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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT Defendants.	§ § § § § § § § § § § § § § §	CASE NO. 3:09-cv-00298-N

NON-PARTY REBECCA REEVES-STANFORD'S RESPONSE IN OPPOSITION TO RECEIVER'S MOTION FOR ORDER TO SHOW CAUSE WHY REBECCA REEVES-STANFORD SHOULD NOT BE HELD IN CONTEMPT

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TO THE HONORABLE JUDGE GODBEY:

Non-Party, Rebecca Reeves-Stanford ("Ms. Reeves"), files this Response In Opposition To Receiver's Motion For Order To Show Cause Why Rebecca Reeves-Stanford Should Not Be Held In Contempt. In support thereof, Ms. Reeves would respectfully show the Court as follows:

INTRODUCTION & BACKGROUND

True to form, the Receiver and his counsel have once again chosen to employ questionable tactics against yet another non-party to this proceeding. Indeed, using tactics that have justifiably been described as "Gestapo-Like" (among other things), the Receiver's actions have resulted in the need for another non-party, in this case Ms. Reeves, to defend herself against meritless civil contempt charges. Specifically, the Receiver claims that, despite being a non-party to this proceeding, Ms. Reeves somehow violated an injunction by selling her home. Ms. Reeves, however, did absolutely nothing wrong. As explained more fully below, Ms. Reeves simply sold a piece of property that she clearly owned, and which was, at all times, her homestead, where she lived and raised her, and Defendant R. Allen Stanford's, two (2) children. A true and correct copy of Ms. Reeves' Affidavit in support of this Brief is attached hereto as **Exhibit "B"** (*See* App. at 31-32). As a result, this Court should not consider any sanctions against her.

The issue before this Court began on August 13, 2009, when the Receiver filed his Motion for Order to Show Cause Why Rebecca Reeves-Stanford Should Not Be Held In Contempt ("Motion"). The Receiver argues that Ms. Reeves should be "held in contempt for failure to comply with the Receivership Orders." The problem, however, is that there is a tremendous amount of confusion surrounding the manner in which Ms. Reeves was served with the "Receivership Orders." Specifically, the Subpoena with which Ms. Reeves was served

states, on its face, that Ms. Reeves is "COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): *See* Exhibit A." Simply attached to the Subpoena, as Exhibit "A", is a Request for Production with which Ms. Reeves fully complied by producing all documents in her custody, care, and/or control.

The confusion begins with the ***other*** attachments to the Subpoena—none of which directly or specifically mentions Ms. Reeves or her property, and which are merely attached to the Subpoena as the following Exhibits:

Exhibit "B" (the Temporary Restraining Order ("TRO") and Order Freezing Assets;
Exhibit "C" (Agreed Preliminary Injunction as to Laura Pendergest-Holt);
Exhibit "D" (Agreed Preliminary Injunction as to the Stanford companies);
Exhibit "E" (Amended Order Appointing Receiver);
Exhibit "F" (Preliminary Injunction as to R. Allen Stanford); and
Exhibit "G" (Preliminary Injunction as to James M. Davis).

Tellingly, the Receiver's Motion is conspicuously silent regarding how the Receiver believes that either Ms. Reeves, or her property, is actually subject to what he calls the "Receivership Orders." The Receiver's Motion is clearly frivolous and meritless, and therefore, warrants denial. And as more specifically set forth below, because Ms. Reeves is not named as a Defendant, nor has she been added as a "Nominal Defendant," the "Receivership Orders" simply do not apply to Ms. Reeves.

Moreover, Ms. Reeves should not be held in contempt with respect to property which was, and always has been, solely owned by Ms. Reeves. Indeed, the property has always been solely in Ms. Reeves' name, and she has always paid all taxes on the property as they became due. (*See* App. at 31-32) (Ms. Reeves' Affidavit). True and correct copies of documents evidencing Ms. Reeves' sole ownership interest in her homestead, as well as the payment of taxes and maintenance on the home, are attached hereto as **Exhibit "A".** (*See* App. at 1-30).

Additionally, Ms. Reeves' property is considered her homestead and, therefore, exempt from creditors.

The bottom line is that the Receiver is simply on yet another "fishing expedition," and he is improperly seeking to hold Ms. Reeves in contempt when there has been no determination, let alone a separate civil action, to determine whether Ms. Reeves' homestead is even subject to attachment in this matter. Therefore, the Receiver and his counsel should be admonished accordingly.

