

**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.

**BEN BARNES AND BEN BARNES  
GROUP, L.P,  
Defendants.**

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**Civil Action No.  
3:10-cv-527**

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(B)(6)  
AND BRIEF IN SUPPORT**

Defendants Ben Barnes ("Barnes") and Ben Barnes Group ("BBG, L.P.") file this their Reply to Plaintiff Ralph S. Janvey's, as court-appointed receiver for the Stanford International Bank, Ltd. ("Plaintiff" or "Receiver"), Response to Motion to Dismiss for Failure to State a Claim Pursuant to Fed. R. Civ. P. 12(b)(6) (the "Response").

**I. SUMMARY OF REPLY**

The Receiver's Response fails to establish that his Original Complaint (the "Complaint") states a claim against Defendant Barnes or against Defendant BBG, L.P. In short, the Response provides no more illumination on the adequacy of the Receiver's claim than does the Complaint itself. Plaintiff's Complaint only makes vague and nebulous allegations regarding the collective actions of the "Barnes Defendants" and does not provide Barnes or BBG, L.P. with "fair notice" of the grounds upon which the Receiver's claim for fraudulent transfer is based. Neither Barnes nor BBG, L.P. can be expected to defend against the Receiver's claims where the Receiver refuses to specify the actions of Barnes, individually, or BBG, L.P. that allegedly support Receiver's claims.

**A. THE RECEIVER'S COMPLAINT FAILS TO STATE A CLAIM AGAINST BARNES**

The Receiver argues that Rule 8 does not require him to separate the allegations against Barnes from the allegations against BBG, L.P.<sup>1</sup> However, Rule 8 requires a "a short and plain statement of the claim showing that the pleader is entitled to relief."<sup>2</sup> Here, the Receiver has failed to provide such a statement related to Barnes; therefore, Plaintiffs' claims against Barnes must be dismissed.

Plaintiff's claims against Barnes must be dismissed because of the vagueness with which Plaintiff has pled the Complaint. In the Complaint, the Receiver makes expansive, but conclusory, allegations against Barnes by asserting that Barnes and a Texas limited partnership, BBG, L.P., committed identical acts. Plaintiff makes no claims against Barnes that he does not also make against BBG, L.P., and in fact, Plaintiff refers to Barnes and BBG, L.P. as one entity – the Barnes Defendants – throughout the Complaint. Nowhere in his Complaint does the Receiver make an allegation against Barnes separate and apart from an allegation he makes against BBG, L.P. Additionally, the Receiver provides no basis for his claims against Barnes other than the overly broad and conclusory statement that the amorphous "Stanford Parties" (which includes Stanford companies that operated legitimate businesses, separate and apart from the alleged Stanford Ponzi Scheme)<sup>3</sup> made payments to Barnes.<sup>4</sup> Furthermore, Plaintiff's claims against Barnes cannot survive if Plaintiff's sole basis for bringing them is that Barnes is the

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<sup>1</sup> Response pg. 4.

<sup>2</sup> See FED. R. CIV. P. 8(a)(2).

<sup>3</sup> The "Stanford Parties" is defined by Plaintiffs to mean, not only the "Stanford Defendants," but also the "many related Stanford entities." Complaint ¶2. The term "Stanford Defendants" is not defined anywhere in the Complaint. As such, Plaintiff's Complaint again fails to provide the factual support necessary to survive a Fed. R. Civ. P. 12(b)(6) motion.

<sup>4</sup> Complaint ¶3.

founder of BBG, L.P.<sup>5</sup> Ben Barnes is not alleged to be (nor is he) the general partner of BBG, L.P., and under the Texas Business Organizations Code and the Texas Revised Limited Partnership Act (which expired on January 1, 2010, but carried provisions over into the Texas Business Organizations Code) only a general partner of a limited partnership is liable for the obligations of a limited partnership unless a limited partner operates (with certain exceptions) as the general partner.<sup>6</sup> Here, Plaintiff has made no such allegations.

The case cited by the Receiver in his Response as similar to this matter, *Court-Appointed Receiver for Lancer Mgmt. Group LLC v. 16983 Canada, Inc.*,<sup>7</sup> can be distinguished in numerous ways. First, the motion to dismiss in *Lancer* was brought by two limited partnerships, not by a limited partnership and an individual alleged to be the "founder" of the limited partnership.<sup>8</sup> Second, the fraudulent transfer claims in *Lancer* involve redemptions actually received by the defendants from Hedge Funds in which they had invested and which were the subject of receiver control.<sup>9</sup> Here, the Receiver does not claim that the alleged fraudulent transfers to the "Barnes Defendants" were redemptions for investments in the Stanford Defendants, the Stanford Parties or the Stanford entities. Rather, the alleged fraudulent transfers made to the "Barnes Defendants" were made by "Stanford entities" for services – "consulting, lobbying, and related services . . . ."<sup>10</sup> Finally, and most importantly, the third amended complaint on which the defendants in *Lancer* based their motion to dismiss contained much more

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<sup>5</sup> Complaint ¶ 3 ("... Ben Barnes Group, L.P., a business consulting and lobbying group founded by Ben Barnes . . .")

