

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiffs,

v.

**ARTHUR LAMAR ADAMS AND
MADISON TIMBER PROPERTIES, LLC,**

Defendants.

No: 3:18-cv-252

Carlton W. Reeves, District Judge

RECEIVER’S RESPONSE TO MOTION FOR DECLARATION OF RIGHTS

Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams (“Adams”) and Madison Timber Properties, LLC (“Madison Timber”), through undersigned counsel, respectfully responds to the Motion for Declaration of Rights Regarding Authority of Receiver to Pursue Certain Claims filed by Jeanne Lehan, on behalf of the beneficiaries of the Jeanne M. Lehan Trust, and Pamela Lehan-Siegel, on behalf of the beneficiaries of the Pamela Lehan-Siegel Trust (collectively, the “Lehan Parties”).

INTRODUCTION

On June 22, 2018, this Court instructed the Receiver “to determine the nature, location, and value of all property interests” of the Receivership Estate, “including but not limited to . . . claims, rights, and other assets.” Doc. 33 at p. 6. These property interests are “Receivership Property.” *Id.*

Separately, this Court’s order “restrain[s] and enjoin[s]” any person receiving notice of the order “from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver” which would “dissipate or otherwise diminish the value of any Receivership Property.” Doc. 33 at p. 11. The Court’s order expressly stays “all civil legal proceedings of any nature . . . or other actions involving . . . any *Receivership Property* . . . [or any] past or present officers, directors, managers, *agents*, or general or limited *partners*” of Adams or Madison Timber. Doc. 33 at p. 13 (emphasis added).

Notwithstanding this Court’s June 22, 2018 order, on June 28, 2018, the Lehan Parties sued Pinnacle Trust Company LLC (“Pinnacle Trust”) in a Mississippi state court for breaches of duties owed to them because Pinnacle Trust “directed, controlled, managed, and oversaw . . . impermissible loans” from their accounts to Madison Timber. Doc. 80 at 2.

The Lehan Parties now ask this Court for a declaration that this Court’s order does not apply to them, for the reason that the Receiver has no standing to pursue “claims asserted by the Lehan Parties in the Lehan Case.” Doc. 80 at 3. Specifically, the Lehan Parties contend that “[t]he Receiver should not be allowed to stay or pursue any claims in the Lehan Case, other than possible claims concerning Pinnacle Trust’s receipt of recruitment fees and/or kickbacks, if any, because the Receiver lacks constitutional standing to do so.” Doc. 80 at 3.

Respectfully, the Lehan Parties misunderstand both the Receiver’s standing and this Court’s stay.

The Receiver’s standing is not limited to claims for the return of “recruitment fees and/or kickbacks”—*i.e.*, fraudulent transfer claims. Although the Receiver has pursued fraudulent transfer claims, she has also pursued claims for, among other things, aiding and abetting, conspiracy, and negligence.

In any event, the Court's stay does not turn on the Receiver's standing. Standing or no standing, this Court has the authority to issue "blanket stays" of any litigation affecting the Receivership Estate. This Court's order already expressly stays any civil proceedings involving Receivership Property or any agents or partners of Madison Timber. To the extent a putative defendant aided and abetted or conspired with Adams and Madison Timber, they were an agent and partner of Adams and Madison Timber as contemplated by the Court's order.

Finally, and most importantly, the Court's stay is prudent. The Lehan Parties are not the only investors who want to sue Pinnacle Trust. The Court's stay is intended to preserve assets that otherwise could be picked apart, to maximize funds available for equitable distribution to all. A stay is necessary here to avoid dissipation of those assets.

ARGUMENT

1. The Lehan Parties misunderstand the Receiver's standing.

The Lehan Parties argue "the Receiver simply lacks standing to stay or pursue the Lehan Parties' claims in the Lehan Case." Doc. 80 at 7. But the Receiver does not purport to have standing to pursue claims that belong only to the Lehan Parties. The Receiver has her own standing, and it is not limited to claims for the return of "recruitment fees and/or kickbacks"—*i.e.*, fraudulent transfer claims.