ARGUMENT & AUTHORITIES

I. CIVIL CONTEMPT STANDARD

It is clear that, in order to prevail on an Order to Show Cause with respect to civil contempt proceedings, proof of a defendant's violation(s) must be clear and convincing. *See United States v. Rizzo*, 539 F.2d 458, 465 (5th Cir. 1976); *Quinter v. Volkswagen of Am.*, 676 F.2d 969, 974 (3d Cir. 1982); *A.H. Robins Co., Inc. v. Fadely*, 299 F.2d 557, 559 (5th Cir. 1962); *Fox v. Capital Co.*, 96 F.2d 684, 686 (3d Cir. 1938). A simple preponderance of the evidence is insufficient. *Miller v. Carson*, 550 F. Supp. 543 (M.D. Fla. 1982). "The '[p]rocess of contempt is a severe remedy, and should not be resorted to where there is *fair ground of doubt* as to the wrongfulness of the defendant's conduct.'" *KSM Fastening Systems, Inc. v. H.A. Jones Co.*, 776 F.2d 1522, 1525 (Fed. Cir. 1985) (quoting *Cal. Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885)).

Moreover, in *Mercer v. Mitchell*, 908 F.2d 763, 768 (11th Cir. 1990), the Court held that with respect to civil contempt proceedings, the purpose is "to enforce a court order that requires the defendant to act in some defined manner. The defendant then allegedly acts, or refuses to act, in violation of the order. The plaintiff would like the defendant to obey the court order and

requests the court to order the defendant to show cause why he should not be held in contempt and sanctioned until he complies." *Id.* The *Mercer* Court also stated that "[i]f the court finds that the conduct as alleged would violate the prior order, it enters an order requiring the defendant to show cause why he should not be held in contempt and conducts a hearing on the matter." *Id.* (citing *Newman v. State of Ala.*, 683 F.2d 1312, 1318 (11th Cir.1982), *cert. denied,* 460 U.S. 1083, 103).

The *Mercer* court also noted that a hearing is to be held, wherein, "the defendant is allowed to show either that he did not violate the court order or that he was excused from complying, . . . [and] [t]ypically, a defendant will argue that he should not be held in contempt because changed circumstances would make strict enforcement of the order unjust." *Id.* In such instance, "the defendant should move the court to modify the order, and the hearing on the show-cause order would take on the appearance of a hearing on a motion to modify an injunction." *Id.* "If the court determines that the order should be modified and that the defendant's conduct did not violate the order as modified, then ordinarily it would be unjust to hold the defendant in contempt. . . . Thus, the typical proceeding satisfies the two essential requirements of due process: notice and hearing." *Id.*

II. CIVIL CONTEMPT IS INAPPROPRIATE AS TO MS. REEVES

A. The TRO Does Not Apply to Ms. Reeves

The Receiver's Motion is conspicuously silent regarding how the Receiver believes that either Ms. Reeves, or her property, is actually subject to what he calls the "Receivership Orders." After a careful review of the TRO, the only paragraphs arguably relevant to the disposition of assets are Paragraphs 5 and 7. Therefore, assuming that the Receiver is basing his Motion on Paragraph 5 of the TRO, Paragraph 5 states, in pertinent part:

> Defendants, their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order . . . are hereby restrained and enjoined from, directly or indirectly, making any payment or expenditure of funds belonging to in or in the possession, custody, or control of Defendants, or effecting any sale . . . or other disposition of any asset belonging to or in the possession, custody, or control of Defendants . . . ." (emphasis added).

But since Ms. Reeves is neither a "Defendant," nor a "person in active concert or participation" with a Defendant, and since she did not "dispose of any asset belonging to or in the possession, custody, or control" of Defendant, it is axiomatic that Ms. Reeves may not be held in contempt for violating the TRO. The Receiver's improper attempt to usurp Ms. Reeves' property rights amounts to nothing more than bullying and harassment, and it is clearly a waste of the Court's limited time and resources.

Assuming the Receiver is basing his Motion on Paragraph 7 of the TRO, such section is inapplicable and states as follows: "All other individuals, corporations, partnerships, limited liability companies, and other artificial entities are hereby restrained and enjoined from disbursing any funds, securities, or other property obtained from Defendants without adequate consideration . . . ." (emphasis added). Paragraph 7, in addition to beng extremely vague and ambiguous, does not apply to Ms. Reeves. She did not disburse any funds, securities, or other property, and any funds obtained from Defendant, Mr. Robert Allen Stanford, were with adequate consideration. As stated above, the property was Ms. Reeves' homestead, where she lived and raised her and Mr. Stanford's two (2) children for a period of four (4) years. Moreover, she purchased the property with proceeds from her previous home where she lived with her children from 2002 through 2005. Thus, assuming *arguendo* that the Receiver's allegations concerning Ms. Reeves' property are true, it is clear that any money that Mr. Stanford provided to Ms. Reeves in the past was consideration for Ms. Reeves' caring for and raising their

two (2) children.

