

**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. §

REBECCA REEVES, §

Defendant. §

Case No. 03:09-CV-2151-N

**RECEIVER'S RESPONSE TO
REBECCA REEVES-STANFORD'S MOTION TO DISMISS**

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Receiver Ralph S. Janvey opposes Rebecca Reeves-Stanford's Motion to Dismiss the Receiver's Original Complaint (Dkt. 5), and would show this Court the following:

I. INTRODUCTION

This lawsuit arises out of the Receiver's effort to recover millions of dollars in Estate assets improperly held by Rebecca Reeves-Stanford.

As the Receiver's Original Complaint pleads, Reeves-Stanford and Allen Stanford had a multi-year relationship. Complaint ¶ 22. Over the course of that relationship, Mr. Stanford transferred to Reeves-Stanford millions of dollars in Estate assets to fund her lifestyle of leisure. *Id.* At one point, Stanford improperly transferred a lump sum of over \$1 million to assist Reeves-Stanford with the purchase of a \$2 million home. *Id.* ¶ 24. These funds originated from Mr. Stanford's Ponzi scheme in which investors in his various entities were defrauded of billions of dollars. *Id.* ¶ 23.

Once the Receivership was initiated, Reeves-Stanford apparently realized that she would no longer be able to live off the largess Mr. Stanford provided her. She therefore set out to preserve as much of the ill-gotten gain as she could. With full awareness of the Receivership Order and while in possession of a subpoena requesting documents, Reeves-Stanford sold her Florida home for \$3 million and spirited the funds away to accounts in the Cook Islands and New Zealand. *Id.* ¶¶ 26–27. A motion for contempt related to that improper funds transfer is currently pending before this Court. (“Motion for Contempt,” Dkt. 699 to Cause No. 03:09-CV-298-N). The Receiver then filed this action against Reeves-Stanford alleging fraudulent transfer and conversion of Estate assets.

This Motion raises a host of arguments, few of which are clearly articulated and none of which contain any legal foundation. The Motion appears to raise four distinct claims: (1) the Court lacks subject matter jurisdiction over the Receiver's claims, (2) the Court lacks personal

jurisdiction over Reeves-Stanford, (3) the Receiver has not stated a claim in his Complaint, and (4) the Receiver has relied improperly on privileged communications. These contentions ignore numerous cases and statutes, all of which plainly establish the propriety of the Receiver's actions. For that reason, the Motion to Dismiss must be denied.

II. ARGUMENT AND AUTHORITIES

Motions to dismiss are “viewed with disfavor and . . . rarely granted.” *Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997) (discussing Rule 12(b)(6) motion). Allegations made in the complaint are presumed to be true, and if they are sufficient the complaint stands. *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981) (discussing motion to dismiss for lack of subject matter jurisdiction); see *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 406 95th Cir. 2001) (in deciding motion to dismiss for failure to state claim, court must accept facts alleged in complaint as true and construe allegations in light most favorable to plaintiff).

A. The Court has subject-matter jurisdiction.

Reeves-Stanford first asserts that the Receiver does not have “standing” to bring this suit. According to Reeves-Stanford, the Receiver lacks the capacity to sue her, the absence of a securities fraud claim defeats the Receiver's suit, and she is not a proper defendant in this action in any event. The Receiver addresses all of these contentions under this heading because each technically questions the Court's subject matter jurisdiction. See *Int'l Transactions, Ltd. v. Embotelladora Agral Recio-Montana, S.A. de C.V.*, 277 F. Supp. 2d 670, 676 (“[W]hen a plaintiff lacks standing to sue in federal court, it is appropriate for the court to dismiss . . . for want of subject matter jurisdiction.”). Because Reeves-Stanford provides no evidence in support of her challenges to the Court's jurisdiction, these contentions are considered “facial” (rather than “factual”) attacks. *Paterson*, 644 F.2d at 523. The Court is therefore required to look only at the sufficiency of the jurisdictional allegations in the Complaint, which are presumed to be

true. *Id.* If those jurisdictional allegations are sufficient, Reeves-Stanford's arguments must be rejected. *Id.*

