

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

STANFORD INTERNATIONAL BANK, LTD., ET AL.,

Defendants.

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Case No.: 3-09-CV-0298-N

**RECEIVER’S CONSOLIDATED REPLY TO RESPONSES TO RECEIVER’S MOTION
TO APPROVE REAL PROPERTY SALES PROCEDURES**

TO THE HONORABLE JUDGE OF SAID COURT:

The Receiver Ralph S. Janvey respectfully submits this consolidated reply to the following responses filed to the Receiver’s motion to approve real property sales procedures [Doc. No. 389] (the “Motion”): Defendant Laura Pendergest-Holt’s Notice of Opposition [Doc. No. 401]; the Stanford Condominium Owners Association’s (“SCOA”) Response [Doc. No. 450]; the Examiner’s Brief in Response [Doc. No. 453]; Trustmark’s Response [Doc. No. 454]; and R. Allen Stanford, et al.’s Opposition [Doc. No. 455] (collectively, the “Responses”)

I. SUMMARY

Most of the issues concerning the Receiver’s proposed procedures for the sale of real property in the Responses are raised in the brief filed by the Examiner. This reply addresses first the issues raised in the Examiner’s brief and then, to the extent the other respondents raised discrete issues, the reply addresses those issues in turn.

II. EXAMINER'S REQUESTS

A. *Additional information on properties included on the schedule*

The Receiver appreciates that the Examiner does not oppose the sale of real property owned by the various Stanford entities currently subject to the Receivership. However, the Examiner requests additional “information concerning the appraised values of the various properties” and would like estimates of what the Receiver “is likely to realize if he is permitted to proceed with the sale of the properties using the procedures he proposes.” Examiner’s Brief at 3. In response, the Receiver has revised the schedule of properties (attached as Exhibit A) to provide additional information about the properties that will be subject to the proposed real property sales procedures. Specifically, the schedule has been revised to:

- Identify the properties that have debt (including the amount (either face or current) and type of debt) according to the best information currently available to the Receiver, and subject to further revision as new information becomes available;
- More specifically describe the properties, including addresses and the name of the specific entity believed to own each property, based on the best information currently available to the Receiver;
- Remove properties that the Receiver believes are owned by individual defendants in their individual capacities (the proposed real property sale procedures apply only to properties of non-individual defendants or companies or entities owned by any defendant).¹

To the Examiner’s request that the Receiver obtain appraisals for each of the properties or provide estimates of their values, the Receiver responds that obtaining such appraisals prior to a sale is unnecessary, time-consuming, and expensive. What the Receiver or even an appraiser thinks the properties are worth is, for the most part, irrelevant; the purpose and effect of the proposed sale procedures is to determine the market value of the properties and to make that

¹ The revised schedule alleviates the sole concern raised by Defendant Laura Pendergest-Holt in her opposition to the Motion. The previous version of the schedule erroneously included a property owned personally by Holt; that property has been removed from the list, which now includes only properties of non-individual defendants or companies or entities owned by any defendant).

determination in connection with a sale of the properties. The sale procedures are designed to provide the most accurate measurement of value—a market test—and to do so in the most efficient and cost-effective way, thereby maximizing the value obtained for the Receivership Estate.

Obtaining appraisals for the properties listed on Exhibit A will cost close to \$200,000 and will add weeks to the sale process, a delay which may cost the Receivership the opportunity to sell some of the assets for maximum value. If the Receiver thinks that a private sale—upon Court approval—is more likely to maximize the value the Receiver can obtain for a given asset, then the Receiver will obtain an appraisal for that property. But as long as an auction provides a better opportunity to maximize value for the estate, the Receiver should be permitted to proceed without the unnecessary, time-consuming, and expensive procurement of an appraisal.

B. Additional information on CBRE

The Examiner expresses “no reservations” about CBRE’s “ability to handle the marketing of the properties owned by the Stanford entities.” Examiner’s Brief at 5. But the Examiner asks for additional information about the Receiver’s decision to retain CBRE to consult on the proposed marketing of real property.

