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TO THE HONORABLE JUDGE GODBEY:

COMES NOW, Randi Stanford, by and through undersigned counsel, who now makes this special appearance before this Court, files this her Response in Opposition to the Receiver's Motion for Order to Show Cause Why Randi Stanford Should Not Be Held in Contempt, and states as follows:

INTRODUCTION

Because of what in all fairness could be characterized as Gestapo-like tactics by the Receiver's attorneys, Randi Stanford, a non-party accused of absolutely no wrongdoing, must now defend against civil contempt charges brought against her by the Receiver for merely asserting her ownership interest in property that she calls home. The Receiver alleges that Miss Stanford violated an injunction with which she has never been formally served. She now stands to lose her home, and the financial contributions she has made in the subject property. She maintains that she is entitled to the property based on equitable title, and that any action she has taken consistent with that assertion to retain 2121 Kirby Drive, Unit 16 NE, Houston Texas ("the Property") has been to protect *her* interest in that property. Any attempt by the Receiver to deprive Miss Stanford of what she legitimately claims to be her property without notice and a right to be heard is fundamentally wrong and would be a violation of her Constitutional right to due process. Her efforts to protect those rights should not result in her being sanctioned by this Court.

Since its purchase in January 2007, the Property has been the residence of Randi Stanford ("Miss Stanford"). *See* Exhibit D, Affidavit of Randi Stanford ("R. Stanford Aff."), ¶¶2-3; *see also* Exhibit E, Affidavit of Susan Stanford ("S. Stanford Aff."), ¶¶2-3. Her mother, Susan Stanford, paid \$50,000.00 in earnest money with a \$1,000.00 option, while Randi Stanford paid \$20,000.00 to extend the contract one more month prior to closing. *See* Exhibit D, R. Stanford Aff., ¶5; *see also*

Exhibit E, S. Stanford Aff., ¶4. Allen Stanford paid the remainder of the purchase price out of a personal account. *See* Exhibit D, R. Stanford Aff., ¶¶2, 4; *see also* Exhibit E, S. Stanford Aff., ¶2. Since the condominium's purchase, Miss Stanford has maintained the Property, and, with the help of Susan Stanford, has paid more than \$113,000.00 for its upkeep, including the monthly maintenance fees, her requisite share of the cost to acquire additional guest parking for the condominium owners and the homeowner's insurance premiums. *See* Exhibit D, R. Stanford Aff., ¶¶6-9; *see also* Exhibit E, S. Stanford Aff., ¶¶5-7.

On March 27, 2009, the Receiver sent a one-page letter to Randi Stanford via "Hand Delivery" wherein he conclusively stated that as of February 17, 2009, he was authorized by this Court "to take immediate and exclusive control, possession, and custody of the Receivership Estate, which includes the Property," Miss Stanford's home. *See* Exhibit A, Letter from Receiver to R. Stanford. The Receiver further advised Miss Stanford that he intended to sell her home. *See id.* In particular, after the Receiver notified Miss Stanford that he is the Receiver for the named defendants pursuant to the Order Appointing Receiver, and Order Adding Relief Defendants issued in the above-captioned matter, the Receiver stated as follows:

As of February 17, 2009, the Court has authorized me to take immediate and exclusive control, possession, and custody of the Receivership Estate, which includes the Property. Working with Baker Botts L.L.P., my legal counsel in this matter, I intend to sell the Property, and we would like to work with you to the extent possible to arrange for the marketing and sale of the Property.

Id. The Receiver and his attorney's did not provide any facts to demonstrate that Miss Stanford's home was part of the "Receivership Estate."

On May 13, 2009, Randy Burton, counsel for Miss Stanford, responded to the Receiver's correspondence stating, in factual and legal detail, the bases for her belief that she was entitled to the Property as her sole homestead. *See* Exhibit B, Letter from R. Burton to S. Ayres.

In response to this assertion of an ownership interest separate and apart from Allen Stanford or any entity he owned or controlled, the Receiver, rather than deal with the actual facts and law asserted, on July 14, 2009, filed his Motion asking the Court for an Order requiring Miss Stanford to show cause why she was not in contempt. Rather than requesting a hearing on the matter, the Receiver, by virtue of the proposed Order filed with the motion, in effect, requested that the Court “shoot first, and ask questions later.” In other words, the Order, as drafted by counsel for the Receiver, purports to deprive Randi Stanford of the opportunity to be heard with regard to her interest in the Property as it asks the Court to rule on the true ownership of the Property without one shred of evidence. *See* Proposed Order to Show Cause [Doc. #586-2]. This seems to be the unfortunate pattern in this Receivership which is to seize and sell and don’t be bothered with any facts or law that may conflict with the Receiver’s predetermined conclusion.