B. The TRO cannot be enforced against Ms. Reeves because it is vague, ambiguous, and overly broad and is, therefore, inapplicable pursuant to Rule 65(d)

In *Martin v. Trinity Industries, Inc.*, 959 F.2d 45 (5th Cir. 1992), the Secretary of Labor petitioned to have a plant owner and its manager held in contempt for interfering with a warrant-authorized inspection. In that case, the district court found defendants in contempt and ordered them to require employees to wear test equipment. On appeal, the Fifth Circuit held that, although the defendants were partially in violation, the contempt order went *beyond the limitations* of the investigative authority of Secretary of Labor with respect to wearing dosimeters. The Court reasoned that "[a] movant in a civil contempt proceeding bears the burden of establishing by clear and convincing evidence 1) that a court order was in effect, 2) that the order required certain conduct by the respondent, and 3) that the respondent failed to comply with the court's order." *Martin*, 959 F.2d at 47 (citing *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987).

In *Martin*, the defendants contended on appeal that the warrant was ambiguous. The Court noted that "[c]ontempt is committed only if a person violates a court order requiring in specific and definite language that a person do or refrain from doing an act." *Id.* at 46 (citing *Baddock v. Villard (In re Baum),* 606 F.2d 592, 593 (5th Cir.1979)). The Court further stated that "[t]he judicial contempt power is a potent weapon which should not be used if the court's order upon which the contempt was founded is vague or ambiguous." *Id.* (quoting *Int'l Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64 (1967)).

Furthermore, in *International Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n*, the Court stated that Congress requires that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to

forbid. *See* 389 U.S. at 76. Because the District Court's decree in that case was not so framed, it could not stand. In fact, the Court found the Order to be "unintelligible," and reasoned that "[t]he most fundamental postulates of our legal order forbid the imposition of a penalty for disobeying a command that defies comprehension." *Id*. at 74. The Court reasoned that Fed. R. Civ. P. 65(d)(1) "was designed to prevent precisely the sort of confusion with which the District Court clouded its command . . . ." *Id.* at 75. Ultimately, the *International Longshoremen's* Court held that since the order clearly failed to comply with Rule 65(d), for failing to state in "specific terms" the acts that it required or prohibited, there simply could be no finding of contempt.

Federal Rule of Civil Procedure 65(d)(1) specifically provides:

> Every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and describe in reasonable detail -- and not by referring to the complaint or other document -- the act or acts restrained or required. (2) The Order binds only the following who receive actual notice of it by personal service or otherwise: (A) the parties; the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

Moreover, Federal Rule of Civil Procedure 65(b)(2), entitled "*Injunctions and Restraining Orders*," provides that "[t]he order binds only the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B)."

The broadly-drafted TRO at issue in this case is vague and ambiguous, and therefore, does not apply to Ms. Reeves. *See In re Bradley v. Bradley*, 371 B.R. 782, 788 (Bankr. W.D. Tex. 2007) (quoting *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir.1995); *see also SEC v. First Fin. Group of Tex., Inc.*, 659 F.2d 660, 669 (5th Cir.1981) (holding that "[a] party

commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." The Court further stated that "'[t]he judicial contempt power is a potent weapon which should not be used if the court's order upon which the contempt was founded is vague or ambiguous.') (citations omitted).

Again, since the TRO does not apply to Ms. Reeves for the reasons explained above, this Court should not find that she has violated it, much less hold her in contempt—civil or criminal. The Receiver's Motion also cites to criminal statute 18 U.S.C. §401(3) and alleges that this Court is empowered to hold Reeves in contempt. Clearly, this is a civil matter and Reeves should not be held in criminal contempt. *See infra* argument relative to criminal contempt.

Furthermore, with respect to civil contempt, in *Chase Nat'l Bank v. City of Norwalk*, 291 U.S. 431, 436 (1934), the Supreme Court held that the District Court was clearly erroneous in enjoining "all persons to whom notice of the order of injunction should come from taking any steps or action of any kind to cause the enforcement of the ouster in the state court." 291 U.S. at 436. The Court reasoned that the city alone was named as defendant, that no person other than the city was served with process, and that the prayer sought relief solely against the city, its officers, officials, agents, employees and representatives. The Court noted as follows:

> It is true that persons not technically agents or employees may be specifically enjoined from knowingly aiding a defendant in performing a prohibited act if their relation is that of associate or confederate. Since such persons are legally identified with the defendant and privy to his contempt, the provision merely makes explicit as to them that which the law already implies. But by extending the injunction to 'all persons to whom notice of the injunction should come,' the District Court assumed to make punishable as a contempt the conduct of persons who act independently and whose rights have not been adjudged according to law . . . Such peril would violate the established principles of equity jurisdiction and procedure.