<sup>6</sup> TEX. BUS ORG. CODE §§ 153.152(b), 153.102.

<sup>7</sup> No. 05-60235-Civ., 2008 WL 2262063 (S.D. Fla. May 30, 2008).

<sup>8</sup> Compare *16983 Canada, Inc.*, NO. 05-60235-Civ., 2007 WL 616865 at ¶¶ 2, 10-11 & Ex. A (S.D. Fla. Jan. 31, 2007) to *Receiver's Original Complaint*.

<sup>9</sup> *16983 Canada, Inc.*, 2007 WL 616865 at ¶¶ 82-89.

<sup>10</sup> Complaint ¶ 5.

detailed information than the Receiver's Complaint, including the dates and amounts of the redemptions which the receiver alleged to be fraudulent.<sup>11</sup> Although the receiver in *Lancer* did not separate the alleged fraudulent transfer by party, he did provide information from which the defendants could possibly identify the recipient of the funds, including the date and amount of each allegedly fraudulent transfer.<sup>12</sup> Here, the Receiver fails provide any information related to the purportedly fraudulent transfers – the Receiver does not provide a single date or amount from which Barnes or BBG, L.P. would be able to discern the recipient of the funds. Accordingly, the *Lancer* case is not similar to the case at hand.

Additionally, Plaintiff claims in his Response that the Receiver can recover against Barnes as either a "transferee" or as a "person for whose benefit the transfer was made" under the Texas Uniform Fraudulent Transfer Act, an act which is never mentioned in the Original Complaint. The very first time Plaintiff makes such a claim is in his Response – nowhere in the eleven (11) page Complaint does the Receiver make any allegation that Barnes is a "person for whose benefit the transfer was made."<sup>13</sup> Instead, each and every time the "Barnes Defendants"<sup>14</sup> are mentioned in the Complaint, they are mentioned as a recipient of payments from the Stanford Parties.<sup>15</sup> Furthermore, in making the argument that Barnes is a "person for whose benefit a transfer was made," Plaintiff cites to and attaches extraneous e-mails in an Appendix none of which were made a part of the Complaint.<sup>16</sup> Because these exhibits<sup>17</sup> were not incorporated in

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<sup>11</sup> *16983 Canada, Inc.*, 2007 WL 616865 at ¶¶ 82-89 & Ex. B. Although the Complaint did not make allegations

<sup>12</sup> *Id.*

<sup>13</sup> *See generally* Complaint.

<sup>14</sup> Again, no individual allegations are made against Barnes.

<sup>15</sup> *See e.g.* Complaint ¶ 3 ("...payments to the Barnes Defendants were funded by the Stanford entities..."), ¶ 4 (...with the Barnes Defendants providing various consulting, lobbying, and related services in exchange for the above referenced payments.", ¶ 35 ("The Receiver is entitled to disgorgement of the funds transferred from the Stanford Parties to the Barnes Defendants because such payments constitute fraudulent transfers."))

<sup>16</sup> Response pg. 6 & Appendix filed in Support.

Receiver's Complaint, they cannot be a basis for deciding Defendants' Motion.<sup>18</sup> Moreover, under well-settled law a "person for whose benefit a transfer was made" "is different from a transferee, immediate or otherwise. . . .[a person] for whose benefit a transfer was made is a guarantor or a debtor-someone who receives the benefit but not the money . . ." *In re Heritage Org., LLC*, 413 B.R.438, 495 (N.D. Tex.) (citing *Bonded Fin. Servs., Inc. v. European Am. Bank*, 838 F.2d 890 (7th Cir. 1988)). In his Complaint, the Receiver makes no allegations that Barnes was a guarantor or a debtor. Instead, the Receiver alleges that Barnes received money from the Stanford Parties.<sup>19</sup> Because the Receiver alleges that Barnes is a transferee, Barnes cannot also be a "person for whose benefit a transfer was made." Thus, the Receiver's argument cannot stand as a basis for denial of Defendants' Motion.

