

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. §

CASE NO. 3:09-cv-2151-N

REBECCA REEVES §

Defendant. §

**REBECCA REEVES-STANFORD’S MOTION TO DISMISS THE
RECEIVER’S ORIGINAL COMPLAINT AGAINST REBECCA REEVES
AND BRIEF IN SUPPORT THEREOF**

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ATTORNEYS FOR REBECCA REEVES-STANFORD

**MOTION TO DISMISS THE RECEIVER'S ORIGINAL COMPLAINT AGAINST
REBECCA REEVES-STANFORD**

COMES NOW the Defendant, REBECCA REEVES-STANFORD (“Defendant”), by and through her undersigned counsel, and files this Motion to Dismiss Original Complaint Against Rebecca Reeves-Stanford, and as grounds, therefore, states as follows:

I. FACTUAL BACKGROUND

1. On or about November 19, 2009, Defendant, REBECCA REEVES-STANFORD (“Defendant”), was served with Plaintiff’s Complaint, which includes claims for disgorgement of Receivership assets, disgorgement of assets fraudulently transferred to Defendant, and conversion of the Key Biscayne property, her previous homestead.

2. Prior to filing this action against Defendant, the Receiver claimed in an action against Mr. Robert Allen Stanford (*SEC v. Stanford International Bank, et al.*, Civil Action No.: 3:09-CV-0298-N) (“the Original Action”) that, despite being a non-party in that proceeding, Defendant somehow violated an injunction by selling her home. The Defendant, however, did absolutely nothing wrong. By way of background, on August 13, 2009, the Receiver filed his Motion for Order to Show Cause Why Rebecca Reeves-Stanford Should Not Be Held In Contempt (“Motion”), and the Court has yet to rule on said Motion – pending before the Court in the original action. Specifically, the Receiver argued that Defendant should be “held in contempt for failure to comply with the Receivership Orders.”

3. As previously argued in the Defendant’s Brief in response thereto, the Receiver’s Motion is conspicuously silent regarding how the Receiver believes that either the Defendant, or her property, is actually subject to what he calls the “Receivership Orders.” Additionally, it is argued that Defendant should not be held in contempt with respect to property which was, and always has been, solely owned by her, has always been solely in her name, and she has always

paid all taxes on the property as they became due. Moreover, Defendant's property is considered her homestead and, therefore, exempt from creditors. In sum, the Complaint filed by the Receiver against Defendant is another improper attempt of the Receiver to hold Defendant liable, or obtain her property, despite a complete lack of evidence and facts to sustain such action.

4. For the reasons set forth below, the Plaintiff's Original Complaint Against Rebecca Reeves-Stanford ("Complaint"), should be dismissed, not to mention the fact that the Complaint is confusing and difficult to follow and formulate a proper response thereto.

II. BRIEF IN SUPPORT OF MOTION TO DISMISS

The Complaint should be dismissed against Defendant, REBECCA REEVES-STANFORD, for lack of personal and subject matter jurisdiction and lack of standing over the Defendant, as well as for the Receiver's improper use of an attorney-client privileged document as a basis of raising this claim, and for the defects and/or deficiencies found in the Complaint.

A. LACK OF STANDING

The Receiver is the Plaintiff in this action as opposed to the SEC, which is the Plaintiff in the Original Action, and since the Complaint fails to allege the Receiver's standing to sue in this action, it must be dismissed. In fact, the Receiver merely alleges that the SEC commenced a lawsuit against Mr. Robert Allen Stanford and various other individuals, and that he was appointed in such action as the Receiver of the property of the Stanford Defendants and entities they own or control. Such is insufficient to confer standing. *See Doe v. Tangipohoa Parish School Board*, 494 F.3d 494 (5th Cir. 2007) (holding that standing to sue must be proven and not merely asserted); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (holding that a plaintiff has the burden of establishing standing).

In the instant case, the Receiver has not shown his capacity to sue Defendant, nor can he

show such standing in order to maintain this action. As such, the Defendant respectfully requests that the Court dismiss the Plaintiff's Complaint based upon lack of standing.

B. LACK OF PERSONAL JURISDICTION

The Receiver claims that he has personal jurisdiction over Defendant pursuant to 28 U.S.C. §§ 754 & 1692, and 15 U.S.C. §§78aa & 77v(a). However, as set forth below, the Receiver lacks personal jurisdiction over the Defendant, and/or he has divested jurisdiction thereof by failing to comply with the law. Pursuant to 28 U.S.C. §754, a receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts, is required to post a bond as required by the court, and shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

In the instant case, the Receiver is not only attempting to maintain this action in his own name, but he has failed to post a bond, and although he maintains that he filed the original Complaint and Order appointing him as Receiver with the 26 United States District Courts, the undersigned has not received a copy of same as it pertains to Defendant, and the original Complaint does not pertain to this Defendant. As such, the Receiver has divested jurisdiction as to Defendant in this action.