Id. at 477.

Moreover, the Fifth Circuit held that non-parties to an infringement suit could not be enjoined from destroying or disposing of allegedly infringing devices, as follows:

> that Courts do not write legislation for members of the public at large; they frame decrees and judgments binding on the parties before them. For that reason, courts of equity have long observed the general rule that a court may not enter an injunction against a person who has not been made a party to the case before it. In *Chase Nat'l Bank v. City of Norwalk*, 291 U.S. 431, 436, 54 S.Ct. 475, 477, 78 L.Ed. 894 (1934), for example, the Supreme Court found 'clearly erroneous' an injunction that was directed at 'all persons to whom notice of the order of injunction should come.' Writing for a unanimous Court, Justice Brandeis explained that it was improper for the district court 'to make punishable as a contempt the conduct of persons who act independently and whose rights have not been adjudged according to law.' 'Unless duly summoned to appear in a legal proceeding,' he added, 'a person not a privy [of a party] may rest assured that a judgment recovered therein will not affect his legal rights.'

Additive Controls Measurement Sys., Inc. v. Flowdata, Inc., 96 F.3d 1390, 1393 (5th Cir.. 1996); *See also Reebok Intern. Ltd. v. McLaughlin*, 827 F. Supp. 622 (S.D. Cal. 1993), *rev'd on other grounds* 49 F.3d 1387 (holding that a non-party may be bound by injunction where it is proved that the nonparty participated in the contumacious act of the party); *Select Creations, Inc. v. Paliafito Am., Inc.*, 852 F. Supp. 740 (E.D. Wis. 1994) (precluding aider and abettor liability for the failure to demonstrate that nonparties had fair notice that acting in concert with judgment debtors or their affiliates would subject nonparties to contempt proceedings).

Ms. Reeves is neither a party, a party's officer, agent, servant, employee, attorney, nor did she engage in active concert or participation with any Defendant in this action. The allegations contained in the Receiver's Motion are insufficient to justify the relief sought therein. The "Receivership Orders" fail to state their terms specifically, and fail to describe in reasonable detail, the act or acts restrained or required, and how they pertain to Ms. Reeves. The "Receivership Orders" are too vague, ambiguous, and overly broad to sustain a finding of civil

contempt on the part of Ms. Reeves. Ms. Reeves is a non-party, and there has certainly been no finding by any court that she participated in any contumacious act of the other parties.

Moreover, the Receiver failed to add Ms. Reeves as a Relief Defendant, or otherwise. It was public knowledge that the property at issue, Reeves' homestead, was listed for sale on the multiple listing service ("MLS") prior to her being served with any of the vague, ambiguous, and obscure Orders that the Receiver alleges apply to Ms. Reeves. As such, this Court is warranted in denying the Receiver's Motion.

C. The TRO Is Conflicting On Its Face And, Therefore, It Cannot Be Held Against Ms. Reeves

The language of the TRO is confusing because it indicates in Paragraph 17 that "the portion of this order that constitutes a temporary restraining order shall expire at 5 o'clock p.m. on the 2d day of March 2009 . . . ." Such language seemingly conflicts with other paragraphs in the TRO and, as such, Ms. Reeves may not be held in contempt for any purported violation thereof. This also negates the knowing and deliberate disregard of a court order since the property at issue, which was listed for sale on the MLS prior to the TRO, was not sold until after the TRO expired by its very own terms.

D. Ms. Reeves never "disbursed" any of the funds that Receiver has claimed are covered by the TRO; rather, she merely changed the characteristic of the funds

Assuming *arguendo* that this Court finds that the Orders in this matter apply to Ms. Reeves, she may not be held in contempt becuase she never actually "disbursed" any funds and, instead, merely sold her homestead (which was listed on the MLS prior to the entry of the TRO), and those monies have not been dissipated. A mere change in the characteristic of the asset cannot be held to constitute disbursement. "Disbursement" is defined as "[t]he act of paying out money, commonly from a fund or in settlement of a debt or account payable." BLACK'S LAW

DICTIONARY (8TH ED. 2004).