If the Order is adopted as written, Randi Stanford will be deprived of her property without the basic constitutional protection of due process of law, held in contempt and required to pay attorneys’ fees and costs – all without any evidence that the Property was purchased with ill-gotten gains, that it is, as a matter of law, part of the Receivership Estate and that Randi Stanford has no legal or equitable interest in the property. Further, it ignores the issue of whether or not she was even subject to the injunction at issue of which she had no actual notice. At the least, Randi Stanford is entitled to offer evidence to support her assertion that, as a non-party asserting an independent interest in the Property, she was not covered by the injunction at issue, and did not violate this Court’s order. *See Regal Knitwear Co. v. National Labor Relations Board*, 324 U.S. 9, 13, 65 S. Ct. 478, 481, 89 L. Ed. 661 (1945).

These contempt proceedings should not be used to litigate the property rights of third parties, such as Randi Stanford. *See SEC v. AmeriFirst Funding, Inc.*, 2008 U.S. Dist. LEXIS 7510, *48

(N.D. Tex. Feb. 1, 2008) (attached hereto as Exhibit C), citing *Resolution Trust Corp. v. Smith*, 53 F.3d 72, 79-80 (5th Cir. 1995). Rather, Randi Stanford's interest in the Property should be "challenged in a further proceeding." *Resolution Trust Corp.*, 53 F.3d at 79-80. However, if this Court opts to address Miss Stanford's property rights during these contempt proceedings, and it is ultimately found that the Property was purchased, in part, with tainted funds, then she and her mother, Susan Stanford, should be granted a share of the sale proceeds proportionate to their untainted contributions to the down payment, improvement and upkeep of the Property.

ARGUMENT AND AUTHORITIES

I. Randi Stanford was not properly served with the pending Motion.

When one seeks "to charge a person with contempt who was not a party to the original action and thus not already within the jurisdiction of the court, he must be served with process as in any other civil action." 11 Wright & Miller, *Federal Practice and Procedure* §2690 at 377 (footnote omitted). An alleged civil contemnor is "entitled to the procedural safeguards afforded by the due process clause." *National Labor Relations Board v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 589 (6th Cir. 1987). Randi Stanford has never been properly served with this motion, and, therefore, this motion should be dismissed.

Pursuant to Federal Rule of Civil Procedure 4(c) and (e), service of process upon Randi Stanford could have been made either (a) pursuant to the Texas laws for service upon an individual in a state court action or (b) by delivering a copy of the motion, proposed order and attachments to her personally, by leaving them at a dwelling house or usual place of abode with some person of suitable age residing therein, or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process. In general, Texas law allows authorized persons to serve the named defendant either by personal delivery or by registered or certified mail. Tex. R. Civ. P.

106(a). Actual notice of the litigation does not satisfy the service requirements of Federal Rule of Civil Procedure 4. *See McGuire v. Sigma Coatings, Inc.*, 48 F.3d 902, 907 (5th Cir. 1995) (finding that rule regarding service requirements “applies with at least as great force to a proceeding to consider sanctions against a [non-party to the litigation]”).

The motion presently before this Court was sent via certified mail to Randy Burton on July 14, 2009. There is nothing to suggest that the Receiver ever attempted to personally serve Miss Stanford, or that any agreement was reached whereby Randy Burton would be allowed to accept service for Miss Stanford. As service of this motion was improper, it should be denied.

II. Randi Stanford is not covered by the injunction relied upon by the Receiver as she did not have notice of the Receivership Order and is acting independently to protect her rights in the Property.

In a civil contempt proceeding, the movant, here, the Receiver, bears the burden of establishing the elements of contempt by clear and convincing evidence. *See United States v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5th Cir. 2004). In the contempt context, “clear and convincing evidence” is “that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to truth of the allegations sought to be established, evidence so clear, direct, weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.” *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (internal quotation marks omitted). The Receiver cannot meet his burden.

