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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 03:09-CV-298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

RECEIVER'S REPLY IN SUPPORT OF HIS MOTION FOR ORDER TO SHOW CAUSE WHY REBECCA REEVES-STANFORD AND JOHN PRIOVOLOS SHOULD NOT BE HELD IN CONTEMPT (DOC. 699)

Receiver Ralph S. Janvey files this Reply to Rebecca Reeves-Stanford's and John Priovolos's Responses to the Receiver's Motion for Order to Show Cause (Docs. 753, 756). None of the excuses given by Reeves-Stanford or Priovolos for their failure to comply with this Court's orders is supported by the law. When Reeves-Stanford sold the Property and hid the proceeds in an offshore account without first taking the simple step of coming to this Court either for permission to do so or for a clarification of its orders, both she and Priovolos took the risk that they were acting in contravention of this Court. *"Intent is not an issue. In civil contempt proceedings the question is not one of intent but whether the alleged contemnors have complied with the court's order." Jim Walter Res. v. Int'l Union, United Mine Workers of Amer.*, 609 F.2d 165, 168 (5th Cir. 1980) (internal quotations omitted). The Receiver establishes in his Motion and in this Reply that the actions of Reeves-Stanford and Priovolos were in fact in violation of this Court's orders. The Court therefore should issue an order directing Reeves-Stanford and Priovolos to show cause why they should not be held in contempt.

I. REPLY TO REEVES-STANFORD'S RESPONSE

A. Reeves-Stanford Does Not Dispute Key Elements of the Receiver's Argument.

Reeves-Stanford spends more than twenty pages responding to the Receiver's Motion, but fails to dispute any of the essential facts supporting the Receiver's argument. The only funds she could have used to purchase the Property came from Allen Stanford. She had notice of this Court's orders, which enjoined all individuals from disbursing assets obtained from Stanford. But she sold the Property anyway.

Reeves-Stanford admits that she received copies of the relevant Court orders prior to selling the Property. Reeves-Stanford Response at 1-2. Specifically, she acknowledges that the Court's Preliminary Injunction as to Allen Stanford ("Preliminary Injunction," Doc. 159) and Amended Order Appointing Receiver ("Receivership Order," Doc. 157) were attached to a Subpoena properly served on Reeves-Stanford on March 25, 2009. She therefore unquestionably had notice that this Court ordered that:

> [A]ll other individuals . . . who receive actual notice of this Preliminary Injunction by personal service or otherwise are hereby restrained and enjoined from disbursing any funds, securities, or other property obtained from Defendant Stanford without adequate consideration.
>
> *and*
>
> [A]ll other persons are hereby restrained and enjoined, without prior approval from the Court, from any act to obtain possession of the Receivership Estate assets.

Preliminary Injunction ¶ VI; Receivership Order ¶ 10(a).

Reeves-Stanford also does not dispute that at least $1.4 million of the funds used to purchase the Property were contributed directly by Stanford, or that for years her sole source of income was Stanford. Rather, realizing that these facts establish that the Property must have been purchased using proceeds from the fraud, she attempts to sweep them under the rug by disingenuously claiming that the letter from her counsel confessing these details is protected by

Federal Rule of Evidence 408. *See* App. at 4-8. (Doc. 701.) The letter in question contains no marking indicating it was intended as a settlement communication, and contains no offer of or reference to any compromise. Reeves-Stanford cannot hide these damning facts behind the protections afforded by Rule 408.

B. Reeves-Stanford Violated the Court's Orders.

By their own language, the orders plainly enjoin Reeves-Stanford's actions. Preliminary Injunction ¶ VI (enjoining "all . . . individuals . . . who receive actual notice of this" order); Receivership Order ¶ (enjoining "all other persons . . . without prior approval of the Court"). It is equally clear that the Court had the legal power to issue orders enjoining Reeves-Stanford, even though she is not a party to the SEC enforcement action. *SEC v. Homa*, 514 F.3d 661, 676-78 (7th Cir. 2008) (holding nonparties in contempt after the nonparties, for solely their own benefit and without coordination or participation with defendant, disbursed assets included in the receivership freeze order); *SEC v. Elfindepan, S.A.*, No. 1:00-CV-742, 2002 WL 31165146, at *5 (M.D.N.C. Aug. 30, 2002) (holding that order applied to respondents who "were on notice of the TRO and Asset Freeze and knew that they held funds that were likely frozen," even though they "were not mentioned in the complaint at the time the TRO and Asset Freeze were issued").

