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

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
Plaintiff,	§	Case No. 3:10-cv-1465
v.	§	
MERGE HEALTHCARE, INC.,	§	
Defendant.	§	

RECEIVER'S ORIGINAL COMPLAINT
AGAINST MERGE HEALTHCARE, INC.

SUMMARY

1. The Court has ordered Receiver Ralph S. Janvey ("Receiver") to take control of all assets of the Receivership Estate in order to make an equitable distribution to claimants injured by a massive fraud orchestrated by Allen Stanford, James Davis, and others.

2. The Receiver's investigation to date reveals that revenue from the sale of fraudulent certificates of deposit ("CD Proceeds") generated substantially all of the income for the Stanford Defendants and the many related Stanford entities (collectively, the "Stanford Parties").

3. The Receiver has identified payments of CD Proceeds totaling $9 million from the Stanford Parties to Merge Healthcare, Inc. On February 13, 2009 — only a few days prior to the Receiver's appointment — $9 million of CD Proceeds were transferred from Stanford International Bank, Ltd. ("SIBL," "SIB," or "the Bank") to Emageon, Inc. ("Emageon"). On April 2, 2009, Emageon was acquired by Amicas, Inc ("Amicas"), and on February 28, 2010,

Amicas merged with Merge Healthcare, Inc. ("Merge"). Merge is the successor to Emageon and, therefore, received $9 million in CD Proceeds fraudulently transferred to it from SIBL. Through this lawsuit, the Receiver seeks the return of these funds in order to make an equitable distribution to claimants.[1]

4. Merge did not provide reasonably equivalent value in exchange for the $9 million in CD Proceeds it received from the Stanford Parties.

5. At all times relevant to this complaint, the Stanford Parties were insolvent, and Defendant Allen Stanford operated the Stanford entities in furtherance of his fraudulent scheme. The payments from the Stanford Parties to Merge were made with actual intent to hinder, delay, and defraud the Stanford Parties' creditors.

6. The Receiver was only able to discover the fraudulent nature of the above-referenced transfers of funds after Allen Stanford and his accomplices were removed from control of the Stanford entities, and after a time-consuming and extensive review of thousands upon thousands of paper and electronic documents relating to the Stanford entities.

7. The Receiver seeks an order that: (a) the payments of CD Proceeds received directly or indirectly by Merge were fraudulent transfers under applicable law or, in the alternative, unjustly enriched Merge; (b) the CD Proceeds received directly or indirectly by Merge are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) Merge is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received from the Stanford Parties; and (d) awards attorneys' fees, costs, and interest to the Receiver.

[1] Prior to filing this Complaint, the Receiver sent a written demand letter to Merge in an attempt to resolve the Receiver's claims against it. Merge failed to even respond to the Receiver's letter.

JURISDICTION & VENUE

8. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), and under Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754).

9. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver to execute his Receivership duties.

10. Further, within 10 days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in the following United States district courts pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in each district: the Eastern District of Wisconsin (Merge's principal place of business); the District of Delaware (where Merge, Amicas, and Emageon are incorporated); the Northern District of Alabama (Emageon's principal place of business); and the District of Massachusetts (Amicas's principal place of business).

11. This Court has personal jurisdiction over Merge pursuant to FED. R. CIV. P. 4(k)(1)(C) and 15 U.S.C. §§ 754 and 1692.

THE PARTIES

12. Plaintiff Ralph S. Janvey has been appointed by this Court as the Receiver for the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities) of Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, Robert Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford Financial Group, the Stanford Financial Group Bldg., Inc., and all entities the foregoing persons and entities own or control, including, but not limited to Stanford Financial Group Global

Management, LLC ("SFGGM") and Stanford Financial Group Company ("SFGC") (the "Receivership Assets"). Plaintiff Janvey is asserting the claims contained herein in his capacity as Court-appointed Receiver.[2]

13. Defendant Merge Healthcare, Inc. is a Delaware corporation with a principal office in Milwaukee, Wisconsin. Merge will be served pursuant to the Federal Rules of Civil Procedure or by other means approved by the Court.

STATEMENT OF FACTS

14. On February 16, 2009, the Securities and Exchange Commission commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford's companies, SIBL, Stanford Group Company, and Stanford Capital Management, LLC (collectively the "Stanford Defendants"). On the same date, the Court signed an Order appointing a Receiver, Ralph S. Janvey, over all property, assets, and records of the Stanford Defendants, and all entities they own or control.

I. Stanford Defendants Operated a Ponzi Scheme.

15. As alleged by the SEC, the Stanford Defendants marketed fraudulent SIB CDs to investors exclusively through SGC financial advisors pursuant to a Regulation D private placement. SEC's Second Amended Complaint (Doc. 952), ¶ 27.[3] The CDs were sold by Stanford International Bank, Ltd. *Id*.