In particular, to prevail on his motion to hold Miss Stanford, an innocent nonparty, in contempt, the Receiver must “establish by clear and convincing evidence that [she] did indeed act in concert with or participate with [Allen Stanford],” in maintaining her personal interest in the Property. *See id.*, at 962. The Receiver’s reliance on Randi Stanford’s assertion of a personal entitlement to the Property is not sufficient to show any “aiding or abetting” on her part. *See id.*

(evidence that non-parties acted in contravention of injunction “means nothing without evidence that it was done *in participation* with [a named defendant].”)

Randi Stanford does not question this Court’s inherent authority to enforce its own injunctions. *See Regal Knitwear*, 324 U.S. at 13, 65 S. Ct. 478, 481. However, she does question whether the injunction at issue reaches an innocent non-party who asserts an independent interest in property alleged, not proven, to be part of the Receivership Estate. Based on the jurisprudence and facts before it, this Court should find that its injunction is not so broad. *See e.g., Waffenschmidt v. MacKay*, 763 F.2d 711, 726 (5th Cir. 1985), *cert. denied*, 474 U.S. 1056, 106 S. Ct. 794, 88 L. Ed. 2d 771 (1986); *see also Heyman v. Kline*, 444 F.2d 65, 66-67 (2d Cir. 1971).

Federal Rule of Civil Procedure 65(d) provides that:

Every order granting an injunction and every restraining order is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Randi Stanford is neither an agent of Allen Stanford (or any defendant in this case), as alleged by the Receiver, *see Receiver’s Motion for Order to Show Cause*, p. 5, nor is she a “person[] in active concert or participation with” Allen Stanford. Rather, Randi Stanford asserts an independent interest in the Property, in the form of equitable title, which removes her from those nonparties subject to the injunction.

The courts . . . may not grant an enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law.

Regal Knitwear, 324 U.S. at 13, 65 S. Ct. 478, 481. Under Rule 65(d), “a nonparty with notice cannot be held in contempt *until* shown to be in concert or participation.” *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 112, 89 S.Ct. 1562, 1570, 23 L.Ed.2d 129 (1969) (emphasis added). The Receiver has not, and indeed cannot make such a showing.

Generally, in civil contempt proceedings, a party need not intend to violate an injunction to be found in contempt. *See Additive Controls & Measurement Sys. v. Flowdata, Inc.*, 154 F.3d 1345, 1353 (Fed. Cir. 1998); *see also AmeriFirst Funding, Inc.*, 2008 U.S. Dist. LEXIS 7510, at *9-10. However, “[n]on-parties are differently situated.” *Additive Controls*, 154 F.3d at 1353. Non-parties are only subject to contempt sanctions if they act with an enjoined party to bring about a result forbidden by the injunction and know that their acts violate the injunction. *Id.* “Although good faith is irrelevant as a defense to a civil contempt order, good faith *is relevant* to whether [a non-party] aided or abetted [a party] in dissipating the funds with knowledge that [the non-party] was violating the court's orders.” *Waffenschmidt*, 763 F.2d at 726 (emphasis added). Here, Randi Stanford’s good faith assertion that she, and *not* the entity holding bare legal title, owns the Property, is relevant to whether she “aided or abetted” Allen Stanford, a named party, in attempting to retain the Property with knowledge that she was violating the court’s order. The evidence before the Court clearly shows that Randi Stanford has in no way acted in concert with a named party subject to the injunction.

In support of his assertions that Randi Stanford is subject to the injunction and that she has acted in violation thereof, the Receiver relies solely upon two pieces of evidence: (1) the Operating Agreement of 16 NE Huntingdon, LLC, wherein Randi Stanford is named Manager, and (2) the May 13, 2009-letter from Randy Burton wherein he asserts, on Miss Stanford’s behalf, the bases for her good faith belief that she, not the LLC, is the owner of the Property. *See Receiver’s Motion*, pp. 4-5,

7. Evidence that Randi Stanford is asserting *her* ownership interest in the Property, over and above any purported interest held by the LLC, *see e.g.*, Exhibit B, Letter from R. Burton to S. Ayres, p. 3, directly contradicts the Receiver's assertion that Randi Stanford is acting as an agent of that LLC.

The Receiver cannot establish by clear and convincing evidence that by asserting *her* property rights in her home, a condominium alleged by the Receiver to be part of the Receivership Estate, Randi Stanford is in contempt of an Order of this Court. Randi Stanford is not a party to this action, is not acting as an agent of a party to this action, is not acting in concert with a party to this action and has not been accused of any wrongdoing. As the Receiver has failed to prove that Miss Stanford is subject to the Receivership Order, his motion should be denied.

