

**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-1955

v. §

ORESTE TONARELLI, §

Defendant. §

**RECEIVER’S ORIGINAL COMPLAINT
AGAINST ORESTE TONARELLI**

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 at least \$3,162,223.91 from the Stanford Parties to Oreste Tonarelli (“Tonarelli”). The transfers of CD Proceeds to Tonarelli consisted of at least the following: \$1,112,500.00 in Bonuses; \$115,097.96 in SIBL Commissions; \$548,790.99 in Referral Fees; and \$1,385,834.96 in proceeds from Tonarelli’s own SIBL CDs. Through this lawsuit, the Receiver seeks the return of these funds in

order to make an equitable distribution to claimants. The Receiver's investigation is continuing, and should more payments of CD Proceeds to Tonarelli be discovered, the Receiver will amend this Complaint to assert claims as to such additional payments.

4. Tonarelli is a former managing director of Stanford Group Company's Private Clients Group in Miami. He was also a Training Director for Stanford Financial Group Company tasked with, among other things, training SIBL CD salespersons on how best to sell the SIBL CD. Tonarelli played a vital role in expanding and perpetuating the Stanford Ponzi scheme by both pushing sales of SIBL CDs and by training others to sell SIBL CDs to investors in existing and untapped markets, including Latin America.

5. Tonarelli either performed services that did not constitute reasonably equivalent value in exchange for the CD Proceeds he received, or he performed only services that were in furtherance of the Ponzi scheme, which cannot be reasonably equivalent value as a matter of law.

6. 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. Each payment of CD Proceeds from the Stanford Parties to Tonarelli was made with actual intent to hinder, delay, and defraud the Stanford Parties' creditors.

7. 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.

8. The Receiver seeks an order that: (a) CD Proceeds received directly or indirectly by Tonarelli were fraudulent transfers under applicable law or, in the alternative, unjustly enriched Tonarelli; (b) CD Proceeds received directly or indirectly by Tonarelli are property of

the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) Tonarelli is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds he received; and (d) awards attorneys' fees, costs, and interest to the Receiver.

JURISDICTION & VENUE

9. 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).

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

11. Further, within 10 days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in the United States District Court for the Southern District of Florida (Tonarelli's district of residence) pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in that district and every other district where the Complaint and Order have been filed.

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

THE PARTIES

13. 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 SFGGM and SFGC (the “Receivership Assets”). Plaintiff Janvey is asserting the claims contained herein in his capacity as Court-appointed Receiver.¹

14. Defendant Oreste Tonarelli resides in Miami, Florida. Alternatively, Tonarelli resides in Coral Gables, Florida. Tonarelli will be served pursuant to the Federal Rules of Civil Procedure or by other means approved by the Court.

STATEMENT OF FACTS

15. 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, Stanford International Bank, Ltd. (“SIB” or “the Bank”), 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.

16. 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), ¶ 27.² The CDs were sold by Stanford International Bank, Ltd. *Id.*

17. 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

¹ 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. Pursuant to Local Rule 3.3(a), the Receiver has filed a notice of related case concurrently with this Complaint.

² 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.

from the beginning. Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other conspirators created a “massive Ponzi scheme”); Doc. 807 (Davis Tr. of Rearrangement) 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 . . .”).

18. 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.

19. 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.*

20. 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.*

21. 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.

22. 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.

23. 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.

24. 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.*

25. 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.

26. 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 CD Proceeds from the Ponzi Scheme to Tonarelli.

27. CD Proceeds from the Ponzi scheme described above were transferred by or at the direction of the Stanford Parties to Tonarelli. Tonarelli did not perform services of reasonably equivalent value in exchange for those payments, and any services performed by Tonarelli were designed to further the operations of the Ponzi scheme and may well have assisted Stanford in attracting new victim investors. Any services provided by Tonarelli were of no utility — and, therefore, were of no value — from the perspective of the Stanford Parties' creditors.

28. The transfers of CD Proceeds to Tonarelli consisted of at least the following: \$1,112,500.00 in Bonuses; \$115,097.96 in SIBL Commissions; \$548,790.99 in Referral Fees; and \$1,385,834.96 in proceeds from Tonarelli's own SIBL CDs. *See Appendix in Support of this Complaint at 1-3 (incorporated herein by reference).*

REQUESTED RELIEF

29. 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; Second Amended Order Appointing Receiver (Doc. 1130) at ¶¶ 1-2. The Receiver seeks the relief described herein in this capacity.

30. 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; Second Amended Order Appointing Receiver (Doc. 1130) 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); Second Amended Order Appointing Receiver (Doc. 1130) at ¶ 5(c).