16. The Stanford Defendants orchestrated and operated a wide-ranging Ponzi scheme. Stanford Defendant James M. Davis has admitted that the Stanford fraud was a Ponzi scheme from the beginning. Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other

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[2] The Receiver's claims in this Complaint are related to his claims on file in Case No. 03:09-CV-0724-N before this Court.

[3] Unless otherwise stated, citations to Court records herein are from the case styled *SEC v. Stanford Int'l Bank, Ltd., et al.,* Civil Action No. 3-09-CV-0298-N.

conspirators created a "massive Ponzi scheme"); Doc. 807 (Davis Tr. of Rearraignment) at 16:16-17, 21:6-8, 21:15-17 (admitting the Stanford Ponzi fraud was a "massive Ponzi scheme ab initio"). In fact, this Court recently found that the Stanford fraud was indeed a Ponzi scheme. *See* Case No. 3:09-CV-0724-N, Doc. 456 at 2 ("The Stanford scheme operated as a classic Ponzi scheme, paying dividends to early investors with funds brought in from later investors."), at 11 ("[T]he Receiver presents ample evidence that the Stanford scheme . . . was a Ponzi scheme."), and at 13 ("The Court finds that the Stanford enterprise operated as a Ponzi scheme . . . .").

17. In marketing, selling, and issuing CDs to investors, the Stanford Defendants repeatedly touted the CDs' safety and security and SIB's consistent, double-digit returns on its investment portfolio. SEC's Second Amended Complaint (Doc. 952), ¶¶ 32-33.

18. In its brochure, SIB told investors, under the heading "Depositor Security," that its investment philosophy is "anchored in time-proven conservative criteria, promoting stability in [the Bank's] certificate of deposit." SIB also emphasized that its "prudent approach and methodology translate into deposit security for our customers." *Id*. ¶ 34. Further, SIB stressed the importance of investing in "marketable" securities, saying that "maintaining the highest degree of liquidity" was a "protective factor for our depositors." *Id*.

19. In its 2006 and 2007 Annual Reports, SIB told investors that the Bank's assets were invested in a "well-balanced global portfolio of marketable financial instruments, namely U.S. and international securities and fiduciary placements." *Id*. ¶ 35. More specifically, SIB represented that its 2007 portfolio allocation was 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments. *Id*.

20. Consistent with its Annual Reports and brochures, SIB trained SGC financial advisors, in February 2008, that "liquidity/marketability of SIB's invested assets" was the "most

important factor to provide security to SIB clients." *Id*. ¶ 36. In training materials, the Stanford Defendants also claimed that SIB had earned consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993). *Id*. ¶ 49.

21. Contrary to the Stanford Defendants' representations regarding the liquidity of SIB's portfolio, SIB did not invest in a "well-diversified portfolio of highly marketable securities." Instead, significant portions of the Bank's portfolio were misappropriated by the Stanford Defendants and were either placed in speculative investments (many of them illiquid, such as private equity deals), diverted to other Stanford Entities "on behalf of shareholder" – *i.e*., for the benefit of Allen Stanford, or used to finance Allen Stanford's lavish lifestyle (*e.g*., jet planes, a yacht, other pleasure craft, luxury cars, homes, travel, company credit cards, etc.). In fact, at year-end 2008, the largest segments of the Bank's portfolio were private equity; over-valued real estate; and at least $1.6 billion in undocumented "loans" to Defendant Allen Stanford. *See id*. ¶¶ 39-40.

22. In an effort to conceal their fraud and ensure that investors continued to purchase the CD, the Stanford Defendants fabricated the performance of SIB's investment portfolio. *Id*. ¶ 4.

23. SIB's financial statements, including its investment income, were fictional. *Id*. ¶¶ 4, 53. In calculating SIB's investment income, Stanford Defendants Allen Stanford and James Davis provided to SIB's internal accountants a pre-determined return on investment for the Bank's portfolio. *Id*. Using this pre-determined number, SIB's accountants reverse-engineered the Bank's financial statements to reflect investment income that SIB did not actually earn. *Id*.

24. For a time, the Stanford Defendants were able to keep the fraud going by using funds from current sales of SIB CDs to make interest and redemption payments on pre-existing CDs. *See id*. ¶ 1. However, in late 2008 and early 2009, CD redemptions increased to the point that new CD sales were inadequate to cover redemptions and normal operating expenses. As the depletion of liquid assets accelerated, this fraudulent Ponzi scheme collapsed.

25. Most of the above facts discovered from Stanford's records have since been confirmed by Stanford's Chief Financial Officer, James Davis, who has pleaded guilty to his role in running the Stanford Ponzi scheme.

