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

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	**Civil Action No. 03:09-CV-0298-N**
STANFORD INTERNATIONAL BANK, LTD., *et al.*	§	
Defendants.	§	
IN RE	§	
STANFORD INTERNATIONAL BANK, LTD.	§	**Civil Action No. 3:09-CV-0721-N**
Debtor in a Foreign Proceeding.	§	

LIQUIDATORS' CONSOLIDATED REPLY TO (1) THEIR MOTION TO AMEND, MODIFY OR VACATE CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER AND (2) THEIR MOTION TO REFER PETITION FOR RECOGNITION PURSUANT TO CHAPTER 15 OF THE BANKRUPTCY CODE AND RELATED PLEADINGS TO THE BANKRUPTCY COURT

The U.S. Receiver, the SEC and the IRS each oppose amending this Court's Amended Receivership Order to allow Messrs. Nigel Hamilton-Smith and Peter Wastell (collectively, "Liquidators") to file a petition pursuant to chapter 15 of the U.S. Bankruptcy Code, apparently preferring to continue pursuing separate, uncoordinated proceedings across the globe. Their opposition briefs are replete with untested and in some cases, patently false, allegations about Liquidators and the Antiguan proceeding. These allegations are not only irrelevant to the issue before the Court – whether the Amended Receivership Order should be amended to permit the

filing of a chapter 15 petition – but it appears that the U.S. Receiver and SEC are more interested in maintaining their positions than cooperating with Liquidators to maximize the recovery for SIB's creditors. As the Examiner (and two groups of Stanford investors) recommend, this Court should consider the chapter 15 petition so that the Court may resolve these issues within the statutory framework articulated by Congress.

I. ARGUMENT

A. THE PENDING APPEALS DO NOT DEPRIVE THIS COURT OF JURISDICTION

As an initial matter, the SEC and the U.S. Receiver both argue (albeit in footnotes) that this Court lacks jurisdiction to grant Liquidators' motion because two parties, including defendant R. Allen Stanford, have filed interlocutory appeals from certain aspects of the Amended Receivership Order.[1] *See* Receiver's Response to the Antiguan Liquidators' Motion to Amend, Modify or Vacate Certain Portions of the Court's Amended Receivership Order ("Receiver's Br.") (Dkt. #371) at 3, n.3; *see also* Plaintiff [SEC's] Opposition to Motion to Amend, Modify or Vacate Certain Portions of the Court's Amended Receivership Order ("SEC Br.") (Dkt. #373) at 2, n.2. For support, the U.S. Receiver and SEC rely on *Coastal Corp. v. Texas Eastern Corporation*, 869 F.2d 817, 820 (5th Cir. 1989) and its progeny. But the SEC and U.S. Receiver misconstrue the holding of *Coastal*. As the Fifth Circuit recently said: "A notice of appeal from an interlocutory order does not produce a complete divestiture of the district court's jurisdiction over the case; rather, it only divests the district court of jurisdiction over ***those aspects of the case on appeal***." *Alice L. v. Dusek*, 492 F.3d 563, 564 (5th Cir. 2007) (emphasis added). "Where an appeal is allowed from an interlocutory order, the district court

[1] The Examiner does not suggest that the pending appeal divests this Court of jurisdiction over Liquidators' motion. *See generally* Brief of the Examiner Regarding the Motion to Modify or Vacate Certain Portions of the Court's Amended Receivership Order ("Examiner's Br.") (Dkt. #368).

may still proceed with matters not involved in the appeal." *Id.* at 564-65 (citing *Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5th Cir. 1981); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)).

