

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

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

STANFORD INTERNATIONAL BANK, LTD., et al)

Defendants.)

Case No.: 3-09-CV-0298-N

**JOHN PRIOVOLOS' RESPONE AND INCORPORATED BRIEF IN RESPONSE TO
RECEIVER'S MOTION FOR ORDER TO SHOW CAUSE WHY HE SHOULD NOT BE
HELD IN CONTEMPT**

JOHN PRIOVOLOS submits his response and brief opposing the Receiver's motion to hold him contempt:

INTRODUCTION

Along with his former client, Rebecca Reeves-Stanford, and another attorney, Melida Viera, the Receiver has moved this Court to hold John Priovolos in contempt of court. Mr. Priovolos is a Florida attorney who was retained by Ms. Reeves-Stanford to respond to a subpoena which was served upon her in Florida by counsel for the Receiver and which sought her financial records.

The crux of the Receiver's Motion is that Mr. Priovolos must have, or appears to have, assisted and advised Ms. Reeves-Stanford to transfer the proceeds of the sale of her home in violation of this Court's Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents, and Order Authorizing Expedited Discovery ("TRO"). See Receiver's Brief, DE 700, pp. 1 & 9 (arguing that attorneys Priovolos

and Viera “apparently” acted in contempt and that there is “substantial reason to suspect” that they “effectively assisted” Ms. Reeves-Stanford in selling her property and placing the proceeds of the sale outside the jurisdiction of the Court).

The Receiver’s motion is, however, otherwise bereft of any specific allegations, which, if proven, might lead to the conclusion that Mr. Priovolos acted in violation of any order of this Court. Indeed, a close reading of the motion and its brief show that the Receiver’s complaint, as it pertains to Mr. Priovolos, boils down to fact that he failed to communicate to the Receiver that his client was selling her property.

In his motion, the Receiver requests that “Reeves-Stanford and her attorney’s should be appropriately sanctioned.” Receiver’s Motion, DE 699, page 2. The motion also seeks “reasonable attorneys’ fees and expenses.” Id. As to Mr. Priovolos specifically, the Receiver only appears to seek an explanation from him as to ‘his conduct’ and holds out the possibility that it will seek future remedies or sanctions. See Receiver’s Brief, DE, 700 pages 9 and 10. The Receiver further states that he is still “investigating” and that he shall seek, in the future, an “order freezing Reeves’ accounts and mandating the return of the assets to the Receivership Estate.” Id.

The Receiver argues that Mr. Priovolos (and the other two non-parties) violated both the Receivership Order, DE 57, and the TRO, DE 8. See Receiver’s Brief, DE 700, page 7. More specifically, the Receiver claims that Mr. Priovolos violated paragraph 10(a) of the Receivership Order and paragraph 7 of the TRO.¹

¹ When the Receiver’s lawyer (and partner) initially threatened to file a contempt motion, paragraph 7 of the TRO was the only provision of any court he cited as having been violated. See Receiver’s Appendix in Support of Brief, DE 701, Exhibit I, page 181.

MEMORANDUM OF LAW

The Criminal Contempt Proceedings Advocated by the Receiver Fail to Comply with Rule 42(c) of the Federal Rules of Criminal Procedure and Fail to Provide Mr. Priovolos Due Process of Law as Required by the Constitution of the United States.

While the Receiver cites some cases involving allegations of civil contempt, he has nevertheless framed this matter as one of criminal contempt. There are two reasons why this proceeding-as to Mr. Priovolos-must be governed by the criminal contempt rules.²

First, the Receiver's brief clearly states that the Receiver is seeking criminal contempt sanctions. On page 6 of his brief, the Receiver specifically invokes this Court's power to hold Mr. Priovolos in criminal contempt as provided for in 18 U.S.C. § 401(3). Indeed, the Receiver's brief quotes the statute, which provides for the imposition of a fine or imprisonment. See Receiver's Brief, DE 700, page 6.