With respect to 15 U.S.C. §§78aa & 77v(a), such sections relate to maintaining an action in the district where defendant is located, which do not pertain to this matter since there is no action pending in the district where Defendant resides. The Receiver also alleges that as a result of Defendant's intentional violations of this Court's Orders, that the Court has inherent subject

matter and personal jurisdiction to enforce its own Orders, which is totally unsupported.

Pursuant to Rule 12(b)(2) of the *Federal Rules of Civil Procedure*, a complaint may be dismissed for lack of personal jurisdiction. In general, in the case of *Mink v. AAAA Development, LLC*, 190 F.3d 333 (5th Cir. 1999), the court stated that a federal court sitting in diversity may exercise personal jurisdiction over a nonresident defendant if (1) the long-arm statute of the forum state confers personal jurisdiction over that defendant; and (2) exercise of such jurisdiction by the forum state is consistent with due process under the United States Constitution. See *Latshaw v. H.E. Johnston*, 167 F.3d 208, 211 (5th Cir. 1999). The *Mink* court noted that since Texas's long-arm statute has been interpreted to extend to the limits of due process, it must only be determined whether subjecting the defendants to suit in Texas would be consistent with the Due Process Clause of the Fourteenth Amendment. See also *Electrosource, Inc. v. Horizon Battery Technologies, Ltd.*, 176 F.3d 867, 871 (5th Cir. 1999) (citing *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990)).

The *Mink* court further stated that the Due Process Clause of the Fourteenth Amendment permits the exercise of personal jurisdiction over a non-resident defendant when: (1) that defendant has purposefully availed himself of the benefits and protections of the forum state by establishing “minimum contacts” with the forum state; and (2) the exercise of jurisdiction over that defendant does not offend “traditional notions of fair play and substantial justice.” *Latshaw*, 167 F.3d at 211 (quoting *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945)). The “minimum contacts” aspect of the analysis can be established through “contacts that give rise to ‘specific’ personal jurisdiction or those that give rise to ‘general’ personal jurisdiction.” Specific jurisdiction exists when the nonresident defendant’s contacts with the forum state arise from, or are directly related to, the cause of action. General jurisdiction exists

when a defendant's contacts with the forum state are unrelated to the cause of action but are "continuous and systematic." However, the court found that there were no contacts established directly relating to the cause of action required for a finding of specific jurisdiction, and with respect to general jurisdiction, the Court found that the presence of an electronic mail access, a printable order form, and a toll-free phone number on a website, without more, does not establish personal jurisdiction.

Moreover, in the seminal case of *International Shoe v. State of Washington*, 326 U.S. 310 (U.S. 1945) the court held that due process of law requires that in order to subject a non-resident defendant to personal jurisdiction, there must exist certain minimum contacts such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Id.* The due process of law clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties or relations. *Id.*; see also *Hitachi Shin Din Cable, Ltd. v. Cain*, 106 S.W.3d 776 (Texas 2003) (holding that minimum contacts cannot be shown through unilateral acts of a third party, nor may random, fortuitous, or attenuated contacts with the State of Texas).

In analyzing the instant case, it is clear that Defendant does not have any minimum contacts with the State of Texas, such that she could reasonably expect to defend a lawsuit thousands of miles away from her home, and finding otherwise would be an undue burden and certainly offend traditional notions of fair play and substantial justice. This is especially true since, as stated above, the sole connection with this matter and said Defendant is the fact that she simply sold a piece of property that she clearly owned, and which was, at all times, her homestead, where she lived and raised her two (2) children with Defendant, Robert Allen Stanford, which does not subject her to personal jurisdiction in this matter.

