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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
	§	
Defendants.	§	

RECEIVER'S OPPOSITION TO MOTIONS TO LIFT INJUNCTION AND ALLOW MOVANTS TO PROCEED IN ANOTHER FORUM[1] (DOCKET NOS. 23 AND 152)

Movants' request to proceed against the Defendants and others in separate jurisdictions would greatly disrupt the central purpose of the Receiver's work – identifying and distributing assets in an orderly, efficient and impartial manner to all the victims of Defendants' fraud, not just a select few. The Court should not cede its jurisdiction over these matters to other courts. Doing so would give rise to piecemeal litigation and leave important decisions about the proper distribution of Receivership assets to disparate courts before the Receiver has had a chance to complete his claims analysis and implement a distribution plan. Movants have not justified foisting this type of interference upon the Receiver's performance of his Court-ordered duties.

Additionally, the motions to intervene fail for the same reason the other motions to intervene have failed – Movants have not satisfied the requirements for intervention under

[1] Movants are David Quintos and Diana Dimitiova, who filed a Motion for Leave to Proceed in Another Forum (Docket #23), and Charles M. Gillis, Ash Shah, Alan Ratliff, Ruth Marina Rodriguez, Lusky Investment Partnership, L.P., and Rosine Chappell, who filed a Motion to Intervene and for Relief from Order Appointing Receiver (Docket #152).

Federal Rule of Civil Procedure 24. Receiver incorporates by reference the arguments in Receiver's Consolidated Opposition to Motions to Intervene.

I. Background

On February 17, 2009, the Court entered an order appointing Ralph S. Janvey as Receiver and directed him to marshal and take custody of the Receivership Estate and any "assets traceable to assets owned or controlled by the Receivership Estate." Order Appointing Receiver at ¶ 5(b); *see also* Amended Order Appointing Receiver (March 12, 2009) ("Order") ¶ 5(b). The Court also charged the Receiver with the duty to preserve the Receivership Estate for the maximum benefit of all claimants. Order at ¶ 5(j). To aid the Receiver in locating, gathering, and preserving the assets, the Court has enjoined all judicial proceedings in other forums. Order at ¶ 9(a).

Quintos and Dimitiova, who claim to be investors in certificates of deposit issued by Stanford International Bank, Ltd., request approval from the Court to bring a separate action against Defendants and other unknown persons in an unnamed jurisdiction.[2] Their motion rests on their status as foreign nationals who are "highly likely to possess" claims and legal rights under Mexican law that are not available to other investors. *See* Motion for Leave to Proceed in Another Forum at 4. They also argue their claims are unusual because they are customers of Stanford Trust Company, which is not one of the named Defendants.[3] *See id*.

Gillis, Shah, Ratliff, Rodriguez, Luskey Investments, and Chappell ("Gillis Movants") claim to be owners of customer accounts that are the subject of the SEC's claims against Defendants. *See* Motion to Intervene and for Relief from Order Appointing Receiver at 4. They

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[2] Interestingly, when Quintos and Dimitiova's counsel called Receiver's counsel to confer about the motion, Quintos and Dimitiova's counsel suggested that the preferred alternative forum may be San Antonio, Texas.

[3] This argument is unavailing because the Receivership Estate includes all assets of the Defendants and all entities they own or control, including Stanford Trust Company. *See* Order at ¶ 1.

request leave to pursue a lawsuit they have filed in Houston, Texas against Defendants, other Stanford entities and former employees.

The Court should not lift the injunction and allow the outlying lawsuits to proceed. None of the Movants has demonstrated that they will be prejudiced in any way by remaining subject to this Court's orders. There is no basis for distinguishing their claims from any of the thousands of claimants with individualized claims. Lifting the injunction would just encourage others to seek approval to file their own litigation in yet other forums. This would lead to claim resolution by different courts under differing standards – all while the Receiver is attempting to locate and gather assets and establish an impartial, equitable distribution of the assets.

II. ARGUMENT

A. A blanket injunction against outlying litigation is necessary; Movants' claims are not sufficiently unique or compelling to justify lifting the stay.