Second, the relief requested as to Mr. Priovolos can only be based upon criminal contempt sanctions because the Receiver is seeking to punish Mr. Priovolos. The courts have long recognized that the nature of the relief sought and the purpose for which the contempt sanction is sought governs the question of whether civil or criminal contempt proceedings are at play. Hicks v. Feiock, 485 U.S. 624, 631 (1988). In Hicks, the Supreme Court explained:

When the nature of the relief sought and the purpose for which the contempt sanction is imposed is remedial and intended to coerce the contemnor into compliance with court orders or to compensate the complainant for losses sustained, the contempt is civil; if on the other hand, the relief seeks to vindicate the authority of the Court by punishing the contemnor and deterring future litigant's misconduct, the contempt is criminal.

Id. at 631. For such reasons, "putatively civil contempt sanctions will be held to be criminal sanctions in cases when the fines were not conditioned on compliance with a court order, not

² To the extent that the Receiver is seeking to compel Ms. Reeves-Stanford to return assets that she has transferred, the proceeding may well be governed by the civil contempt rules. However, as explained below, as to Mr. Priovolos, this proceeding must be governed by the criminal rules.

tailored to compensate the complaining party, and instead initiated to vindicate the authority of the court and punish the actions of the alleged contemnor.” Cromer v. Kraft Foods, 390 F.3d 812, 822 (4th Cir. 2004) (quoting Buffington v. Baltimore, 913 F.2d 113, 133-135 (4th Cir. 1990) and Bradley v. American Household, Inc., 378 F.2d 373, 377-379 (4th Cir. 2004)).

Here, as to Mr. Priovolos, the relief requested from the Receiver is not, and cannot be, tethered to compel compliance of the Court’s TRO. The Receiver holds out for such relief, in the future, as to Ms. Reeves-Stanford – freezing her accounts and mandating return of assets. But such relief is simply not available as against Mr. Priovolos, as he has no control over, or possession of, any Receivership assets or records or assets of Ms. Reeves-Stanford. Nor, with the exception of its boilerplate request for attorney’s fees, is the relief requested calculated to compensate the Receiver for any loss. Instead, the relief requested as to Mr. Priovolos is that which this Court may deem ‘appropriate.’ See Receiver’s Motion, DE 700, page 2. Thus, it is obvious that what the Receiver seeks is an order from this Court punishing Mr. Priovolos for what the Receiver believes was his contemptuous disregard of the Receiver’s investigation and the Court’s TRO.

Criminal contempt proceedings are governed by 18 U.S.C. § 401(3) and Rule 42(a) of the Federal Rules of Criminal Procedure and Mr. Priovolos is thus entitled to all the procedural safeguards set out in Rule 42. See Intl. Union, United Workers of America v. Bagwell, 512 U.S. 821, 833 (1994)(“Criminal contempt sanctions are entitled to the full criminal process.”) This is because “criminal contempt is a crime in the ordinary sense.” Bloom v. Illinois, 391 U.S. 194, 201 (1968). Thus, a person is entitled to notice, Fed. R. Crim. P. 42(a)(1), is entitled to a trial Fed. R. Crim. P. 42(a)(3), and contempt must be proven beyond a reasonable doubt. Hicks, 485

U.S. at 632. Also, a person accused of criminal contempt must be advised of right to counsel. Cromer, 390 F.3d at 820 (citing U.S. v. Johnson, 659 F.2d 415, 417-417 (4th Cir. 1981)).