For all of the above reasons, Plaintiff has wholly failed to pled a claim for relief against Barnes and Barnes' Motion to Dismiss must be granted. .

**B. UNDER THE *TWOMBLY*<sup>20</sup> AND *IQBAL*<sup>21</sup> STANDARDS, THE RECEIVER FAILS TO STATE A CLAIM FOR RELIEF**

To survive a motion to dismiss, Plaintiff's Complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.<sup>22</sup> A claim has facial plausibility when the plaintiff pleads factual content that permits the court to draw the reasonable inference that defendant is liable for the misconduct alleged.<sup>23</sup> Where the facts do not permit the

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<sup>17</sup> Defendants are filing a separate Objection and Motion to Strike the Receiver's proffered Exhibits.

<sup>18</sup> *Lovelace v. Software Spectrum, Inc.* 78 F.3d 1015, 1017-18 (5th Cir. 1996).

<sup>19</sup> See *See e.g.* Complaint ¶ 3 ("...payments to the Barnes Defendants were funded by the Stanford entities..."), ¶ 4 (...with the Barnes Defendants providing various consulting, lobbying, and related services in exchange for the above referenced payments."), ¶ 35 ("The Receiver is entitled to disgorgement of the funds transferred from the Stanford Parties to the Barnes Defendants because such payments constitute fraudulent transfers.")

<sup>20</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

<sup>21</sup> *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009).

<sup>22</sup> *Iqbal*, 129 S.Ct. at 1949; *Twombly*, 550 U.S. at 570.

<sup>23</sup> *Iqbal*, 129 S.Ct. at 1949; *Twombly*, 550 U.S. at 556.

Court to infer more than the mere possibility of misconduct, the Complaint has stopped short of showing that Plaintiffs are plausibly entitled to relief.<sup>24</sup> "A pleading that offers "labels and conclusions" or a "formulaic recitation of the elements of a cause of a cause of action will not do. Nor does a complaint suffice if it tenders 'naked assertions" devoid of "further factual enhancement."<sup>25</sup> While the Court must accept all of Plaintiff's allegations as true, it is not bound to accept as true "a legal conclusion couched as a factual allegation."<sup>26</sup> Plaintiff's Response effectively acknowledges these propositions.

Here, Plaintiff's Complaint contains nothing more than "unadorned accusation[s] devoid of factual support" that the Supreme Court warned of in *Iqbal* and *Twombly*.<sup>27</sup> Plaintiff's Complaint is devoid of any reference to facts which support Plaintiff's bold accusations including, without limitation:

- "The Receiver has identified substantial payments from the Stanford Parties<sup>28</sup> to Ben Barnes and Ben Barnes Group, L.P... (collectively the "Barnes Defendants")."<sup>29</sup>
- "Payments to the Barnes Defendants were funded in part by Stanford entities<sup>30</sup> . . ."<sup>31</sup>

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<sup>24</sup> *Iqbal*, 129 S.Ct. at 1950 (citing *Twombly*, 550 U.S. at 557); FED. R. CIV. P. 8(a)(2).

<sup>25</sup> *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555, 557).

<sup>26</sup> *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555.

<sup>27</sup> *Iqbal*, 129 S.Ct. at 1949; *Twombly*, 550 U.S. at 555.

<sup>28</sup> The "Stanford Parties" is defined by Plaintiffs to mean, not only the "Stanford Defendants," but also the "many related Stanford entities." Complaint ¶2. Therefore, it is wholly possible, even probably, that a Stanford entity which is not a Stanford Defendant and is not a part of the alleged Ponzi scheme, paid the "Barnes Defendants" for services.

<sup>29</sup> Complaint ¶ 3

<sup>30</sup> "Stanford entities" is not defined by the Receiver in the Complaint. However it is mentioned in Paragraph 2: "...the Stanford Defendants and the many related Stanford entities (collectively the 'Stanford Parties')." Accordingly, the Stanford entities cannot mean the Stanford Defendants which have been accused of being a Ponzi scheme.