The Receivership Order grants the Receiver the discretion to make decisions about hiring professionals such as CBRE to assist in administering the estate. Receivership Order ¶ 5(h) (providing that the Receiver can “[e]nter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of such managers, agents, custodians, consultants, investigators, attorneys, and accountants as Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Assets.”).

In exercising the discretion granted him under the Receivership Order, the Receiver examined the proposal made by CBRE and found it to be in line with market rates. Furthermore, the Receiver knows that CBRE enjoys an excellent reputation as one of the leading real estate brokers in the country, has many offices, and can serve as a single point of response on the brokerage side. Having a single central broker is more efficient and ultimately less expensive than trying to identify and vet local brokers around the country—CBRE can and will locate local brokers where necessary. In some cases, the Receiver may hire an individual broker directly if circumstances do not justify use of CBRE as intermediary. The Receiver is sensitive to the Examiner's concerns about cost, and the Receiver believes that using CBRE as the single point of contact for the marketing or real property is more cost effective than hiring local brokers on an ad hoc basis.

The Examiner also asked for a copy of the engagement agreement with CBRE. The agreement has not been provided because it has not yet been finalized and executed. The principal material term—the commission structure—was disclosed in the Motion. In some cases, the commission percentage is not specifically determined but rather is tied to the market conditions, which is a significant protection to the estate. CBRE's proposed hourly consulting rate also was disclosed in the Motion. The Receiver expects to finalize the CBRE agreement within the next several days. Upon execution of the engagement agreement, the Receiver will provide it to the Examiner and the Court.

C. Information on costs of the proposed procedures

Determining precisely the total administrative costs of the real property sale procedures is not possible. Nevertheless, the Receiver is confident that the costs will be lower than if appraisals are required for every site and the properties are sold in an ad hoc fashion without a

streamlined process. Additionally, the administrative costs will be less than what the estate will realize from the sale of the properties, particularly if the Receiver's proposed procedures are followed and the estate is able to maximize value through the auction process. In response to the Examiner's concerns, however, the Receiver has asked CBRE for an estimate of its consulting costs, which information the Receiver will provide to the Examiner once obtained.

D. Size of the Break-up Fee

The Examiner has expressed concern that the proposed sale procedures do not explicitly state a cap on the size of the break-up fee that could be negotiated with a stalking horse. The Receiver agrees that a stated limitation is appropriate. The Receiver will work to negotiate the best possible break-up fee, not to exceed 3% of the bid.

E. Web-site notice

The Examiner objects to the Receiver's proposal to provide notice of property sales on the Receiver's web site. The Receiver proposed the web-site notice method in an effort to save money for the estate. Providing newspaper notice as requested by the Examiner will be more costly than web-site notice. For example, in Tennessee, the *Fayette Falcon* charges \$6 per newspaper column inch per day for advertising. The *Shelbyville Times-Gazette* charges \$132 for a 4" by 6" advertisement on its highest circulation day (Wednesday). In Mississippi, the *Lee County Courier* and the *Baldwin News* charge 12 cents per word for an initial advertisement, and 10 cents per word thereafter, along with a \$3 proof-of-publication charge. The cost to provide notices in multiple newspapers over several weeks can be saved through the use of web-site notice. Nevertheless, if the Court requires the Receiver to provide newspaper notice, the Receiver, of course, will comply.

F. End Date for Bidding

The Examiner asks the Receiver to clarify whether bidding would end three or five business days before the auction. The Examiner also proposes that bidding end just one business day before auction. The Receiver thinks that one business day is not sufficient time to fully assess and evaluate a bid. Accordingly, the Receiver suggests that bidding should end three business days before auction. Potential bidders will have plenty of notice such that a three-business-day cutoff should not be burdensome on anyone. The Receiver can and will use his discretion to allow a late-filed bid if the Receiver determines that it would be in the best interest of the Receivership Estate to do so.

