

A. Intervention of Right

SCOA does not satisfy Rule 24's requirements for intervention of right. An application for intervention of right under Federal Rule 24(a)(2) must meet four requirements:

- (1) the application for intervention must be timely;
- (2) the applicant must have an interest relating to the property or transaction which is the subject of the action;
- (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest;
- (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm'rs of the Orleans Levee Dist., 493 F.3d 570, 578 (5th Cir. 2007) (internal citation omitted); *see generally* FED. R. CIV. P. 24(a)(2). A movant must satisfy all of these requirements to intervene as a matter of right. *Id.* Because SCOA cannot satisfy the third requirement, it is ineligible for intervention as a matter of right.

The third requirement for intervention of right is that a movant be situated such that disposition of the action might impair its ability to protect its interests. Various courts in receivership proceedings have held that a movant's ability to protect its interest is not impaired when it has recourse to a receiver's claims process. *See, e.g., S.E.C. v. Homa*, 17 F. App'x 441, 446 (7th Cir. 2001) ("This court has held that intervention as of right is not available where the proposed intervenor may pursue its claim before the Receiver with the benefit of an appropriate procedure." (citing *C.F.T.C. v. Heritage Capital Advisory Servs., Ltd.*, 736 F.2d 384, 387 (7th Cir. 1984)); *C.F.T.C. v. Chilcott Portfolio Mgmt., Inc.*, 725 F.2d

584, 586 (10th Cir. 1984) (holding that district court did not err in denying intervention because movant could assert his claim through the Receiver's process); *S.E.C. v. Provident Royalties, LLC*, 2010 WL 27185, at *2 (N.D. Tex. 2010) ("Prior to approving the Receiver's distribution plan, the court will seek objections to the plan. Strasburger will therefore have an opportunity to object to the distribution. Accordingly, Strasburger is unable to establish that the disposition of this action will impair or impede its ability to protect its interests.").

This Court agrees with the courts that denied intervention of right because of a receiver's claims process. Like the movants in those cases, SCOA fails to establish that disposition of this action would impair or impede its interests. SCOA has a forum in which it may assert its claims: the Receiver's claims process, which is available to creditors of all stripes. To the extent SCOA asserts a claim of superior interest in SDC assets, it may still do so through the Receiver's process. The Court will consider objections to the Receiver's distribution plan before allowing funds to be distributed, at which time SCOA may object to the Receiver's proposed plan. Accordingly, SCOA's interests will not be impaired if it is not allowed to intervene.²

²SCOA relies on the Eighth Circuit's decision in *S.E.C. v. Flight Transport Corp.*, 699 F.2d 943 (8th Cir. 1983). The *Flight Transport* court came to a different conclusion than this Court in determining that an unliquidated creditor had a right to intervene under Rule 24(a). The important difference between this case and *Flight Transport*, though, is that in that case, there appeared to be no clear distribution and claims process. *See id.* at 947–48. The Court noted the possibility that funds might all be distributed to defrauded investors, leaving none for creditors like the plaintiff. *Id.* There is no such possibility here. The Receiver's claims process encompasses both creditors like SCOA and Stanford investors. SCOA can file a claim asserting superior right over SDC assets at any time. Further, unlike *Flight Transport*, here there is no question that SCOA will have an opportunity to object if it believes the Receiver seeks to dispose of funds to which it claims priority.

B. Permissive Intervention

The Court also denies SCOA's request for permissive intervention. Under Rule 24(b), a court may allow a party to intervene if it meets three requirements. First, the movant must timely apply to intervene. Next, the movant must bring a claim or defense that shares a common question of law or fact with the main action. Finally, "[i]n exercising its discretion [under Rule 24(b),] the court must consider whether intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(1), (3).

The Court will not exercise discretion to allow SCOA to intervene because it would cause undue delay. If SCOA intervenes, it will add yet another layer of litigation for the Receiver to defend. This would further drain receivership assets and leave fewer funds available for distribution to creditors and investors. Indeed, the Receiver's brief details the voluminous expense he has incurred thus far in responding to the many motions filed by creditors and investors in this case. *See* Resp. to Mot. to Intervene [410] at 11. As discussed below and in the Court's previous order denying motions for relief from the Court's litigation stay, it is not appropriate to disturb the receivership status quo with unnecessary litigation at this time. *See* Order of March 8, 2010 [1030]. SCOA's claim to SDC funds and insurance proceeds can be handled along with the myriad other creditor claims that will be processed when the Receiver makes a distribution plan.

II. MOTION TO PROCEED IN ANOTHER FORUM

As to SCOA's request to pursue arbitration against SDC, the Court denies the motion for reasons discussed in its earlier order declining to lift the litigation stay. *See generally* Order of March 8, 2010 [1030]. The focus of that order was the Court's decision to disallow litigation against former Stanford employees at this time. However, the Court also noted:

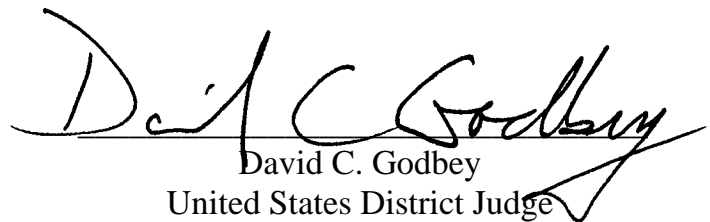
Some movants ask the Court to proceed in another forum against Stanford-owned entities or the Receiver. Such claims would even more directly interfere with the Court's administration of the receivership estate than suits against former employees. Accordingly, the Court also declines to lift the stay with respect to suits against Stanford-owned entities and the Receiver.

Id. at 4. The same is true for prospective claims against SDC, a Stanford-owned entity. Accordingly, the Court denies SCOA's motion to proceed in another forum.

CONCLUSION

The Court denies SCOA's motion to intervene because it has not proved that Federal Rule of Civil Procedure 24(a)(2) entitles it to intervene. The Court also declines SCOA's request for permissive intervention because allowing individual creditors to intervene in this case would cause unnecessary expense and delay. Finally, the Court denies SCOA's motion to proceed in another forum against SDC for reasons discussed in its March 8, 2010 order.

Signed March 17, 2010.


David C. Godbey
United States District Judge