's Motion and Brief to Approve Private Sale of Assets in Panama City, Panama (the "Motion"), and respectfully show the Court as follows:

ARGUMENT

Under the Order Appointing Receiver and the subsequent Amended Receivership Order, the Receiver Ralph Janvey is charged with preserving the assets of the Receivership Estate (the "Estate") and protecting the value of the Estate from irreparable harm.[1] Nowhere in the Receiver's Motion does the Receiver allege that Stanford Bank (Panama) S.A.("SBP"), Stanford *Casa de Valores, S.A.* ("SCV") or Pershore Investments, S.A. ("Pershore") were not legitimate and viable businesses, or otherwise tainted by alleged fraud. Therefore, the Receiver's instant motion is another attempt to exceed the authority granted in the Receivership Order, to circumvent his duty to preserve the assets of the Estate, and to continue his fire sale of Estate

[1] *See* Rec. Doc. No. 157, Amended Order, at 5(g), p5.

assets at a time when it is virtually impossible to maximize their value; and indeed where the Receiver's own action contributed the low sale prices for these assets.

Had the Receiver not rushed in and ceased operations of the Stanford entities, admittedly viable ongoing concerns, which in turn led to instability in all companies the Stanford entities had interests in, perhaps the Receiver would not find himself in the position he now occupies: selling for a cut-rate price companies which, with proper management and negotiations with the Panamanian government, could have continued as ongoing businesses, bringing in profits and more assets to the Estate.

Mr. Stanford opposes this motion on the same grounds he has opposed similar attempts by the Receiver to dispose of Estate property – namely, that the liquidation of the Estate assets SBP, SCV, and Pershore (hereinafter collectively referred to as "Panama Assets"), constitutes a breach of the Receiver's fiduciary duty, 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. However, if the sale is undertaken, pursuant to this Court's July 1, 2009 Order, the proceeds should be made available to Mr. Stanford in furtherance of his defense because the assets are untainted by fraud.

1. Liquidation of the Panama Assets is Not in the Best Interest of the Estate

Selling the Panama Assets at a severe discount is not in the best interest of the Estate. At a proposed sale price of $15,500,000.00, the Receiver seeks to relieve the Estate of assets that prior to the SEC's and Receiver's actions, were worth many more multiples than this amount sought. Lost among the unfortunate events surrounding the sale of these Panama Assets is that the Receiver's own actions more than likely played a part in the seizure of these assets by the Panamanian government and the position that the Receiver now finds himself. The bleak

situation is caused in whole or in part by the Receiver's ill-advised shutdown of the Stanford entities in February 2009. In fact, the Panamanian government sought reorganization of the businesses in the hopes that they could continue operating. Instead, as we have seen time and again since the Receiver has taken over the handling of the affairs of the Estate, either by plan or lack of competence, asset after asset has been mismanaged by the Receiver and allowed to allegedly deteriorate in value to such a degree that they are being sold off at appallingly low returns on the Estate's investment in the assets. Quite frankly, if the Receiver represents in his Motion that he is hurried or otherwise pressured by the Panamanian government to sell the Panama Assets, or finding difficulty unfreezing foreign accounts, this is merely self-fulfilling prophecy caused by the Receiver's mismanagement of the Estate assets. Any troubles or red-tape encountered by the Receiver in effecting the sale of the Panama Assets is caused by his own negligence in managing the Estate Assets.

Further, from what the Receiver has represented in the Motion, a full evaluation of the sales process undertaken by the Receiver is not possible, including how he solicited bids, the parameters of the bid, the identities of the prospective bidders, the type of due diligence he engaged in with respect to these bidders, the amount and structure of the bids, the approval process for accepting the winning bid. Without all this information, it is impossible to completely evaluate whether the sale of each of these assets is truly in the best interest of the Estate and whether the contracted sales price was the best possible price the Receiver could obtain for the Panama Assets.

Further, the Receiver, in his attempted sale of the Estate's Panama Assets, fails to comply with the requirements for the sale of property set forth in 28 U.S.C. § 2001, *et seq.* Despite the Receiver's claims that this sale involves transfer of stock, and not real estate, so as to fall under

§2004, it is not in keeping with the intent of the statute as the sale of stock in Pershore, which holds title of the property where SBP and SCV are located, is inherently a real estate transaction. As a real estate transaction, it is governed by § 2001, not §2001.