The Receiver has standing to pursue, *inter alia*, any claims against any third parties whose actions contributed to the success of the Madison Timber Ponzi scheme, and therefore to the debts of the Receivership Estate. *See, e.g., Official Stanford Inv'rs Comm. v. Greenberg Traurig, LLP*, No. 3:12-CV-4641-N, 2014 WL 12572881, at *4 (N.D. Tex. Dec. 17, 2014) ("This Court has held that the Receiver may assert tort claims against third parties based on allegations that the third parties' torts contributed to the liabilities of the Receivership Estate."); *Janvey v. Adams & Reese*,

LLP, No. 3:12-CV-0495-N, 2013 WL 12320921, at *8 (N.D. Tex. Sept. 11, 2013) (“The Receiver’s civil conspiracy claim is for conspiracy to commit fraud, breaches of fiduciary duty, fraudulent transfers, and conversion.”). Indeed, on December 19, 2018, the Receiver filed a complaint against Butler Snow LLP; Butler Snow Advisory Services, LLC; Matt Thornton; Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Alexander Seawright, LLC; Brent Alexander; and Jon Seawright that includes counts for civil conspiracy; aiding and abetting; recklessness, gross negligence, and at a minimum negligence; violations of Mississippi’s Fraudulent Transfer Act; violations of Mississippi’s Racketeer Influenced and Corrupt Organization Act; joint venture liability; attorney malpractice; and negligent retention and supervision. *See Alysson Mills v. Butler Snow LLP, et al.*, No. 3:18-cv-866 (S.D. Miss), Doc. 1. The Receiver is currently assessing whether she has similar claims against Pinnacle Trust.

The Receiver agrees that the Lehan Parties may have claims against Pinnacle Trust that are personal to them and distinct from the Receiver’s own claims. But the Lehan Parties are wrong to suggest that a third party such as Pinnacle Trust did not owe any duties, the breach of which might make it answerable to the Receivership Estate today.

2. The Lehan Parties misunderstand the Court’s stay.

In any event, that the Lehan Parties may have claims against Pinnacle Trust that are personal to them and distinct from the Receiver’s own claims does not excuse the Lehan Parties from this Court’s stay. The Court’s stay does not turn on the Receiver’s standing. It is this Court’s order—and not the Receiver’s standing—that mandates a stay of the Lehan Parties’ claims.

The Lehan Parties argue the Court’s order’s stay applies only to claims by or against the Receiver, Adams, and Madison Timber, or involving property owned by them. But the Court’s order charges the Receiver with marshaling, preserving, and conserving assets of the Receivership

Estate, for the benefit of all victims. For this reason, it is “axiomatic” that the Court has broad authority to issue a “blanket stay” that temporarily prevents individual victims from pursuing claims against third parties against whom the Receivership Estate also may have claims. *S.E.C. v. Stanford Intern. Bank Ltd.*, 424 Fed. App’x 338, 340 (5th Cir. 2011). Indeed, the Court’s order expressly “restrain[s] and enjoin[s]” any person receiving notice of the order “from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver” which would “dissipate or otherwise diminish the value of any Receivership Property,” separately defined to include claims of the Receivership Estate. Doc. 33 at p. 11. The Court’s order’s stay necessarily applies not merely to claims by or against the Receiver, Adams, and Madison Timber, or involving property owned by them, but also to claims that could diminish the value of the Receivership Estate’s claims. *S.E.C. v. Faulkner*, No. 3:16-cv-1723, 2018 WL 5279321 at *2 (N.D. Tex. Oct. 24, 2018) (The Court’s power to issue a stay “is not limited to enjoining suits against entities that have been placed in receivership—at least where the stay order is nonetheless necessary to protect receivership assets.”).

The Court’s order also expressly stays “all civil legal proceedings of any nature . . . or other actions involving . . . past or present officers, directors, managers, *agents*, or general or limited *partners*” of Adams or Madison Timber. Doc. 33 at p. 13 (emphasis added). To the extent third parties aided and abetted Adams in growing the Madison Timber Ponzi scheme, they were agents and partners of Adams and Madison Timber. In fact, the Receiver’s most recently filed complaint alleges the defendants by their acts formed a *de facto* joint venture, or partnership, with Adams and Madison Timber. See *Alysson Mills v. Butler Snow LLP, et al.*, No. 3:18-cv-866 (S.D. Miss), Doc. 1. All civil legal proceedings against any such third parties—including Pinnacle Trust, which

the Lehan Parties allege sold them investments in Madison Timber—are subject to the Court’s stay.