Most importantly, this contempt proceeding cannot be presented (prosecuted) by the Receiver and his counsel. Rule 42(a)(2) requires an independent prosecutor for any criminal contempt proceeding and requires that the Court request that the contempt be prosecuted by an attorney for the government. If the U.S. Attorney declines to prosecute the case, the Court must appoint an disinterested attorney to prosecute the contempt. As made obvious by the Supreme Court in Young v. United States Ex Rel. Vuitton, 481 U.S. 787 (1987), this requirement is especially important in this case. In Young, the petitioners were prosecuted and convicted for violating an injunction prohibiting them from essentially stealing the trademark of Louis Vuitton's famous French leather goods. The Supreme Court, however, reversed the convictions and held that it was "fundamental error" for the court to allow Vuitton's lawyers, who were counsel to an interested party, to prosecute the contempt allegations. Id. at 802, 810-813. In support of its holding, the Supreme Court reasoned that the appointment of counsel for an interested party to prosecute the contempt of court created the appearance of impropriety and conflicts of interests. Id. at 806-807. The Supreme Court further explained that the prosecution of criminal contempt proceedings are best left to trained prosecutors with the United States Attorney's Office. Id. at 801-803.

The Receiver and his lawyers are very obviously interested parties. The Receiver brought the contempt motion through his lawyers, who are his partners at the same law firm. And, of course, the Receiver was appointed by the Court to vindicate the rights of the victims of the fraud committed by the Stanford defendants and he and his law partners are paid from the very funds he collects for the victims. In fact, the Receiver's brief essentially cast him and his

lawyers as the victims of Mr. Priovolos' failure to tell them that Ms. Reeves-Stanford was selling her property. Thus, it is hard to imagine a more interested group of attorneys prosecuting a contempt case against someone for alleging violating the Court's TRO. Because the Receiver's motion seeks criminal contempt sanctions against Mr. Priovolos, this Court should reject any presentation of contempt allegations by the Receiver and his counsel.

To be sure, this Court has the inherent power to review this, and any, matter before it and, if necessary, make a referral to the U.S. Attorney. Mr. Priovolos has filed a declaration under seal explaining his actions in connection with this matter. As Mr. Priovolos explained in the motion accompanying his sealed declaration, he simply requires a court order to be able to explain his actions. Once that explanation is provided, he is confident the Court will find that his conduct does not form the basis of any contempt proceedings.

Mr. Priovolos Did Not Act In Contempt of this Court's Orders.

There is no basis to proceed with a criminal contempt proceeding because Mr. Priovolos did not violate an order of this Court. Here, the Receiver cites two orders he claims Mr. Priovolos violated. Before addressing Mr. Priovolos' conduct, it is important to note that if Ms. Reeves-Stanford was not in violation of any Court orders, then Mr. Priovolos obviously cannot be in violation of any orders. Ms. Reeves-Stanford is separately responding to the Receiver's motion and Mr. Priovolos has had no involvement in the preparation of that response. However, as part of the procedural rights due to Mr. Priovolos, the Court is required to find that the orders were violated by the conduct of Ms. Reeves-Stanford. Thus, Mr. Priovolos briefly addresses why it does not appear that the orders were violated.

The first of the Receiver's two claims is that Ms. Reeves-Stanford violated paragraph 10(a) of the Amended Order Appointing Receiver, which was entered by the Court on March 12,

2009. DE 157. Paragraph 10(a) enjoins creditors and *other persons* from any act to *obtain possession* of Receivership Estate Assets. See Amended Receivership Order, DE 157, page 8, paragraph 10(a) and Receiver's Brief, DE 700, page 7 (arguing that paragraph 10 of the Receivership Order obviously applied to Ms. Reeves Stanford and her Key Biscayne property).

The term Receivership Estate is defined in the order to include "Receivership Assets" and "Receivership Records." Paragraph 1 of the Order defines Receivership Assets as – "assets, monies, securities, properties, real and personal, tangible and intangible, ... of the defendants and all entities they own and control." Thus, in order to be subject to paragraph 10(a)'s injunction, a piece of real property, or its sale proceeds, *must* be of a defendant or an entity that a defendant owns or controls.

Ms. Reeves-Stanford is plainly not one of the defendants. Nor is she some entity owned or controlled by any of the defendants. Ms. Reeves-Stanford's home and its sale proceeds are thus not "Receivership Assets," as defined by the Order the Receiver claims Ms. Reeves-Stanford violated. Therefore, paragraph 10(a) of the Order does not appear to enjoin Ms. Reeves-Stanford from selling her property and investing the proceeds of the sale.

