

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

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
Plaintiff,	§	
	§	CIV. ACTION NO.3-09CV0298-N
	§	
v.	§	
	§	
STANFORD INTERNATIONAL BANK,	§	
LTD., ET AL.,	§	
Defendants.	§	

DEFENDANT R. ALLEN STANFORD’S OPPOSITION TO RECEIVER’S MOTION TO APPROVE PROCEDURES FOR THE SALE OF THE VESSEL “SEA EAGLE” AND SALE OF THE VESSEL PURSUANT TO THOSE PROCEDURES (REC. DOC. 796)

COMES NOW, through undersigned counsel, Defendant R. Allen Stanford who files this Opposition to Receiver’s Motion to Approve Procedures for the Sale of the Vessel “Sea Eagle” and Sale of the Vessel Pursuant to Those Procedures and respectfully shows the Court as follows:

ARGUMENT

The Receiver seeks approval for the sale of the sea vessel “Sea Eagle,” which was purchased prior to the time period of the fraud alleged in the SEC’s Amended Complaint, and is thus an untainted asset that belongs to Defendant R. Allen Stanford (“Mr. Stanford”). Because the “Sea Eagle” is an untainted asset belonging to Mr. Stanford, which should be released to Mr. Stanford for his use, the Receiver’s attempt to sell the vessel to a third party exceeds the authority granted to him in the Amended Receivership Order. Rec. Doc. 157. Moreover, assuming, *arguendo*, that the “Sea Eagle” is an asset of the Receivership Estate (“Estate”), which is denied, the attempted sale of this asset, and other Estate assets in the Receiver’s current

manner abrogates the Court's ability to render a meaningful judgment, is not in the best interests of the Estate, and should not occur until the case is resolved on its merits. Finally, the Receiver has failed to return personal property located on board the vessel, despite repeated prior requests, therefore the Receiver is impermissibly attempting to sell personal belongings to which he does not hold title and which are not subject to the Receivership Order. Accordingly, the Receiver's motion should be denied, the contract for sale of the "Sea Eagle" voided, and Mr. Stanford and Ms. Stoelker's personal belongings on board the vessel should be returned to them.

1. The Receiver Attempts to Sell an Untainted Asset which Belongs to Defendant R. Allen Stanford

Based upon information and belief, Mr. Stanford purchased the "Sea Eagle" in 1998. According to the SEC's Amended Complaint, the SEC alleges that the fraud involving the defendants in this matter occurred between 1999 and 2009. The purchase and possession of the "Sea Eagle" clearly predates the fraud allegations made against Mr. Stanford and the other defendants, and is thus an untainted asset. The Receivership Order and the Court's rulings do not extend to the Receiver authority over untainted assets. Untainted assets are to be returned to Mr. Stanford for his use in the defense of this matter.

In attempting to force through the sale of the "Sea Eagle," the Receiver fails to consider that the vessel in question is an untainted asset. Instead, the Receiver seeks only to continue the pattern of unencumbered fire sales assets without regard for whether the sales are ultimately beneficial to the Estate, or in this case, whether the asset itself is amenable to sale. In fact, nowhere in the Receiver's motion does he explain why the "Sea Eagle" is a proper Estate asset that can be sold (i.e. an asset tainted by fraud). As the Court noted in its Order of July 1, 2009, it acknowledges that there may be Estate assets that are untainted by alleged fraud that may be used by Mr. Stanford in his defense of this case. The Receiver has apparently disregarded this

possibility and has moved forward with efforts to sell the “Sea Eagle,” despite the fact that it was purchased prior to any alleged fraud by Mr. Stanford or the other defendants.

For the above-mentioned reasons, the Court should deny the Receiver’s Motion to Approve Procedures for the Sale of the Vessel “Sea Eagle” and Sale of the Vessel Pursuant to Those Procedures.

2. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits

Moreover, assuming for the sake of argument the “Sea Eagle” is an Estate asset, which it is not, allowing the Receiver to continue to sell Estate assets will abrogate this Court’s ability to render a meaningful judgment on the merits. A preliminary injunction preserves the status quo, prevents irreparable injury to the parties and preserves the court’s ability to render a meaningful decision after a trial on the merits.¹ If the Receiver is able to sell many of the Estate’s assets prior to adjudication on the merits, the Court’s findings will have little or no value. If the Stanford is victorious at a trial on the merits, that result will be diminished significantly if the Receiver is permitted to continue to dispose of Estate assets in a the manner. The Receiver should not be permitted to sell Estate assets without an adjudication of the merits of the underlying claims.²

¹ See *Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5th Cir. 1975).

² See *Securities Exchange Commission v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001) (holding, “[i]t is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership.”); *SEC v. Current Financial Services*, 783 F.Supp. 1441, 1445-46 (D.D.C. 1992)(agreeing to appoint a receiver after TRO granted but refusing to grant receiver the right to liquidate assets; stating, “[s]uch drastic measures are [not] appropriate prior to the entry of final judgment. The SEC may renew its motion to encompass such relief if necessary in the future”).