III. Randi Stanford has a good faith belief that she is entitled to the Property based on equitable title, but her property rights are more appropriately determined in a separate proceeding.

Based upon the Receiver's Motion for an Order to Show Cause, the question presently before this Court is a narrow one: did Randi Stanford violate "a definite and specific order of the court requiring [her] to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Travelhost*, 68 F.3d at 961; *see also AmeriFirst Funding*, 2008 U.S. Dist. LEXIS at *46-47. In other words, did she act in contempt of this Court's Order? The short answer – No. While it is appropriate at this juncture to provide the bases for Randi Stanford's assertion of an ownership interest in the Property, she respectfully suggests that it would *not* be appropriate during the course of this proceeding for the Court to adjudicate her property rights. *See id.* Rather, Randi Stanford's interest in the Property should be challenged in a separate proceeding where the Court can then determine whether it is a Receivership Asset. *See Resolution Trust Corp. v. Smith*, 53 F.3d 72, 79-80 (5th Cir. 1995).

Randi Stanford, by way of Mr. Burton's letter to the Receiver, has asserted that her father,

Allen Stanford, gave the Property to her as a gift and, as it has been exclusively possessed and used by Miss Stanford as her home, such property is exempt from seizure as her homestead under the Texas Property Code. Under Texas law, a homestead is exempt from seizure by creditors except under a very specific set of circumstances. *See* Tex. Const. Art. XVI, §50; Tex. Prop. Code §41.001. A homestead is defined as property that is used for the purpose of a home or a home and a business simultaneously that does not exceed an area of 10 acres in an urban area. Tex. Prop. Code §41.002(a). This exemption covers not only land but has also been acknowledged with regard to condominiums. *See In re Niland*, 825 F.2d 801 (5th Cir. 1987). “To establish homestead rights, the claimant must show a combination of both overt acts of homestead usage and the intention on the part of the owner to claim the land as a homestead.” *Sanchez v. Telles*, 960 S.W.2d 762, 770 (Tex. App. El Paso 1997).

Randi Stanford has possessed the Property since it was acquired, has claimed it as her exclusive residence and, with the help of her mother, has paid more than \$113,000.00 for its maintenance and upkeep along with other fees. *See* Exhibit D, R. Stanford Aff.; *see also* Exhibit E, S. Stanford Aff. Apart from the gifted portion, she and her mother also contributed more than \$70,000.00 to the down payment on her home. *See* Exhibit D, R. Stanford Aff., ¶5; *see also* Exhibit E, S. Stanford Aff., ¶4. She and her mother have an equity position in the home and it legally cannot be seized and sold absent a partition. She has clearly used the Property as her homestead, and by investing in that Property, has shown her intent to claim it as her homestead. While the Receiver asserts that “there can be no homestead rights in property purchased with the proceeds of fraud as against the victims of fraud,” Receiver’s Motion, p. 8, the Receiver has failed to come forward with any evidence, beyond conclusory statements, that the Property was, in fact, purchased with the proceeds of fraud. *See e.g., In Re: Financial Federated Title and Trust, Inc.*, 347 F.3d 880, 887-92

(11th Cir. 2003) (detailed tracing of funds used to purchase property at issue); *see also In re Hecker*, 316 B.R. 375, 383-386 (S.D.Fla. Bankr. 2004) (same). Without such evidence that the Property was purchased with tainted funds and very importantly the right to confront any such evidence, Randi Stanford should not be deprived of this exemption. Nor should she be deprived of her property without notice, evidence and the right to be heard.

Miss Stanford further asserts that she holds equitable title to the Property. It is upon this equitable title that Randi Stanford bases her ability to claim a homestead exemption as an equitable owner has the right to exercise all the incidents of ownership. *See Harrison v. Air Park Estates Zoning Committee*, 533 S.W.2d 108, 111 (Tex. Civ. App. Dallas 1976). An equitable title is an enforceable right to have the legal title transferred to the holder of the equitable right. *NRG Exploration, Inc. v. Rauch*, 671 S.W.2d 649, 653 (Tex. App. Austin 1984), *writ refused n.r.e.*, (Nov. 7, 1984). The passing of the equitable title is a matter of law and not a matter of stipulation in a contract. *Bucher v. Employers Cas. Co.*, 409 S.W.2d 583, 584 (Tex. Civ. App. Fort Worth 1966); *Armington v. Gilcrease Oil Co.*, 190 S.W.2d 587, 596 (Tex. Civ. App. San Antonio 1945).