1. Capacity to sue.

Reeves-Stanford first attacks the Receiver's fundamental ability to bring this action. This attack entirely ignores the Receivership Order and a legion of authority rejecting her contentions. Indeed, as is clear from the caption itself, the Receiver brought the Complaint "in his capacity as Court-appointed Receiver for the Stanford [Defendants]." This posture is proper and conveys the necessary jurisdiction, as a receiver "stands in the place of the individuals and entities over whose property he has been appointed receiver." *Reneker v. Offill*, No. 3:08-CV-1394, 2009 WL 804134, at *5 (N.D. Tex. Mar. 26, 2009) (Fitzwater, J.) (citing *Hymel v. FDIC*, 925 F.2d 881, 883 (5th Cir. 1991)). This Court has assumed exclusive jurisdiction and taken possession of all assets of the Stanford Defendants, and directed the Receiver to collect, marshal, and take custody of all "assets traceable to assets owned or controlled by the Receivership Estate."¹ Amended Order Appointing Receiver (Dkt. 157 to Cause No. 3:09-CV-298-N) ¶¶ 1, 5(b). The Court has further directed the Receiver to "[i]nstitute such actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets . . . traceable to the Receivership Estate." *Id.* ¶ 5(c).

Orders of this sort are routinely held to create the necessary capacity to sue. *See, e.g., SEC v. Cook*, No. 3:99-CV-571, 2001 WL 880734, at *2 (N.D. Tex. July 27, 2001) (Buchmeyer, J.) (holding that receiver had standing to bring claims against relief defendants for recovery of receivership assets because receivership order authorized him to do so); *Warfield v. Boone*,

¹ This includes the receivership assets Reeves-Stanford transferred to accounts in the Cook Islands and New Zealand. Complaint ¶ 27; *see U.S. v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962) (ordering U.S. citizen to turn over to receiver stock certificates located in the Bahamas).

No. 3:00-CV-272, 2001 WL 256172, at *2 (N.D. Tex. Mar. 8, 2001) (Buchmeyer, J.) (holding that receiver had standing to sue on behalf of creditors); *Scholes v. Lehmann*, 56 F.3d 750, 753–54 (7th Cir. 1995) (holding that receiver had standing to bring action against Ponzi scheme mastermind’s ex-wife to recover assets funneled to her, as such an action seeks to redress injuries to the receivership entities). In *Boone*, as here, the relief defendant argued that the receiver did not have standing to bring the action. 2001 WL 256172, at *2. Judge Buchmeyer, who had through a previous order authorized the receiver to institute all actions necessary to protect the estate’s assets, rejected the relief defendant’s argument. *Id.* By law, the receiver represented the interests of both the entity in receivership and the entity’s creditors, and therefore had standing to sue the relief defendant on their behalf. *Id.* The same result is proper here.

2. The Court has ancillary subject matter jurisdiction over the Receiver’s claims.

The Court also has subject matter jurisdiction over all of the Receiver’s claims pursuant to the doctrine of ancillary jurisdiction. *Warfield v. Arpe*, No. 3:05-CV-1457, 2007 WL 549467, at *6 (N.D. Tex. Feb. 22, 2007) (Buchmeyer, J.). Under this doctrine, a federal receiver may sue in the court of his or her appointment to accomplish the ends sought and directed by the suit in which the appointment was made, and such action will be regarded as ancillary to the court’s original subject matter jurisdiction in the principal suit. *Id.* As the Sixth Circuit has explained:

[It is] undisputed . . . that the initial suit which results in the appointment of the receiver is the primary action and that any suit the receiver thereafter brings in the appointment court in order to execute his duties is ancillary to the main suit. As such, the district court has ancillary subject matter jurisdiction of every suit irrespective of diversity, amount in controversy or any other factor which would normally determine jurisdiction.

Haile v. Henderson Nat’l Bank, 657 F.2d 816, 822 (6th Cir. 1982), *quoted in Arpe*, 2007 WL 549467, at *6–*7.

