

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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|-------------------------------------|---|------------------------------------|
| SECURITIES AND EXCHANGE | § | |
| COMMISSION | § | |
| Plaintiff, | § | |
| | § | CIV. ACTION NO.3-09CV0298-N |
| | § | |
| v. | § | |
| | § | |
| STANFORD INTERNATIONAL BANK, | § | |
| LTD., ET AL., | § | |
| Defendants. | § | |

**DEFENDANT R. ALLEN STANFORD’S OPPOSITION TO RECEIVER’S MOTION
FOR ORDER CONFIRMING SALE OF REAL PROPERTY IN CORAL GABLES,
FLORIDA (REC. DOC. 1078)**

COMES NOW, through undersigned counsel, Defendant R. Allen Stanford who files this Opposition to Receiver’s Motion for Order Confirming Sale of Real Property in Coral Gables, Florida, and respectfully shows the Court as follows:

ARGUMENT

The Receiver seeks approval for the sale of certain real property located at 20 Casuarina Concourse, Coral Gables, Florida (“Property”). The attempted sale of this asset, as with other Estate assets, in the Receiver’s current and continuing manner since the outset of this case plainly and clearly abrogates the Court’s ability to render a meaningful judgment at trial, exceeds the scope of the Receivership, is not in the best interests of the Estate, and should not occur until the case is resolved on its merits. Accordingly, the Receiver’s motion should be denied and the contract for sale of the Property voided.

1. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits

Allowing the Receiver to continue to sell Estate assets like the subject Property will abrogate this Court's ability to render a meaningful judgment on the merits. A preliminary injunction preserves the status quo, prevents irreparable injury to the parties and preserves the court's ability to render a meaningful decision after a trial on the merits.¹ If the Receiver is able to sell many of the Estate's assets prior to adjudication on the merits, the Court's findings will have little or no value. If Stanford is victorious at a trial on the merits, that result will be diminished significantly if the Receiver is permitted to continue to dispose of Estate assets in his current manner. The Receiver should not be permitted to sell Estate assets without an adjudication of the merits of the underlying claims.²

2. The Receiver's Liquidation Request Exceeds the Scope of the Appointment Order And is a Breach of His Fiduciary Obligation to Preserve the Estate for All Claimants

It is well established that the purpose for a court to appoint an equity receiver is to take custody and manage property involved in litigation in order to preserve the property pending the court's final disposition of the suit.³ A receiver has a duty to preserve the property for the benefits of the claimants, and that duty must be undertaken without bias to one side or the other.⁴

¹ See *Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5th Cir. 1975).

² See *Securities Exchange Commission v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001) (holding, "[i]t is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership."); *SEC v. Current Financial Services*, 783 F.Supp. 1441, 1445-46 (D.D.C. 1992)(agreeing to appoint a receiver after TRO granted but refusing to grant receiver the right to liquidate assets; stating, "[s]uch drastic measures are [not] appropriate prior to the entry of final judgment. The SEC may renew its motion to encompass such relief if necessary in the future").

³ See *Wright & Miller*, 12 *Fed. Prac. & Proc. Civ. 2d* §2981 (2005).

⁴ See *Boothe v. Clarke*, 58 U.S. 322, 331 (1854) (holding, "[a] receiver is an indifferent person...he is appointed on behalf of all parties.").

The receiver is a fiduciary to the person who ultimately has rights in the property.⁵ Indeed, the Amended Appointment Order explicitly instructs the Receiver on his fiduciary obligations, ordering him to “conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate.”⁶

Preserving the Property (as opposed to selling it now in a rushed sale process) is in fact beneficial to all Estate claimants. It is difficult to imagine how liquidating the Estate’s interest in a depressed real estate market and overall economic climate is consistent with the Receiver’s duty to preserve the value of the Estate pending a final adjudication on the merits. This course of action is short-sighted and only serves to propagate the fire sale being conducted by the Receiver and is a breach of his fiduciary duties to the Estate and exceeds the scope and intent of the Receivership. The sale of the Property does not benefit the Estate in the long run and thus not in its best interests and must be denied.

CONCLUSION

Based on the foregoing reasons, The Receiver’s sale of the Property exceeds the scope of the Receivership Order and prevents the Court from rendering a meaningful judgment on the merits in this case. Accordingly, Defendant R. Allen Stanford respectfully requests that the Court deny the Receiver’s Motion for Order Confirming Sale of Real Property in Coral Gables, Florida, void the proposed sale of the Property and preserve the Property until such time this case is resolved on the merits.

⁵ See *Citibank, N.A. v. Nyland Ltd.*, 839 F.2d 93, 98 (2d. Cir. 1988).

⁶ See Rec. Doc. 157, Amended Order, at 5(g), p.5.

Dated: May 28, 2010

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Respectfully submitted,

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ATTORNEY IN CHARGE

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on May 28, 2010.

/s/Ruth Brewer Schuster