For example, it would be akin to a gold bar being sold for the value of the gold bar or exchanging five (5) twenty dollar bills for a single one hundred dollar bill. The asset maintains its value, but with a different characteristic. Even if the Court finds that the Order(s) applied to Ms. Reeves, it cannot be demonstrated that she disbursed the funds to which the Receiver is claiming to be entitled. Therefore it would be inappropriate to hold Ms. Reeves in contempt for "disbursing" any funds or assets.

E. Ms. Reeves sought the assistance of, and relied upon, the advice of legal counsel in all stages of this action and, therefore, she cannot be found to have knowingly disobeyed a court order

Ms. Reeves retained legal counsel immediately upon being served with the Subpoena at issue. She specifically engaged counsel to fully comply with the Subpoena served upon her on March 26, 2009. Her legal counsel, Mr. John Priovolos, had knowledge that the property at issue, her homestead, was for sale, as it was public record and listed on the MLS. The purpose of Ms. Reeves retaining Mr. Priovolos' services was to provide complete representation on the Subpoena, and any and all attachments, and to ensure compliance. Ms. Reeves' property was eventually sold to care for her two (2) children, as discussed herein.

Although the Receiver's Motion indicates that Ms. Reeves had "full knowledge of the Receivership Orders" and "benefited from the apparent assistance of attorneys Melinda Viera and John Priovolos," there is no "apparent" evidence as to how these facts were determined. Indeed, any and all advice of counsel would be protected by the attorney-client privilege, and knowledge simply cannot be inferred. Knowing full well that any and all advice that counsel provided to Ms. Reeves is protected under the attorney-client privilege, the Receiver still is seeking to obtain an Order to Show Cause against her attorneys, in an attempt to cause a breach

of that privilege. The Receiver's Motion goes on to state that Defendant, Mr. Robert Allen Stanford, had a "decades-long relationship … and [she] was the beneficiary of funds transferred to her of at least 1.4 million [dollars]." The Motion further states that Ms. Reeves "used the money to, among other things, purchase a home in Key Biscayne, Florida." The Receiver also alleges that, after receiving a Subpoena seeking "more information about the funds used to purchase the property … Reeves then promptly sold the home, and transferred the sale proceeds to offshore accounts…" (*See* Receiver's Motion at pp. 1-2).

Mr. Priovolos has filed a Sealed Declaration, apparently in an attempt to protect his own interests, and it will be responded to separately, in a sealed response upon permission of this Court. However, and without disclosing attorney-client privilege, Ms. Reeves retained counsel to fully and properly respond to the Subpoena, and to adhere to, and comply with, any and all sections pertaining to Ms. Reeves. If Ms. Reeves' counsel, or the Receiver, believed that the TRO applied, there was never any mention of same between the individual parties prior to June 24, 2009.

In fact, in the numerous e-mails between counsel and the Receiver, there was never any mention of a TRO, let alone its applicability or inapplicability to Ms. Reeves. Rather, the only document request at issue was Exhibit "A" to the Subpoena. Ms. Reeves was not even directed to read, examine, or decipher any other section in the document she received. Even upon realizing that the property was sold, the Receiver still made no mention in any e-mail, correspondence, or otherwise that the TRO was disregarded or disobeyed.

Additionally, the Receiver's Motion makes no mention that the home, which was solely in Ms. Reeves' name, was also her homestead and the sole residence for her and her two (2) minor children. The children are a result of her relationship with Defendant, Mr. Robert Allen

Stanford, and are her only children. A precursory search of the Florida Tax records would have revealed the property's ownership and homestead status, as well as the fact that the home was for sale prior to any subpoena purportedly served upon Ms. Reeves. Again, the home was listed in on MLS prior to any Receivership Order being served. Additionally, any and all proceeds from the sale of the home are still considered homestead protected for a period of time under the Florida Constitution.

The Receiver's actions in attempting to persuade the Court with salacious unsupported facts should not be condoned. The Receiver knew, or should have known, that Ms. Reeves' homestead existed, yet sought no relief in Court to prevent its sale, transfer, encumbrance, or otherwise and made no reference to a Freeze Order being applicable to her or her property. There were a number of actions that could have been taken if the Receiver felt the property was the subject of a Freeze Order, as demonstrated by the actions against other non-parties in the case.

Moreover, the Receiver has attached to his Brief as Exhibit "A", which is correspondence from Ms. Reeves' then counsel, Mr. Mark Kamilar, dated July 15, 2009, upon which he relies to form the basis of his allegations regarding the derivation of funds from Defendant, R. Allen Stanford, as well as the location of said funds. However, Ms. Reeves objects to this Court admitting or considering such correspondence as evidence, since it was made in an effort to effectuate settlement, and was for settlement purposes only. *See* FED. R. EVID. 408 (prohibiting the use of any admissions and/or statements as evidence if such statements are made for settlement purposes only, as is the case with respect to the above-described correspondence).

