

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

RALPH S. JANVEY, IN HIS CAPACITY AS
COURT-APPOINTED RECEIVER FOR THE
STANFORD INTERNATIONAL BANK, LTD.,
ET AL.,

Plaintiff,

v.

JAMES R. ALGUIRE, ET AL.,

Defendants.

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CASE NO. 3:09-CV-0724-N

**RECEIVER’S RESPONSE TO PATRICIO ATKINSON’S
MOTIONS TO COMPEL ARBITRATION AND TO DISMISS**

Receiver Ralph S. Janvey (the “Receiver”) files this Response to Patricio Atkinson’s (“Atkinson”) Motions to Compel Arbitration and to Dismiss and respectfully shows the Court as follows:

ARGUMENTS & AUTHORITIES

The Court should deny Atkinson’s motion to compel arbitration and to dismiss or stay the case pending arbitration. As the Receiver explained in his Response to Certain Former Stanford Employees’ Motions to Compel Arbitration and to Dismiss (Doc. 316) — which is incorporated by reference into this response — the Receiver’s claims against Atkinson are not subject to an arbitration agreement because no agreement to arbitrate exists between the Receiver and Atkinson. Although Atkinson may have signed a severance agreement that contained arbitration language, the Receiver was not — and is not — a signatory or party to that agreement. The Receiver is pursuing his claims as a creditor or on behalf of creditors, and creditors are not bound by arbitration agreements that may exist between debtors and third

parties. In addition, the Court should exercise its broad powers in receivership cases and deny Atkinson's motion to compel arbitration.

The Court should also deny Atkinson's motions to dismiss based upon the Receiver's alleged failure to comply with Federal Rules of Civil Procedure 8 and 9(b). As the Receiver has previously explained (*see* Doc. 316, incorporated by reference herein), the Receiver has satisfied the basic pleading requirements of Rule 8. Furthermore, the heightened pleading standards of Rule 9(b) do not apply to the Receiver's claims. And even if Rule 9(b) did apply, the Receiver has satisfied the standards of that Rule.

Unlike the other movant Former Employees, Atkinson also argues that unjust enrichment and disgorgement are not independent causes of action and that the Receiver's complaint should, therefore, be dismissed for failure to state a claim. First, the Receiver has not pled disgorgement as an independent cause of action. Instead, disgorgement is the relief the Receiver seeks under his fraudulent-transfer and unjust-enrichment claims. The case law is clear that disgorgement is a proper remedy when asserting claims for fraudulent transfer and unjust enrichment. *See U.S. v. Project on Gov't Oversight*, 572 F. Supp. 2d 73, 77 (D.D.C. 2008) (“[T]he proper remedy for unjust enrichment is disgorgement.”); *Quilling v. Schonsky*, Civil No. 3:05-CV-2122-BH (H), 2007 WL 725473, at *1-3 (N.D. Tex. March 6, 2007) (upholding judgment disgorging fraudulently transferred funds received from Ponzi scheme); *Chu v. Hong*, 249 S.W.3d 441, 446 (Tex. 2008) (TUFTA provides for “equitable remedies to rescind the fraudulent transfer”); *Sec. Pac. Equip. Leasing, Inc. v. Thompson*, No. 01-96-01556-CV, 1998 WL 723897, at *2 (Tex. App.—Houston [1st Dist.] Oct. 8, 1998, no pet.) (disgorgement is proper remedy for fraudulent-transfer claim); *City of Harker Heights v. Sun Meadows Land, Ltd.*, 830 S.W.2d 313, 317 (Tex. App.—Austin 1992, no writ) (affirming judgment for disgorgement

based on theory of unjust enrichment). Accordingly, Atkinson's motion to dismiss the disgorgement "claim" should be denied.

Moreover, pertinent case law from this Court and other courts establishes that unjust enrichment is an independent cause of action. *See Newington Ltd. v. Forrester*, Civil Action No. 3:08-CV-0864-G ECF, 2008 WL 4908200, at *3-4 (N.D. Tex. Nov. 13, 2008) (holding that unjust enrichment is independent cause of action); *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 685 (Tex. 2000) (discussing unjust-enrichment cause of action); *HECI Exploration Co. v. Neel*, 982 S.W.2d 881, 891 (Tex. 1998) (explaining that unjust-enrichment claim is valid); *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 460 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) ("Unjust enrichment is an independent cause of action."). As a result, the Court should deny Atkinson's motion to dismiss for failure to state a claim.

CONCLUSION & PRAYER

For the foregoing reasons, the Receiver respectfully requests that the Court deny Atkinson's motions to compel arbitration and to dismiss or stay the case pending arbitration; Atkinson's motion to dismiss for failure to comply with Rule 9(b); Atkinson's 12(b)(6) motion to dismiss for failure to comply with Rule 8; and Atkinson's motion to dismiss for failure to state a claim alleging unjust enrichment and disgorgement are not independent causes of action. The Receiver also requests his attorney's fees and costs and any such and further relief to which he may be entitled.

Dated: February 26, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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**ATTORNEYS FOR RECEIVER
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CERTIFICATE OF SERVICE

On February 26, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner John J. Little and all counsel and/or pro se parties of record electronically or by another means authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
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