A bona fide gift transfers both equitable and legal title. *Hereford Land Company v. Globe Industries, Inc.*, 387 S.W.2d 771, 775 (Tex. Civ. App. -- Tyler 1965). In this case, while bare legal title to the Property remains in the name of 16NE Huntington, LLC, Randi Stanford obtained equitable title to the Property by virtue of a gift from her father, Allen Stanford, as well as her contribution to the equity by her down payment and ongoing expenditures on the property.

A gift is a voluntary transfer of property to another made gratuitously and without consideration. *Bradley v. Bradley*, 540 S.W.2d 504, 511 (Tex. Civ. App. -- Fort Worth 1976, no writ). Under Texas law, it is presumed that a parent intends to make a gift to his child if the *parent delivers possession*, conveys title, **or** purchases property in the name of a child. *Woodworth v.*

Cortez, 660 S.W.2d 561, 564 (Tex. App. – San Antonio 1983), *citing Burk v. Turner*, 15 S.W. 256 (1891); *Reeves v. Simpson*, 144 S.W. 361 (Tex. Civ.App, -- Fort Worth 1912, no writ). In this case, Allen Stanford paid (with community property funds) the majority of the purchase price for the Property and gifted it to his daughter. However, both Susan Stanford and Randi Stanford contributed to the down payment on the Property in the amounts of \$50,000.00 and \$20,000.00, respectively. *See* Exhibit D, R. Stanford Aff., ¶5; *see also* Exhibit E, S. Stanford Aff., ¶4. Randi Stanford has been in sole and exclusive possession of the Property since its purchase on or about January 16, 2007, has, with the help of her mother, Susan Stanford, paid for the maintenance and upkeep of the Property, and obtained a homeowner’s insurance policy in her name to cover the Property. *See* Exhibit D, R. Stanford Aff.; *see also* S. Stanford Aff. All of these actions by, or on behalf of, Randi Stanford, are consistent with her assertion that she in fact and in law holds equitable title in the Property.

The Receiver has yet to present one bit of evidence to establish that the funds used by Allen Stanford to purchase the Property were ill-gotten gains. Rather, the Receiver merely asserts in a purely conclusory manner that the funds Allen Stanford used to purchase the Property “*are* traceable to his wrongful acts” and that the funds in Allen Stanford’s personal bank accounts “are traceable to fraud and are Estate assets,” Receiver’s Motion, pp. 7-8 (emphasis in original). Really? What if in an adversarial proceeding, where an opposing lawyer is actually testing these fraud and tracing claims, those assertions of fraud and traceability by the Receiver cannot be proven to a fact finder? The clear answer is that this Court will have been taken down a path of wrongfully depriving Randi Stanford, and other similarly situated individuals, of their property without due process of law.

IV. Alternatively, if the Court determines that the Property is part of the Receivership Estate and deems it necessary to be sold, both Randi and Susan Stanford are entitled to a share of the sale proceeds proportionate to the untainted amounts contributed by them to the purchase price.

As asserted previously, this Court should decline to make a determination as to the property rights of third parties at this time, as the scope of the contempt question presently before the Court is narrow. *See Travelhost*, 68 F.3d at 961. However, if the Court finds that the property should not be exempted from the Receivership Estate, then both Randi and Susan Stanford should be allowed to assert claims to a portion of the proceeds to be derived from the sale of the Property based on the amounts of their contributions to the purchase price. *See In re Hecker*, 316 B.R. 375, 390 (S.D. Fla. Bankr. 2004).

CONCLUSION

For the foregoing reasons, Randi Stanford asks that this Court deny in its entirety the Receiver's Motion for Order to Show Cause Why Randi Stanford Should Not Be Held in Contempt. Randi Stanford should not be deprived of her home, through seizure and sale, without due process of law by giving her notice and a right to be heard and by compelling the Receiver and his lawyers to prove, as they claim they can, that the purchase of this property was done by funds traceable to fraudulent conduct by Allen Stanford.

Respectfully Submitted,

/s/ Joe Kendall

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ATTORNEY FOR RANDI STANFORD

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2009, I electronically filed the foregoing with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record in this case who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Joe Kendall
JOE KENDALL