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

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

ORDER

This Order addresses Movants Nigel Hamilton-Smith and Peter Wastell's (collectively, the "Antiguan Liquidators") motion to amend in Civil Action No. 3:09-CV-0298-N (the "Receivership Action") [docket 329] and motion to refer in Civil Action No. 3:09-CV-0721-N (the "Chapter 15 Action") [docket 1].

The Court must first determine whether it has jurisdiction to consider the motion to amend. Certain parties, not including the Antiguan Liquidators, have filed interlocutory appeals in the Receivership Action, including an appeal of the Order appointing the

Receiver.[1] Among *many* other provisions, that Order includes the injunctive language prohibiting the filing of a petition under Chapter 15 of the Bankruptcy Code that is the subject of the motion to amend. The appellants do not appear to complain of the prohibition against filing a petition under Chapter 15 and do not appear to be eligible to file such a petition even if they wanted to do so. *See, e.g.*, 11 U.S.C. § 1515(a) (permitting a "foreign representative" to file petition for recognition); *id.* § 1515(b) (requiring petition to be accompanied by copy of decision commencing foreign proceeding and appointing foreign representative). Thus, the prohibition against filing a petition under Chapter 15 is not implicated by any currently pending appeal of the Court's Order appointing the Receiver.

The Fifth Circuit recently observed that "[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). "How broadly a court defines the aspects of the case on appeal depends on the nature of the appeal." *Id.* at 565. In addition to considering the nature of the appeal, it also is sensible to consider the nature of the underlying case. Here the underlying case is a receivership, comparable in many respects to a bankruptcy proceeding. The Order encompasses many parties in many different aspects falling far outside those issues implicated by the pending appeals. To hold here that an interlocutory appeal by any one party of any part of the Order appointing the Receiver

[1]*See* Docket Nos. 317 (Notice of Appeal of Richard Hunton, *et al.*); 323 (Notice of Appeal of R. Allen Stanford); *see also* Docket No. 367 (motion for, *inter alia*, extension of time to appeal of Samuel Bukrinsky, *et al.*).

divested the Court of its ability to control unrelated aspects of the receivership would work great mischief and perhaps hardship for other parties. Also in considering the nature of the pending appeals, nothing the Court could do either way in connection with the Antiguan Liquidators' motion to amend would affect the outcome of those appeals in any way, nor affect the jurisdiction of the Court of Appeals over them. Accordingly, the Court holds that the "aspects of the case on appeal" do not include the prohibition against Chapter 15 filings as applied to the Antiguan Liquidators. The Court thus holds that it is not divested of jurisdiction to consider the Antiguan Liquidators' motion to amend.[2]

Turning to the merits of the motion to amend, the Court finds the Antiguan Liquidators have shown good cause to be granted leave to file their Chapter 15 petition. Granting leave is consonant with Congress's intent in enacting Chapter 15. As a practical matter, the mechanism of Chapter 15 is precisely designed to effect coordination between entities like the Antiguan Liquidators and the Receiver. Finally, denying leave would require the Court to address and resolve serious questions regarding conflicts between equitable receiverships and bankruptcy that are best left for another day. The Court therefore grants the Antiguan Liquidators leave to file the Chapter 15 Action.

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[2]The Court also finds this to fit within the limitations of *Coastal Corp. v. Tex. E. Corp.*, 869 F.2d 817, 819-21 (5th Cir. 1989). The Court of Appeals there limited the district court's authority under Rule 62(c) to orders preserving the status quo: "the powers of the district court over an injunction pending appeal should be limited to maintaining the status quo and ought not to extend to the point that the district court can divest the court of appeals from jurisdiction while the issue is before us on appeal." *Id.* at 820. Granting the Antiguan Liquidators' motion for leave would not alter the status quo with respect to the pending appeals and would not divest the Court of Appeals from jurisdiction of the issues before it on appeal.

The next question is whether the Chapter 15 Action should proceed before the Bankruptcy Court or before this Court. Normally it is more efficient for bankruptcy matters to proceed before the Bankruptcy Court, both due to its greater familiarity with those matters and the existence of procedures adapted to disposition of such questions. Here, the Court finds it is more efficient for the Chapter 15 Action to proceed, at least in the first instance, before this Court. First, Chapter 15 is so new the Bankruptcy Court has not yet developed the superior institutional expertise that it surely will in time. Second, this Court is already familiar with many of the factual circumstances involved, which familiarity the Bankruptcy Court would need to develop from scratch. Third, it is clear that any decision by the Bankruptcy Court would be appealed to this Court (just as it is likely that this Court's decision will be appealed to the Court of Appeals), and both time and effort would be saved by proceeding in this Court in the first instance. Finally, the factual issues to be determined do not appear to be particularly within the specialized expertise of the Bankruptcy Court.[3] Accordingly, pursuant to 28 U.S.C. § 157(d), the Court withdraws the reference of the Chapter 15 Action to the Bankruptcy Court. The Court will reconsider whether to re-refer the Chapter 15 Action to the Bankruptcy Court following determination of whether to enter an order of recognition under 11 U.S.C. § 1517.

[3]For example, the "center of main interests" question, *see* 11 U.S.C. §§ 1502(4), 1517(b)(1), appears to raises issues at least similar to the principal place of business inquiry well-known to the Court under 28 U.S.C. § 1332(c)(1). *See In re Betcorp Ltd.*, 400 B.R. 266, 286-90 (Bankr. D. Nev. 2009) (discussing similarity & collecting cases).

The Court orders the Antiguan Liquidators and the parties to the Receivership Action, including the Receiver and the Examiner, to confer regarding what process the Court should adopt to comply with the mandates of section 1517(a) and (c), requiring the Court to determine whether to enter an order recognizing a foreign proceeding after notice and a hearing and at the earliest possible time. The parties shall advise the Court of their positions in a joint status report to be filed in the Chapter 15 Action no later than May 29, 2009.

Signed May 15, 2009.

David C. Godbey
United States District Judge