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.

Plaintiff,

V.

REBECCA REEVES,

Defendant.

S

Case No. 03:09-CV-2151-N
S

REBECCA REEVES,
S

Defendant.

RECEIVER'S MOTION TO STRIKE REEVES-STANFORD'S AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS, AND BRIEF IN SUPPORT THEREOF

Receiver Ralph S. Janvey files this Motion to Strike Reeves-Stanford's Affidavit in Support of Motion to Dismiss (Dkt. 10), and Brief in Support Thereof. The Affidavit was improperly submitted after the Receiver filed his Response to the Motion to Dismiss, affording the Receiver no chance to respond to Affidavit's contents. Moreover, the allegations in the Affidavit are conclusory, and not relevant to any issue before this Court. The Affidavit should be struck.

A. The Affidavit was improperly filed after the Receiver responded to Reeves-Stanford's Motion to Dismiss.

Though the Affidavit was purportedly filed "in support of" Reeves-Stanford's Motion to Dismiss, it was not attached to (or even referenced in) that motion. Reeves-Stanford does not explain why she did not attach the Affidavit to her Motion to Dismiss. Nor does she explain why she did not submit the Affidavit—which was executed December 10, 2009—until January 6, 2010, eight days after the Receiver filed his Response. As a result of Reeves-Stanford's dilatory filing, the Receiver had no opportunity to respond to this "evidence" in his pleading.

B. The allegations in the Affidavit are conclusory.

In her Affidavit, Reeves-Stanford claims that she "ha[s] not transacted business . . . in the State of Texas since 1982;" that she "do[es] not have any minimum contacts with the State of Texas whatsoever;" and that she has "[n]ever availed [her]self of any of the protections of the State of Texas." (Affidavit ¶¶ 2–3) These conclusory allegations, which merely state legal conclusions without giving the Court any actual facts to weigh, are not competent evidence. *Galindo v. Precision American Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985) (holding that "affidavits setting forth ultimate or conclusory facts and conclusions of law are insufficient"); *In re Hunt*, 136 B.R. 437, 452 n. 23 (Bankr. N.D. Tex. 1991) (holding that motion to dismiss was "insufficient in as much as the motion and evidence submitted are conclusory with only a two-page, self-serving affidavit in support thereof"); *Jackson v. Texas A&M Univ. Sys.*, 975 F. Supp. 943, 949 (S.D. Tex. 1996) (holding that "conclusory allegation in . . . affidavit in opposition to Defendants' Motion to Dismiss is insufficient").

C. The allegations in the Affidavit are not relevant to any issue in this case.

Even if the conclusory allegations in the Affidavit were sufficient to constitute evidence in a typical dispute over personal jurisdiction, they are irrelevant here where Reeves-Stanford's contacts with Texas are not at issue. As discussed more fully in the Receiver's Response to the Motion to Dismiss, the personal jurisdiction of a federal receivership court is not governed by traditional minimum contacts analysis. (Dkt. 8 at 7–11) The Receiver's compliance with 28 U.S.C. §§ 754 and 1692 give this Court jurisdiction over Reeves, who does not dispute she resides within the Southern District of Florida. This action may proceed against Reeves-Stanford

in the Northern District of Texas despite her claimed lack of contacts with this forum.¹ The Affidavit is therefore irrelevant, and inadmissible. *See* FED. R. EVID. 402.

CONCLUSION

For the foregoing reasons, the Receiver asks the Court to grant this Motion and strike Reeves-Stanford's Affidavit.

¹ See, e.g., Warfield v. Edwards, No. 3:01-CV-480, 2001 WL 803791, at *2–*3 (N.D. Tex. July 11, 2001) (suit brought by receiver in the N.D. Tex. against relief defendants from Nevada could proceed in the N.D. Tex. because receiver filed papers in the D. Nev. in compliance with 28 U.S.C § 754); Warfield v. Arpe, No. 3:05-CV-1457, 2007 WL 549467, at *10–12 (N.D. Tex. Feb. 22, 2007) (suit brought by receiver in the N.D. Tex. against defendants from Idaho could proceed in the N.D. Tex. because receiver filed papers in the D. Idaho in compliance with 28 U.S.C § 754); Quilling v. Stark, No. 3:05-CV-1976, 2006 WL 1683442, at *3–4 (N.D. Tex. June 19, 2006) (suit brought by receiver in the N.D. Tex. against relief defendants from central California could proceed in the N.D. Tex. because receiver filed papers in the C.D. Cal. in compliance with 28 U.S.C. § 754).

Dated: January 20, 2010 Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF CONFERENCE

I hereby certify that I have complied with the meet-and-confer requirements of Local Rule CV-7.1(b). On January 19, 2010, I exchanged email with Vanessa Prieto, an attorney for Ms. Reeves-Stanford. While Ms. Prieto declined to state a final position on the Motion, she did indicate she was opposed to the relief sought in this Motion.

/s/ Samuel Cooper Samuel Cooper

CERTIFICATE OF SERVICE

On January 20, 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.

/s/ Kevin M. Sadler Kevin M. Sadler