Reeves-Stanford's efforts to avoid this plain language are uncompelling.

1. Reeves-Stanford gave no consideration for the property obtained from Stanford.

Reeves-Stanford first argues that Paragraph VI of the Preliminary Injunction[1] is inapplicable because it only enjoins disbursing property that was obtained from Stanford "without adequate consideration." She confusingly posits that she gave Stanford adequate

[1] Her response refers to Paragraph 7 of the Temporary Restraining Order (Doc. 8), which contains substantially the same language as Paragraph VI of the Preliminary Injunction.

consideration for the money he gave her—$1.4 million of which she admits was used to purchase the Property—by "caring for and raising their two (2) children." Reeves-Stanford Response at 5-6.

The Receiver is aware of no law characterizing one parent's care for her own children as "consideration" for funds received from the other parent. Further, even if Reeves-Stanford's consideration argument is legally viable, it is an affirmative defense and Reeves-Stanford must establish the facts supporting her claim. Because Reeves-Stanford has revealed neither the total amount of money Stanford has given her over the past twenty years nor the specific valuable services she claims to have performed in return, the adequacy of this supposed consideration cannot be judged.

2. Reeves-Stanford disbursed the property by secreting the funds to an off-shore account.

Reeves-Stanford next argues that she did not violate Paragraph VI because she did not technically "disburse" the funds. Reeves-Stanford Response at 10. Such word games do not rescue Reeves-Stanford from a finding of contempt. "[A] party's compliance with a court order cannot be avoided by a literal or hypertechnical reading of an order. It is the spirit and purpose of the order, not merely its precise words, that must be obeyed." *Ruiz v. McCotter*, 661 F. Supp. 112, 144 (S.D. Tex. 1986) (internal quotations omitted); *also Nat'l Rsch. Bureau, Inc. v. Kucker*, 481 F. Supp. 612, 615 (S.D.N.Y. 1979).

The fact of the matter is that because of Reeves-Stanford's actions, property of the Receivership Estate has been liquidated and hidden in an account in the Cook Islands. The Receiver now has no access to property that this Court ordered was under his control. Receivership Order ¶ 5(b). Reeves-Stanford's former counsel flaunted this fact in his July 15, 2009 letter, in which he informed Receiver's counsel that "the proceeds of the sale are beyond

the reach of collection effort" because "American court decrees have not been honored by [Cook Islands] courts." App. at 7-8.

Moreover, neither Reeves-Stanford's disbursement argument nor her consideration argument speaks to her violation of Paragraph 10 of the Receivership Order. The Property is a Receivership Estate asset and therefore properly came into this Court's possession on the day this receivership commenced. Receivership Order ¶ 1. Reeves-Stanford's sale of property that was legally in this Court's possession, and her subsequent deposit of the proceeds of that sale into an off-shore bank account, were plainly acts taken to effectively obtain sole possession of that property.

3. The Property is excepted from Florida's homestead laws.

Because it was purchased using proceeds from the Stanford fraud, the Property is not protected by Florida's homestead exemption. Under normal creditor-debtor situations, an individual's homestead is only subject to seizure or forced sale for: (1) the payment of taxes and assessments thereon; (2) obligations contracted for the purchase, improvement, or repair thereof; or (3) obligations contracted for labor performed on the property. *Havoco of Amer., Ltd. v. Hill*, 790 So.2d 1018, 1022 (Fla. 2001). However, the Florida Supreme Court instructs that the homestead exemption "should not be so applied as to make it an instrument of fraud." *Id*. at 1020. "We have invoked equitable principles to reach beyond the literal language of the exceptions . . . where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead." *Id*. at 1028; *see also Jones v. Carpenter*, 106 So. 127, 130 (Fla. 1925) ("A homestead . . . cannot be employed as a shield and defense after fraudulently imposing on others.").

Whether Reeves-Stanford herself was involved in the underlying fraud is inconsequential. If the funds used for the purchase of the Property were obtained through fraud, the Property is not protected by the homestead exemption. *In re Fin. Federated Title and Trust, Inc.*, 347 F.3d 880, 890 (11th Cir. 2003) (applying Florida law in holding that "a lack of knowledge on the part of the person asserting the homestead does not change this analysis, as it is the fraudulent nature of the funds which is of the utmost importance"); *Palm Beach S&L Ass'n F.S.A. v. Fishbein*, 619 So.2d 267, 270-71 (Fla. 1993) (holding homestead exemption to be inapplicable because funds used to satisfy mortgage were obtained through fraud, even though property at issue was held solely by wife, who played no role in the fraud); *In re Hecker*, 316 B.R. 375, 390 (Bankr. S.D. Fla. 2004) (holding that under Florida law a spouse's lack of knowledge or involvement "provides no defense" where fraudulently obtained funds are used to purchase a homestead property). To hold otherwise would give Reeves-Stanford an undeserved "windfall." *Fishbein*, 619 So.2d at 271.

Courts overseeing receiverships have recently applied Florida's law on this issue in two cases involving substantially similar facts to those found here. In *SEC v. Kirkland*, Kirkland objected to the receiver's forced sale of his home, arguing that it was protected as his homestead under the Florida Constitution. No. 6:06-CV-183, 2008 WL 1787234 (M.D. Fla. Apr. 11, 2008). The facts showed that the proceeds of the fraudulent activity were funneled into accounts held by Kirkland's companies, which were then used to purchase and maintain Kirkland's homestead. *Id*. at *4. Thus, there was a direct link between the fraudulent activity and the use of those funds to purchase and maintain the home. *Id*. Applying *Havoco*, the court held that the property therefore was not a protected homestead, and could be forcibly sold. *Id*. at *4, *5.

In *CFTC v. Hudgins*, the court appointed a receiver to take possession of the defendant's assets after the CFTC brought a civil action related to a Ponzi scheme run by the defendant. 620 F. Supp. 2d 790 (E.D. Tex. 2009). Prior to the institution of the action, the defendant had given "a single woman residing in Florida" cash gifts, comprised of funds from the scheme, which she used to pay off the mortgage to her Florida condominium. *Id*. at 792. Like Reeves-Stanford, the woman refused to turn over the condominium to the receiver, arguing that her interest in it was protected by Florida's homestead exemption. *Id*. Applying many of the same cases discussed above, the court held that Florida law did not protect the property at issue because funds obtained through fraud were used in its purchase and maintenance. *Id*. at 794-95. The court also agreed that under Florida law it did not matter that the woman was not herself a party to the fraud: "That Silette is innocent of the fraud—and another person hurt by Hudgins's acts—does not change this analysis." *Id*. at 795.

4. Reeves-Stanford's supposed uncertainty about the Court's order is not a defense.

Reeves-Stanford's argument that she believes the Court's orders to be vague, and that she therefore cannot be held in contempt for her violation, is equally unavailing. As an initial matter, much of her argument is specific to the TRO, and the Receiver's Motion plainly stated that Reeves-Stanford was "in direct violation of the Preliminary Injunctions and Sections 10(a) and 5(b) of the Receivership Order," not the TRO. Brief in Support of Motion at 5. (Doc. 700.) Moreover, Reeves-Stanford's own actions belie her contention that she did not believe the orders to prohibit her sale of the Property. Selling the Property and sending the proceeds to an offshore bank account—particularly to one in a country whose courts apparently will not honor a decree from this Court that the funds be returned—are not the actions of one who thinks the orders to be inapplicable.

Even if Reeves-Stanford did truly believe the orders to be vague or ambiguous, she then had a duty petition this Court for clarification before taking any action:

> [T]he proper remedy for vagueness is a motion for modification, clarification, or construction, and vagueness may not be argued successfully as a defense to contempt without prior efforts to obtain clarification.

Lelsz v. Kavanagh, 673 F. Supp. 828, 840 (N.D. Tex. 1987) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949)); *also NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 583 F. Supp. 115, 120 (W.D. La. 1984) (holding that "respondents had an *affirmative duty* to petition for a clarification, modification, or construction of the Order before performing acts in the ambiguous area," and finding that because they did not do so "any ambiguity in the language of our Order is not a legally sufficient defense to civil contempt"); *SEC v. Elfindepan, S.A.*, 2002 WL 31165146, at *5 (noting that respondents "could have held the funds until they were given an opportunity to be heard," but "[i]nstead, they chose to spend the funds and risk contempt of court").

Similarly, it is no defense for Reeves-Stanford to say she was under the impression that Florida's homestead exemption protected her property, or that she otherwise did not believe she was violating the Court's orders. There is no requirement that the Court find Reeves-Stanford to have "knowingly disobeyed a court order" in order to hold her in contempt. *See* Reeves-Stanford Response at 11. The requirement is that she have had "knowledge *of* the court's order," which she plainly did. *SEC v. First Fin. Group of Tex.*, 659 F.2d 660, 669 (5th Cir. 1981) (emphasis added). The fact that an individual may have acted in good faith in attempting to comply with a court's orders "is not sufficient to avoid contempt." *Lelsz*, 673 F. Supp. at 839 (citing *Jim Walter*, 609 F.2d at 168).

This is true even if, as she claims, Reeves-Stanford was following the advice of an attorney who counseled that her actions would not violate the orders. The law is clear that "[r]eliance upon advice of counsel may be considered in mitigation of the sanction but does not constitute a defense to contempt of court." *First Fin. Group*, 659 F.2d at 670; *also Calcasieu*, 583 F. Supp. at 120 ("Whether respondents acted upon advice of counsel is no defense to civil contempt.").[2]

II. REPLY TO PRIOVOLOS'S RESPONSE

Priovolos essentially makes three arguments as to why he cannot be held in contempt: (1) Reeves-Stanford did not act in contempt of the Court's orders; (2) even if Reeves-Stanford acted in contempt, that does not mean that he as her attorney violated the Court's orders; and (3) because he was merely Reeves-Stanford's attorney, he can only be sanctioned if he is found in criminal rather than civil contempt. The Receiver has disposed of the first argument above; Reeves-Stanford was bound by the orders, and her actions violated those orders.

Reeves-Stanford has represented to the Court that she hired Priovolos to represent her in "adher[ing] to, and comply[ing] with" the Subpoena, attached to which were this Court's orders. Reeves-Stanford Response at 11, 12. She has further represented that she "sought the assistance of, and relied upon, the advice of legal counsel in all stages of this action." *Id*. at 11. Neither Reeves-Stanford nor Priovolos dispute that Priovolos was her attorney at the time of the Property sale. Motion at 9. If, as is implied in Reeves-Stanford's Response and in her current counsel's July 15, 2009 letter, Priovolos assisted Reeves-Stanford's violation of this Court's orders by counseling her to sell the Property and send the proceeds to an offshore account, Priovolos is

[2] In any event, Reeves-Stanford has never specified the nature of the questions asked any attorney or the advice received from an attorney.

also in contempt of those orders. App. at 7; *Whitcraft v. Brown*, 570 F.3d 268, 272-73 (5th Cir. 2009); *Vandenburg v. Nocona General Hosp.*, No. 7:03-CV-008, 2008 WL 114846, at *5, *6-7 (N.D. Tex. Jan. 10, 2008).

Priovolos is incorrect that a civil contempt action "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." *See* Priovolos Response at 4. An attorney who acts in concert with his client in violating a court's order may be found in civil contempt. *Whitcraft*, 570 F.3d at 272. In *Whitcraft*, the Fifth Circuit reviewed Judge Fitzwater's finding that both the attorney and his client were in civil contempt of an order freezing receivership assets after the client violated that order by selling a painting. *Id*. The Fifth Circuit upheld the civil contempt finding based on the fact that the attorney—"with full knowledge of the freeze order's terms—was an active participant in discussions about how to get funds to [his client], [and] approved of the sale of the Picasso." *Id*. Likewise, here the evidence establishes that Priovolos was aware of this Court's orders at the time of the sale, and Reeves-Stanford has suggested that in selling the property she was relying on advice given to her by Priovolos.

Priovolos cannot hide behind any claim of attorney-client privilege in refusing to tell the Receiver and this Court what his specific role was in advising Reeves-Stanford on the sale and clandestine money transfer. By invoking her reliance on counsel's advice as a defense to her violation, Reeves-Stanford has placed her once-confidential communications with Priovolos at issue and waived the privilege.[3] *Conkling v. Turner*, 883 F.2d 431, 434 (5th Cir. 1989) (holding

[3] As discussed above, her reliance on advice of counsel may in fact only be considered in mitigation of the severity of the sanction, not as a defense for the contempt.

that "the attorney-client privilege is waived when a litigant places information protected by it in issue through some affirmative act for his own benefit").

III. CONCLUSION

Reeves-Stanford has given no legally supportable argument as to why she had a legal right to sell the receivership property, and Priovolos does not dispute that he counseled Reeves-Stanford to take actions that were in violation of this Court's orders. The Receiver reurges his request for the entry of an order directing each of them to show cause why they should not be held in contempt for failure to comply with those orders.

Dated: September 14, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On September 14, 2009, 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 John J. Little and all counsel and/or pro se parties of record electronically or by another means authorized by Federal Rule of Civil Procedure 5(b)(2).

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