

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, and	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants.	§	
	§	

**RECEIVER’S MOTION FOR ORDER TO SHOW CAUSE WHY RANDI STANFORD
SHOULD NOT BE HELD IN CONTEMPT AND BRIEF IN SUPPORT THEREOF**

Allen Stanford is the sole member of the 16 NE Huntingdon LLC (“LLC”), which owns unit 16 NE at 2121 Kirby Drive in Houston, Texas (“the condo”). As Manager of the LLC, Randi Stanford (“Ms. Stanford”) has current possession and control of the condo, which the Harris County Appraisal District valued at more than \$1.3 million in 2009. Other units in the same building have recently sold for more than \$1 million. Records indicate that the condo is unencumbered and that \$1-1.5 million in profit could be realized from a sale for ultimate distribution to Stanford claimants. The Receiver has asked Ms. Stanford for reasonable access to the condo so that it can be inspected, appraised, and marketed for sale. This request included an offer to permit Ms. Stanford’s continuing, rent-free occupancy of the condo, with 30 days notice prior to the closing of any sale.

Ms. Stanford has not only refused to cooperate with the Receiver, but has also asserted to the Receiver that she is entitled to the condo as her homestead because it was a gift

from Allen Stanford, or in the alternative, because Allen Stanford's fiduciary relationship to Ms. Stanford gave rise to a constructive trust that vested her with equitable title. Ms. Stanford's continued possession and control of the condo will prevent the Receiver from performing his duties to take possession and preserve the value of Estate assets in furtherance of maximum disbursement to claimants.

For these reasons, the Receiver respectfully moves the Court for an order (1) directing Ms. Stanford to show cause why she should not be held in contempt for failure to comply with the Amended Order Appointing Receiver, (2) directing Ms. Stanford's compliance with the Amended Order Appointing Receiver, (3) directing Ms. Stanford, and her mother Susan Stanford, to vacate the condo within 30 days; and (4) removing Ms. Stanford as Manager of the LLC that owns the condo. The Receiver also seeks his reasonable attorneys' fees and expenses in bringing and prosecuting the Motion.

I. FACTUAL BACKGROUND

A. The Court has ordered the Receiver to take control of the Receivership Estate.

The Receiver has been ordered to take complete and exclusive control of the Receivership Estate:

4. Until the expiration date of this Order or further Order of this Court, Receiver is authorized to immediately take and have **complete and exclusive control, possession, and custody of the Receivership Estate** and to any assets traceable to assets owned by the Receivership Estate.

5. As of the date of entry of this Order, the Receiver is specifically directed and authorized to . . . [c]ollect, marshal, and take custody, control, and possession of all the funds, accounts, mail, and other assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned or controlled by the Receivership estate, wherever situated

Amended Order Appointing Receiver at ¶¶ 4, 5(b) (Doc. 157) (hereinafter “the Receivership Order”). The Receivership Estate includes not only the property of the Defendants, but the property of any entity owned or controlled by Defendants as well:

1. This Court assumes exclusive jurisdiction and takes possession of the assets, monies, securities, **properties, real and personal, tangible and intangible, of whatever kind and description, wherever located**, and the legally recognized privileges (with regard to entities), **of the Defendants and all entities they own or control** (“Receivership Assets”)

2. Ralph S. Janvey of Dallas, Texas, is hereby appointed Receiver for the Receivership Assets and Receivership Records (collectively, “Receivership Estate”)

Id. at ¶¶ 1, 2. The Receiver’s authority over the Estate includes the power to remove, as the Receiver deems necessary or advisable, any officer of the Receivership Estate, *id.* at ¶ 5(a), and to seek relief in this Court to obtain control or possession of Estate assets, *id.* at ¶ 5(c).

The Receiver has previously filed a motion asking this Court to approve of procedures for marketing and sales of real property, including the condo. Receiver’s Motion to Approve Procedures for Sales of Real Property (Doc. 389); Receiver’s Consolidated Reply to Responses to Receiver’s Motion to Approve Real Property Sales Procedures (Doc. 510) & Appendix (Doc. 510-2) at 2.

B. The assets of the Estate include the condominium.

Allen Stanford is the sole member of the 16 NE Huntingdon LLC, a Delaware Single Member Limited Liability Company formed in 2007 for the purpose of owning real estate. *See* Operating Agreement at Appx. 3 (designating Allen Stanford as the sole member of the LLC); *id.* at 4 (allocating all net profits and losses to the sole member). The LLC was capitalized solely with contributions from Allen Stanford. *Id.* at 1, 4. Allen Stanford’s daughter, Randi Stanford, is the sole Manager and Officer of the LLC. *See* Operating Agreement at Appx.

1 (designating Randi Stanford as the sole Manager and Officer of the LLC). The LLC owns a 2,800 square foot condominium located at 2121 Kirby Drive, Houston, Texas 77019, in which Ms. Stanford resides. *See* Warranty Deed at Appx. 12; Tax Appraisal at Appx. 15.