Accordingly, this Court has ancillary jurisdiction over claims brought by the Receiver to recover assets dissipated during the course of the Ponzi scheme, including this one. *See SEC v. Investors Security Corp.*, 560 F.2d 561, 567 (3d Cir. 1977) (holding that district court had ancillary jurisdiction over matter brought by receiver that was “within the powers delegated by the court to accomplish ends sought by the underlying action”); *Stenger v. World Harvest Church, Inc.*, No. 1:04-CV-151, 2006 WL 870310, at *4 (N.D. Ga. Mar. 31, 2006) (invoking the “settled rule that an equity receiver has the power to bring ancillary actions to recover assets which were fraudulently transferred to investors in a Ponzi scheme”); *Terry v. Walker*, No. 3:04-CV-64, 2006 WL 736861, at *1 (W.D. Va. Mar. 23, 2006) (holding that district court overseeing SEC enforcement action has “a special brand of pendant jurisdiction” over claims brought by the receiver to recover receivership property). The Receivership Order—requiring that all “actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons . . . who received assets . . . traceable to the Receivership Estate . . . shall be filed in this Court”—recognizes and affirms this independent basis for jurisdiction. Amended Order Appointing Receiver ¶ 5(c).²

3. Reeves-Stanford is a proper relief defendant.

Finally, Reeves-Stanford argues that she is not a proper relief defendant, and that the Court may not assert subject matter jurisdiction on that basis. Motion at 8. This position ignores

² Reeves-Stanford also argues that the Court does not have subject matter jurisdiction because the Receiver makes no allegations of securities fraud against her. Motion at 8. The fact that the Receiver has not alleged that Reeves-Stanford participated in the fraudulent scheme does not affect the Court’s ability to assert subject matter jurisdiction over this action: “It is well established that in a securities enforcement lawsuit, a federal court has subject matter jurisdiction over equitable actions to recover the proceeds of securities fraud that are wrongfully held by third parties. In such cases, a federal court may order equitable relief against a person who is *not* accused of wrongdoing if the person has received ill-gotten funds and does not have a legitimate claim to those funds. *Warfield v. Arpe*, No. 3:05-CV-1457, 2007 WL 549467, at *6 (N.D. Tex. Feb. 22, 2007) (Buchmeyer, J.) (citing *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998); *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998); *SEC v. Cherif*, 933 F.2d 403, 414 n.11 (7th Cir. 1991); *SEC v. Antar*, 831 F. Supp. 380, 401 (D. N.J. 1993)). This Court therefore has subject matter jurisdiction over the Receiver’s equitable claims.

the Receiver's Complaint which pleads facts sufficient to establish that Reeves-Stanford is a proper relief defendant.

A relief defendant is a party who is not accused of wrongdoing, but is joined in the lawsuit to aid the recovery of relief. *Janvey v. Adams*, --- F.3d ----, No. 09-10761, 2009 WL 3791623, at *1–*2 (5th Cir. Nov. 13, 2009).³ A person may be named as a relief defendant if that person (1) has received ill-gotten funds and (2) does not have a legitimate claim to those funds. *Id.*

Though Reeves-Stanford vaguely claims that she “provided services for Mr. Stanford over the years” as consideration for the millions of dollars she received from him, and thus has a legitimate claim to those funds, she offers no evidence on this point. As a result, the Court must presume the allegation in the Complaint that “Reeves-Stanford is in possession of assets traceable to the Stanford Defendants’ fraud, and she cannot establish a right to retain those assets” to be true. Complaint ¶ 3; *see Paterson*, 644 F.2d at 523. Because this allegation is sufficient to establish that Reeves-Stanford is a proper relief defendant, there is no basis for granting Reeves-Stanford’s Motion on this ground. *See Paterson*, 644 F.2d at 523; *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191–92 (4th Cir. 2002) (“[I]t is not necessary for the court to separately obtain subject matter jurisdiction over the claim to the funds held by the [relief] defendant.”); *see also SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005) (holding that wife of defendant in enforcement action, who received money and property traceable to

³ In *Adams*, the Fifth Circuit held that certain investors were not proper relief defendants because it was “undisputed” that they had “certain rights and obligations” in the property, which “constitute[d] a legitimate ownership interest.” 2009 WL 3791623, at *2. Similarly, in *SEC v. Sun Capital, Inc.*, upon which Reeves-Stanford relies, the court held that Sun Capital could not be named as a relief defendant because “the evidence establishe[d] that Sun Capital ha[d] a legitimate ownership in the loan proceeds.” No. 2:09-CV-229, 2009 WL 1362634, at *2 (M.D. Fla. May 13, 2009). Unlike the intended relief defendants in those cases, Reeves-Stanford’s purported ownership interest is not “undisputed,” and has not been “established”—let alone supported—by any evidence.