Courts considering whether to lift a receivership injunction have applied a three-part test that balances the interests of the receiver and the moving parties:

> (1) Whether refusing to lift the injunction genuinely preserves the status quo or whether the moving party will suffer substantial injury if it is not permitted to proceed;
>
> (2) The time at which the motion for relief from the injunction is made; and
>
> (3) The merits of the moving party's claim.

SEC v. Wencke, 622 F.2d 1363, 1373-74 (9th Cir. 1980) (establishing balancing test); *United States v. Acorn Technology Fund, L.P.*, 429 F.3d 438, 444 (3rd Cir. 2005) (adopting *Wencke* test). Movants have the burden of proving that the balance of these factors weighs in favor of lifting the injunction. *See Acorn Technology Fund, L.P.*, 429 F.3d at 450.

These factors should be considered against the backdrop of the core purposes of a receivership: (1) the Receiver's interests are "'very broad and include not only protection of the receivership res, but also protection of defrauded investors and considerations of judicial economy'" and (2) the purpose of the injunction is "to give the receiver 'a chance to do the important job of marshaling and untangling a company's assets without being forced into court by every investor or claimant.'" *United States v. Petters*, 2008 WL 5234527, *3 (D. Minn. Dec. 12, 2008) (quoting *Acorn Technology*, 429 F.3d at 443).

1. Lifting the injunction would interfere with the Receiver's ability to maintain the status quo.

This Receivership is complex and far-reaching. There are nearly 200 entities with holdings in 10 foreign countries and thousands of customers who are potential victims of the Defendants' fraud. A blanket injunction against litigation is the only way the Court may be assured of control over and thus the protection of the Receivership Estate while the Receiver performs the duties mandated by the Court's Order. *See SEC v. Wencke*, 622 F.2d at 1369 ("The blanket stay was found by the district court necessary to achieve the purposes of the receivership. We conclude the district court had the power to enter the order."); *SEC v. Byers*, 592 F. Supp.2d 532, 536 (S.D.N.Y. 2008) (concluding the court had authority to enter a blanket injunction - "If the court could not control the receivership assets, . . . the receiver would be unable to protect those assets.") (citing *Wencke*, 622 F.2d at 1369-70). Without the control provided by the Court's blanket injunction against litigation, the Receiver would be unable to maintain the status quo.

Allowing Movants to proceed in other jurisdictions would encourage numerous – potentially thousands – of other investors and creditors to seek approval to file lawsuits in other

jurisdictions out of fear that they would lose the "race to the courthouse."[4] Because the Movants' claims are in essence no different from any other claim, many other investors would demand the same approach. The result would be piecemeal litigation conducted in different jurisdictions with different outcomes, all of which would have a detrimental impact on the Receivership Estate and other claimants. *See Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985) ("[Blanket injunctions against litigation] can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales, as well as preventing 'piecemeal resolution of issues that call for a uniform result.'") (citation omitted).

Defending a large number of lawsuits also would divert the Receiver from the performance of his duties. *See Wencke*, 622 F.2d at 1373 ("The Receiver must be given an opportunity to progress in his assigned tasks before this Court contemplates lifting any stays. To remove the stay as requested could seriously damage the Receivership estate by, among other reasons, disrupting the orderly administration by the Receiver of this case."). Quintos and Dimitiova's assertion that proceeding in another forum would somehow relieve the Receiver of added burdens, (*e.g.*, litigating matters of foreign law, *see* Motion at 6-7), is no answer at all. First, the Receiver does not believe *any* litigation about the release of accounts is productive or appropriate at this point. Second, as all the Movants would be litigating claims against the Defendants to recover from assets of the Receivership Estate, the Receiver likely would have to participate in and defend the litigation no matter where it is pending. And the litigation would

[4] In fact, at least fourteen separate lawsuits already have been filed in various state and federal courts, some of which are securities class actions. The Receiver has been largely successful in convincing plaintiffs in these cases to suspend prosecution of those cases and to comply with the Court's injunction. Permitting Movants to proceed with their litigation would work directly counter to these efforts.