The condo is therefore part of the Receivership Estate and is subject to the exclusive control and possession of the Receiver.

C. Randi Stanford is interfering with the Receiver's possession and control of the condo.

Randi Stanford is currently in possession of the condo. On March 27, 2009, the Receiver notified Ms. Stanford that the Receivership Order authorized him to take exclusive control of the condo. *See* Ltr. from R. Janvey to R. Stanford at Appx. 17. The Receiver also expressed his intention to sell the condo. *Id.* Rather than demand that Ms. Stanford immediately surrender possession of the premises (which the Receiver was authorized to do under the Receivership Order), the Receiver offered to allow Ms. Stanford to continue residing in the condo rent free if she "maintained [it] in a manner conducive to effective marketing and sale." *Id.* The Receiver further offered to provide Ms. Stanford with three hours' notice before showing the condo to prospective purchasers, as well as thirty days' notice before closing to give her an adequate time to remove her belongings. *Id.*

Ms. Stanford has refused to cooperate with the Receiver's reasonable efforts to take control of the condo. Her response to the Receiver's letter denies the Receiver's right to exclusive control of the condo. *See* Ltr. from R. Burton to S. Ayers at Appx. 19 (contending that Randi is "entitled to the property").¹

¹ The response was prepared by Randy Burton of Burleson Cooke LLP on behalf of both Randi and Susan Stanford. *See* Ltr. from R. Burton to S. Ayers at Appx. 18. Susan is Randi's mother and Allen Stanford's wife. *Id.* at 18, 22.

II. ARGUMENT & AUTHORITIES

A. **Randi Stanford's interference with the Receiver's efforts to take control of the condo violates the Receivership Order.**

The Receivership Order enjoins any agent of a Defendant from “doing any act or thing whatsoever to interfere with the Receiver’s taking control, possession, or management of the Receivership Estate.” Doc. 157 at 9, ¶ 13.² Defendant Allen Stanford owns the LLC, and Ms. Stanford serves as the Manager of the LLC at the pleasure of Allen Stanford; thus she is an agent of a Defendant. *See* Operating Agreement at Appx. 3-5 (naming Allen Stanford as sole member and Randi Stanford as Manager and Officer), 6 (member may remove Manager at any time with or without cause). As such, the Receivership Order enjoins Ms. Stanford from interfering with the Receiver’s possession and control of the condo. Ms. Stanford has violated this Court’s injunction by refusing to cooperate with the Receiver’s efforts to market and sell the condo.

² The Receivership Order states in full:

13. Defendants, and their respective agents, officers, and employees and all persons in active concert or participation with them **are hereby enjoined from doing any act or thing whatsoever to interfere with the Receiver’s taking control, possession, or management of the Receivership Estate or to in any way interfere with the Receiver or to harass or interfere with the duties of the Receiver** or to interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate

14. Defendants, their respective officers, agents, and employees and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise . . . shall: (a) **To the extent they have possession, custody, or control of same, provide immediate access to and control and possession of the Receivership Estate assets and records**

Doc. 157 at ¶¶ 13, 14 (emphasis added).

B. This Court has inherent equity power to enforce the Receivership Order by finding Randi Stanford in contempt.

“[A] district court has broad powers in fashioning relief in an equity receivership proceeding.” *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006). Pursuant to these powers, a receivership court may issue an injunction that binds non-parties with notice, far exceeding normal limits on the scope of injunctions. *See SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980) (“The federal courts have inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to enforce the federal securities laws.”).

A federal court has the inherent power to enforce its own injunctive decrees. *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985); *Powell v. Ward*, 643 F.2d 924, 931 (2d Cir. 1981); *Myers v. United States*, 264 U.S. 95, 103 (1924). In addition, the United States Code provides that “[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command.” 18 U.S.C. § 401(3) (2009). “The jurisdiction of a court to enforce its orders extends nationwide.” *In re Zyprexa Injunction*, 474 F. Supp. 2d 385, 418 (E.D.N.Y. 2007); *see also Stiller v. Hardman*, 324 F.2d 626, 628 (2d Cir. 1963) (“Violation of an injunctive order is cognizable in the court which issued the injunction, regardless of where the violation occurred.”).

Accordingly, any interference with a receiver’s control and possession, without the permission of the court, may be punished as contempt. *See, e.g., In re Cogier*, 340 F. Supp. 612, 616 (W.D. Va. 1972); *Strickland v. Williams*, 109 S.E.2d 761, 763 (Ga. 1959); *see also Fed. Sav. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987) (upholding issuance of civil contempt order for violation of injunction).

The Receiver asks the Court to exercise this power and enter an order directing Randi Stanford to show cause why she should not be held in contempt for violating the Receivership Order.