III. MS. REEVES' PROPERTY IS HOMESTEAD AND EXEMPT FROM CREDITORS

Pursuant to the Florida Constitution, an individual's homestead is protected from being seized by creditors. *See In re Adell*, 321 B.R. 562 (Bankr. M.D. Fl. 2005). In *Adell*, a Michigan home builder that obtained a multimillion Michigan judgment against an individual debtor objected to the Florida homestead exemption since the debtor subsequently moved to Florida and purchased the home shortly after Michigan judgment was entered. *Id* at 573.

The creditors in *Adell* claimed that the debtor's purchase of the Florida property, which occurred after the multimillion judgment, was an apparent attempt to frustrate the judgment creditor's collection efforts by converting non-exempt assets into exempt ones. The court, however, held that the debtor's actions did not warrant the imposition of an equitable lien or a constructive trust on the home because the debtor was protected by Florida's homestead exemption laws. *See id.* at 573 The court reasoned that the constitutional protections of Florida's homestead laws prevent an attempt to seize homestead in order to satisfy claims of a creditor, other than the three specific exemptions stated in the Constitution itself, which are: (1) taxes owed by the homesteader, (2) an obligation incurred by the owner which created the lien on the property, by consent, *i.e.*, by contract, and (3) claims on laborer and material men who contributed to the repair and improvement of the homestead are entitled to a lien under the Mechanics Lien Statutes for the State of Florida. *Id*. at 572. The court further noted that, although attempts have been made to expand these exemptions and remove the Constitutional protections in order to prevent wrongdoing, the Florida Supreme Court has expressly rejected any such attempts to enlarge the exemptions unless under extraordinary circumstances. *Id*.

The *Adell* court cited to the Florida Supreme Court case of *Havoco of Am., Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001), which involved a clear-cut case of conversion of non-exempt

property into exempt homestead property. However, the *Adell* court held that the record was totally devoid of evidence to warrant an imposition of an equitable lien on the debtor's homestead and noted that Article X, Section 4 of the *Florida Constitution* provides debtors broad protection from attachment by debtor's creditors. *Adell*, 321 B.R. at 572 Furthermore, the court stated that by virtue of the expressed provision of the Florida Constitution, a debtor must establish (1) that the debtor is a "*natural person*," (2) that the person claiming the exemption is a Florida resident and has established that he made, or intended to make the real property at issue, his or her permanent "*residence*," (3) the person claiming the exemption of homestead is the "*owner*" of the real property at issue, and (4) the property claimed as homestead is not in excess of acreage permitted by the Constitution, *i.e.*, one-half acre within the boundary of a municipality or one hundred sixty acres of contiguous land located in the unincorporated areas of the municipality. *Id.*

In the instant case, Ms. Reeves met all requirements, and the home was designated and recorded in the public records as homestead property in 2005. The record is totally and completely devoid of any evidence whatsoever to warrant an imposition of an equitable lien on Ms. Reeves' homestead, especially in light of the fact that Ms. Reeves is a non-party. Thus, due to the facts and circumstances surrounding the issues in the instant case, the Receiver's Motion is baseless, and warrants denial. As stated, Ms. Reeves was not named as a Defendant, a "Nominal Defendant," or otherwise, and the "Receivership Orders" do not apply to her. In an attempt to support his position, the Receiver cites to case law in his Brief that is clearly inapplicable and/or distinguishable, for the reasons set forth herein. As such, Ms. Reeves should not be held in contempt and the Receiver and his counsel should be admonished as a result of the improper, inapplicable, and baseless Motion filed in this matter seeking to hold her in contempt.

IV. THE RECEIVER'S CITATIONS TO AUTHORITY ARE DISTINGUISHABLE AND/OR INAPPLICABLE

A. Ms. Reeves was never named as a relief defendant, and no determination has been made as to the legitimacy of the Receiver's claim on her homestead

The first case upon which the Receiver relies, *SEC v. Elfindepan, S.A.*, No. 1:00CV00742, 2002 U.S. Dist. LEXIS 28411 (M.D.N.C. Aug. 30, 2002), is easily distinguishable from the case at bar. In *Elfindepan*, the SEC filed a complaint alleging various counts of securities fraud against a number of defendants. *See id* at *4. The court granted the SEC's request for a temporary restraining order, and entered a preliminary injunction freezing the assets of Defendants, Elfindepan. After that TRO was entered the Defendant Elfindepan transferred funds to third parties, Patrick Wilson and C.R.C.C. L.L.C. ("CRCC"). Thereafter, the SEC amended its complaint, adding Patrick Wilson and CRCC, as relief defendants. *See id*.