Liquidators' motion, which seeks relief from the portion of the Amended Receivership Order that bars Liquidators from filing a chapter 15 petition, is unrelated to the pending appeals, which focus primarily on the asset freeze imposed by the Amended Receivership Order and related orders.[2] At bottom, the argument that any motion relating to the Amended Receivership Order is now beyond this Court's jurisdiction is yet another attempt to avoid litigating the merits of the legal issues that Liquidators seek to present to this Court through their chapter 15 petition.[3]

B. THE OPPOSITION BRIEFS PRESENT NO SOUND REASON TO PRECLUDE A CHAPTER 15 PETITION

It is an immutable fact that SIB is involved in receivership, liquidation or recognition proceedings in several, international jurisdictions, including the United States, Antigua, Canada, Switzerland and the United Kingdom. As the Examiner explains, this situation presents a number of complicated legal and policy issues that are most efficiently addressed if the Court considers the chapter 15 petition. *See* Examiner's Br. at 3-5. Maintaining the status quo, as the U.S. Receiver, SEC and IRS advocate, is untenable and not in the interest of SIB's investors,

[2] While neither appellant has yet filed a statement of issues with the Fifth Circuit (and Mr. Stanford's appeal is under seal), neither party challenged the chapter 15 ban in this Court, nor would they have cause to given that neither is a "foreign representative" within the meaning of the term in chapter 15.

[3] Though the U.S. Receiver opposes Liquidators' attempt to file a chapter 15 petition in the United States – thereby attempting to foreclose Liquidators from offering evidence regarding SIB's "center of main interests" – the U.S. Receiver has offered such evidence in proceedings in both Antigua and the United Kingdom. Notably, however, this Court explicitly declined to appoint him a "foreign representative" under 11 U.S.C. § 1505, *see* Amended Receivership Order (Dkt. #157) ¶ 6 (striking relevant language), and the U.S. Receiver does not qualify as a "foreign representative" under the UNCITRAL Model Law on which chapter 15 is based. *See* UNCITRAL Model Law ch. I art. 2(d) (1997) ("Foreign representative means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding …"); *id.* art. 2(a) (1997) ("'Foreign proceeding' means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, ***pursuant to a law relating to insolvency*** in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation…") (emphasis added).

given that jurisdictional issues will continue in other countries, which (absent cooperation) will unnecessarily further deplete resources and the recovery available to SIB's investors.

1. Chapter 15 Controls the Assessment of How to Treat Antiguan Proceedings

While the opposition briefs devote extensive argument to impugning the integrity and adequacy of the Antiguan judicial system,[4] they do not address, much less dispute, that Congress enacted chapter 15 precisely to guide courts' consideration of the issues raised by international insolvency proceedings. Indeed, the opposition briefs together do not contain a single citation to chapter 15, its stated purpose of fostering cooperation between U.S. and foreign courts, *see* 11 U.S.C. § 1501(a) (2006), or its legislative history.[5] Yet it is chapter 15 that lays out precisely how courts should determine the respect necessary to give to foreign tribunals. The oppositions' arguments directed at SIB's connections to Antigua or lack thereof, as well as to Antiguan law's relative treatment of U.S. and other foreign interests, are properly directed to the Court in a chapter 15 proceeding, not on a request to vacate the unsupported bar preventing Liquidators from making their case under the statute.[6]

[4] The U.S. Receiver complains bitterly that the Antiguan court questioned whether this Court's orders are effective in Antigua, and that the Antiguan court found that he "has no legal entitlement to standing in Antigua and Barbuda." Receiver's Br. at 18. The U.S. Receiver acknowledges, as he must, that the Antiguan court allowed him to appear in Antigua as *amicus curiae*, even after it denied his petition to appoint himself liquidator of SIB in Antigua. *See id.* at 18, n.16. The U.S. Receiver does not mention, however, that, in so doing, the Antiguan court allowed him to cross-examine Paul Ashe, Director of the FSRC, and Nigel Hamilton-Smith, one of the Liquidators, on certain relevant issues. *See* Judgement entered on April 17, 2009, ¶¶ 18-20 (attached as Exhibit C to Receiver's Br., *see* Receiver's Br., App. at 25-26).

[5] Only the Examiner addresses chapter 15's terms, and he supports the filing of a chapter 15 petition. *See* Examiner Brief at 4-5.

[6] Should this Court determine that it will hear Liquidators' chapter 15 petition in the first instance, it should do so on full briefing and after an evidentiary hearing, as contemplated by chapter 15. While Liquidators address some of those issues below, only some highlights can be addressed in this context.