31. One of the Receiver’s key duties is to maximize distributions to defrauded investors and other claimants. *See* Second Amended Order Appointing Receiver (Doc. 1130) 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. *See* Second Amended Order Appointing Receiver (Doc. 1130) at ¶ 5(b).

I. The Receiver is Entitled to Disgorgement of CD Proceeds Fraudulently Transferred to Tonarelli.

32. The Receiver is entitled to disgorgement of the CD Proceeds transferred from the Stanford Parties to Tonarelli because such payments constitute fraudulent transfers under applicable law. The Stanford Parties made the payments to Tonarelli 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 Tonarelli at a time when the Stanford Parties were insolvent, and the Stanford Parties did not receive reasonably equivalent value in exchange for the transfers.

33. 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]."). Moreover, "in determining actual intent actual intent . . . , consideration may be given, among other factors, to whether . . . the transfer or obligation was to an insider." TEX. BUS. & COM. CODE ANN. § 24.005(b)(1) (Vernon 2009). Because Tonarelli was an insider with the Stanford entities, the fraudulent transfers Tonarelli were made with the actual intent to hinder, delay, or defraud creditors. *See* TEX. BUS. & COM. CODE ANN. § 24.002(7) (defining "insider" for the purposes of the fraudulent-transfer statute).

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

35. Consequently, the burden is on Tonarelli 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 (“A defendant invoking this defense has the burden to show *both* objective good faith and reasonable equivalence of consideration.”) (emphasis in original); *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 Tonarelli received, unless Tonarelli proves *both* objective good faith *and* reasonably equivalent value.

36. The good-faith element of this affirmative defense requires that Tonarelli — a high-ranking Stanford employee who was an insider — prove objective, rather than subjective, good faith. *See 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).

37. There is no evidence that Tonarelli provided reasonably equivalent value in exchange for the fraudulent transfers he received. Moreover, both this Court and the Fifth

Circuit have held that providing services in furtherance of a Ponzi scheme does not confer reasonably equivalent value. *Warfield*, 436 F.3d at 555, 560; Case No. 3:09-CV-0724-N, Doc. 456 at 13-14 (“[A]s a matter of law, services provided in the context of a Ponzi scheme do not constitute ‘reasonably equivalent value.’”). Furthermore, 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). Tonarelli cannot now claim that, in return for furthering the Ponzi scheme and helping it endure, he should be entitled to keep the over \$3.1 million in CD Proceeds he received from the Stanford Parties. Because Tonarelli cannot meet his burden to establish that he provided reasonably equivalent value for such payments, the Receiver is entitled to the disgorgement of those funds.

38. Moreover, under applicable fraudulent-transfer law, the Receiver is entitled to attorney’s fees and costs for his claims against Tonarelli. *See* TEX. BUS. & COM. CODE ANN. § 24.013 (“[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 Tonarelli.

39. Tonarelli cannot meet his burden to establish that he provided reasonably equivalent value for the CD Proceeds received from the Stanford Parties and that he received such payments in good faith. Accordingly, the Receiver is entitled to the disgorgement of those funds.

40. 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 Tonarelli.

41. 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. & COM. 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”).

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

II. In the Alternative, the Receiver is Entitled to Disgorgement of CD Proceeds from Tonarelli under the Doctrine of Unjust Enrichment.

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

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

44. 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 Tonarelli.

45. Tonarelli has been unjustly enriched by his receipt of CD Proceeds from the Stanford Parties. The Receiver is, therefore, entitled to disgorgement of all CD Proceeds fraudulently transferred to Tonarelli. Pursuant to the equity powers of this Court, the Receiver seeks an order that: (a) CD Proceeds received directly or indirectly by Tonarelli unjustly enriched Tonarelli; (b) CD Proceeds received directly or indirectly by Tonarelli are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) Tonarelli is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds he received; and (d) awards attorneys' fees, costs, and interest to the Receiver.

PRAYER

46. The Receiver respectfully requests an Order providing that:

- (a) CD Proceeds received directly or indirectly by Tonarelli were fraudulent transfers under applicable law or, in the alternative, unjustly enriched Tonarelli;
- (b) CD Proceeds received directly or indirectly by Tonarelli are property of the Receivership Estate;
- (c) CD Proceeds received directly or indirectly by Tonarelli are subject to a constructive trust for the benefit of the Receivership Estate;

- (d) Tonarelli is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds he received;
- (e) The Receiver is awarded attorneys' fees, costs, and prejudgment and post-judgment interest; and
- (f) Such other and further relief as the Court deems proper under the circumstances.

Dated: September 29, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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CERTIFICATE OF SERVICE

On September 29, 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 Oreste Tonarelli individually or through his counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/s/ Kevin M. Sadler
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