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,	§	Case No. 03:10-CV-0366
v.	§	
MIGUEL VENGER, ET AL.,	§	
Defendants.	§	

RECEIVER'S BRIEF IN SUPPORT OF MOTION TO DISMISS THE BUNDICK, STRENGTH, TUCKER, AND WATTS COUNTERCLAIMS

The Receiver, Ralph S. Janvey, (the "Receiver") hereby submits this Brief in Support of his Motion to Dismiss Shannon S. Bundick's, Joseph W. Strength's, Eric and Jennifer Tucker's, and Thurston and Cheryl B. Watts's (the "Stanford Investors") Counterclaims, stating as follows:

INTRODUCTION

The Stanford Investors have failed to state a claim upon which relief can be granted, and this Court should, therefore, dismiss their counterclaims. The Receiver—as an officer of this Court—acted in accordance with the Court's freeze of the Stanford Investors' accounts and, thus, is entitled to absolute judicial immunity for his actions. Moreover, the Receiver cannot be held liable for conversion, as he was acting pursuant to court orders.

FACTUAL SUMMARY

On February 17, 2009, the Court entered (1) a Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents, and Order Authorizing Expedited Discovery ("TRO"); and (2) an original Order Appointing the Receiver over all property, assets, and records of the Stanford Defendants, and all entities they own or control. In the TRO, the Court froze the assets in all accounts held "in the name, on behalf or for the benefit of" the Stanford Defendants, including the investors' accounts at Pershing, SEI, and JP Morgan. TRO [Doc. 8][1] at ¶ 6. Moreover, the Court's original and amended Receivership Orders authorized the Receiver to "take custody, control, and possession" of all assets of the Stanford Defendants and the entities under their control, Order Appointing Receiver [Doc. 10] at ¶ 5; Amended Order Appointing Receiver [Doc. 157] at ¶ 5, and the Court has held previously that the investors' accounts were properly frozen under the scope of the Court's orders. Order [Doc. 321] at 2–3 ("Thus, even if the J.P. Morgan or Pershing accounts are not held on behalf of Stanford, in requesting a freeze on all of these accounts, the Receiver acted within the authority the Court granted him to 'take custody, control, and possession' of all assets of the Defendants and the entities they control. . . . The hold therefore properly applied to all movants' accounts.").

The Receiver's team diligently worked to review and release as many of the investors' Pershing, SEI, and JP Morgan accounts as possible from the Court-ordered account freeze. By June 29, 2009, the Receiver had released the overwhelming majority—approximately 97%—of these accounts. On June 29, the Court signed an Order providing that the remaining accounts would be unfrozen on August 3, 2009, unless the Receiver asserted claims against the

[1] Unless otherwise stated, citations to Court records herein are from the case styled *SEC v. Stanford Int'l Bank, Ltd., et al.,* Civil Action No. 3-09-CV-0298-N.

investors to recover proceeds of the fraud and obtained an order extending the freeze. Order [Doc. 533] at 1-2. Between June 29, 2009 and July 28, 2009 alone, the Receiver's team reviewed and released more than 750 of the remaining accounts with a value of approximately $225 million.

On July 28, 2009, the Receiver asserted claims against approximately 800 investors, seeking disgorgement of funds stolen from investors and distributed to other investors. On August 4, 2009, the Court extended indefinitely the account freeze on such investors' accounts to the extent of purported interest payments they received. Order Granting in Part and Denying in Part Receiver's Motion for Order Freezing Assets Held in the Names of Certain Relief Defendants [3:09-CV-0724-N, Doc. 35] at ¶ 3. To allow the Receiver to appeal the Court's order ending the account freeze as to purported principal payments, the Court further extended the account freeze to the extent of the full value of purported interest and principal payments until August 13, 2009. *Id.* at ¶ 6.

On August 11, 2009, the Fifth Circuit Court of Appeals extended the account freeze pending the Receiver's appeal. Ultimately, on November 13, 2009, the Fifth Circuit ended the account freeze as to both principal and interest amounts. Immediately following the Fifth Circuit's holding, the Receiver and his team released the investors' Pershing, SEI, and JP Morgan accounts.

ARGUMENTS AND AUTHORITIES

The Stanford Investors have failed to state a claim upon which relief can be granted. As a result, the conversion counterclaims against the Receiver should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

1. As an officer of the Court, the Receiver is entitled to absolute judicial immunity.

In implementing the Court-ordered freeze of the Stanford Investors' accounts, the Receiver simply carried out his duties as an officer of this Court, and as such, he is entitled to absolute judicial immunity. "Court appointed receivers act as arms of the court and are entitled to share the appointing judge's absolute immunity provided that the challenged actions are taken in good faith and within the scope of the authority granted to the receiver." *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995); *see also Nat'l Bus. Consultants, Inc. v. Lightfoot*, 292 Fed. App'x 298, 300 (5th Cir. 2008) (receiver immune from liability for activities related to securing receivership assets). As the Ninth Circuit noted in *New Alaska Development Corp. v. Guetschow*:

> [C]ases from other circuits have held uniformly that state court-appointed receivers are entitled to absolute immunity. They start with the premise that "receivers are court officers who share the immunity awarded to judges." Absent broad immunity, receivers would be "a lightning rod for harassing litigation aimed at judicial orders." To limit the harassment of receivers "as quickly as possible," a plaintiff is required to allege the absence of judicial immunity.