The SEC's amended complaint alleged that the Relief Defendants were in possession of funds obtained from Elfindepan and that they would be unjustly enriched if permitted to retain them. *Id.* The Relief Defendants asserted that they had a legitimate claim to the funds. *Id*. The SEC filed the contempt motion, alleging that the Relief Defendants were in violation of the TRO and Freeze Order. The matter was set for an evidentiary hearing. The purpose of the evidentiary hearing was to determine whether the funds transferred from Elfindepan to the Relief Defendants were subject to the Asset Freeze, because, as the court noted, "[o]bviously, there can be no contempt of the Asset Freeze if the funds in the possession of the Relief Defendants were not frozen." *Id*. at *4-5.

The Relief Defendants claimed that the funds were obtained as part of a legitimate contractual bargain and were not subject to the Freeze Order. *Id.* at *5. The Court held that the funds transferred to the Relief Defendants, after the TRO was issued, were subject to the Freeze

Order and that the Relief Defendants then dissipated the funds after they were put on notice. Therefore, the Court held the Relief Defendants in contempt. The Court noted that Relief or Nominal Defendants are not accused of wrongdoing in the underlying complaint but were simply included to facilitate recovery of funds needed to afford relief. Therefore, the Court found that relief defendants may be enjoined when they (1) receive ill-gotten funds, and (2) have no legitimate claim to those funds. *Id*.

In *Elfindepan* it was undisputed that fraudulently obtained funds were transferred to the Relief Defendants. This is clearly not the case with Ms. Reeves, as she is not a named or "nominal Defendant," and she has a legitimate claim to the asset (her home) and the asset has not been dissipated.

The Receiver also relies on *SEC v. Cherif*, 933 F.2d 403 (7th Cir. 1991), a case that the Seventh Circuit remanded, concluding (1) that the district court must decide the ownership interest of the nominal defendant, and (2) that the injunction would be binding on him only if he had no legitimate ownership interest. The issue in *Cherif* involved a contempt motion where the district court had to determine whether the Relief Defendants had a legitimate claim to the funds. Unlike in the case of Ms. Reeves' homestead, *Cherif* was dealing with a Note Transaction that was commonly known as a "prime bank" scheme. For the Relief Defendants' ownership interest to be legitimate, the Note Transaction itself had to be legitimate. The Court found that the Relief Defendants failed to produce evidence to rebut the SEC's finding that they have no legitimate ownership interest in the Funds, as the Note Transaction was not legitimate.

In the instant case, the Receiver never added Ms. Reeves as a Relief Defendant, or otherwise, even though it was public knowledge that the property at issue, Ms. Reeves' homestead, was listed for sale on the MLS prior to being served with any of the Orders issued in

this case. Ms. Reeves has a viable ownership interest in the funds/property, as they were received in return for valid and adequate consideration consisting of caring for and raising Ms. Reeves' and Defendant, R. Allen Stanford's, two (2) children. Thus, it would be unwarranted to hold Ms. Reeves in contempt for knowingly violating a Court Order.

The Receiver further cites to *SEC v. Egan*, 856 F. Supp. 401 (N.D. Ill. 1993), and such authority is also misplaced. In *Egan*, the SEC sought an order of disgorgement from, and declaration of constructive trust against, third parties to whom funds were allegedly improperly disbursed. The Court found that the "Relief Defendants" in that action must disgorge the *benefits* that they derived from the violations by the culpable defendants.

In the instant case, once again, Ms. Reeves is neither a "Relief Defendant," nor any party in this action. Moreover, her homestead, which was for sale prior being served with any court orders, was paid for with legitimate monies. To the extent that any of the purchase price was paid by Defendant Allen Stanford, such money was clearly consideration for Ms. Reeves supporting and raising Mr. Stanford's two (2) children. Moreover, there is no issue of *res judicata*, as in the *Egan* case, nor any similarity in facts. Thus, once again, the Receiver has provided no legal support for finding Ms. Reeves in contempt of court.