fraudulent scheme, was proper relief defendant); *SEC v. Antar*, 44 Fed. Appx. 54 (3d Cir. 2002) (upholding district court's assertion of jurisdiction, pursuant to relief defendant doctrine, over defendant's wife, who had received property traceable to the fraud); *SEC v. Cavanaugh*, 155 F.3d 129, 137 (2d Cir. 1998) (holding that defendant's wife, who did not know that culpable spouse had deposited proceeds of fraud into her account, was properly treated as a relief defendant); *CFTC v. Nations Invs., LLC*, No. 07-61058-CIV, 2008 WL 4376887, at *6 (S.D. Fla. Aug. 25, 2008) (holding that defendant's wife was a proper relief defendant because her home loan was paid off with fraudulent funds to which she did not have a legitimate claim).

B. The Court has personal jurisdiction over Reeves.

Reeves-Stanford fares no better with her argument that the Court lacks personal jurisdiction over her. In fact, her motion entirely ignores the proper legal framework in which personal jurisdiction in receivership claims is determined.

Contrary to her claims, the personal jurisdiction of a federal receivership court is not governed by traditional minimum contacts analysis. *Quilling v. Stark*, No. 3:05-CV-1976, 2006 WL 1683442, at *2 (N.D. Tex. June 19, 2006) (Lindsay, J.); *Haile*, 657 F.2d at 823–24; *see also Busch v. Buchman, Buchman & O'Brien*, 11 F.3d 1255, 1258 (5th Cir. 1994) (holding that the traditional minimum contacts analysis does not apply where personal jurisdiction is predicated on a federal statute that allows for nationwide service of process; the relevant inquiry is whether the defendant has minimum contacts with the United States). Rather, receivership courts acquire nationwide personal jurisdiction based on the interplay of 28 U.S.C. §§ 754 and 1692.

Through enactment of these statutes Congress extended the territorial jurisdiction of receivership courts to any district in which property of the receivership estate may be located, as long as the receiver complies with certain statutory prerequisites. *Arpe*, 2007 WL 549467, at *10; *Warfield v. Edwards*, No. 3:01-CV-480, 2001 WL 803791, at *2 (N.D. Tex. July 11, 2001)

(Buchmeyer, J.); *Stark*, 2006 WL 1683442, at *3; *Haile*, 657 F.2d at 823; *Quilling v. Cristell*, No. 3:04-CV-252, 2006 WL 316981, at *1–*2 (W.D.N.C. Feb. 9, 2006). Though this congressionally articulated policy may be inconvenient to some defendants, it comports with the requirements of due process, and facilitates judicial efficiency in receivership cases. *See Cristell*, 2006 WL 316981, at *4; *Bellaire Gen. Hosp. v. Blue Cross Blue Shield*, 97 F.3d 822, 825–26 (5th Cir. 1996) (holding that a court’s exercise of personal jurisdiction over a nonresident defendant pursuant to such a statute does not offend due process concerns or traditional notions of fair play and substantial justice).

Section 754 gives a receiver jurisdiction and control over receivership property in any district in which he files a copy of the complaint and order of appointment:

A receiver appointed in any civil action or proceeding involving property . . . situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property. . . . Such receiver 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.

28 U.S.C. § 754; *see Wright, Miller & Marcus*, Fed. Prac. & Proc. at 44 § 2985 (1997) (explaining that this statute “gives the appointing court and the receiver exclusive jurisdiction and control over all of defendant’s property in whatever district it may be situated, provided that the receiver files copies of the complaint and his or her order of appointment in each district in which property is located.”). The second statute, Section 1692, authorizes service of process in any district in which Section 754 filings are made:

In proceedings in a district court where a receiver is appointed for property . . . situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district.

28 U.S.C. § 1692. “Together, these statutes give a receivership both *in rem* and *in personam* jurisdiction in all districts where property of the receivership may be located.” *Stark*, 2006 WL

1683442, at *3 (citing *SEC v. Vision Comms., Inc.*, 74 F.3d 287, 290 (D.C. Cir. 1996); *Haile*, 657 F.2d at 823); *Arpe*, 2007 WL 549467, at *11; see FED. R. CIV. P. 4(k)(1)(c) (“Serving a summons . . . establishes personal jurisdiction over a defendant when authorized by a federal statute.”).