II. Stanford Transferred Funds from the Ponzi Scheme to Merge.

26. On February 13, 2009, $9 million of CD Proceeds were transferred from SIBL to Emageon. On April 2, 2009, Emageon was acquired by Amicas, and on February 28, 2010, Amicas merged with Merge. Merge is the successor to Emageon and, therefore, received the $9 million in CD Proceeds fraudulently transferred to it from SIBL. Merge did not provide reasonably equivalent value in exchange for those CD Proceeds.

REQUESTED RELIEF

27. This Court appointed Ralph S. Janvey as Receiver for the Receivership Assets. Order Appointing Receiver (Doc. 10) at ¶¶ 1-2; Amended Order Appointing Receiver (Doc. 157) at ¶¶ 1-2. The Receiver seeks the relief described herein in this capacity.

28. Paragraph 4 of the Order Appointing Receiver, signed by the Court on February 16, 2009, authorizes the Receiver "to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." Order Appointing Receiver (Doc. 10) at ¶ 4; Amended Order Appointing Receiver (Doc. 157) at ¶ 4. Paragraph 5(c) of the Order specifically authorizes the Receiver to "[i]nstitute such actions or proceedings [in this Court] to impose a constructive trust,

obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate." Order Appointing Receiver (Doc. 10) at ¶ 5(c); Amended Order Appointing Receiver (Doc. 157) at ¶ 5(c).

29. One of the Receiver's key duties is to maximize distributions to defrauded investors and other claimants. *See* Amended Order Appointing Receiver (Doc. 157) at ¶ 5(g), (j) (ordering the Receiver to "[p]reserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants"); *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver's "only object is to maximize the value of the [estate assets] for the benefit of their investors and any creditors"); *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004). But before the Receiver can attempt to make victims whole, he must locate and take exclusive control and possession of assets of the Estate or assets traceable to the Estate. Doc. 157 ¶ 5(b).

I. The Receiver is Entitled to Disgorgement of Assets Fraudulently Transferred to Merge.

30. The Receiver is entitled to disgorgement of the funds transferred from the Stanford Parties to Merge because such payments constitute fraudulent transfers under applicable law. The Stanford Parties made the payments of CD Proceeds to Merge with actual intent to hinder, delay, or defraud Stanford's creditors; as a result, the Receiver is entitled to the disgorgement of those payments. Additionally, the Stanford Parties transferred the funds to Merge at a time when the Stanford Parties were insolvent, and the Stanford Parties did not receive reasonably equivalent value in exchange for the transfers.

31. The Receiver may avoid transfers made with the actual intent to hinder, delay, or defraud creditors. "[T]ransfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception." *Quilling v.*

Schonsky, No. 07-10093, 2007 WL 2710703, at *2 (5th Cir. Sept. 18, 2007); *see also Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) (". . . [the debtor] was a Ponzi scheme, which is, as a matter of law, insolvent from its inception. . . . The Receiver's proof that [the debtor] operated as a Ponzi scheme established the fraudulent intent behind transfers made by [the debtor]."). Because payments from a Ponzi scheme are presumptively made with an actual intent to defraud creditors, it makes no difference whether such payments were made pursuant to contracts entered into by the Stanford Defendants.

32. The Stanford Parties were running a Ponzi scheme and paid Merge with funds taken from unwitting SIB CD investors. The Receiver is, therefore, entitled to disgorgement of the funds the Stanford Parties fraudulently transferred to Merge.

33. Consequently, the burden is on Merge to establish an affirmative defense, if any, of good faith and provision of reasonably equivalent value. *See* Case No. 3:09-CV-0724-N, Doc. 456 at 13 (citing *Hahn v. Love*, No. 01-07-00096-CV, 2009 WL 793637, at *6 (Tex. App.—Houston [1st Dist.] Mar. 26, 2009, pet. denied)); *see also, Scholes*, 56 F.3d at 756-57 ("If the plaintiff proves fraudulent intent, the burden is on the defendant to show that the fraud was harmless because the debtor's assets were not depleted even slightly."). The Receiver is, therefore, entitled to recover the full amount of the payments that Merge received, unless Merge proves *both* objective good faith *and* reasonably equivalent value.

34. The good-faith element of this affirmative defense requires that Merge prove objective — not subjective — good faith. *Warfield*, 436 F.3d at 559-560 (good faith is determined under an "objectively knew or should have known" standard); *In re IFS Fin. Corp.*, Bankr. No. 02-39553, 2009 WL 2986928, at *15 (Bankr. S.D. Tex. Sept. 9, 2009) (objective standard is applied to determine good faith); *Quilling v. Stark*, No. 3-05-CV-1976-BD, 2007 WL

415351, at *3 (N.D. Tex. Feb. 7, 2007) (good faith "must be analyzed under an objective, rather than a subjective, standard. The relevant inquiry is what the transferee objectively knew or should have known instead of examining the transferee's actual knowledge from a subjective standpoint.") (internal citations and quotation marks omitted).