3. Alternatively, the Receiver Has Not Satisfied His Fiduciary Obligations to the Estate By the Manner In Which He Has Conducted the Sale of the “Sea Eagle”

Even assuming for the sake of argument the “Sea Eagle” is an asset tainted by fraud, which it is not, the Receiver’s suggested procedure shows no attempt to conduct the sale of the vessel in a manner that would satisfy his fiduciary obligations to the Estate. This is plainly evident from the fact that the Receiver’s “stalking horse” offer from Neil Helliwell, the CEO of labor contractor Prime Projects International, for \$2.5 million, is less than 40% of the asking price issued by his own broker Ardell, which is itself a very substantially low asking price for the “Sea Eagle,” and similar vessels currently on the market. The “stalking horse” offer by Mr. Helliwell arbitrarily establishes a far too low starting point for offers on the vessel, and practically guarantees that the Receiver will not even approach the low asking price that Ardell has valued the vessel. Based upon information and belief, Mr. Stanford invested over \$16 million in renovating the “Sea Eagle,” stripping the vessel to its hull and rebuilding it into one of the finest sport fishing boats in the world. The two engines installed by Mr. Stanford on the vessel alone are worth the price of the “stalking horse” contract with Helliwell. Further, the “Sea Eagle” is insured for an amount well in excess of the asking price sought by Ardell. That the Receiver would claim in his motion that Mr. Stanford’s reconfiguration of the “Sea Eagle” has reduced its resale value quite frankly defies belief and common sense. Any failure to sell the “Sea Eagle” for an amount far and above Ardell’s asking price of \$6.5 million will be a complete waste of Estate assets if the Receiver is allowed to sell it via the haphazard “fire sale” mentality which it has disposed of other Estate assets. Further, the Receiver has sought to sell the “Sea Eagle” during the least optimal time of the year for boat sales. The best time for boat sales is during the winter. The Receiver also seeks to sell the vessel during an economic downturn.

These factors only further guarantee that the Receiver would not obtain a fair market or optimal price for the “Sea Eagle.”

Moreover, the Receiver supports his motion for sale of the “Sea Eagle” by claiming that dock fees for the vessel run at \$25,000.00 a month and sale of the vessel would save the Estate this monthly cost. Based upon information and belief, this fee amount is far and above the amount one would expect to incur for a vessel that is presumed to be in dock and not operating with a full crew. The dock fees and costs allegedly being paid by the Receiver are at least 80% more than what is generally paid for dock fees and an engineer and/or security to maintain a vessel in dock in Fort Lauderdale, Florida. Clearly, the Receiver has failed to manage Estate assets by finding cheaper available dock and upkeep fees for the “Sea Eagle.”

Because the procedures set forth by the Receiver for the sale of the “Sea Eagle” virtually guarantee under market bids for the vessel, the Receiver fails to show this Court that it can engage in a competitive sale process that would ensure that the vessel would be sold at a competitive price.

4. The Receiver cannot and should not be permitted to sell personal belongings located on the “Sea Eagle”

Despite repeated requests, the Receiver has failed to return personal belongings of Mr. Stanford and Ms. Stoelker located on board the “Sea Eagle.”³ There is no legal or equitable basis for the Receivership to retain or sell these personal belongings. Some of the items have no real value to the Receivership but do have personal meaning or value to Mr. Stanford and Ms.

³ Mr. Stanford and Ms. Stoelker have been working to recover their personal belongings for several months. Although some belongings have been returned, the items on the “Sea Eagle” have not. On October 7, a letter was sent to counsel for the Receiver again identifying and requesting the return of some of their personal belongings located on board the “Sea Eagle”. The belongings at issue include several small sculptures; linens; lamps; table top items (placemats, napkin rings, napkins, runners, coasters, candle holders, salt pepper shakers, serving pieces, etc.); DVDs; CDs; and Mr. Stanford and Ms. Stoelker’s personal scuba gear – dive vests, masks, snorkels, mouthpieces, etc.

Stoelker. Other items were purchased by Ms. Stoelker or given as gifts to Ms. Stoelker by persons other than Mr. Stanford and are thereby unquestionably not Receivership assets. To the extent the personal belongings at issue are not Receivership assets, the Receiver has no legal right to sell or transfer them and doing so would subject the Receivership Estate to a claim for conversion. Moreover the Receiver's motion requests only permission to sell the vessel; nowhere does the Receiver request permission to sell personal belongings. Although Paragraph 23 of the Purchase and Sale Agreement executed by Neil Helliwell, Rec. Doc. 797, appears to recognize that the personal belongings of Mr. Stanford and his family (as owners) are not to be included in the sale of the vessel, the Receiver has nevertheless failed to return these personal items as requested.

Any and all of Mr. Stanford and Ms. Stoelker's personal belongings located on the "Sea Eagle" should be returned immediately, as repeatedly requested. Alternatively, Mr. Stanford requests that the personal belongings be retrieved by the Receiver, and held until such date as an agreement can be reached regarding their return. In no event should the Receiver permit these personal belongings to be transferred or sold.

CONCLUSION

Based on the foregoing reasons, the Receiver's attempt to sell the "Sea Eagle," an untainted asset, exceeds the scope of the Receivership Order and prevents the Court from rendering a meaningful judgment on the merits in this case. Furthermore, the Receiver has no authority to sell the personal belongings of Mr. Stanford and his family members that are located on board the "Sea Eagle". Accordingly, Defendant R. Allen Stanford respectfully requests that the Court deny the Receiver's Motion to Approve Procedures for the Sale of the Vessel "Sea Eagle" and Sale of the Vessel Pursuant to Those Procedures and order that said asset be returned

to Defendant R. Allen Stanford. Defendant R. Allen Stanford additionally and alternatively requests that any and all personal belongings of himself and Ms. Stoelker be excluded from the sale of the Sea Eagle and returned immediately or be retrieved and held by the Receivership until such date as an agreement can be reached regarding their return.

Dated: October 13, 2009

Respectfully submitted,

/s/ Ruth Brewer Schuster

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ATTORNEY IN CHARGE

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on October 13, 2009.

/s/Ruth Brewer Schuster