The Receiver filed copies of the SEC’s Complaint against the Stanford Defendants and the Order Appointing Receiver in the United States District Court for the Southern District of Florida — where Reeves-Stanford lives and where the property in question is located — on February 20, 2009, three days after his appointment. See App. at 1–53, Documents Filed in S.D. Fla. Per this Court’s order, no bond was required.⁴ Order Appointing Receiver (Dkt. 10) ¶ 2 (“The Receiver shall not be required to post a bond unless required by the Court.”); Amended Order Appointing Receiver ¶ 2 (same). The Receiver therefore has complied with 28 U.S.C. §§ 754 and 1692, giving this Court personal jurisdiction over Reeves. See *Edwards*, 2001 WL 803791, at *1–*2 (holding that the Court had personal jurisdiction over defendants pursuant to these statutes in action brought by receiver for conversion and fraudulent transfer, among other claims).

Based on these statutory provisions, the law is clear that this action may proceed against Reeves in the Northern District of Texas despite her claimed lack of contacts with this forum. See, e.g., *id.* at *2–*3 (suit brought by receiver in the N.D. Tex. against relief defendants from Nevada could proceed in the N.D. Tex. because receiver filed papers in the D. Nev. in compliance with 28 U.S.C § 754); see also *Arpe*, 2007 WL 549467, at *10–*12, (suit brought by receiver in the N.D. Tex. against defendants from Idaho could proceed in the N.D. Tex. because

⁴ Moreover, while the statute specifically states that a receiver’s failure to file the required documents within ten days “divest[s] the receiver of jurisdiction and control over” the property, no such consequence exists for a failure to post a bond. 28 U.S.C. § 754.

receiver filed papers in the D. Idaho in compliance with 28 U.S.C § 754); *Stark*, 2006 WL 1683442, at *3–*4 (suit brought by receiver in the N.D. Tex. against relief defendants from central California could proceed in the N.D. Tex. because receiver filed papers in the C.D. Cal. in compliance with 28 U.S.C. § 754).

Furthermore, Reeves-Stanford’s improper efforts to spirit away Estate property provide an independent basis for personal jurisdiction. In prior pleadings before this Court, Reeves-Stanford admitted that she received copies of the Court’s Preliminary Injunction as to Allen Stanford (“Preliminary Injunction,” Dkt. 159 to Cause No. 03:09-CV-298-N) and Amended Order Appointing Receiver. Reeves-Stanford Response to Motion for Contempt (Dkt. 753 to Cause No. 03:09-CV-298-N) at 1–2. She therefore unquestionably had notice of this Court’s orders that:

[A]ll other individuals . . . who receive actual notice of this Preliminary Injunction by personal service or otherwise are hereby restrained and enjoined from disbursing any funds, securities, or other property obtained from Defendant Stanford without adequate consideration.

and

[A]ll other persons are hereby restrained and enjoined, without prior approval from the Court, from any act to obtain possession of the Receivership Estate assets.

Preliminary Injunction (Dkt. 159 to Cause No. 03:09-CV-298-N) ¶ VI; Amended Order Appointing Receiver ¶ 10(a).

Courts possess inherent authority to enforce their own injunctive decrees. *Waffenschmidt v. Mackay*, 763 F.2d 711, 716 (5th Cir. 1985). By refusing to cooperate with the Receiver’s attempts to marshal the Receivership assets in her possession, Reeves-Stanford is actively participating in the Stanford Defendants’ misappropriation and concealment of the Ponzi scheme’s proceeds. The Court therefore has personal jurisdiction over Reeves-Stanford despite her claimed lack of contacts with the forum. *Id.* at 714 (“Nonparties who reside outside the

territorial jurisdiction of a district court may be subject to that court's jurisdiction if, with actual notice of the court's order, they actively aid and abet a party in violating that order. This is so despite the absence of other contact with that forum.”).

C. The Receiver has stated claims upon which relief can be granted.

A motion to dismiss for failure to state a claim under Rule 12(b)(6) “is viewed with disfavor and is rarely granted.” *Lowrey*, 117 F.3d at 247. The Court must limit its review to the face of the pleadings, accepting as true well-pleaded facts and viewing them in the light most favorable to the plaintiff. *Biliouris v. Sundance Res., Inc.*, 559 F. Supp. 2d 733, 735 (N.D. Tex. 2008) (Godbey, J.). To be viable, the Complaint “must include ‘enough facts to state a claim to relief that is plausible on its face,’ i.e., ‘enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim or element.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 545 (2007)). The Receiver's factual allegations “must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Id.* at 735–36 (quoting *Twombly*, 550 U.S. at 555).

