

**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.,

**RECEIVER'S RESPONSE TO
JOHN G. ADAMS AND REBECCA N. ADAMS' MOTION TO DISMISS PURSUANT TO
RULE 12(b)(2)**

The Receiver, Ralph S. Janvey, (the “Receiver”) opposes John G. and Rebecca N. Adams’ (collectively, the “Adamses””) Motion to Dismiss for lack of personal jurisdiction. The Adamses reside in Marshall, Texas. Therefore, this Court, which sits in Texas, does not have to rely on a filing under 28 U.S.C. section 754 to have personal jurisdiction over them; it has personal jurisdiction under general “minimum contacts” principles.

The Adamses are wrong when they assert that section 754 precludes the Court from obtaining personal jurisdiction any other way. Indeed, two of the four cases they cite make the point that §754 is a *non-exclusive* basis for jurisdiction. *See Am. Freedom Train Found. v. Spurney*, 747 F.2d 1069, 1073 (1st Cir. 1984) (“[T]he district court erred when it concluded . . . that jurisdiction in an in personam receivership action . . . is governed exclusively by section 754.”); *SEC v. Vision Commc’ns, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996) (quoting *United States v. Ariz. Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984)) (“[c]ompliance with § 754, the court

held, is necessary ‘[w]hen there is no other basis for jurisdiction.”’). The other two cases the Adamses cite do not support their jurisdictional argument and are otherwise inapposite.

Because the Adamses are properly before the Court, their motion to dismiss should be denied.¹

ARGUMENTS & AUTHORITIES

1. The Receiver need only present *prima facie* evidence of jurisdiction.

The Receiver bears the initial burden to prove the Court’s personal jurisdiction over a defendant, but that burden is not a stringent one at this stage:

The plaintiff bears the burden of establishing jurisdiction, but need only present *prima facie* evidence. We must accept the plaintiff’s “uncontroverted allegations, and resolve in [his] favor all conflicts between the facts contained in the parties’ affidavits and other documentation. In considering a motion to dismiss for lack of personal jurisdiction a district court may consider “affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery.”

Revell v. Lidov, 317 F.3d 467, 469 (5th Cir. 2002) (citations omitted); *see also* 5B CHARLES ALAN WRIGHT AND ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1351 (3rd ed. 2009) (“On the [12(b)(2)] motion, the plaintiff bears the burden to establish the court’s jurisdiction, which normally is not a heavy one.”).

The Receiver more than meets this standard, as the appendices hereto (*see* footnote 2, *infra*) conclusively establish that the Adamses are residents of Texas and therefore amenable to personal jurisdiction in this Court.

¹ Alternatively, if the Court determines that a section 754 filing in the Eastern District of Texas is necessary, then the Receiver requests that the Court defer ruling on the Adamses’ motion until after it rules on the Receiver and the SEC’s joint motion for reappointment of the Receiver. (No. 3:09-CV-0298, Doc. 958.) Reappointment would give the Receiver an opportunity to file the reappointment order and the SEC’s current complaint in the underlying case in the Eastern District (and in other districts where assets have been discovered since the Receiver was last appointed), thus providing the Court with personal jurisdiction over the Adamses under 28 U.S.C. section 1692. *See Vision Commc’ns*, 74 F.3d at 291 (“On remand, the court may reappoint the receiver and start the ten-day clock of § 754 ticking once again.”).

2. This Court has personal jurisdiction over the Adamses because they reside in Texas.

In their motion to dismiss, Dr. John G. and Rebecca N. Adams fail to inform the Court that that they are Texans. They reside in Marshall, in the Eastern District of Texas. That is where they own a home and where Dr. Adams practices medicine. (*See* App. 1-8.)² This brings them clearly within the Court's personal jurisdiction.

"General [personal] jurisdiction exists where a 'defendant's contacts with the forum state are substantial and continuous and systematic but unrelated to the instant cause of action.' . . . *The residency of a defendant in the forum state routinely creates such systematic and continuous contact.*" *Religious Tech. Ctr. v. Liebreich*, 339 F.3d 369, 374 (5th Cir. 2003) (emphasis added) (quoting *Cent. Freight Lines Inc. v. APA Transport Corp.*, 322 F.3d 376, 381 (5th Cir. 2003)). Further, Federal Rule of Civil Procedure 4(k)(1)(A) provides that personal jurisdiction may be obtained over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Nothing in the text of section 754 indicates an intent to supersede the Court's general personal jurisdiction throughout the state in which it sits. *See* FED. R. CIV. P. 4(k)(1)(A); 28 U.S.C. § 754. Thus, the fact that the Adamses reside in the Eastern District of Texas, rather than the Northern District, makes no difference. *See Am. Home Assurance Co. v. Glovegold, Ltd.*, 153 F.R.D. 695, 698 (M.D. Fla. 1994) ("There is little question that if the Middle District had personal jurisdiction over Defendants, the Southern District would have also had personal jurisdiction. Personal jurisdiction exists on a statewide