2. Because Congress Established These Procedures, Barring a Chapter 15 Petition is Far Different Than The Litigation Stay Cases Upon Which the Oppositions Rely

The specific issue presented here – whether the court may enjoin a chapter 15 petition – is one of first impression in the United States (the opposition briefs complain that Liquidators cited no cases in this context, but given that Congress enacted Chapter 15 in 2005, this is not surprising). Yet, as discussed above, Congress' purpose in enacting Chapter 15 is clear. In opposition, the U.S. Receiver and the SEC rely primarily on the Court's general authority to stay litigation in other jurisdictions, as well as recent the bankruptcy stay case, *Byers*, which neither addressed chapter 15 nor presented the situation of parallel proceedings in other countries. Reliance on such authority misses the point. Regardless of the justification for other aspects of the stay, there is no authority for this Court to pretermit the process Congress established for this situation.[7] Indeed, unlike the cases relied upon by the U.S. Receiver and the SEC, the injunction here does not bar litigation that will distract the U.S. Receiver from performing his duties timely; rather, it is barring the very method Congress adopted to address foreign insolvency proceedings and coordination of multiple proceedings.[8]

[7] The U.S. Receiver asserts that Liquidators "present[ed] no compelling reason for treating an injunction against filing a chapter 15 petition any differently from any other litigation stay." U.S. Receiver Opp. at 5. However, it is precisely the fact that Congress enacted chapter 15 to deal with the issues presented here that makes this situation different than the generic case law regarding litigation stays relied on by the U.S. Receiver.

[8] Although an equity receivership can be applied to (among other things) distribute assets and take authority over foreign assets, courts have long recognized that it is not necessarily preferable to bankruptcy even in cases such as this where the insolvency stems from alleged securities fraud: "We see no reason why violations of the Securities Act should result in the liquidation of an insolvent corporation via an equity receivership instead of the normal bankruptcy procedures, which are much better designed to protect the rights of interested parties." *Esbitt v. Dutch-Am. Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir. 1964); *cf.* Brief in Support of Motion (i) To Intervene; (ii) To Amend or Modify Certain Portions of this Court's Amended Receivership Order; (iii) In support of the Antiguan Receivers-Liquidators' Request to Coordinate Proceedings under Chapter 15 of the Bankruptcy Code; and (iv) In the Alternative, For Extension of Time to Appeal (Dkt. #369) ("Intervenors' Br.") at 9 (discussing benefits of a bankruptcy proceeding as opposed to an equity receivership).

C. SIB'S CONNECTIONS TO ANTIGUA AND THE INTEGRITY OF THE ANTIGUAN PROCEEDINGS, ARE PROPERLY ADDRESSED IN THE CHAPTER 15 PROCEEDING

1. Whether SIB Has Greater Connections to the United States or to Antigua Should Be Decided Under Chapter 15

Arguments that U.S. law is better, fairer, or, in the case of the IRS's argument, more convenient, for government claimants, should not be a basis for the Court to preclude any consideration of the chapter 15 petition. The SEC and the U.S. Receiver can and should make those arguments in the chapter 15 context, where the Court will have a prescribed framework to assess the recognition to be given the Antiguan proceeding, and will retain authority to consider the broader interests that the U.S. Receiver and SEC assert. Those arguments are premature now.

2. Whether SIB Should Be Aggregated With Other Stanford Entities Is an Issue for the Bankruptcy Proceedings

The U.S. Receiver asserts that dual receiverships over different Stanford-related entities would be inefficient and ineffective because SIB must be aggregated within the Receivership Estate. Once again, this issue is not relevant to whether the Amended Receivership Order should be amended to allow consideration of the chapter 15 petition. But even if it were relevant, the U.S. Receiver's position regarding aggregation of SIB is unfounded. First, he presumes that an aggregation of entities is appropriate in an equity receivership,[9] but he has not offered any explanation why such an aggregation would benefit SIB's creditors.[10] Second, refusal to

[9] As support, the U.S. Receiver cites *SSP Partners v. Gladstrong Investments (USA) Corp.*, 275 S.W.3d 444, 454 (Tex. 2008) and *Kensington Int'l Ltd. v. Congo*, [2006] 2 BCLC 296. Neither of these cases consider whether it is appropriate to aggregate corporate entities in an equity receivership, but instead recite the well-known standard that in certain cases of fraud, courts will disregard sham corporate formalities in order to impose liability on those responsible for the fraud. Assuming aggregation is possible, the U.S. Receiver has cited no authority to explain what the standards are and what showings are required, let alone precedent for aggregating over 100 entities of the magnitude involved here.