Here, Reeves-Stanford contends (1) that the Receiver has failed to state a proper claim for conversion, and (2) that the Receiver's claims are deficient because “a potential statute of limitations defense exists.” Motion at 10–11, 12.

1. The Receiver states a proper claim for conversion.

Under Texas law, conversion is “the unauthorized and wrongful assumption of dominion and control over the property of another, to the exclusion of and inconsistent with the owner's rights.” *50-Off Stores, Inc. v. Banques Paribas (Suisse), S.A.*, 180 F.3d 247, 253 (5th Cir. 1999). The tort is established by proving (1) the plaintiff owned, had legal possession of, or was entitled to possession of the property, and (2) the defendant exercised control over the property in a

manner inconsistent with the plaintiff's rights.⁵ *Walsh v. America's Tele-Network Corp.*, 195 F. Supp. 2d 840, 850 (E.D. Tex. 2002). The Receiver has pleaded sufficient facts supporting both of these elements that, if proven, would give the Receiver a right to relief. *See Twombly*, 550 U.S. at 555.

The Receiver met the first element—that he owned, had legal possession of, or was entitled to possess the property in question—by alleging:

[I]t appears that all funds used in the purchase of the Key Biscayne Property were supplied to Reeves by Mr. Stanford. Mr. Stanford had no access to funds other than those that were fraudulently obtained from the Stanford Defendants' victims. The funds used to purchase the Key Biscayne Property, and the property itself, were thus Receivership assets under this Court's Orders. . . . Upon liquidating the Key Biscayne Property, the proceeds from that sale were Receivership assets under this Court's orders. The Receiver owned, possessed, and had the right to possess those proceeds.

Complaint ¶¶ 37–38. Accepting these facts to be true, as the Court must, the Receiver has established that pursuant to this Court's orders he owned, had legal possession of, and was entitled to possession of the proceeds from the sale of the Key Biscayne Property.

The Receiver met the second element—that Reeves-Stanford exercised control over the proceeds inconsistent with the Receiver's right to that Receivership asset—by alleging that Reeves-Stanford retained the proceeds and deposited them into her own bank accounts:

On May 8, 2009—more than six weeks after being served with this Court's orders—Reeves sold the Key Biscayne Property for \$3 million without informing the Receiver. . . . Reeves has since informed the Receiver that she sent the proceeds from the sale of the Key Biscayne Property to accounts she controls in the Cook Islands and New Zealand. She claims that, because she transferred the funds to these locales, the funds are now beyond the reach of the Receiver and the Court. . . . Reeves wrongfully exercised dominion or control over those proceeds.

⁵ Where, as here, the defendant shows a "clear repudiation of the plaintiff's rights," the plaintiff need not establish that a demand was made to return the property, and the defendant refused to do so. *Fields v. Keith*, 174 F. Supp. 2d 464, 481 (N.D. Tex. 2001) (Lindsay, J.).

Id. ¶¶ 26–27, 38. Depositing the proceeds in her own bank accounts is plainly inconsistent with the Receiver’s rights to that property, especially when those accounts are supposedly out of even this Court’s reach.⁶

Reeves-Stanford further claims that, even if the Receiver did properly allege all of the requisite elements of conversion, he has not stated a claim upon which relief can be granted because “the monies allegedly the subject of this action are not subject to a conversion claim since they not [sic] derive from a specific, identifiable, traceable fund.” Motion at 11 (citing *Taylor Pipeline Constr., Inc. v. Directional Road Boring, Inc.*, 438 F. Supp. 2d 696 (E.D. Tex. 2006)).

In Texas, “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.” *Taylor Pipeline*, 438 F. Supp. 2d at 708. Under the facts pleaded in the Complaint, it is “plausible” that the proceeds from the sale of the Key Biscayne Property are in fact traceable, and there is a “reasonable expectation that discovery will reveal” this to be the case.⁷ *See Biliouris*, 559 F. Supp. 2d at 735 (quoting *Twombly*, 550 U.S. at 570, 545). There is no basis for the Court to dismiss this cause of action merely because Reeves-Stanford claims the funds are not traceable. The suit should progress to discovery, where the parties can gather evidence on this topic.