35. There is no evidence that Merge reasonably equivalent value in exchange for the fraudulent transfers it received. Moreover, consideration which has no utility from the creditor's perspective does not satisfy the statutory definition of "value." *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007); *In re Hinsley*, 201 F.3d 638, 644 (5th Cir. 2000). Because Merge cannot meet its burden to establish that it provided reasonably equivalent value for the payments of CD Proceeds from the Stanford Parties, the Receiver is entitled to the disgorgement of those funds.

36. Moreover, under applicable fraudulent transfer law, the Receiver is entitled to attorney's fees and costs for his claims against Merge. *See, e.g.,* TEX. BUS. & COM. CODE ANN. § 24.013 (Vernon 2009) ("[T]he court may award costs and reasonable attorney's fees as are equitable and just."). As a result, the Receiver requests reasonable attorney's fees and costs for prosecuting his fraudulent-transfer claims against Merge.

37. Merge cannot meet its burden to establish both that it provided reasonably equivalent value for the CD Proceeds received from the Stanford Parties and that it received such payments in good faith. Accordingly, the Receiver is entitled to the disgorgement of those funds.

38. In order to carry out the duties delegated to him by this Court, the Receiver seeks complete and exclusive control, possession, and custody of the CD Proceeds received by Merge.

39. The Receiver was only able to discover the fraudulent nature of the above-referenced transfers after Allen Stanford and his accomplices were removed from control

of the Stanford entities, and after a time-consuming and extensive review of thousands upon thousands of paper and electronic documents relating to the Stanford entities. Thus, the discovery rule and equitable tolling principles apply to any applicable limitations period. *See*, *e.g.*, *Wing v. Kendrick*, No. 08-CV-01002, 2009 WL 1362383, at *3 (D. Utah May 14, 2009); *Quilling v. Cristell*, No. 304CV252, 2006 WL 316981, at *6 (W.D.N.C. Feb. 29, 2006); *see also* TEX. BUS. & COMM. CODE ANN. § 24.010(a)(1) (claims may be brought either within four years of the transfer *or* "within one year after the transfer or obligation was or could reasonably have been discovered by the claimant").

40. The Stanford Parties, who orchestrated the Ponzi scheme, transferred the CD Proceeds to Merge with actual intent to hinder, delay, or defraud their creditors. The Receiver is, therefore, entitled to disgorgement of all CD Proceeds fraudulently transferred to Merge. Pursuant to the equity powers of this Court, the Receiver seeks an order that (a) the payments of CD Proceeds received directly or indirectly by Merge were fraudulent transfers under applicable law; (b) the CD Proceeds received directly or indirectly by Merge are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) Merge is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received from the Stanford Parties; and (d) awards attorneys' fees, cost, and interest to the Receiver.

II. The Receiver is Entitled to Disgorgement of Assets from Merge under the Doctrine of Unjust Enrichment.

41. In the alternative, the Receiver is entitled to disgorgement of the funds paid to Merge pursuant to the doctrine of unjust enrichment under applicable law. Merge holds funds that in equity and good conscience belong to the Receivership for ultimate distribution to the

defrauded investors. Merge has been unjustly enriched by such funds, and it would be unconscionable for it to retain the funds.

42. In order to carry out the duties delegated to him by this Court, the Receiver seeks complete and exclusive control, possession, and custody of the CD Proceeds received by Merge.

43. Merge has been unjustly enriched by its receipt of the CD Proceeds from the Stanford Parties. Pursuant to the equity powers of this Court, the Receiver therefore seeks an order that (a) the payments of CD Proceeds received directly or indirectly by Merge unjustly enriched Merge; (b) the CD Proceeds received directly or indirectly by Merge are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) Merge is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received from the Stanford Parties; and (d) awards attorneys' fees, costs, and interest to the Receiver.

PRAYER

44. The Receiver respectfully requests an Order providing that:

(a) the payments of CD Proceeds received directly or indirectly by Merge were fraudulent transfers under applicable law or, in the alternative, unjustly enriched Merge;

(b) the CD Proceeds received directly or indirectly by merge are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate;

(c) Merge is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received from the Stanford Parties; and

(d) the Receiver is entitled to an award of reasonable attorneys' fees, costs, and interest.

Dated: July 26, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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CERTIFICATE OF SERVICE

On July 26, 2010, 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 will serve Merge Healthcare, Inc. individually or through its counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/s/ Kevin M. Sadler
Kevin M. Sadler