Assuming, *arguendo*, that § 2004 is applicable, § 2004 does not set a notably relaxed standard for the sale of personalty. Contrary to the Receiver's assertion that the Court is permitted wide latitude in approving sales procedures under § 2004, in a more recent case than those cited by the Receiver, the Northern District of Texas stated in *Sec. Exch. Comm'n v. T-Bar Resources, LLC*, No. 3:07-cv-1994-B, 2008 U.S. Dist. LEXIS 87880, *10 n. 4, 2008 WL 4790987, at *3 n. 4. (N.D. Tex. October 28, 2008), that few courts have interpreted § 2004's permission to deviate from the procedural safeguards guaranteed in § 2001. *See Sec. Exch. Comm'n v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2008 U.S. Dist. LEXIS 69241, 2008 WL 4262532, at *2 (M.D. Fla. Sept. 12, 2008). Nevertheless, the Northern District admonished that when a court analyzes the sale of personalty under § 2004, the court must follow the "preferential course" outlined in § 2001(b), "that should be deviated from 'in extraordinary circumstances.'" *T-Bar Resources*, 2008 U.S. Dist. LEXIS 87880, *10 n. 4, 2008 WL 4790987, at *3 n. 4 (citing *Tanzer v. Huffines*, 412 F.2d 221, 222 (3rd Cir. 1969).

Further, the Receiver's reliance upon the Court's authority to approve the sale of non-real property assets under §2004 is misguided as the Receiver has essentially sought the Court's approval for the sale after the fact – after the Receiver had already solicited bids and agreed to the parameters of the sale with the prospective buyer – rather than seeking the Court's approval beforehand. This failure to comply with the statute further evidences the Receiver's interest in disposing of Estate property in the most expedient manner rather than the most beneficial manner to the Estate.

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

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. The Receiver should not be permitted to sell Estate assets without an adjudication of the merits of the underlying claims.[3]

3. The Receiver's Liquidation Request Exceeds the Scope of the Receivership Order And is a Breach of his Fiduciary Obligation to Preserve the Estate for All Claimants

It is well established that the purpose for a court to appoint an equity receiver is to take custody and manage property involved in litigation in order to **preserve** the property and assets of the Estate pending the court's final disposition of the suit.[4] A receiver has a duty to preserve the property for the benefits of the claimants, and that duty must be undertaken without bias to one side or the other.[5] The receiver is a fiduciary to the person who ultimately has rights in the property.[6] Indeed, the Amended Receivership Order explicitly instructs the Receiver on his

[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").

[4] *See* Wright & Miller, 12 *Fed. Prac. & Proc. Civ. 2d* §2981 (2005).

[5] *See Boothe v. Clarke*, 58 U.S. 322, 331 (1854) (holding, "[a] receiver is an indifferent person…he is appointed on behalf of all parties.").

[6] *See Citibank, N.A. v. Nyland Ltd.*, 839 F.2d 93, 98 (2d. Cir. 1988).

fiduciary obligations, ordering him to "conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate."[7]

With respect to the instant Motion, the Receiver attempts to justify the sale of the Panama Assets by pointing out that a receiver *may* dispose of receivership property "that does not show evident signs of working out for the benefit of the creditors." With that in mind, the Receiver concludes that it is in the best interest of the Estate to liquidate these investments at once.

The Receiver's motion to liquidate the Panama Assets disregards the significant admonition in *Jones* and *Kingsport* – the two cases on which the Receiver bases his authority to liquidate Estate property – that receivership property should not be liquidated if "its continuance is demonstrably beneficial to creditors."[8] As discussed above, preserving the Panama Assets as going concerns (as opposed to liquidating them now), which does not appear to have been considered, is in fact beneficial to all Estate claimants. By concluding otherwise, the Receiver illustrates once again his unwillingness to abide by his fiduciary duty. It is difficult to imagine how liquidating the Estate's Panama Assets at a fraction of the Estate's cost basis is consistent with the Receiver's duty to preserve the value of the Estate pending a final adjudication on the merits. This course of action is short-sighted and only serves to propagate the fire sale being conducted by the Receiver. The requested sales do not benefit the Estate in the long run and are thus not in the Estate's best interest and must be denied.

[7] *See* Rec. Doc. 157, Amended Order, at 5(g), p.5.

[8] *Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961); *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d. 1931).

CONCLUSION

Based on the foregoing reasons, the Receiver's attempt to liquidate the Estate's assets in Panama City, Panama described above contravenes the Receivership Order and constitutes a breach of the Receiver's duty to preserve the Estate for the benefit of all claimants. Accordingly, Mr. Stanford respectfully requests that the Court deny the Receiver's motion to sell the assets in Panama City, Panama. In the event the Court grants the Receiver's Motion, Mr. Stanford hereby reserves his right to make a claim on any of these assets to the extent that they are not tainted by alleged fraud.

Dated: February 8, 2010

Respectfully submitted,

/s/ Ruth Brewer Schuster

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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 February 8, 2010.

/s/Ruth Brewer Schuster