undoubtedly result in additional expense to the Receivership Estate, depleting assets that may already be insufficient to satisfy the claims of all the victimized investors and creditors. *See Acorn Technology*, 429 F.3d at 443 ("A district court should give appropriate substantial weight to the receiver's need to proceed unhindered by litigation, and the very real danger of litigation expenses diminishing the receivership estate."); *see also, SEC v. Pittsford Capitol Income Partners, L.L.C.*, 2007 WL 61096, *2 (W.D.N.Y. Jan 5, 2007) (granting judgment creditors' request to lift the injunction would defeat the fundamental purpose of protecting the estate property and returning the property to the victims because "only a handful of victims would receive close to full compensation while the pro rata shares available to the hundreds of other victims would be significantly diminished.").

In *SEC v. Wencke*, the Ninth Circuit explained why maintaining a blanket injunction is critical to a receivership. It protects the interests of the very persons enjoined from filing suit, and prevents the estate from becoming overwhelmed by the expense of multiple lawsuits:

> The receiver and the district court also felt it essential for the receiver to be given time to explore all the complex transactions and aspects of the receivership estate so that innocent shareholders suffered no further harm.
>
> A receiver appointed by a court in the wake of a securities fraud scheme may encounter difficulties sorting out the financial status of the defrauded entity or entities. There may be a genuine danger that some litigation against receivership entities amounts to little more than a continuation of the original fraudulent scheme. Similarly, the securities fraud may have left the finances of the receivership entities so obscure or complex that the receiver is hampered in conducting litigation. Moreover, the expense involved in defending the many lawsuits which often are filed against an entity in the wake of a securities fraud scheme may be overwhelming unless some are temporarily deferred. A stay of proceeding against receivership entities except by leave of the court may be an appropriate response to the above concerns, and the district court did not abuse its discretion in this case by entering the blanket stay.

Wencke, 622 F.2d at 1373. In short, there is no better way to maintain the status quo and protect the interests of all claimants than a blanket injunction prohibiting litigation.

2. Movants will not suffer substantial injury if they are required to wait.

On the other side of the balance, Movants will not suffer substantial injury if they are not permitted to proceed with their suit at this time. There is no suggestion that Quintos or Dimitiova will be stripped of their Mexican law claims, if they even have any, that the Gillis Movants will lose their Texas Securities Act claims, or that any of the Movants will lose other important rights unless they are allowed to proceed immediately. Presumably it is the delay in the enforcement of their rights that is the true complaint. But, delay alone is not a sufficient reason to lift the injunction. *See Petters*, 2008 WL 5234527, *4 (delay in ability to proceed with pending lawsuits not enough to tip the balance in favor of lifting the stay); *see also, Federal Trade Comm'n v. Med Resorts Int'l, Inc.*, 199 F.R.D. 601, 609 (N.D. Ill. 2001) (denying motion to lift injunction when the only "injury" stemmed from the delay in enforcing the movants' rights).

Quintos and Dimitiova also contend, without any evidence or authority, that the SEC either has no interest in representing the interests of foreign nationals or has a conflict of interest and cannot represent the foreign nationals' interests. *See* Motion at 5. Comments about the SEC's interests miss the point. Quintos and Dimitiova's interests, like the Gillis Movants' interests, are protected by the ***Receiver***, who has been charged with preserving the Receivership Estate to prevent any "irreparable loss, damages, and injury to the Estate." The Order does not distinguish between investors of different nationalities or status, and the Receiver's work has been to protect the Receivership Estate for the benefit of all victims of the Defendants' fraud, including foreign nationals like Quintos and Dimitiova. *See* Order at ¶¶ 5(g) and (j).

