

I.

CHARACTER OF THE PROPERTY

Under Texas law, “[p]roperty possessed by either spouse during or on dissolution of marriage is *presumed* to be community property.” TEX. FAM. CODE § 3.003(a) (emphasis added); see *Wyly v. United States*, 610 F.2d 1282, 1288 (5th Cir. 1980) (noting that community property is all property that is acquired by a spouse during marriage). This is a basic and fundamental right that is protected by both the Texas Constitution and the Texas Family Code. See TEX. CONST. art. XVI § 15; TEX. FAM. CODE §§ 3.002, 3.003; *Wyly*, 610 F.2d at 1288 (“the basic elements of Texas marital property law occupy a position above that of state statutes, and neither the legislature or affected parties may validly take steps which are inconsistent with them.”). Thus, *all assets* acquired by Allen Stanford during his marriage to Susan Stanford are presumed to be community property.³ See *Osuna v. Quintana*, 993 S.W.2d 201, 205 (Tex. App.—Corpus Christi 1999). Rebutting this presumption requires clear and convincing proof. See TEX. FAM. CODE § 3.003(b). This the SEC, Receiver, and Examiner conveniently, but not surprisingly, ignore.

All of the assets acquired and currently held by the Receiver as part of the Receivership Estate were acquired after 1975, when Susan and R. Allen Stanford were married. Thus, under Texas community property law, Susan Stanford owns half of every penny and every property in

³ To rebut Susan Stanford’s right to the boat proceeds, the SEC contends that the Davis Plea Agreement “establishes” that Allen Stanford started a securities fraud “as of at least 1988.” SEC Resp. at 3 n.3.

Leaving aside for a moment that the allegations in the live complaint control, in order to exchange his potential 360 month plus exposure under the Sentencing Guidelines (given the alleged fraud loss) for a lesser guaranteed cap many criminals would be willing to swear they had personal knowledge the moon was made of green cheese. The hearsay in the plea agreement proves nothing in this case. Davis is an admitted felon, and has not been subjected to cross-examination by Susan Stanford. The operative pleading before this Court makes this claim dubious at best, if not irrelevant.

Furthermore, as Susan Stanford has been married to Allen Stanford for over 34 years, her marriage pre-dates the supposed start of the securities fraud identified in the Davis Plea Agreement. Thus, the SEC’s blanket statement that “[t]here is no doubt that the vessels at issue here are tainted by fraud” is itself in doubt.

the control of the Receiver, unless and until the Receiver proves a given asset was procured by fraud as alleged in the complaint. Furthermore, the law does not contemplate depriving a person of their property by affidavit or expert report. *See* U.S. CONST. amends. V, VII, XIV; TEX. CONST. art. I §§ 13, 15, 17, 19; *see generally* TEX. CONST.

Though the Court previously ordered the Receiver to set aside the proceeds of two boats, alluding to a future resolution, *see* Order [Doc. # 1023], the Receiver, Examiner, and SEC claim that Susan Stanford is a mere creditor just like everyone else and not entitled to a hearing. But this is false—as the Court implicitly acknowledged by granting her motion to intervene and a sequestration of half of the boat sale proceeds—as Susan Stanford is the only person in the world who is *presumed*, as a matter of Texas law, to own half of the assets in the control of the Receiver. The mantra repeated by the Receiver, Examiner, and SEC that Susan Stanford is not entitled to “preferential treatment” as to *her own property* improperly lumps Susan Stanford with other claimants to the Receivership Estate. *See* SEC Resp. at 3; Receiver Resp. at 4; Examiner Resp. at 5. But Susan Stanford is *not* a creditor of the receivership estate. Indeed, the segregated proceeds from the sale of the vessels do not even become part of the receivership estate unless and until the Court determines that Susan Stanford is not entitled to those funds, and then only after a fact finder determines under relevant legal standards and procedure that the boats were procured by fraud and pled to have been so procured. Since these funds are subject to Susan Stanford’s community property rights and given the live pleading clearly shows they are not part of the receivership estate, Susan Stanford is entitled to them now.

The Receiver, Examiner, and SEC rely on the false premise that the segregated proceeds are part of the receivership estate. The Court appointed Mr. Janvey as Receiver for assets of the Defendants. Am. Order [Doc. # 157]. Susan Stanford is not a defendant and she is innocent of any wrongdoing. Susan Stanford’s right to her community property is hers and hers alone, not a

receivership asset subject to disposition by the Receiver. Susan Stanford's community property is simply not part of the Receivership Assets and the total disregard of her rights and without due process of law is a Fifth Amendment taking.