B. Ms. Reeves Was Not Specifically Ordered To Refrain From Action, Nor Was Any Action Knowingly And Deliberately Taken Against Court Orders

In the case of *In re BKS Properties, Inc. v. Shumate*, 271 B.R. 794, 802 (N.D. Tex. 2002), the Court held a party in civil contempt for knowing and deliberate violations of a bankruptcy court order. However, once again, the *Shumate* case is completely distinguishable from the instant case. In *Shumate*, the court conducted a show cause hearing on Shumate's cursory or incomplete answers to interrogatories and requests for production of documents. The Court found Shumate in civil contempt of court for his knowing and deliberate violations of the court's

order permanently enjoining Shumate from litigating against the Plaintiffs except as pertains to the administration of the Shumate bankruptcy case, as well as limitations on other filings. Despite the above, Shumate filed various actions, in various courts, all against parties clearly subject to prior orders, and pertaining to the real property specifically subject to such orders/injunctions. Thus, Shumate was found in civil contempt of court. There was never a question as to the clarity of the Order or the Defendant's actions.

In the case before this Court, there are no specific Orders directing Ms. Reeves not to sell her homestead, she is not a party, and any of her actions/inactions were not done knowingly or deliberately in violation of a Court Order. As such, neither civil nor criminal contempt is warranted.

V. Criminal Contempt Is Inapplicable

The Receiver's Motion makes a blanket reference to 18 U.S.C. §401(3) and claims that "the Court is . . . empowered by the United States Code to find . . . Reeves, Melida Viera [which claims have since been dismissed], and John Priovolos in contempt." *See* Receiver's Brief, section II(A). 18 U.S.C. §401(3) provides that "a court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as--(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

However, Florida Courts have held that an individual who "willfully" violates a court's order may be held in criminal contempt, only if he/she acts intentionally or exhibits conduct which constitutes reckless disregard for orders of the court; negligent, accidental, or inadvertent violations are not sufficient. *U.S. v. KS & W Offshore Eng'g, Inc.*, 932 F.2d 906 (11th Cir. Fla. 1991); *see also U.S. v. Terry*, 815 F. Supp. 728 (S.D.N.Y. 1993), *affirmed* 17 F.3d 575 (holding

that a court may find the alleged contemnor guilty of criminal contempt for violating a preliminary injunction only if the government has proven beyond reasonable doubt that contemnor willfully violates specific and definite terms of that injunction); *Matusow v. U.S.A.*, 229 F.2d 335 (5th Cir. 1956) (reversing a criminal contempt charge because the court did not accord the individual a right to a presumption of innocence, and did not require proof of his guilt of contempt beyond a reasonable doubt, pursuant to minimal procedural requirements of a provision of the Federal Rules of Criminal Procedure 42, which addresses criminal contempt outside presence of the court).

Here, Ms. Reeves may not be held in criminal contempt, since she did not willfully violate any Order of this Court. She at all times sought the advice of counsel and did not act intentionally or exhibit conduct constituting a reckless disregard of an order. Additionally, there has been no showing beyond a reasonable doubt that Ms. Reeves willfully violated any "specific and/or definite terms" of any order or injunction, as no such "specific or definite terms" exist or pertain to her in this matter. Thus, criminal contempt is improper.

VI. BAD FAITH CLAIMS BY THE RECEIVER

The Receiver has clearly shown his propensity to make baseless and misleading accusations against non-parties in this matter. In addition to the disputed claims against Ms. Reeves, the Receiver also attempted to hold non-party, Melida Viera ("Ms. Viera"), in contempt as well. However, as is clear from Ms. Viera's Affidavit, she was never even formally retained by Ms. Reeves and simply advised Ms. Reeves to obtain counsel practicing in Federal Court. The Receiver's actions amount to vexatious and frivolous litigation and, as such, the Receiver and his counsel should be held accountable for their legally improper and unsupported "witch hunt" against innocent non-parties. Although the Receiver withdrew his Motion against Ms.

Viera, it still demonstrates the "shoot first, ask questions later" mantra. This is not the proper method for filing motions requesting the Court to hold a party in contempt.

The Receiver has filed the Motion(s) with complete disregard for Ms. Viera's reputation as a lawyer. The Court should not condone the Receiver's behavior. A party should have a good faith basis in law and fact to request a court to order an individual to be held in contempt. In our case, the Receiver did not have that good faith basis against Ms. Viera, nor does he have one against Ms. Reeves.

CONCLUSION

For the reasons set forth above, Ms. Reeves respectfully requests that this Court deny the Receiver's baseless Motion for Order to Show Cause Why Rebecca Reeves-Stanford Should Not Be Held In Contempt, grant her attorneys' fees and costs for having to defend the Receiver's frivolous Motion, and grant any further relief deemed just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 1, 2009, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the Court's electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. I further certify a true and correct copy of the foregoing document was served, as indicated below, the following counsel, on September 1, 2009:

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