3. Allowing outlying litigation this early in the Receivership will only add to the complexity of this Receivership.

While Receiver has worked diligently, he has had only four weeks to unravel Defendants' complicated matrix of companies, assets, and investor account transactions. Courts that have considered a motion to lift a blanket litigation injunction this early in a receivership routinely deny the motion. *See e.g., Petters*, 2008 WL 5234527 at *3 (two-month receivership - "[I]n the very early stages of a receivership, 'even the most meritorious claims might fail to justify lifting a stay given the possible disruption of the receiver's duties.") (citation omitted); *Pittsford Capital*, 2007 WL 61096 at *2 (seven-month receivership proceeding); *Federal Trade Comm'n v. 3R Bankcorp*, 2005 WL 497784, *3 (N.D. Ill. Feb. 23, 2005) (three-month receivership - "'[w]here the motion from relief from stay is made soon after the receiver has assumed control over the estate, the receiver's need to organize and understand the entities under his control may weigh more heavily than the merits of the party's claim.'") (citation omitted).[5]

4. The merits of Movants' claims are immaterial to the analysis; the balance of interests still weighs heavily in favor of maintaining the injunction.

On balance, the merits of Movants' claims are immaterial because in this case the other factors outweigh this one. In fact, many courts assume the validity and merits of the movants' claims for purposes of this balancing test yet still deny the motion to lift the litigation stay. *See, e.g., Byers*, 592 F. Supp. 2d at 537 ("Even assuming the Movants' claims are strong, however,

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[5] Courts frequently deny motions to lift a litigation stay even when the receivership has been pending for several years. *See Acorn Technology*, 429 F.3d at 449-50 (refusing to lift stay when receivership in effect for nearly 3 years); *SEC v. Universal Financial*, 760 F.2d 1034, 1039 (9th Cir. 1985) (refusing to lift stay after four years); *Wencke*, 622 F.2d at 1374 (refusing to lift stay after two years); *United States v. ESIC Capital, Inc.*, 675 F. Supp. 1464, 1466 (D. Md. 1987) (refusing to lift stay and finding two-year old receivership "relatively youthful"); *but cf. United States v. ESIC Capital, Inc.*, 685 F. Supp. 483, 485-86 (D. Md. 1988) (lifting stay after two years to allow foreclosure of pre-existing first lien on one piece of property in the receivership estate because single mother had no other means of supporting her children and the foreclosure action would be painless for all concerned).

the other two *Wencke* factors weigh heavily against lifting the injunction); *Petters*, 2008 WL 5234527, * 4 (denying motion to lift stay but assuming the "asserted claims are arguably colorable, . . ."); *Med Resorts*, 199 F.R.D. at 609 (even though preliminary injunction, asset freeze, and appointment of receiver make it "more likely that [movants] will prevail in future litigation. . . . the fact that one of the *Wencke* factors tips in favor of [the movants] is not determinative, especially when all of the others undoubtedly call for a continuation of the stay."). In *Pittsford Capital*, the creditors had *judgments in hand* and were seeking to lift the injunction so they could enforce the judgments against the assets of the receivership estate. The Court refused, primarily because lifting the injunction would allow the judgment creditors to get out ahead of other creditors with equally valid yet higher-dollar claims. That is exactly what would happen here if Movants were allowed to proceed. *Pittsford Capital*, 2007 WL 61096, *2.

In any event, there is no way to evaluate the merits of Quintos and Dimitiova's Mexican law claims because they have failed to offer any evidence or argument under Mexican law that would allow the Court to determine the efficacy of the claims. Apparently, Quintos and Dimitiova themselves do not know whether they have viable claims. *See* Motion at 4 and 16 ("Movants possess or are highly likely to possess legal claims, rights and obligations under foreign law" and "Movants may determine that they have claims and remedies under foreign law that ought to be pursued . . . ."). Likewise, other than a very general statement that they have claims under the Texas Securities Act, the Gillis Movants have not identified any facts that support a claim. That deficiency alone should defeat both motions. *United States v. ESIC Capital, Inc.*, 675 F. Supp. 1462, 1464 (D. Md. 1987) ("There must be some discussion of the merits, and here, that discussion is absent.").

III. CONCLUSION

Movants have not carried their burden of proving the balance of interests weighs in favor of lifting the injunction. Receiver requests that the Court deny the motions and stop Movants' quest to initiate a race to the courthouse.

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Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On March 16, 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 all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Timothy S. Durst
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