869 F.2d 1298, 1303 (9th Cir. 1989) (internal citations omitted). This rationale equally applies to federal receivers and is based on longstanding common law principles. *See, e.g.*, *Kermit Constr. Corp. v. Banco Credito y Ahorro Ponceno*, 547 F.2d 1, 2 (1st Cir. 1976) ("The district court decided that receivers are court officers who share the immunity awarded to judges. At common law, this was true . . . ." (citing *Davis v. Gray*, 83 U.S. 203, 218 (1862); 2 R. CLARK, LAW AND PRACTICE OF RECEIVERS §§ 388, 392 (3d ed. 1959))).

Here, the Stanford Investors have failed to allege that the Receiver was acting outside the scope of his duties as an officer of the Court. "Failure to allege 'that the judge's ultimate actions were not judicial or beyond the scope of the court's jurisdiction' requires

dismissal." *New Alaska*, 869 F.2d at 1303. The only exception to this immunity is when the individual entitled to judicial immunity "act[s] in the clear absence of all jurisdiction." *Davis v. Bayless*, 70 F.3d at 373 (citing *Stump v. Sparkman*, 435 U.S. 349, 357–60 (1978)). "[T]he proper inquiry is . . . whether the challenged actions were obviously taken outside the scope of the judge's power." *Id.* The Stanford Investors' conversion claims are based solely on actions taken by the Receiver which were squarely within the scope of this Court's authority. *See id.* at 374 ("Because court orders expressly authorized [the receiver] to [take the action allegedly giving rise to liability], she was acting within the scope of her authority . . . ."). Therefore, the Receiver is immune from liability for his actions relating to the account freeze.

Furthermore, the Stanford Investors fail to state a claim that would overcome the Receiver's immunity from liability under the express terms of the Order appointing the Receiver in this case. The original and amended orders appointing the Receiver each state the following:

> Except for an act of willful malfeasance or gross negligence, the Receiver shall not be liable for any loss or damage incurred by the Receivership Estate, or any of Defendants, the Defendants' clients or associates, or their subsidiaries or affiliates, their officers, directors, agents, and employees, or by any of Defendants' creditors or equity holders because of any act performed or not performed by him or his agents or assigns in connection with the discharge of his duties and responsibilities hereunder.

Order Appointing Receiver [Doc. 10] at ¶ 2; Am. Order Appointing Receiver [Doc. 157] at ¶ 2. The Stanford Investors failed to plead that any of the Receiver's actions constituted gross negligence or willful malfeasance or were outside the scope of his duties or responsibilities. There is nothing in the Court record to even suggest that the Receiver's implementation of the freeze orders constituted either willful malfeasance or gross negligence. Therefore, the Receiver cannot be liable for any loss or damage resulting from any alleged conversion, and the

Receiver's Motion to Dismiss the Stanford Investors' conversion counterclaims should be granted.

2. Freezing assets pursuant to a valid court order is not "conversion."

In addition to the fact that the Receiver is immune from liability for his actions in carrying out lawful and valid court orders, his actions in implementing the freeze orders as a matter of law were not a "conversion" of the Stanford Investors' property. The Stanford Investors seek damages for the Receiver's purported conversion of the assets in their Pershing accounts during the Court-ordered account freeze. Because the Receiver acted under court orders to implement a freeze of the Stanford Investors' accounts, his actions can not constitute the tort of conversion of the Stanford Investors' assets in those accounts. *See Whitehead v. Allied Signal, Inc.*, No. 98-6305, 1998 WL 874868, at *2 (10th Cir. Dec. 16, 1998) ("It is a general rule of tort law that court orders validate actions that would otherwise constitute intentional property torts such as conversion and trespass."); *Calamia v. City of N.Y.*, 879 F.2d 1025, 1031 (2d Cir. 1989) (one is privileged to commit acts that would otherwise be a conversion when acting pursuant to court order); *Little v. Fulps*, No. 05-02-00827-CV, 2002 WL 31831367, at *1 (Tex. App.—Dallas Dec. 18, 2002, no pet.) (as a matter of law, there is no conversion where court order authorized defendant to exercise dominion and control over property); *see also* RESTATEMENT (SECOND) OF TORTS § 266 (1965).

As a matter of law, the Receiver did not commit an act of conversion when he implemented the orders of both this Court and the Fifth Circuit to freeze the assets contained in the Stanford Investors' accounts.

CONCLUSION AND PRAYER

For the reasons stated above, the Stanford Investors' conversion counterclaims against the Receiver should be dismissed for failure to state a claim upon which relief may be granted. *See* FED. R. CIV. P. 12(b)(6). The Receiver respectfully requests that the Court enter judgment that Shannon S. Bundick, Joseph W. Strength, Eric and Jennifer Tucker, and Thurston and Cheryl B. Watts take nothing, dismiss the Stanford Investors' conversion counterclaims with prejudice, and award the Receiver his reasonable attorneys' fees, costs, and such other and further relief the Court deems proper under the circumstances.

Dated: June 3, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On June 3, 2010, 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. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
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