Assuming *arguendo* that the Key Biscayne residence was clearly defined as a Receivership Asset, paragraph 10(a) still fails to enjoin Ms. Reeves-Stanford from selling her residence and investing the sale proceeds. Paragraph 10(a) enjoins "any act to *obtain possession* of the Receivership Estate." Ms. Reeves-Stanford, who owned her home and lived in it, already had possession. She did not do anything to obtain possession of her home after the entry of the order. It was already hers.

With respect to the TRO, paragraph 7 prohibits "all individuals...from disbursing any funds, securities or other properties obtained from the Defendants without adequate

consideration.” Putting aside the question of whether Ms. Reeves-Stanford purchased her residence with money received from R. Allen Stanford “without adequate consideration,” the Receiver must still show that Ms. Reeves–Stanford was bound by the TRO within the strictures of Rule 65(d).

Rule 65(d) provides that an injunction “is binding only upon parties to the action, their officers, agents, servants, employees, and attorneys, *and upon those persons acting in concert or participation with them who receive actual notice of the order by personal service or otherwise.*” Fed. R. Civ. P. 65(d) (emphasis added). Thus, in order for a non-party, as Ms. Reeves–Stanford is, to be bound by an injunction, it must be shown that the non party aided and abetted a party to the suit, such as R. Allen Stanford. See Travelhost v. Blandford, 68 F.3d 958, 965 (5th Cir. 1995)(“Plaintiff’s must still prove that non-party respondents aided or abetted [named defendant]”) (citing Waffenschmidt v. MacKay, 763 F.2d 711, 724 (5th Cir. 1985)).“A party commits contempt of court 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.” Id. at 961 (quoting S.E.C. v. First Fin. Group of Texas, 659 F.2d 660, 669 (5th Cir. 1981)).

In Travelhost, the district court issued an injunction against Blandford, a named defendant in the action, prohibiting him from distributing or publishing a magazine similar to that of the plaintiff’s. Following entry of the injunction, Blandford sold his business’ assets to two non parties who then published the magazine Blandford had and which was similar to the plaintiff’s. On appeal, the Fifth Circuit held that there was no evidence showing that the two non-parties acted in concert with Blandford as required by Rule 65(d). As such, the Fifth Circuit reversed the district court’s finding that the two non-parties had acted in contempt in violating its

injunction. Id. at 962 (“Evidence that Bunyard and Hoffman published ‘Passport’ after January 14, 1994, therefore, means nothing without evidence that it was done in participation with Blandford”).

The case of S.E.C. v. Pension Fund of America, 2006 WL 1104768 (S.D. Fla. March 23, 2006) provides further guidance on this requirement. In that case, the Receiver moved to hold the individual defendants, Luis Cornide and Robert De la Riva, and their respective wives in contempt of court for violating an asset freeze order at the onset of the action filed by the S.E.C. The freeze order was similar to the order in this case. The Court conducted a two-day evidentiary hearing in connection with the civil contempt motion.³ While the district court found that it was “painfully obvious” that the accounts of Juliana De La Riva were entirely funded with investor money, the court also found that the Receiver and the SEC had failed to prove that Robert De la Riva controlled the accounts of his wife. Id. at *10. As the court held in Pension Fund of America, even if the Receiver can show that the certain assets or properties are funded with monies traceable to the Receivership Estate, an injunction does not bind a non party who possess those assets *unless* he or she is shown to be in active concert, or in participation, with a defendant or a party named to the action. See Fed. R. Civ. P. 65(d).