In *S.E.C. v. Alexander*, 2003 WL 21196852 (S.D.N.Y. 2003), the court held that the SEC failed to establish minimum contacts sufficient for the exercise of personal jurisdiction over defendant in whose name trades were made. The court reasoned that the SEC permits the exercise of personal jurisdiction to the limit of the Due Process Clause of the Fifth Amendment, and that the plaintiff bears the burden of establishing minimum contacts over defendants in a Rule 12(b)(2) motion to dismiss. Since the plaintiff proffered no basis for the exercise of personal jurisdiction over Defendant in that case, Afouxenide, for disgorgement of alleged illegal profits, the factual basis for establishing sufficient minimum contacts for purposes of the exercise of personal jurisdiction is entirely lacking. As such, the SEC has failed to sustain its burden with respect to the exercise of personal jurisdiction over Afouxenide, and the action was dismissed as against her. *Id.*

In the instant case, as this Court can see from the Complaint, the Receiver has filed a frivolous and meritless Complaint against Defendant and such actions on the part of the Receiver should not be condoned and Receiver should be sanctioned accordingly for his attempted abuses of the judicial system and in filing the improper frivolous claim. For the reasons set forth herein, Defendant respectfully requests that the Court dismiss Plaintiff's Complaint because the Court lacks personal jurisdiction over her.

C. LACK OF SUBJECT MATTER JURISDICTION

The Receiver claims that he has inherent subject matter jurisdiction over Defendant, and admits that he is not "alleg[ing] at this time that Reeves participated in the Stanford Defendants' fraudulent scheme. Rather, she is added in a nominal capacity to facilitate equitable relief." *See* Complaint at page 1, ¶2.

In the instant case, the Defendant's property is not subject to disgorgement or otherwise

by the Receiver. *See SEC v. Sun Capital, Inc.*, 2009 WL 1362634 (M.D. Fla. 2009) (finding that the SEC could not freeze the assets of a person with a legitimate claim to funds who was not a proper relief defendant); *Picard Chemical, Inc. Profit Sharing Plan v. Perrigo Co.*, 940 F. Supp. 1101 (W.D. Mich. 1996) (holding that the court lacked subject matter jurisdiction over the alleged “nominal defendants,” since there were no allegations of securities law violations by the parties. *See also CFTC v. Sarvey*, 2008 WL 2788538 (N.D. Ill. 2008) (dismissing based upon lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), since the relief or nominal defendants held the relevant funds as a result of providing services to the defendants and had a legitimate claim to such funds); *SEC v. Collelo*, 139 F.3d 674, 675-77 (9th Cir. 1998) (referring to a relief or nominal defendant as one serving as a “trustee, agent, or depository.”).

In this case, there are no allegations of securities violations by Defendant and Defendant may not be viewed as a “relief” or “nominal” defendant” because she is neither a “trustee,” “agent,” or “depository” for the alleged monies and has, in fact, provided services for Mr. Stanford over the years as consideration for any monies she may have received as a result of raising and caring for their two (2) children. Thus, the Complaint should be dismissed as the Receiver lacks subject matter jurisdiction.

D. THE COMPLAINT IS IMPROPERLY PREMISED UPON ATTORNEY-CLIENT PRIVILEGED INFORMATION AS WELL AS PRIVILEGED SETTLEMENT COMMUNICATIONS

The Complaint must also be dismissed for relying, in part, upon information that is attorney-client privileged. Specifically, immediately upon the Receiver serving Defendant with a Subpoena in reference to the Order to Show Cause in the original action, Defendant retained legal counsel to fully comply with said Subpoena served upon her on March 26, 2009. Her legal counsel, Mr. John Priovolos, had knowledge that the property at issue, her homestead, was for

sale, as it was public record and listed on the MLS. The purpose of Defendant retaining Mr. Priovolos' services was to provide complete representation on the Subpoena, and any and all attachments, and to ensure compliance. The property of Defendant was eventually sold to care for her two (2) children.

The Complaint incorrectly alleges that Defendant delayed in producing documents to the Subpoena described above and that the sale of her homestead "further confirms that all of Reeves' assets are traceable." Although the Receiver claims that Defendant had "full knowledge of the Receivership Orders" and "benefited from the apparent assistance of attorneys Melinda Viera and John Priovolos," there is no "apparent" evidence as to how these facts were determined, as any and all advice of counsel would be protected by the attorney-client privilege, and knowledge cannot be inferred. Knowing full well that any and all advice that counsel provided to Defendant is protected under the attorney-client privilege, the Receiver still is attempting or has attempted to obtain an Order to Show Cause against her attorneys, in an attempt to cause a breach of that privilege, as well as this new, frivolous Complaint filed against Defendant with no adequate basis or support.

In fact, in the numerous e-mails between counsel and the Receiver, there was never any mention of a TRO, let alone its applicability or inapplicability to Defendant. Rather, only the document request was at issue, Exhibit "A" to the Subpoena, served upon the Defendant in the original action. The Receiver's actions in attempting to persuade the Court with salacious unsupported facts should not be condoned, whether via Motion for Order to Show Cause or in this new action against Defendant.

