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

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, ROBERT ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT,<br><br>Defendants. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | Case No. 3-09-CV-00298-N |

**RECEIVER'S REPLY TO DEFENDANT R. ALLEN STANFORD'S OPPOSITION TO RECEIVER'S MOTION AND BRIEF TO APPROVE PRIVATE SALE OF ASSETS IN PANAMA CITY, PANAMA (DOC. 999)**

Ralph S. Janvey, as Receiver for assets of Defendants and for all Stanford-affiliated entities, files this reply to the response filed by Defendant R. Allen Stanford ("Stanford") (Doc. 999) to the Receiver's Motion to Approve Private Sale of Assets in Panama City, Panama ("Motion for Sale") (Doc. 976), and would show the Court as follows:

## I. Introduction

Stanford's response to the Motion for Sale merely rehashes nearly identical arguments raised in opposition to earlier Court-approved sales of Receivership assets. He argues that: (1) the proposed sale exceeds the Receiver's authority, constituting a breach of the Receiver's fiduciary obligation to preserve, not dispose of assets; and (2) that the proposed sale is not in the best interest of the Receivership estate. Contrary to these

claims, the proposed sale is authorized by law and within the best interests of the estate. Moreover, Stanford ignores the reality that these estate assets are subject to significant foreign government control. The Panamanian regulators seized control of Stanford's Panamanian assets, and decided either to liquidate the assets or allow them to be sold under conditions as they dictated. If the proposed sale does not go through within the next several days, the Panamanian regulators will order the Panamanian assets liquidated dramatically reducing any recovery for the Receivership estate.[1]

## II. Argument and Authorities

### A. The Proposed Sale is Authorized by Law

Stanford argues that the proposed sale of stock of the three Panamanian corporations does not comply with the demands of 18 U.S.C. § 2001 *et seq.*, and that approval is beyond the scope of the Receiver's authority in an equitable receivership. (Stanford's Objections (Doc. 999) at 4 & 5-6). He argues that the proposed sale fails to meet the requirements of 28 U.S.C. § 2001(b), which governs a receiver's sale of private realty.[2] His argument fails, however, because the sale of stock of three corporations is not realty. Under these circumstances, 28 U.S.C. § 2004 expressly authorizes the Court to approve a sale of personal property, such as stock, without adhering to the requirements of section 2001(b).[3]

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[1] In fact, the Panamanian regulators have indicated that the sale of Stanford Bank of Panama must be concluded by February 12, 2010 and the sale of Stanford Casa de Valores (the brokerage business) must be concluded by February 18, 2010. See Doc. 989 at 2.

[2] Section 2001(b) sets forth various prerequisites for a private realty sale to be confirmed, including three appraisals of the real estate, publication in a newspaper of general circulation, and a minimum selling price of two-thirds of the appraisal value. 28 U.S.C. § 2001(b). Section 2001(b) further provides that the sale shall be "upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby." *Id*.

[3] Section 2004 provides that "[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, *unless the court orders otherwise*." 28 U.S.C. § 2004 (emphasis added).

Stanford, nevertheless, cites an opinion of United States District Judge Jane Boyle in a case where an equitable receiver sought to sell oil and gas wells, without strictly complying with the directives of 18 U.S.C. § 2001(b). *United States v. T-Bar Recourses*, 2008 U.S. Dist. LEXIS 87880 (N.D. Tex. Oct. 28, 2008). In that case, Judge Boyle noted that 28 U.S.C. § 2004 authorizes a receiver to sell personal property without having to meet the formal requirement of 18 U.S.C. § 2001(b) when "extraordinary circumstances" exist. *United States v. T-Bar Recourses*, 2008 U.S. Dist. LEXIS 87880, *10 n.4 (citing T*anzer v. Huffines*, 412 F.2d 221, 222 (3d Cir. 1969).

In fact, in T*anzer v. Huffines*, the district judge approved a receiver's expedited sale of stock of a corporation without meeting the requirements of 18 U.S.C. § 2001(b). The court of appeals found that "the financial condition of the corporation and the deadline fixed by the offeror," justified application of 18 U.S.C. § 2004, and the district judge's approval "was not an abuse of discretion." T*anzer v. Huffines*, 412 F.2d at 222-23.[4]

Similarly, circumstances here justify the application of section 2004 without strict adherence to the requirements of section 2001. Panamanian regulators unilaterally decided to seize control of Stanford Bank of Panama (SBP) and Stanford *Casa de Valores* (SCV). These regulators unilaterally decided the future of these entities. Under the regulators' decision, these entities would either be liquidated or sold. The Panamanian regulators unilaterally dictated the procedure of any sale, recognizing only the ultimate ownership interests of the receivership estate. The Panamanian regulators set