G. Receiver's Selection of Successful Bidder

The Examiner has concerns about the Receiver's discretion in determining the successful bidder. The Receiver's discretion is a function of the duties and responsibilities granted him under the Receivership Order. As an equity receiver, the Receiver serves as the arm of the Court, and he needs the flexibility and discretion granted him by the Court in the Receivership Order to discharge his duties and accomplish what is in the best interest of the entire estate. Nevertheless, the Receiver is mindful of the Examiner's concerns. To that end, the Receiver will agree, as the Examiner requested, to file a report with the Court within two weeks of a sale being completed with respect to any of the real property that is subject to the real property sale procedures.

H. Approval to Proceed with the Sale of Certain Properties

Delay in approving the procedures for the sale of real estate results in significant and unnecessary cost to the Receivership Estate. It delays the sale of (and consequently the receipt of cash from) properties that have no usefulness or value to the Receivership Estate, while at the

same time forcing the continued imposition of high ownership and maintenance expenses. Two examples are the office building located at 5050 Westheimer in Houston, Texas and the hangar located at 100 Jim Davidson Drive in Sugar Land, Texas. These properties are ready to market and sell. Together, they are costing the Receivership Estate more than \$139,446 per month to own and maintain, on average.

The building located at 5050 Westheimer in Houston, Texas is one of the more desirable real property assets owned by the Receivership Estate given its prime location in the Galleria area. The Estate incurs costs for the mortgage, taxes, insurance and other expenses associated with owning and maintaining this property of approximately \$124,800 per month, on average. The property has been shown to several prospects and the Receiver has received multiple offers from potential buyers that CBRE believes are ready, willing and able to negotiate stalking horse contracts. The Receiver and CBRE believe these offers to be in a suitable range to proceed with negotiating a stalking horse contract.

The Receivership Estate owns a hangar building located at 100 Jim Davidson Drive in Sugar Land, Texas. The building is located on land ground leased from the City of Sugar Land. The hangar is not mortgaged, but the Receivership Estate is incurring rent under the ground lease, as well as insurance, taxes and other maintenance costs in connection with the continued ownership of the hangar, which amount to approximately \$14,646 per month, on average. The airplanes located at the hangar are in the process of being liquidated with the Court's approval, and once that occurs, the Estate will no longer have any use for the hangar. Certain prospective purchasers have been shown the property and the Receiver has received a cash offer from at least one of them. Approval of the CBRE's engagement is necessary so that may aggressively market

the hangar pending the disposition of the airplanes to obtain an appropriate bidder with whom to negotiate a stalking horse contract in accordance with the proposed sale procedures.

The Receiver asks the Court to move without delay in approving the Motion at least with respect to 5050 Westheimer and 100 Jim Davidson Drive.

III. SCOA'S RESPONSE IN OPPOSITION

SCOA is engaged in a long-running legal dispute with Stanford Development Corporation ("SDC"), a company owned and controlled by Allen Stanford, stemming from the design, construction, development, marketing, and sale of a condominium complex in Houston, Texas. This dispute dates back to 2007, when Movant filed its Original Petition against SDC in the 333rd District Court of Harris County, Texas. On January 29, 2009, the First Court of Appeals ruled that the parties should arbitrate their dispute, and the trial court subsequently stayed the case.

On April 30, 2009, SCOA filed a motion to intervene so that it could pursue its claims against SDC in arbitration. *See* SCOA Mot. to Intervene (Doc. No. 350). The Receiver filed a response in opposition to the SCOA motion to intervene, arguing that allowing SCOA "to proceed with its case in arbitration would further deplete the assets of the Receivership Estate and disrupt the Receiver's ability to focus on the identification and equitable distribution of those assets." Receiver's Response at 18 (Doc. No. 410).

SCOA now asks the Court "to disallow any sales of property owned, in whole or in part, by SDC until such time as SCOA's claims against SDC can be satisfied." SCOA Response at 5.² As a company owned and controlled by Allen Stanford, SDC clearly falls under the ambit of the

² SCOA also asks for the Court to order the Receiver to provide SCOA "with a list of all property that the Receiver contends of believes is owned, in whole or in part, by SDC." *Id.* Because SCOA has no right to assert its claim directly against specific assets of the Receivership Estate, as explained *infra*, the Receiver should not be required to provide such a list to SCOA.