² Appendix 1-3 is taken from the Harrison County, Texas Central Appraisal District website, showing current property tax records for the Adamses. Appendix 4-7 is taken from the Texas Medical Board's "Public Verification/Physician Profile" page, reflecting Dr. Adams' registration as a licensed physician in Texas. Appendix 8 is a "White Pages" listing for Dr. Adams' medical office in Marshall, Texas. The Receiver asks this Court to take judicial notice of these public records. *See In re Lincoln Logs Ltd.*, Nos. 08-13079, 08-13080, 2010 WL 322163, at *2 n.2 (Bankr. N.D.N.Y. Jan. 25, 2010) (taking judicial notice of public property tax record); *Hernandez v. Harrison*, No. CV 07-7489 JVS(JC), 2009 WL 2606091, at *2 (C.D. Cal. Aug. 20, 2009) (taking judicial notice of state medical board registration for purposes of determining address); *Cariani v. D.L.C. Limousine Serv., Inc.*, 363 F. Supp. 2d 637, 640 n.3 (S.D.N.Y. 2005) (taking judicial notice of phone book as public record).

basis; the propriety of bringing an action in one district rather than in another district is a question of venue.”).³

The Adamses argue (although obliquely so as not to highlight their Texas residency) that because the Receiver has not made a section 754 filing in the Eastern District of Texas, the Court lacks jurisdiction over them. They theorize that, in a case brought by a receiver, compliance with section 754 is the *only* way the Court can acquire personal jurisdiction and that section 754 forecloses personal jurisdiction under “traditional minimum contacts” principles. (No. 3:10-CV-0931, Doc. 4 at ¶ 2.).

The Adamses are wrong in their discussion of the law. The filing of a section 754 notice is *not* the exclusive means of obtaining personal jurisdiction over a defendant. Rather, “[c]ompliance with § 754 is necessary . . . ‘[w]hen there is no other basis for jurisdiction.’” *Vision Commc’ns*, 74 F.3d at 291 (emphasis added) (quoting *Ariz. Fuels*, 739 F.2d at 460).

[N]othing in the language of section 754 or in the decisional law . . . precludes the district court from exercising its *in personam* equitable jurisdiction in ancillary actions brought by the receiver. *If there is in personam jurisdiction, it need not be shown that the court has jurisdiction over property under section 754.*

Am. Freedom Train Found., 747 F.2d at 1073-74 (emphasis added). See also *SEC v. Heartland Group, Inc.*, No. 01 C 1984, 2003 WL 21000363, at *2 (N.D. Ill. May 2, 2003) (in an SEC enforcement proceeding, “court could have personal jurisdiction in two scenarios: (1) if the court had *in rem* jurisdiction over the assets [via section 754] or (2) if the court had *in personam* jurisdiction over [the defendant]”).

³ See also *Injen Tech. Co. v. Advanced Engine Mgmt., Inc.*, 270 F. Supp. 2d 1189, 1193 (S.D. Cal. 2003) (“In the personal jurisdiction context, the court examines statewide contacts, while for purposes of venue, the court examines only those contacts pertaining to the judicial district.”); *Eltayeb v. Ingham*, 950 F. Supp. 95, 99 (S.D.N.Y. 1997) (holding personal jurisdiction was proper over defendant residing in different federal district located within same state).

A section 754 filing is particularly unnecessary when the defendant resides in the forum state. This point is made in one of the cases upon which the Adamses rely. The Sixth Circuit, in *Haile v. Henderson National Bank*, observed that, in enacting section 1692, the jurisdictional provision operates in tandem with section 754: “Congress has provided for service of process *beyond the territorial limits of the state in which the district court sits . . .*” 657 F.2d 816, 825 (6th Cir. 1981). The *Haile* court also quoted approvingly from Prof. Moore’s explanation of the differences between sections 754 and 1692 and their predecessor provisions:

Failure to file copies of the complaint and order of appointment in any district no longer divests the appointing court of jurisdiction over all property located *outside the state in which the suit was brought*; it now divests the court of jurisdiction only over the property in the district where the copies are not filed.

Id. at 823 (emphasis added) (citing 7 (Pt. 2) JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE, § 66.08(1), at 1949–50 (2d ed. 1972 rev.)).