[4] "It is a well settled rule that, except in cases of abuse, appellate courts will not disturb the exercise of a district court's discretion in setting the terms and conditions for a judicial sale and the confirmation thereof." *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3d Cir. 1968), *accord*, *United States v. Garcia*, 474 F.2d 1202, 1206 (5th Cir. 1973).

various deadlines for completion of the negotiation and sales process. During this time, the Receiver expended significant resources and time to convince foreign regulators and banks to release SBP assets in Europe and South America to ensure that the proposed sale could proceed. Under these circumstances, it would be unreasonable to expect the sale of the Panamanian Assets to comply with the requirements of section 2001.

Indeed, other federal courts considering the private sale of personal property under 18 U.S.C. § 2004, routinely approve a discretionary deviation from the scheme described in Section 2001. *See, e.g., United States v. Stonehill*, 83 F.3d 1156, 1160 (9th Cir. 1996) (emphasizing the language "unless the court orders otherwise" in Section 2004 and concluding "[t]herefore, it is at the district court's discretion whether to obtain appraisals [in sales of] personal property."); *see also SEC v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. Sept. 12, 2008) (approving sale of personalty without appraisals or publication where costs of compliance would significantly offset the purchase offer); and *United States v. Kerner*, No. 00-75370, 2003 WL 22905202, *2 (E.D. Mich. Oct. 24, 2003) ("Under . . . 28 U.S.C. § 2004, which states that the requirements of section 2001 must be followed 'unless the court orders otherwise,' the Court clearly has the discretionary authority to confirm the private sale [that is not made pursuant to the requirements in Section 2001].").

Stanford claims, without legal support, that because Pershore Investment S.A. holds title to the real estate, application of 28 U.S.C. § 2001(b) is required. (Stanford's Objections (Doc. 999) at 3-4). But, section 2004 is written broadly to govern the sale of "[a]ny personalty." 28 U.S.C. § 2004. While not defined by statute, this term would clearly include stock of a corporation. *See Travis v. Trust Co. Bank*, 621 F.2d 148, 150

(5th Cir. 1980) ("The [state-law] Code itself does not define 'personal property,' but that term has been construed to mean any kind of property interest, whether tangible or intangible, choate or inchoate."); *see also San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 640 (Tex. 2000) (defining "personal property" to include "everything that is subject to ownership not falling under the definition of real estate").

The mere fact that the company being sold happens to own realty would not change the nature of the investment interest or convert the sale into a sale of realty only. In this regard, "shares of corporate stock are personal property" *Engel v. Teleprompter Corp.*, 703 F.2d 127, 131 (5th Cir. 1983). As such, "[a] purchase of stock in a corporation, however, does not constitute the purchase of the corporate assets, just as a transfer of the stock of a corporation is not a transfer of the property and assets of the corporation itself." *Id*. Hence, the court in *Tanzer* had no hesitation in applying 18 U.S.C. § 2004, to the sale of stock. *Tanzer v. Huffines*, 412 F.2d at 223.

Stanford's arguments that the Panamanian assets cannot be sold until his case is resolved and that the receiver's authority only extends to the preservation of assets, is unavailing, and has already been rejected by this Court in earlier motions to sell receivership assets. (*See e.g.*, Docs. 733, 734, 816, 861, and 876). Under the clear demand of federal law a "receiver . . . appointed in any cause pending in any court of the United States . . . shall manage and operate the property in his possession as . . . receiver . . . according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959.

A common-law equity receiver, therefore, has the power and responsibility 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 receivers "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 Sys.*, 54 F.2d 497, 501 (2d Cir. 1931)); *see also In re San Vicente Medical Partners Ltd.*, 962 F.2d 1402, 1406 (9th Cir.), *cert. denied*, 506 U.S. 873 (1992) ("[F]ederal courts enjoy wide discretion in fashioning relief and protective measures in SEC actions").

Moreover, the instant sale, is taking place only after: (a) the Court found "good cause" to believe that the Defendants violated federal securities laws, thus justifying the appointment of the Receiver. (Doc.8 at 2); (b) the Court found good cause to enter a preliminary injunction against defendant Stanford (Doc. 159); and (c) Stanford's codefendant, James Davis, has made a judicial confession detailing defendant Stanford's participation in a massive Ponzi scheme touching most of Stanford's many businesses. (Doc. 807) (Davis Tr. of Rearraignment at 16:16-17, 21:6-8, 21:15-17). Nevertheless, Stanford chastises the "ill-advised" Receiver who "rushed in and ceased all operations of Stanford." (Stanford's Objections (Doc. 999) at 2-3). Under these circumstances, the Receiver's quick action in taking control of Stanford's assets was more than justified.