Here, while the Receiver alleges that Ms. Reeves–Stanford “appears” to have paid for her Key Biscayne residence with money she received from defendant Stanford, the Receiver simply fails to allege that she was under the defendant’s control or that he she acted in concert or participation with him when she sold her residence and moved the proceeds from the sale. Accordingly, Mr. Priovolos, who was even further removed from any enjoined party in this case,

³ Mr. Priovolos respectfully notes that while the Pension Fund of America case is an important decision on the issue of when a wife can be liable for receiving assets originally provided by the enjoined husband, that proceeding was for civil contempt and used the “clear and convincing standard.” This proceeding requires the even higher “beyond a reasonable doubt “ standard.

cannot be exposed to a contempt punishment when his client was not in violation of the injunction.

Even if this Court determines that its TRO did apply to Ms. Reeves-Stanford's actions and that she acted in a manner that could be considered a civil contempt of this Court's orders, such a finding would not lead to the conclusion that Mr. Priovolos acted in a manner that can be punished by a finding of criminal contempt. Mr. Priovolos is responsible for his own actions and can only be punished if he personally acted in manner which violated of the Court's orders and which can be proven, beyond a reasonable doubt, to have constituted a criminal violation. Mr. Priovolos is prepared to explain all of the facts regarding his representation of Ms. Reeves-Stanford. Mr. Priovolos cannot at this time explain those facts because his former client has invoked confidentiality. And while Mr. Priovolos believes that the Florida Rules of Professional Conduct and the ABA Model Rules of Professional Conduct expressly permit him to explain the facts of his representation to defend these charges, he seeks an Order of this Court to be able to reveal those facts. Therefore, Mr. Priovolos respectfully requests the right to supplement this memorandum after the Court has permitted him to explain his actions in this case. When those actions are explained through the disclosure of his sealed declaration, he believes that the Receiver and the Court will find that he acted in good faith and not in violation of the Court's orders. See Waffenschmidt, 763 F.2d at 726 (“[g]ood faith is relevant to whether the bank aided and abetted MacKay in dissipating funds...”).

In conclusion, the Receiver's motion to show cause why Mr. Priovolos should be held in contempt should be denied.

Respectfully submitted,

By: s/ Henry P. Bell

HENRY P. BELL

Henry P. Bell

Fla. Bar. 0090689

6301 Sunset Drive

South Miami, Florida 44143

Telephone: 305-665-8625

Fax: 3-5-665-8624

Email: hbelle@bellpalaw.com

Pro Hac Vice Counsel for John Priovolos

By: s/William "Kim" Wade

THE WADE LAW FIRM, P.C.

William "Kim" Wade

Texas Bar No.

12700 Preston Road, Suite 265

Dallas, Texas 75230-1854

Telephone: 214-346-2946

Fax: 214-346-2947

Email: kwade@wadelaw.com

Counsel for John Priovolos

CERTIFICATE OF SERVICE

On September 2, 2009, I electronically submitted the foregoing motion with the clerk of court for 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 all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2). I further certify that I have served the following by U.S. Mail:

Kevin M. Sadler, (kevin.sadler@bakerbotts.com)

Robert I. Howell (robert.howell@bakerbotts.com)

David T. Arlington (david.arlington@bakerbotts.com)

BAKER BOTTS L.L.P.

98 San Jacinto Blvd., Suite 1500

Austin, Texas 78701-4078

Telephone: 512.322.2500

Facsimile: 512.322.2501

ATTORNEYS FOR RECEIVER

RALPH S. JANVEY

Timothy S. Durst (tim.durst@bakerbotts.com)

BAKER BOTTS L.L.P.

2001 Ross Avenue, Suite 600

Dallas, Texas 75201-2980

Telephone: 214.953.6500

Facsimile: 214.953.6503

ATTORNEY FOR RECEIVER

RALPH S. JANVEY

Bradford M. Cohen

1132 SE 3rd Avenue

Fort Lauderdale, FL 33316

Attorney for Rebecca-Reeves Stanford

Melida Viera

111 NE 1st St. Ste. 902

Miami, FL 33132-2517

By: s/William "Kim" Wade
William "Kim" Wade

By: S/ Henry P. Nell
Henry P. Bell