Moreover, the Receiver has attached to his Brief in support of his Motion for Order to Show Cause in the original action, as Exhibit "A", correspondence from Defendant's then

counsel, Mr. Mark Kamilar, dated July 15, 2009, in which he relies on assertions contained therein as forming the basis for the allegations as to the derivation of funds from Defendant, R. Allen Stanford, as well as the location of said funds. Just as Defendant argued in response to the Motion for Order to Show Cause, Defendant renews her objection to this Court admitting or considering such correspondence as evidence, since it was made in an effort to effectuate settlement, and was for settlement purposes only. *See* Rule 408 of the *Federal Rules of Evidence* with respect to the prohibition against utilizing admissions and statements as evidence if made for settlement purposes only, as is the case with respect to the above-described correspondence.

As such, Defendant respectfully requests that the Court dismiss Plaintiff's Complaint, since the allegations contained therein are based upon evidence improperly obtained with respect to settlement discussions and attorney-client privileged information.

E. IMPROPER PLEADING

The Complaint in this matter is disorganized and improperly raises various causes of action. First, the Receiver refers to an alleged fraudulent scheme and seeks to disgorge the Defendant's property, whether held by the Defendant or as part of a fraudulent transfer, as well as conversion of the Defendant's Key Biscayne property – which homesteaded property was properly sold, with notice.

With respect to the conversion claim, such must be dismissed pursuant to *WRR Industries, Inc. v. Prologis*, 2006 WL 1814126 (N.D. Tex. Jun. 30, 2006), which held that, under Texas law, the tort of conversion is defined as the unauthorized and wrongful assumption and exercise of dominion and control over the property of another, to the exclusion of and inconsistent with the owner's rights. *Id.* at *9. Furthermore, in *Taylor Pipeline Constr., Inc. v. Directional Road Boring, Inc.*, 438 F. Supp. 2d 696 (E.D. Tex. 2006), the court noted that Texas

jurisprudence holds that money can be the subject of conversion when (1) it is in the form of specific chattel, such as old coins, or (2) when the money is delivered to another party for safekeeping, the keeper claims no title, and the money is required and intended to be segregated, either substantially in the form in which it was received or as an intact fund. *Id.* at 709 The Court further notes that from its very nature, the title to money passes by delivery, and its identity is lost by being changed into other money or its equivalent in the methods ordinarily used in business for its safekeeping and transmission. Therefore, a cause of action for conversion fails when the plaintiff cannot trace the exact funds claimed to be converted, making it impossible to identify the specific monies in dispute, which the Receiver alleges were used to purchase a home and are now monies derived from the sale of such home.

In the instant case, not only does the Complaint fail to allege all of the requisite elements necessary to state a cause of action for conversion, but the monies allegedly the subject of this action are not subject to a conversion claim since they not derive from a specific, identifiable, traceable fund. Therefore, Defendant respectfully requests that the Court dismiss Plaintiff's Complaint.

F. STATUTE OF LIMITATIONS

The Complaint fails to provide any support for its claims against Defendant and/or her property and, instead, makes blanket allegations that since she had a relationship with Mr. Robert Allen Stanford that somehow the Plaintiff as Receiver, and not the SEC, has a basis to seek to obtain her homesteaded property. In fact, the Receiver merely alleges that since Defendant uses Mr. Stanford's name as her own, and has received large sums of money and gifts from Mr. Stanford over many years (for which there is no support or even allegation lending such support), and has not disputed these gifts, that these gifts and monies are traceable to illegal proceeds of a

fraudulent scheme and are subject to disgorgement. However, the Defendant cannot adequately respond to such allegations since there is no time frame for such alleged fraud, and a potential statute of limitations defense exists.

Assuming arguendo that this Court finds that a statute of limitations defense does not apply, it is urged that this Court, in its discretion, consider the remoteness in time of the alleged receipt of monies from Mr. Stanford, as well as the fact that the sole argument for the Receiver's position is the apparently long-standing relationship between the Defendant and Mr. Stanford. In fact, the parties simply have two (2) older children together and such is not a basis to claim that any possible monies received over the years by Mr. Stanford in consideration for raising his two (2) children are subject to disgorgement or otherwise. For the reasons set forth herein, Defendant respectfully requests that the Court dismiss Plaintiff's Complaint.

WHEREFORE, Defendant, REBECCA REEVES STANFORD, respectfully requests that this Court dismiss the RECEIVER'S Complaint, grant her attorneys' fees and costs as a result of having to defend this frivolous action, and grant any further relief deemed just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 9, 2009, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the Court's electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

s/ Jeronimo Valdez
R. JERONIMO VALDEZ