Receivership Estate and is subject to the Court's Order Appointing Receiver.³ Despite knowing this, SCOA attempts again to interfere with the Receiver's administration of the Receivership Estate. SCOA's claim against SDC can be fully litigated at the appropriate time, and if SCOA is successful, SCOA will have a claim against the Receivership Estate. *See* Receiver's Response to Mot. to Intervene at 16-17. Once the Receiver has completed the asset-gathering process and implemented a Court-approved claims resolution process, SCOA will be able to proceed with its claims. SCOA is a contingent unsecured creditor of SDC—an entity that is part of the Receivership Estate. As such, SCOA has no direct interest in any of the assets of SDC, and should not be permitted to prevent the sale of SDC assets, which are Estate assets. Accordingly, the Receiver asks the Court to overrule the SCOA's objection on all points.

IV. R. ALLEN STANFORD'S RESPONSE

R. Allen Stanford argues in his objection to the real property sale procedures that the Receiver is exceeding the powers granted under the Receivership Order. Not true. The Receivership order grants the Receiver “the full power of an equity receiver under common law.” At common law, an equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501).

³ SCOA states in its Response that “SDC has not been implicated in any securities fraud.” SCOA Response at 4. But it is beyond dispute that SDC is part of the Receivership Estate. On May 8, 2009, counsel for Receiver emailed the relevant documentation to counsel for SCOA to inform him of SDC's ownership. *See* Correspondence to Counsel for Movant, attached as Ex. B (Appendix at 5) to the Receiver's Response to SCOA's Motion for Leave to Intervene [Doc. No. 410].

Stanford argues that more information should be provided concerning the properties scheduled to be sold. The Examiner made a similar request, and in response to that request, the Receiver has amended the schedule of properties to provide the best information about the properties available to the Receiver at present. Stanford also argues that no sale of properties should be allowed until after the adjudication of the SEC civil case against him and the other Defendants. There is no need to wait. Regardless of the outcome of the civil case, it is beyond dispute that the Stanford companies cannot continue to operate as a viable economic enterprise. The liquidation of Stanford properties is a foregone conclusion. It is the Receiver's duty to accumulate assets for ultimate distribution to investors and creditors. The liquidation of the properties on Exhibit A will help the Receiver fulfill that duty and accomplish that purpose.

Stanford argues that the sale of the properties would constitute a waste of assets and be a breach of the Receiver's fiduciary duty to preserve estate assets. But the properties are forcing the Receivership Estate to accrue significant administrative costs, including taxes, insurance, and maintenance costs. If the properties are not sold, the Receiver will either have to continue to service the debt on the properties or accrue interest at the default rate. The longer the assets go unsold, the less value the Receiver will be able to obtain from them for the benefit of the Receivership Estate. The proposed sale procedures are designed to minimize waste and to maximize value for the estate.

V. TRUSTMARK'S RESPONSE

Trustmark alleges a security interest in one of the properties initially listed on the schedule attached to the Motion. That property is owned by Jim and Lori Davis. It was erroneously included in the schedule attached to the Motion. The revised schedule attached to this reply as Exhibit A does not include the property in which Trustmark alleges it holds a

security interest. Accordingly, Trustmark's objection and requests for relief are moot, as the proposed sale procedures apply only to properties of non-individual defendants or companies or entities owned by any defendant.

Trustmark also argues that its requested modifications to the sale procedures ought to be made for the benefit of other secured parties. But no other secured party has objected, and Trustmark does not have standing to object on their behalf. Even if Trustmark had standing to argue for other secured lenders, however, the relief Trustmark seeks is unnecessary. The Receiver's interests and the secured parties' interest are aligned. Both want to obtain the highest possible price for the properties to be sold. The Receiver has no incentive or intention to sell any properties for less than the value of the debt securing such properties, and the Receiver intends to pay the secured creditors out of the sale proceeds at closing. The proposed real property sale procedures do not in any way pose a threat to the interests of secured parties. Accordingly, the Receiver asks the Court to overrule Trustmark's objection and deny the relief sought in the Trustmark Response.

Dated: June 23, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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Certificate of Service

On June 23, 2009, 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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