[10] The U.S. Receiver states that "almost all Estate assets are assets of SIB or traceable to SIB." Receiver's Br. at 15. If that is correct, it is difficult to understand how SIB investors would benefit by aggregation of all Stanford-related entities since the creditors of the other entities are likely to receive a *pro rata* share in these assets.

consider the chapter 15 petition will not permit the U.S. Receiver to aggregate SIB with the other Stanford-related entities because (1) with dueling and uncoordinated proceedings it is doubtful that the U.S. Receiver will be able to obtain assets outside the United States, and (2) the U.S. Receiver does not have the customer information necessary to make distributions.

3. The Antiguan Distribution Scheme Adequately Protects SIB's Claimants

Both the U.S. Receiver and the SEC complain that the plan of distribution ordered by the Antiguan court (an order the form of which was approved by counsel to the U.S. Receiver) is inadequate. For example, the SEC argues that "the priority described [in the Antiguan Order] does not identify investors, but only creditors and depositors." SEC Br. at 6. Not only is this argument irrelevant and premature, it is one of semantics because investors are treated as "creditors" in Antigua. Further, while the U.S. Receiver and SEC purport to worry about SIB's investors, the only investors who are on record support consideration of the chapter 15 petition. *See* Intervenors' Br. at 13 (arguing that coordination under chapter 15 will provide substantial benefits to SIB's investors); *see also* Reply in Support of Joint Emergency Motion to Reconsider the Order Approving Procedures to Apply For Review and Potential Release of Accounts (Dkt. #359) at 3-4 (similar).

4. The Fact that the Antiguan Government May Have a Financial Interest in or Owe Money to Other Stanford Entities Is Not Relevant

Both the SEC and the U.S. Receiver argue that Liquidators' recognition proceeding should not be allowed to proceed purportedly because Stanford, "through some of his wholly-owned entities" made loans to the Antiguan government that have not yet been repaid. *See* Receiver's Br. at 18-19; SEC Br. at 9. Even assuming that the government of Antigua was a debtor ***of SIB*** (a fact that neither party alleges),[11] the Antiguan government is no less

[11] Liquidators have uncovered no evidence that the Antiguan government owes money to SIB.

independent than the United States government, which is a creditor of Mr. Stanford (the IRS) and a plaintiff in this case (the SEC).

5. The U.S. Government's Belief that It Will Fare Better in U.S. Courts Does Not Override Congressional Respect for Foreign Proceedings

In its brief, the IRS essentially argues that because the United States may be received more favorably by a U.S. court than an Antiguan court, this Court should retain jurisdiction over the matter. Putting aside the questionable assumption that a U.S. court (or the U.S. Receiver) will somehow regard the IRS's putative claims against Mr. Stanford with special favor,[12] the convenience for the IRS in litigating on what it perceives as home turf does not trump the legislative judgments Congress made in enacting chapter 15. While the IRS claims that various international agreements to which both the United States and Antigua are parties "may not be useful" here because they impose specific requirements on the IRS, United States (IRS) Response in Opposition to the Antiguan Liquidators' Motion to Amend, Modify or Vacate Certain Portions of the Court's Amended Receivership Order ("IRS Br.") (Dkt. #370) at 2, inconvenience is not a ground to disregard international agreements and statutes such as chapter 15 that speak directly to issues of international comity.[13] Those agreements and statutes define "the U.S. rule of law" for which the IRS asserts without foundation that Liquidators "have little interest or concern." IRS Br. at 4. Further, the IRS is incorrect that recognition under chapter 15 will necessarily disrupt their tax litigation against Mr. Stanford by making it more difficult to

[12] The IRS complains that the priority scheme in Antigua "is unlike the order of distribution found in the U.S. Bankruptcy Code, endorsed by Congress, that recognizes administrative claims, secured claims, priority claims and unsecured general claims." IRS Br. at 3. But the equity receivership now in place is no better – it is also contrary to the scheme provided in the Bankruptcy Code given that there are no established rules, and the priority and distribution scheme is apparently whatever the U.S. Receiver decides is equitable and convinces the Court to approve.