Not one of the four cases cited by the Adamses supports their theory. In fact, as indicated by the above-quoted material, three of the cases—*American Freedom Train Foundation*, *Vision Communications* and *Haile v. Henderson National Bank*—directly refute it. *American Freedom* is especially instructive. The district court in that case had held that it did not have personal jurisdiction over out-of-state defendants because the plaintiff receiver had not made section 754 filings in the districts where the defendants resided; it made this ruling without exploring whether the defendants’ minimum contacts with the forum state provided an alternative basis for jurisdiction. The First Circuit held that this was improper. “[T]he district court erred when it concluded . . . that jurisdiction in an in personam receivership action . . . is governed exclusively by section 754.” 747 F.2d at 1073. “If there is in personam jurisdiction, it need not be shown that the court has jurisdiction over property under section 754.” *Id.* at 1073–74. The court of appeals proceeded to analyze whether the defendants had minimum contacts

with Massachusetts, the forum state, sufficient to support jurisdiction under that state's long-arm statute and constitutional Due Process principles. Because it concluded that minimum contacts with the forum state did not exist, the court of appeals affirmed the lower court's dismissal of the receiver's suit. *Id.* at 1076. The lesson of this case is that minimum contacts does provide a separate and independent basis for jurisdiction, even where section 754 has not been followed. Minimum contacts of course exist in this case because the Adamses reside in the forum state.

The other case cited by the Adamses—*SEC v. Cook*, No. 3-01-CV-0480-R, 2001 WL 803791 (N.D. Tex. July 11, 2001)—rejected the baseless argument that effective personal jurisdiction over an out-of-state defendant requires *both* a section 754 filing and minimum contacts with the forum state. The Adamses turn that basic ruling on its head when they argue that minimum contacts with the forum state do *not* provide a basis for personal jurisdiction. *Cook* cannot be read for that proposition.

In sum, a section 754 filing is not necessary for the Court to exercise personal jurisdiction over a resident of the state in which it sits. The Court's general personal jurisdiction over a resident of the forum state is fully effective with or without a section 754 filing in the defendant's home district.

3. In the alternative, the Court should defer ruling on the Adamses' motion pending a ruling on the Receiver and the SEC's joint motion for a reappointment order, which would then allow the Receiver to make a section 754 filing in the Eastern District of Texas.

If the Court determines that it does not have personal jurisdiction over the Adamses independent of section 754, the Receiver requests that the Court defer ruling on the Adamses' motion pending a ruling on the Joint Motion of the SEC and Receiver for Entry of Second Amended Order Appointing Receiver (No. 3:09-CV-0298, Doc. 958) (the “Reappointment Motion”) and the Reply in Support of the Reappointment Motion (No. 3:09-

CV-0298, Doc. 1029) (the “Reappointment Reply”). The Receiver moved for reappointment in January 2010 for the express purpose of filing additional section 754 notices. (No. 3:09-CV-0298, Doc. 958 at 1–2.) As the court of appeals in *Vision Communications* pointed out, even if a section 754 filing is necessary in a given case for the district court to have jurisdiction over a defendant, the district court has the option of reappointing the receiver to permit him to complete additional filings pursuant to section 754. 74 F.3d at 291. Reappointment will “start the ten-day clock of § 754 ticking once again” and definitively establish a separate basis for personal jurisdiction over the Adamses pursuant to 28 U.S.C. § 1692.⁴ *Id.*

The Court essentially followed this course in *Warfield v. Arpe*, No. 3:05-CV-1457-R, 2007 WL 549467 (N.D. Tex. Feb. 22, 2007). It resolved the defendants’ motion to dismiss for lack of personal jurisdiction by reappointing the receiver and permitting him to complete a section 754 filing in the defendants’ district, which then provided a basis for personal jurisdiction under section 1692. *Id.* at *12–*13.

CONCLUSION & PRAYER

For the foregoing reasons, the Receiver respectfully requests that the Court deny the Adamses’ motion to dismiss for lack of personal jurisdiction. In the alternative, the Receiver asks the Court to defer ruling on the personal jurisdiction motion until a reasonable time after it rules on the Receiver’s request for reappointment, as reappointment would give the Receiver an opportunity to comply with §754 in the Eastern District of Texas. The Receiver also requests such other and further relief to which he may be entitled.

⁴ The Receiver has been diligent in his compliance with section 754, making such filings in 29 districts, located in 16 states, the District of Columbia, the Virgin Islands, and Puerto Rico. However, additional investigation has revealed the existence of receivership assets and records in additional districts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On June 9, 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 John J. Little and all counsel and/or pro se parties of record electronically or by another means authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler

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