

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. §

Case No. 03:09-CV-0724-N

RECEIVER’S MOTION TO DISMISS
AND BRIEF IN SUPPORT OF MOTION TO DISMISS
CERTAIN STANFORD INVESTORS’ COUNTERCLAIMS

The Receiver, Ralph S. Janvey, (the “Receiver”) hereby submits this Motion to Dismiss and Brief in Support of Motion to Dismiss Certain Stanford Investors’ (the “Stanford Investors”) Counterclaims, stating as follows:

**MOTION TO DISMISS:
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

The Stanford Investors have failed to state a claim upon which relief can be granted. As a result, their conversion counterclaims¹ against the Receiver should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

¹ In the interest of judicial economy, and to avoid duplicative filings, the Receiver moves to dismiss the Stanford Investors’ conversion counterclaims in this combined Motion. The Stanford Investors’ conversion counterclaims have been filed in this case in Docs. 245 at ¶ 30; 246 at ¶ 29; 247 at ¶ 29; 248 at ¶ 29; 249 at ¶ 30; 250 at ¶ 29; 251 at ¶ 30; 252 at ¶ 29; 253 at ¶ 29; 254 at ¶ 30; 255 at ¶ 30; 256 at ¶ 29; 257 at ¶ 30; 258 at ¶ 30; 259 at ¶ 30; 260 at ¶ 34; 261 at ¶ 34; 262 at ¶ 34; 263 at ¶ 33; 264 at ¶ 34; 265 at ¶ 30; 266 at ¶ 30; 267 at ¶ 30; 268 at ¶ 30; 269 at ¶ 30; 270 at ¶ 30; 271 at ¶ 31; 272 at ¶ 30; 273 at ¶ 30; 274 at ¶ 30; 275 at ¶ 29; 276 at ¶ 30; 277 at ¶ 30; 278 at ¶ 30; 279 at ¶ 30; 280 at ¶ 30; 281 at ¶ 30; 282 at ¶ 29; 283 at ¶ 29; 284 at ¶ 29; 285 at ¶ 29; 286 at ¶ 29; 289 at ¶ 30; 290 at ¶ 31; 291 at ¶ 29; 292 at ¶ 29; 293 at ¶ 30; 294 at ¶ 30; 295 at ¶ 30; 297 at ¶ 29; 331 at ¶ 29; 332 at ¶ 30; 333 at ¶ 30; and 338 at ¶ 30.

On February 17, 2009, the Court entered (1) a Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents, and Order Authorizing Expedited Discovery (“TRO”); and (2) an original Order Appointing the Receiver over all property, assets, and records of the Stanford Defendants, and all entities they own or control. In the TRO, the Court froze the assets in all accounts held “in the name, on behalf or for the benefit of” the Stanford Defendants, including the investors’ accounts at Pershing, SEI, and JP Morgan. TRO (Doc. 8)² at ¶ 6. Moreover, the Court’s original and amended Receivership Orders authorized the Receiver to “take custody, control, and possession” of all assets of the Stanford Defendants and the entities under their control. Order Appointing Receiver (Doc. 10) at ¶ 5; Amended Order Appointing Receiver (Doc. 157) at ¶ 5. Importantly, the Court has previously held that the investors’ accounts were properly frozen under the scope of the Court’s orders. Order (Doc. 321) at 2-3 (“Stanford exercised significant control over these accounts. With limited exceptions, Pershing and J.P. Morgan could execute transactions in the accounts only upon Stanford’s instructions, rather than the movants’ instructions. . . . Without a hold on the accounts, the Stanford employees, who in many cases had discretionary authority to control customer accounts, could have transferred millions of dollars from those accounts. Thus, even if the J.P. Morgan or Pershing accounts are not held on behalf of Stanford, in requesting a freeze on all of these accounts, the Receiver acted within the authority the Court granted him to ‘take custody, control, and possession’ of all assets of the Defendants and the entities they control. . . . The hold therefore properly applied to all movants’ accounts”).

The Receiver’s team diligently worked to review and release as many of the investors’ Pershing, SEI, and JP Morgan accounts as possible from the Court-ordered account

² Unless otherwise stated, citations to Court records herein are from the case styled *SEC v. Stanford Int’l Bank, Ltd., et al.*, Civil Action No. 3-09-CV-0298-N.

freeze. By June 29, 2009, the Receiver had released the overwhelming majority — approximately 97% — of these accounts. On June 29, the Court signed an Order providing that the remaining accounts would be unfrozen on August 3, 2009, unless the Receiver asserted claims against the investors to recover proceeds of the fraud and obtained an order extending the freeze. Order (Doc. 533) at 1-2. Between June 29, 2009 and July 28, 2009 alone, the Receiver's team reviewed and released more than 750 of the remaining accounts with a value of approximately \$225 million.

On July 28, 2009, the Receiver asserted claims against approximately 800 investors, seeking disgorgement of funds stolen from investors and distributed to other investors. On August 4, 2009, the Court extended indefinitely the account freeze on such investors' accounts to the extent of purported interest payments they received. Order Granting in Part and Denying in Part Receiver's Motion for Order Freezing Assets Held in the Names of Certain Relief Defendants (3:09-CV-0724-N, Doc. 35) at ¶ 3. To allow the Receiver to appeal the Court's order ending the account freeze as to purported principal payments, the Court further extended the account freeze to the extent of the full value of purported interest and principal payments until August 13, 2009. *Id.* at ¶ 6.

On August 11, 2009, the Fifth Circuit Court of Appeals extended the account freeze pending the Receiver's appeal. Ultimately, on November 13, 2009, the Fifth Circuit ended the account freeze as to both principal and interest amounts. Immediately following the Fifth Circuit's holding, the Receiver and his team released the investors' Pershing, SEI, and JP Morgan accounts.

The Stanford Investors now seek damages for the Receiver's purported conversion of the assets in their Pershing accounts during the Court-ordered account freeze. But,

as shown above, the Receiver was at all times in compliance with the account-freeze orders of both this Court and the Fifth Circuit. Because the Receiver was operating under court orders freezing the Stanford Investors' accounts, he cannot be held liable for any conversion of the Stanford Investors' assets in those accounts. *Whitehead v. Allied Signal, Inc.*, No. 98-6305, 1998 WL 874868, at *2 (10th Cir. Dec. 16, 1998) ("It is a general rule of tort law that court orders validate actions that would otherwise constitute intentional property torts such as conversion and trespass."); *Calamia v. City of N.Y.*, 879 F.2d 1025, 1031 (2d Cir. 1989) (one is privileged to commit acts that would otherwise be a conversion when acting pursuant to court order); *Little v. Fulps*, No. 05-02-00827-CV, 2002 WL 31831367, at *1 (Tex. App.—Dallas Dec. 18, 2002, no pet.) (as a matter of law, there is no conversion where court order authorized defendant to exercise dominion and control over property); *see also* RESTATEMENT (SECOND) OF TORTS § 266 (1965). The Receiver, therefore, cannot be held liable for appropriately following the orders of both this Court and the Fifth Circuit freezing the assets contained in the Stanford Investors' Pershing accounts.

For the reasons stated above, the Stanford Investors' conversion counterclaims against the Receiver should be dismissed for failure to state a claim upon which relief may be granted. *See* FED. R. CIV. P. 12(b)(6).

PRAYER

The Receiver respectfully requests that the Court enter judgment that the Stanford Investors take nothing, dismiss the Stanford Investors' conversion counterclaims with prejudice, and award the Receiver his reasonable attorneys' fees, costs, and such other and further relief the Court deems proper under the circumstances.

Dated: March 15, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On March 15, 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, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler