IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT 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 SUR-REPLY IN OPPOSITION TO RECEIVER'S MOTION FOR ORDER TO SHOW CAUSE WHY REBECCA REEVES-STANFORD SHOULD NOT BE HELD IN CONTEMPT

TO THE HONORABLE JUDGE GODBEY:

Non-Party, REBECCA REEVES-STANFORD ("REEVES"), hereby files this Sur-reply In Opposition To Receiver's Motion For Order To Show Cause Why Rebecca Reeves-Stanford Should Not Be Held In Contempt (hereinafter "Sur-reply"), and in support thereof states as follows:

I. Introduction

On September 14, 2009, the Receiver filed his Reply In Support Of His Motion For Order To Show Cause Why Rebecca Reeves-Stanford and John Priovolos Should Not Be Held In Contempt ("Reply"). This serves as REEVES' Response thereto.

II. Reeves Had No Duty To Seek Clarification Of An Inapplicable Order

The Receiver claims that "[n]one of the excuses given by Reeves-Stanford . . . for . . . [her] failure to comply with this Court's orders is supported by the law." The Receiver alleges that REEVES "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. . . , [and that she] had a duty [to] petition this Court for clarification before taking any action." The Receiver's allegations are unsupported and inconsistent with the facts of this case. The Order(s) is/are vague, ambiguous, and do not specifically prohibit REEVES, a non-party, from any action.

The Receiver cites to *Jim Walter Res. v. International Union, United Mine Workers of Am.*, 609 F.2d 165 (5th Cir. 1980), which holds that in civil contempt proceedings, the question is not intent; instead, the question is whether the alleged contemnors have complied with the court's order. The Appellate Court affirmed the contempt finding and stated that the TRO directed a discontinuance of a union strike. The Local claimed that it could not return to work as a result of the TRO, without first voting to rescind the strike. The court, however, held that the Local could have requested clarification or permission from the court, but the Local did neither.

In this case, REEVES is and was a non-party to this action and has no standing to seek clarification. In *Santiago v. Furniture Chauffeurs*, 1999 WL 967511 (N.D. Ill. 1999), the court held that while a union is liable for the concerted and authorized activity by its members in violation of a court order, since there was no evidence of threats, they could not be held in contempt. The Court distinguished *Jim Walter* and stated that although that court upheld a contempt finding, the basis for hat court's holding was that

the violative action was by members functioning as a union, thus, constituting *concerted, authorized activity*, and the same cannot be said of the facts in *Santiago*, or in the instant case concerning REEVES. The court in Santiago reasoned that "[a]n implicit obligation . . . is not enough to serve as the basis for a finding of contempt. The law is clear that a party can be held on contempt only for 'behavior clearly prohibited by a court order 'within its four corners.'" *Id.* at *5 (citations omitted).

In *Positive Software Sol., Inc. v. New Century Mort. Corp.*, 337 F. Supp. 2d 862, 876 (N.D. Tex. 2004), the Court cited to *Jim Walter*, but held that the order was not sufficiently definite for a finding of contempt, and stated 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. The 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.'" Although the order had definite meaning and was not ambiguous, the language was not specific and definite so as to require New Century to refrain from such action. The order merely *facially related to materials produced in discovery, as is the case with the Order allegedly relating to REEVES*. While the Court did not condone the conduct, the order was not sufficiently clear and definite to be enforced by contempt.

Here, the Order required REEVES to produce certain discovery, and she immediately retained counsel in order to comply. To hold REEVES in contempt for responding to the Order would be in contradiction of case law and punish her for language in an Order that was neither specific nor definite, especially since she is a non-party and there is no evidence or claim that she acted in concert with any Defendant to be found in violation of such Order. As such, a finding of contempt would be improper.

The Receiver also cites to the following distinguishable cases: *Lelsz v. Kavanagh*, 673 F. Supp. 828 (N.D. Tex. 1987) (distinguishable because the order pertained to party defendants, who testified they had no trouble understanding the settlement agreement, which specific terms they drafted); *NASCO, Inc. v. Calcasieu Tel. & Radio, Inc.*, 583 F. Supp. 115 (W.D. La. 1984) (defendants were enjoined from conveying or disposing of assets pending case resolution. Defendants engaged in deliberate and calculated efforts to defeat obligations under the agreement, and were found to have violated the injunction. With respect to ambiguity in the order, the Court refused to consider such claim since they acted in bad faith); and *SEC v. First Fin. Group of Tex.*, 659 F.2d 660 (5th Cir. 1981) (contempt finding due to officers' persistent refusal to comply with court orders and willful bad faith, which contradicted any inference of accidental oversight or confusion).

The above cases do not apply to the facts of this case and, as such, do not warrant a finding that REEVES should be found to be in contempt of any Order(s) of this Court.

III. Reeves Did Not Violate Any Order Of This Court

The Receiver alleges that REEVES violated this Court's "Orders," and cites to *SEC v. Homa*, 514 F.3d 661 (7th Cir. 2008), wherein non-parties were held in contempt for disbursing assets included in a receivership freeze order. The SEC filed a civil action for securities fraud against Mr. Homa, and his partners were also held in contempt. After the freeze order, a wire transfer was directed by his partners, which transaction was found to have been *initiated solely to circumvent the freeze order*. The Court held that the actions amounted to a conscious and deliberate decision, and civil contempt was

warranted for acting in concert with one another to dissipate protected assets.

This case is distinguishable because REEVES did not "disburse" any assets; rather, she sold her homestead and changed the characteristic of such asset. Despite the Receiver's unsupported allegations, there has been no attempt to hide the sale proceeds, a sale which was not prohibited under any Court Order and which was publicly listed for sale prior to any Court Order. The Receiver also cites to *SEC v. Elfindepan, S.A.*, 2002 WL 31165146 (M.D.N.C. Aug. 30, 2002), which is discussed in REEVES' Answer Brief.

IV. Reeves Did Not "Secret" Or "Hide" Any Funds

The Receiver cites to *Ruiz v. McCotter*, 661 F. Supp 112, 144 (S.D. Tex. 1986) and *National Research Bureau, Inc. v. Kucker*, 481 F. Supp. 612, 615 (S.D.N.Y. 1979), stating that compliance with a court order cannot be avoided by a literal or hypertechnical reading, and claims that REEVES secreted funds to an offshore account. In *Ruiz*, it was argued that the absence of a specific provision in a stipulation prohibiting single-celling of certain prisoners in segregation cells, precluded any penalty. The Court held that the policy of placing certain prisoners who were designated for single-cells in segregation facilities was inconsistent with the order's purpose. A finding of contempt was warranted, since the orders were specifically designed to negate these practices.

In *Kucker*, defendants' second edition of a regional mall directory *unquestionably* included substantial portions of plaintiff's copyrighted directory, and the Court held that the injunction was clearly violated, which specifically prohibited certain actions.

Here, there was no literal/hypertechnical reading of the Order; rather, the Order simply does not prohibit REEVES from selling her homesteaded property. There is no mention of the Property in an Order; furthermore, REEVES sold the Property with full

public disclosure, and the monies derived from the sale remain intact in a disclosed location. Contempt in this instance would be unfounded and unjustified. The Receiver fails to acknowledge that the Property was previously listed for sale, and the sale does not amount to contempt. There is no fraud on the part of REEVES, no "secreting" or "hiding" of funds, and such allegations are nonsensical since REEVES disclosed the whereabouts of such funds, despite any request or Court order seeking such information.

V. Reeves' Homestead Property Is Protected, And There Is No Evidence of Fraud

The Receiver claims that since REEVES received funds from Mr. Stanford as consideration in caring for their two children, "that these facts establish that the Property must have been purchased using proceeds from the fraud." Such claim is ludicrous and uncorroborated. The Receiver also claims that REEVES failed to reveal the amount of monies she received from Defendant in caring for their children. Such is not an issue, and the Receiver's claim that it is an "affirmative defense" and she "must establish the facts supporting her claim," is beyond the scope of the Order, since REEVES a non-party.

Additionally, the Receiver's allegation that REEVES' Homestead Property is a "Receivership Estate asset," is a broad claim, wholly unsupported by the facts. Assuming the Court or Receiver take the position that such Property belonged to the "Receivership Estate," the Order should have specifically described such Property, as opposed to attempting to characterize vague language as being inclusive. The Receiver also claims that the Property is not exempt as homestead "[b]ecause it was purchased using proceeds from the Stanford fraud." Again, there exists no evidence in support thereof, and the Receiver makes a contradictory allegation that "*[i]f* the funds used for the purchase of the

Property were obtained through fraud, the Property is not protected by the homestead exemption." The Receiver cannot escape the law and is attempting to jump the gun and find that the Property is a Receivership Estate asset and that it was purchased using fraudulently obtained monies, all without following the proper legal avenues in arriving at such a finding. The Order cannot be said to reveal such findings. Thus, a finding of contempt, based upon such weak claims, would be improper.

As support, the Receiver cites to the following: *Havoco of Amer., Ltd. v. Hill*, 790 So. 2d 1018, 1022 (Fla. 2001) (the Supreme Court actually held that a homestead acquired by a debtor with the specific intent to hinder, delay, or defraud creditors is not excepted from the protection of Article X, Section 4, and remanded the case for further proceedings); *Jones v. Carpenter*, 106 So. 127, 130 (Fla. 1925) (the funds at issue, subject to an equitable lien, were all spent for labor and improvements on the house, including roofing, which appellee sought to exempt and which the court found were within the qualifications to his homestead and not exempt to satisfy such lien(s)); *In re Fin. Federated Title & Trust, Inc.*, 347 F.3d 880, 890 (11th Cir. 2003) (it was undisputed that at least $977,921 could be traced back to the debtor, and these funds were fraudulently obtained and used to purchase the property. The Court reasoned that this was not a case of conversion of non-exempt to exempt assets, the use of a homestead to hinder, delay or defraud creditors, or use of a homestead which is connected to a criminal activity. Instead, Appellants purchased their home with fraudulently obtained funds and the Florida Constitution does not protect Appellants' homestead property from an equitable lien or constructive trust); *Palm Beach S&L Ass'n F.S.A. v. Fishbein*, 619 So. 2d 267, 270-71 (Fla. 1993) (involving an equitable lien and holding that the bank that

took a mortgage on the marital residence after the husband forged the wife's signature on loan documents was entitled to an equitable lien against the residence, even though wife had not been party to the fraud. The Court reasoned that the homestead would have been liable for the preexisting mortgages and taxes anyway and if an equitable lien attached, the wife stood in no worse position than she stood in prior to the fraudulent mortgage); *In re Hecker*, 316 B.R. 375, 390 (Bankr. S.D. Fla. 2004) (because the funds used by the debtor to purchase the real property were traceable to funds that the debtor fraudulently obtained from the creditor, the property was subject to an equitable lien in favor of creditor, and not exempt as a homestead, because an equitable lien or constructive trust could be imposed where the fraudulently obtained funds had been traced directly or indirectly into the acquisition of the homestead); *SEC v. Kirkland*, 2008 WL 1787234 (M.D. Fla. April 11, 2008) (Kirkland was active in the fraudulent sale of triplexes, proceeds were funneled into accounts held by Kirkland's companies, and used to purchase and maintain his homestead. Thus, there was a direct link between the fraudulent activity and the use of those funds to purchase and maintain Kirkland's home); and, *CFTC v. Hudgins*, 620 F. Supp. 2d 790 (E.D. Tex. 2009) (finding an equitable lien on the homeowner's condominium which was paid for by Ponzi scheme proceeds. The fraudulent monies were wired to Silette, a woman he met through an on-line dating service just three months prior).

The above cases either support REEVES' position or are distinguishable. There has been no finding, nor can there be, that the monies REEVES received over the years by Mr. Stanford, in raising their two children, were obtained fraudulently and given to her to defraud creditors. Such is not the case and there is no evidence suggesting

otherwise.

VI. The Receiver Fails To Address Fed. R. Civ. P. , Rule 65

The Receiver's Response fails to address Fed. R. Civ. P., Rule 65(d)(1), requiring that the Order state in "specific terms" the acts that it required or prohibited, or there can be no finding of contempt. Moreover, subsection (b)(2) provides that the Order may only bind those with actual notice, and other persons in active concert or participation.

VII. Conclusion

The Order(s) in this case is/are vague, ambiguous, overly broad, and inapplicable to REEVES, therefore, she may not be found in violation thereof, much less be held in contempt, civil or criminal.

Respectfully submitted,

By: s/ Jeronimo Valdez
R. JERONIMO VALDEZ
Texas State Bar No. 24042079
jvaldez@vwlegal.com

VALDEZ | WASHINGTON LLP
Highland Park Place
4514 Cole Avenue, Suite 600
Dallas, Texas 75205
(214) 361-7800 – Telephone
1 (469) 327-2629 – Facsimile

AND

Bradford M. Cohen
Apparing Pro Hac Vice
Florida Bar No. 118176
lawronin@aol.com
Vanessa L. Prieto
Appearing Pro Hac Vice
Florida Bar No. 124613
lawvlp@aol.com

BRADFORD COHEN LAW
1132 SE 3rd Avenue
Fort Lauderdale, Florida 33316
Telephone: 954-523-7774
Facsimile: 954-523-2656

ATTORNEYS FOR REBECCA REEVES-STANFORD

CERTIFICATE OF SERVICE

I certify that on September 29, 2009, I electronically filed the foregoing document with the Clerk of Court for the U.S.D.C., N.D. 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 29, 2009:

Mr. John Priovolos, Esquire
Law Offices of John Priovolos, P.A.
2333 Brickell Avenue, Suite A-1
Miami, FL 33129

Via Certified Mail, RRR

Ms. Melida Viera, Esquire
111 NE 1st Street, Suite 902
Miami, FL 33132-2517

Via Certified Mail, RRR

s/ Jeronimo Valdez
R. JERONIMO VALDEZ