<sup>31</sup> Complaint ¶ 3

- "The Barnes Defendants work for the Stanford Parties . . . had the unfortunate effect of attracting new victims to the Stanford Parties' fraudulent investment scheme."<sup>32</sup>

As discussed in detail in Defendants' Motion to Dismiss, the Receiver has failed to provide any "factual enhancement" which would permit these allegations from being more than merely "naked assertion(s)."<sup>33</sup> *See Defendants' Brief in Support of Motion to Dismiss, pgs. 8 & 9.* Because Plaintiff's Complaint lacks the type factual support, discussed in Defendants' Brief in Support of Motion to Dismiss, Plaintiff's claim for relief is not "plausible on its face" and these conclusory allegations which are unsupported by additional operative facts must be disregarded.<sup>34</sup> Accordingly, Plaintiff's vague Complaint does not plausibly suggest an entitlement to relief, and therefore, must be dismissed in its entirety under Fed R. Civ. P. 12(b)(6).<sup>35</sup>

**C. THE RECEIVER'S COMPLAINT DOES NOT COMPLY WITH FED. R. CIV. P. 8**

Plaintiff seeks "disgorgement of funds transferred from the Stanford Parties to the Barnes Defendants . . . ."<sup>36</sup> However, Plaintiff's Complaint is so vague and ambiguous in law and fact that it fails to establish that the Receiver is entitled to the relief he seeks.<sup>37</sup> Federal Rule of Civil

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<sup>32</sup> Complaint ¶ 6.

<sup>33</sup> *See Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555, 557).

<sup>34</sup> *Iqbal*, 129 S.Ct. at 1951.

<sup>35</sup> *Id.*

<sup>36</sup> Complaint ¶ 35.

<sup>37</sup> Plaintiff prays for the following relief:

"An order providing that: (a) the payments from the Stanford Parties to the Barnes Defendants constitute fraudulent transfers under applicable law; (2) the funds transferred from the Stanford Parties to the Barnes Defendants are the property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (3) the Barnes Defendants are liable to the Receivership for an amount equaling the amount of funds transferred from the Stanford Parties to the Barnes Defendants; and (4) the Receiver is entitled to an award of reasonable attorneys' fees, costs and interest.

Complaint ¶ 42(a)-(d).

Procedure 8(a)(2) provides that "[a] pleading that states a claim for relief must contain: . . . a short plain statement of the claim showing that the pleader is entitled to relief."<sup>38</sup>

The Receiver alleges his Complaint has "included state-law claims showing that he is entitled to relief . . ."<sup>39</sup> However, Plaintiff's Complaint wholly fails to provide notice as to the "applicable law" under which the Receiver files his claim for fraudulent transfer.<sup>40</sup> The Receiver argues that he "has made plain in the Complaint that Texas law applies,"<sup>41</sup> however, that is simply not true. Nowhere in the Complaint does the Receiver state that he is making a claim under the Texas Uniform Fraudulent Transfer Act – the first time that statement is made is on page two (2) of his Response. In deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), courts must limit their inquiry to the facts stated in the complaint, documents either attached to or incorporated in the complaint, matters of which they take judicial notice, and documents in the public record.<sup>42</sup> Accordingly, because Plaintiff has not set forth in his Complaint the law which forms the basis for his claims against Barnes and BBG, L.P., Plaintiff has wholly failed to meet his burden under FED. R. CIV. P. 8 to establish that he "is entitled to relief."

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<sup>38</sup> FED R. CIV. P. 8(a)(2).

<sup>39</sup> Response ¶¶ 35-41.

<sup>40</sup> Throughout the Complaint, the Receiver had the opportunity to provide this information (i.e., ¶¶ 35, 41, and 42 in which Plaintiff merely seeks an order under "applicable law"). In Complaints filed by the Receiver against other entities, such information has been provided. *See, e.g.,* Receiver's Original Complaint Against Political Committees ¶ 36, filed on February 19, 2010 in *Ralph S. Janvey, in his capacity as the court appointed receiver for the Stanford International Bank, Ltd., et al, v. Democratic Senatorial Campaign Comm., Inc., et al*, Cause No. 3:10-cv-00346-N ("The Receiver is entitled to disgorgement of funds transferred from Stanford, Davis, and the Stanford Financial Group to the Committee Defendants because such payments constitute fraudulent transfers under Texas law and other applicable law. *See e.g.,* TEX. BUS. & COMM. CODE § 24.005(a)").

<sup>41</sup> Response pg. 6.

<sup>42</sup> *Lovelace v. Software Spectrum, Inc.* 78 F.3d 1015, 1017-18 (5th Cir. 1996).



**IV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, for all the foregoing reasons, Defendants Ben Barnes and Ben Barnes Group, L.P. respectfully requests that the Court dismiss all of Plaintiff's claims for failure to state a claim Fed. R. Civ. P. 12(b)(6) and award Defendants such other and further relief to which they may be justly entitled.

Respectfully submitted

**WINSTEAD PC**

By:       /s/      Jay J. Madrid      

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ATTORNEYS FOR DEFENDANTS BEN  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of May, 2010, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, and that I have served all counsel of record via certified mail, return receipt requested.

      /s/      Jay J. Madrid        
Jay J. Madrid