II.

RIPENESS OF ADJUDICATION

The SEC, Receiver, and Examiner claim Susan Stanford's claim is not ripe. That prompts the question: What else is there to be done? The issue is ripe. In fact, every time an asset is seized and/or sold, Susan Stanford's claim to her community property interest is ripe to determine the character of the property and whether there is sufficient proof to persuade a fact finder that the asset or money was obtained by fraud. How much more the case when the asset is believed to have become part of the community property estate at a time outside the pleadings?

In a marriage of this duration, it is reasonable to believe some or many of the community assets cannot be traced to fraud. But the issue as to the proceeds from the sale of the boats is clearly ripe.

III.

DISSIPATION OF THE ASSETS

Given the presumption of community property under Texas law, half of everything gathered by the Receiver is *hers*. Thus half of every penny paid to the lawyers and consultants hired by the Receiver and the Examiner is *hers*. One irony is that on April 16, 2010, the very day that the Receiver, Examiner, and SEC filed pleadings opposing Susan Stanford's motion for a mere hearing on her right to the proceeds of two boats, the Court approved payment of \$4,764,753.22 to the Receiver and \$170,963.53 to the Examiner. Half of this—or \$2,467,858.38—is presumptively *hers*.

At what point do the attorneys and consultants stop benefitting from Susan Stanford's

property? How many extra millions of dollars does the Receiver, his lawyers, and his consultants have to spend before they give back what does not rightfully belong to the receivership estate in the first place? The Receiver has spent tens of millions of dollars in attorneys' and experts' fees, and the most that he can say with regard to Susan Stanford's community property is that he is "still investigating the source of the funds to purchase the Vessels, including working with banks and others to gather and analyze account information necessary to trace the flow of the proceeds" and that "while much has been learned," he has not been able to "obtain and review information about accounts that he believes directly relate to the purchase of the vessels." Receiver Resp. at 2-3. The Receiver bears the burden of showing by clear and convincing evidence that the vessels are not community property, and if he cannot fulfill this burden, Susan Stanford is entitled to half of the proceeds from the vessels *now*.

Though the receivership estate has been greatly exhausted by the legal and other professional fees incurred, the Receiver, Examiner, and SEC are not willing to have the Court determine whether the millions of dollars that have been sequestered as Susan Stanford's community property are even part of the Receivership Estate. If the Receiver truly believes that the sequestered funds should be part of the Receivership Estate—and not Susan Stanford's community property—this issue should be litigated. This would give Susan Stanford the right to confront and cross examine any witness whose testimony is relied upon to rebut her immediate right to the boat proceeds, assets believed to have been obtained before the scheme is alleged to have begun. If the Receiver cannot show by clear and convincing evidence that the sequestered funds are not community property, Susan Stanford demands the funds, which are not part of the Receivership Estate and thus not entrusted to the Receiver's care.

IV.

CONCLUSION

Susan Stanford simply seeks an evidentiary hearing for the Court to either determine her right to the sequestered proceeds or determine that the sequestered proceeds are truly a part of the receivership estate, and if so, whether they were procured by fraud. The Receiver has made no showing, much less a showing by clear and convincing evidence, that *any* of the property that he has seized for the receivership estate is not community property. This includes the Receiver's failure to show that the vessels are not community property. To the extent that the Receiver, Examiner, or SEC ever offers witness testimony to attempt to rebut the presumption of Susan Stanford's community property right, Susan Stanford is entitled to cross-examination. Thus, given the complete lack of any evidence rebutting the presumption of Susan Stanford's right to the boat proceeds, and contrary to the contentions of the Receiver, Examiner, and SEC, a hearing on Susan Stanford's right to the proceeds is not premature—it is long overdue. And if the Receiver cannot rebut the presumption of community property, then she is entitled to half of the proceeds from the sale of the boats.

Susan Stanford respectfully requests that the Court grant her Motion for Evidentiary Hearing on Susan Stanford's Right to Proceeds from Sale of Vessels and hold an evidentiary hearing allowing Susan Stanford to be heard and compelling turnover of the funds this Court previously ordered sequestered.

Respectfully submitted,

/s/ Joe Kendall

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2010, I electronically filed the foregoing Reply to Responses Opposing Susan Stanford's Motion for Evidentiary Hearing on Her Right to Proceeds From Sale of Vessels with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record in this case who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Joe Kendall

JOE KENDALL