⁶ Although the evidence indicates that Reeves-Stanford’s conversion of the Receivership asset was intentional, the Receiver does not need to show intent in order to prevail. “The wrongful intent to convert another’s property is not an essential element. . . . A good faith but unauthorized retention of property can be a conversion.” *In re Moody*, 899 F.2d 383, 385 (5th Cir. 1990) (applying Texas law).

⁷ After all, Reeves-Stanford has claimed the proceeds were deposited into specific accounts held in her name, and that at least until recently they remained there.

2. Statute of Limitations.

The fact that Reeves-Stanford thinks she might have a statute of limitations defense also does not provide any basis for the dismissal of the Complaint.⁸ While a court may consider a statute of limitations defense on a Rule 12(b)(6) motion to dismiss, “such a motion cannot be granted unless the limitations defense is clear on the face of the complaint.” *Seghers v. El Bizri*, 513 F. Supp. 2d 694, 707 (N.D. Tex. 2007) (Fish, J.).

Reeves-Stanford points to nothing in the Complaint establishing that any claim against her is barred by any statute of limitations. She does not even state which claims she believes are barred by a statute of limitations, or identify the limitations periods supposedly at issue. Her motion to dismiss on this ground should be denied. *See Jones v. Alcoa, Inc.*, 339 F.3d 359, 366 (5th Cir. 2003) (upholding denial of motion to dismiss because it was not “evident from the plaintiff’s pleadings that the action [was] barred” by limitations); *Seghers*, 513 F. Supp. 2d at 707 (holding that statute of limitations did not provide grounds for dismissal because “the court [was] unable to find on the face of the complaint a clear indication that the [claim was] barred by the statute of limitations”); *Rice v. Interactive Learning Sys., Inc.*, No. 3:07-CV-725, 2007 WL 2325202, at *2 (N.D. Tex. Aug. 10, 2007) (Fish, J.) (“Because the statute of limitations defense is not clear on the face of the complaint, the motion to dismiss is denied.”).

⁸ Relatedly, Reeves-Stanford complains that she “cannot adequately respond to [the Receiver’s] allegations since there is no time frame [in the Complaint] for [the] alleged fraud.” Motion at 12. The Receiver was not required to state a time frame in the Complaint, as there is “no affirmative duty on [a plaintiff] to plead facts in [the] complaint necessary to defeat a statute of limitations defense.” *Patel v. Pacific Life Ins. Co.*, No. 3:08-CV-249, 2009 WL 1456526, at *8 (N.D. Tex. May 22, 2009) (Boyle, J.) (quoting *Rice v. Interactive Learning Sys., Inc.*, No. 3:07-CV-725, 2007 WL 2325202, at *2 (N.D. Tex. Aug. 10, 2007) (Fish, J.)).

D. Reeves-Stanford's discussion regarding attorney-client and settlement communications.

Reeves-Stanford also moves for dismissal of the Complaint because, she says, “allegations contained therein are based upon evidence improperly obtained with respect to settlement discussions and attorney-client privileged information.” Motion at 8–10. As a threshold matter, this contention raises evidentiary issues not properly decided on a motion to dismiss. Nor does Reeves-Stanford’s Motion provide factual support for these contentions. The supposed “settlement” communication to which Reeves-Stanford refers provides no facial support for her claim. It is not marked as a settlement communication nor does it make a reference to any offer of compromise. It thus bears none of the indicia of a settlement communication. As to the issue of attorney-client communication, the Receiver is unaware that he possesses any material of a privileged nature exchanged between Reeves-Stanford and any of the four lawyers who have so far represented her in this matter.⁹ For these reasons, Reeves-Stanford has articulated no basis for dismissal on these grounds.

CONCLUSION

The Court has jurisdiction over this matter and over Reeves, and the Receiver’s claims are properly pled. The Motion should be denied.

⁹ Oddly, the specific allegations Reeves-Stanford claims are based on attorney-client communications — that she “had ‘full knowledge of the Receivership Orders’ and ‘benefited from the apparent assistance of attorneys Melinda Viera and John Priovolos’” — *are not even made in the Complaint*. See Motion at 9. They are only found in the Motion for Contempt. (Dkt. 699 to Cause No. 03:09-CV-298-N) Of course, the contention that a party was represented by counsel is entirely proper.

Dated: December 29, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On December 29, 2009, 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.

/s/ Kevin M. Sadler
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