C. Randi Stanford’s assertions of equitable title and homestead rights have no merit.

In her response to the Receiver’s notice, Ms. Stanford raises several claims to the condo. First, she asserts that her father, Allen Stanford, gave the condo to her as a gift. She relies on the rebuttable presumption that a gift is intended when a parent transfers possession of property to a child. *See* Ltr. from R. Burton to S. Ayers at Appx. 20-21 (citing *Woodworth v. Cortez*, 660 S.W.2d 561, 564 (Tex. App.—San Antonio 1983, no writ)). But in order to make a gift, the donor must relinquish all dominion and control over the property. *Oadra v. Stegall*, 871 S.W.2d 882, 890 (Tex. App.—Houston [14th Dist] 1994, no writ). Here, Allen Stanford retained dominion and control over the property through the LLC. *See* Operating Agreement at Appx. at 2 (stating that one of the purposes of the LLC is “[t]o own real estate”); *id.* at 3 (naming Allen Stanford as the sole member of the LLC); *id.* at 4 (naming Randi Stanford as the Manager of the LLC); *id.* at 6 (authorizing the sole member to remove the Manager at any time, with or without cause).

Second, Ms. Stanford claims that she has equitable title in the property by virtue of a constructive trust. But she concedes that “[t]his assumes, of course, that the alleged wrongful acts [by Allen Stanford] are not traceable to the funds used to purchase the Property.” *See* Ltr. from R. Burton to S. Ayers at Appx. 22. Contrary to this assumption, the funds used by Allen Stanford to purchase the condo *are* traceable to his wrongful acts. Randi admits that “Allen Stanford paid the majority of the purchase price for the Property from his personal bank account.” *Id.* at 21. The funds in Allen Stanford’s personal bank accounts are traceable to fraud and are Estate assets. *See* Doc. 157 at ¶ 1 (“This Court assumes exclusive jurisdiction and takes

possession of the . . . monies . . . of the Defendants . . .”), ¶ 15 (Defendants’ personal bank accounts frozen); Order at 1 (Doc. 544) (denying Allen Stanford’s motion to unfreeze assets for payment of attorney’s fees because “he has not shown that he has \$10 million dollars, or any lesser amount, in personal assets untainted by potential fraud”).

Third, Ms. Stanford claims that the condo is exempt from seizure as her homestead. *See* Ltr. from R. Burton to S. Ayers at Appx. 19-20. But there can be no homestead rights in property purchased with the proceeds of fraud as against the victims of the fraud. *See First State Bank of Ellinger v. Zelesky*, 262 S.W. 190, 192 (Tex. Civ. App.—Galveston 1924, no writ) (holding that, where husband purchased property with funds embezzled from his employer, wife could acquire no homestead rights in the property as against the employer).

Finally, Ms. Stanford claims that she and Susan Stanford should be reimbursed out of any sale proceeds because they contributed funds to the purchase and maintenance of the condo. *See* Ltr. from R. Burton to S. Ayers at Appx. 22. The Receiver disputes whether Ms. Stanford and her mother, Susan Stanford, made any such contributions. But even if they did, that fact would not permit them to interfere with the Receiver’s control and possession of the condo. Rather, they may file a claim with the Receivership like any other creditor.

In sum, Ms. Stanford’s attempts to justify her interference with the Receiver’s control of the condo have no substance. The Court’s intervention is needed to ensure the orderly administration of the Receivership.

III. PRAYER

For the foregoing reasons, the Receiver respectfully moves for an order (1) directing that Randi Stanford show cause why she should not be held in contempt for violating the Amended Order Appointing Receiver; (2) directing that Randi Stanford comply with the Amended Order Appointing Receiver; (3) directing that Randi Stanford and Susan Stanford be

ordered to vacate the condominium, unit 16 NE at 2121 Kirby Drive, Houston, Texas within thirty (30) days of the entry of this Court's order; and (4) removing Randi Stanford as Manager of the 16 NE Huntingdon LLC. The Receiver further seeks his reasonable attorneys' fees and expenses in bringing and prosecuting the Motion.

Dated: July 14, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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CERTIFICATE OF CONFERENCE

On July 14, 2009 counsel for the Receiver conferred with Randy Burton, counsel for Randi Stanford and Susan Stanford, who stated that his clients oppose the relief sought herein; with John Little, Court-appointed Examiner who stated that he does not oppose the relief sought herein; with Jeffrey Tillotson, counsel for Laura Pendergest-Holt, who stated that his client opposes the relief sought herein; with David Finn, counsel for James Davis, who stated that his client does not oppose the relief sought herein, with Ruth Schuster, counsel for Allen Stanford, who stated that her client opposes the relief sought herein; and with Manuel Lena, counsel for the United States Internal Revenue Service, who stated that the IRS takes no position regarding the relief sought herein. Counsel for the Receiver has attempted to confer with David Reece, counsel for the SEC. The SEC has not yet expressed its position on this motion. This motion is therefore opposed.

/s/ Kevin M. Sadler

Kevin M. Sadler

CERTIFICATE OF SERVICE

On July 14, 2009, I electronically submitted the foregoing motion and brief, the appendix, and the proposed order with the clerk of court for 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 John Little, 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). I further certify that I have served the following by certified U.S. Mail, return-receipt requested:

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