Stanford contends that the Receiver should have just continued to operate SBP and SCV until his case is concluded. That option was simply not available to the Receiver nor financially beneficial for the estate. Under the strictures established by the

Panamanian regulators, to merely preserve the assets and not participate in the sale would have been tantamount to Nero fiddling while Rome burned. Rather, the Receiver chose to participate, to the extent possible, with the Panamanian regulators in the sale of SBP and SCV, in an effort to maximize the value of the Receivership assets, and ultimately, the value of the estate. Court approval of the proposed sale would conclude this process.

**B. The Proposed Sale is within the Best Interests of the Receivership Estates**

Stanford, through conjecture and hyperbole, ridicules the Receiver's attempt to conclude the proposed sale, alleging that it is not within the best interests of the estate. (Stanford's Objections (Doc. 999) at 2-3). While Stanford alleges that the proposed sale is merely "a fire sale" done at "cut rate" prices, he offers no support for this contention. Rather, the facts establish that the sales price is fair, especially under the circumstances.

The Receiver obtained three separate valuations of SBP: (1) from Mann, Lee and Associates, Inc., MMG Bank of Panama, a well-respected Panamanian accounting firm; (2) from a respected bank and brokerage business in Panama City; and (3) from Mr. Jaime de Gamboa Gamboa, a well-regarded financial expert in Latin America, who was appointed by the Panamanian banking regulator as the independent bank reorganizer, administrating the bank until the sale is concluded or liquidation begins. All three appraisals place the value of the bank between $7,800,000.00 and $9,000,000.00 USD. The $8,750,000.00 proposed sales price for SBP is, therefore, reasonable. In fact, when the Antigua CD of $5,000,000.00 plus interest is included in this price, the sale price is more than reasonable.

Likewise, the offer to purchase SCV for $650,000.00 is reasonable. Mr. de Gamboa values the brokerage business at $700,000.00. The last balance sheet statement

for September 2009 places the stock holder equity at $837,747.00. However, SCV does not have a seat in the Panamanian stock exchange, requiring SCV to maintain clearing agreements with other brokerage firms. SCV had a relationship, through other Stanford entities, with Pershing LLC. Importantly, this relationship will terminate with the sale of SBP and SCV, greatly diminishing the value of SCV. Under these circumstances, the sale of SCV is reasonable.

As to the sale of Pershore Investments Inc., which merely holds title to the real estate, the Receiver obtained three appraisals for the real estate. These appraisals were from three respected real estate appraisal companies in Panama City, Panama. These three appraisals placed the value of the real estate between $1,100,000 and $1,575,000 USD. The proposed sales price of $1,100,000 for Pershore Investments, Inc. is therefore reasonable.

All of these appraisals belie Stanford's unsupported claim that the proposed sale is not within the best interests of the estate. Notably, Stanford does not challenge the merit or accuracy of the appraisals. Importantly, if the sale is not approved, then the Panamanian regulators have indicated that they will proceed to liquidation. In that event, Mr. de Gamboa, in his original appraisal prepared in July 2009, opined that if the sale is not completed and liquidation occurs, that the most money that will be realized from the sale of SBP would be approximately $3,000,000.00-$4,000,000.00 USD.

However, the undersigned counsel has obtained a supplemental letter opinion from Mr. de Gamboa, reflecting a liquidation in light of the passage of time. A true and correct copy of this letter and Mr. de Gamboa's *curriculum vitae* is attached as an

appendix to this reply. Mr. de Gamoba opines that a liquidation could essentially exhaust all assets of SBP leaving the receivership with very few assets. Appendix at 1-2.

Moreover, Mr. de Gamboa reiterates the process employed by the Panamanian regulators to sell SBP. Forty-three licensed banks in Panama were solicited to apply to purchase the bank. None did. Several groups of entrepreneurs, however, vetted by the Panamanian Banking Regulator, expressed an interest in purchasing SBP and SCV. The Receiver negotiated with these groups, resulting in the current proposed purchase agreement. Mr. de Gamboa attests that the Receiver was able to negotiate the most viable and fair offer available from the group of potential purchasers. Under these circumstances, the proposed sale would be in the best interest of the estate. Consequently, the Receiver respectfully requests that the Court approves proposed sale of stock of the three corporations.

## III. Conclusion

The Court respectfully requests that the Court, after consideration of the Receiver's Motion for Sale, Stanford's response and this reply, grant the Motion for Sale as well as all legal and equitable relief to which the Receiver may be entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On February 10, 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. 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/ Richard B. Roper
Richard B. Roper