The Lehan Parties contend the Receiver’s interpretation of the Court’s order’s stay is “without merit,” but they do not explain why. The cases they cite relate only to general principles of standing—they do not address the question of the scope of the Court’s order’s stay. The Lehan Parties cannot cite cases that support their interpretation of the Court’s order’s stay because their interpretation is contrary to the law of this Circuit. *See, e.g., Rishmague v. Winter*, 616 Fed. App’x 138, 140 (5th Cir. 2015) (“Several courts have recognized the importance of preserving a receivership court’s ability to issue orders preventing interference with its administration of receivership property.”); *Stanford Intern. Bank Ltd.*, 424 Fed. App’x at 341 (“It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions.”); *Faulkner*, 2018 WL 5279321 at *3 (“[A] district court can stay other lawsuits to the extent necessary to protect receivership assets.”). Under the law of this Circuit, it is enough that the Lehan Parties’ claims against Pinnacle Trust “involve[] potential receivership assets.” *Faulkner*, 2018 WL 5279321 at * 4.

The *Stanford* case is instructive. In that case, victims of the Stanford Ponzi scheme requested that the district court lift its stay to permit them to pursue claims against third-party financial advisors who had induced their investments. Unquestionably, the victims’ claims against their financial advisors belonged only to the victims. The district court nevertheless denied their request, and the Fifth Circuit affirmed, observing that the needs of the receivership estate must come first:

We are not insensitive to the Appellants’ arguments that given their financial situations, their need to recover funds immediately is paramount. However, the Receiver’s task to marshal, preserve and conserve the receivership estate is as much for their benefit as for the benefit of all of the other investors—investors who also

lost amounts of money that changed their lives. Therefore, at this stage of the litigation, we agree with the District Court that the needs of the Receiver outweigh the substantial injury being suffered by the Appellants.

Stanford Intern. Bank Ltd., 424 Fed. App'x at 341.¹ Like the victims' claims in *Stanford*, at this stage of the litigation, the Lehan Parties' claims also must wait.

3. The Court's stay is prudent.

It is not the Receiver's intent to deprive the Lehan Parties or any victim of their rights against responsible third parties. The Receiver, however, has a duty to all victims to maximize the value of the Receivership Estate, not only by pursuing the Receivership Estate's claims—but also by invoking the Court's order's stay to prevent the dissipation of third-party assets that may satisfy those claims.

Understood this way, the Court's order's stay is not a question of standing, but of administration and equity. If every victim were permitted to pursue her own claims at this stage of the litigation, the Receivership Estate would become un-administrable. Indeed, the Lehan Parties are not the only victims who wish to sue Pinnacle Trust. It would be unfair to permit them to proceed, while others have patiently waited, simply because they were the first to file a complaint. When any victim receives money for herself from a responsible third party, she reduces the total amount of money available for other victims. *Stanford Intern. Bank Ltd.*, 424 Fed. App'x at 341 (“Recovery against one of them could deplete possible assets coming into the estate.”). A stay of

¹ See also *Rishmague v. Winter*, 616 Fed. App'x 138, 140 (5th Cir. 2015) (“[A]s the district court continues to receive itself as well as coordinate and oversee extensive litigation, relating to asset recovery, we cannot say that the district court abused its discretion in declining to lift the litigation stay.”); *S.E.C. v. Kaleta*, 530 Fed. App'x 360, 362 (5th Cir. 2013) (A district court has “inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to enforce the federal securities laws,” including “injunctions to stay proceedings by non-parties to the receivership.”) (citations omitted).

the Lehan Parties' claims is prudent to avoid the risk that a future recovery will deplete funds of Pinnacle Trust that otherwise might be available for equitable distribution to all.

CONCLUSION

In view of this Court's order, the law of this Circuit, and the interests in administration and equity, this Court should decline the Lehan Parties' invitation to lift its stay.

January 28, 2019

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com
Receiver's counsel

/s/ Kristen D. Amond

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere, *Primary Counsel*
Jason W. Burge
Kristen D. Amond
Rebekka C. Veith
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
jburge@fishmanhaygood.com
kamond@fishmanhaygood.com
rveith@fishmanhaygood.com
Receiver's counsel

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: January 28, 2019

/s/ Kristen D. Amond