[13] The proper remedy for whatever "inconvenience" exists for the IRS is to seek to revise the existing agreements between the governments, not to ask this Court to ignore the Congressionally determined appropriate scheme, chapter 15.

obtain information from SIB. The IRS will have the same ability to obtain information as they would have if the Antigua proceeding was not recognized.

6. Scurrilous and Specious Accusations of Misconduct Should Not Influence This Court's Decision

The opposition briefs assert an array of baseless accusations regarding the conduct of the Antiguan Liquidators, courts and government, most of which cannot be fully addressed in this reply brief (even if they were relevant). One accusation directed specifically at the Liquidators, however, demands a response. Seeking to cast aspersions on Liquidators, the U.S. Receiver and the IRS accuse them of having destroyed and/or absconded with information in Canada. *See* Receiver's Br. at 20 ("the Antiguan Liquidators moved all SIB electronic data that had existed in Canada out of Canada and to Antigua" and "[t]here is no reason to believe that the Antiguan Liquidators would not do the same thing in the U.S. if given the chance"); IRS Br. at 2, 4 ("On the other hand, the Antiguan Liquidators have little interest or concern for the U.S. rule of law in this matter – as their destruction of computer evidence demonstrates."). The facts – all of which are omitted from their briefs – are these:

Once appointed Joint Receiver-Managers of SIB by the Antiguan court, Liquidators took immediate steps to close SIB's Canadian office, which no longer had any selling function and therefore simply drained SIB's cash.[14] Liquidators notified the U.S. Receiver of these actions in February 2009, but he did not send a representative to Montreal for more than a month thereafter. During their visit, Liquidators became aware of certain IT systems at the office, and therefore arranged to have their IT experts make a forensic image of all of the data. These forensic standards are well-accepted and widely used in criminal matters to preserve evidence. After the image was taken, Liquidators took the precaution of erasing from the computer equipment any

[14] The Montreal office effectively served as a sales office for SIB.

confidential data, thereby preserving the evidence but avoiding the needless expense of keeping the office open. The Court can judge for itself what it says about the U.S. Receiver's interests that he portrays this event as an improper destruction of evidence rather than a direct and prudent cost savings for SIB and its claimholders.[15]

D. LIQUIDATORS' MOTION TO REFER

Each of the opposition briefs and the Examiner's brief take the view that if a chapter 15 recognition proceeding is undertaken, it should be heard by this Court. Liquidators do not object to this Court in the first instance addressing the core issue of recognition upon appropriate submissions. However, Liquidators reserve their right to seek to refer the case to the U.S. Bankruptcy Court at a later time because after recognition of the Antiguan proceeding, relief may be sought from time to time under provisions of the Bankruptcy Code that would entail resolution of issues that are particularly within the specialized experience of the bankruptcy court.

[15] Liquidators remain ready to share information with the U.S. Receiver on terms that do not violate Antiguan law. Indeed, Liquidators recently sent the U.S. Receiver a proposed cooperation agreement. In contrast, the U.S. Receiver's contention that he "stands ready to work with the Antiguan Liquidators" and that he is "open to methods of reducing costs", Receiver's Br. at 22, ring hollow. Not only does the U.S. Receiver oppose Liquidators' attempt to invoke chapter 15 (and thereby seek the cooperation intended by Congress), but he has steadfastly refused to share ***any*** information regarding SIB with Liquidators. Indeed, recently he sought to preclude SIB's former counsel from providing relevant documents to Liquidators. *See* Receiver's Reply to Response of Hunton & Williams LLP in Opposition to Receiver's Motion to Compel (Dkt. #315) at 11 (asking the Court to preclude Hunton "from providing any information … to … any receiver or liquidator appointed by a foreign court").

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Respectfully submitted,

/s/ Weston C. Loegering

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Evan P. Singer

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