



Antiguan corporations are not subject to the jurisdiction of the Court and they are not subject to the Receivership Order.<sup>3</sup> Mr. Stanford nonetheless moved to amend the order to allow for certification out of an abundance of caution and respect for the Court.<sup>4</sup>

In his response to the instant motion, the Receiver seeks to bring these eleven corporations within the ambit of the Receivership Estate by asking the Court to disregard the separate corporate structure of these companies.<sup>5</sup> The Receiver also asks the Court to designate him as Mr. Stanford's agent in Antigua for these eleven corporations and authorize him to, *inter alia*, certify their annual returns.<sup>6</sup> Finally, the Receiver asks the Court to conclude that these eleven corporations are Receivership assets on the basis that an adverse inference should be drawn from Mr. Stanford's invocation of his Fifth Amendment rights.<sup>7</sup>

In making these requests, the Receiver wholly disregards the decision in the Eastern Caribbean Supreme Court holding that the Order Appointing Receiver has no extraterritorial affect in Antigua and that the Receiver has no legal standing there. That holding, along with receivership law in general, stands firmly in the way of the Receiver's assertion that these eleven Antiguan corporations are part of the Receivership Estate and thus subject to his control. Instead of addressing these obstacles head-on, the Receiver attempts to convince the Court that it should disregard the separate corporate structure of these eleven corporations in order to place them

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<sup>3</sup> *Id.* at 3. "Furthermore, by seeking to amend the Receivership Order for the limited purpose of allowing Mr. Stanford to certify the returns of these Antiguan corporations, Mr. Stanford is in no way conceding or inferring that these Antiguan corporations are subject to the jurisdiction of the Court or the Receivership order." *Id.* at 3 n.1.

<sup>4</sup> *Id.* at 2, 4.

<sup>5</sup> *See* Rec. Doc. 641, Receiver's Response to R. Allen Stanford's Motion to Amend the Receivership Order for the Limited Purpose of Allowing for the Certification of the Annual Returns of Certain Antiguan Corporations, at p. 5-7.

<sup>6</sup> *See* Rec. Doc. 641, at p. 6-7.

<sup>7</sup> *See* Rec. Doc. 641, at p. 7-8.

within the Court's jurisdiction. The argument is not persuasive. Disregarding the corporate form is reserved for exceptional circumstances and requires presenting clear evidence that the corporate form was abused. Given that the Receiver offers no evidence of abuse, his argument has no merit. Likewise, the Receiver offers no evidence to support his claim that Mr. Stanford's Fifth Amendment invocation is grounds for the Court to conclude that these eleven corporations were involved in the alleged fraudulent scheme and thus are subject to the Receiver's control.

The fact still remains that Mr. Stanford—and Mr. Stanford alone—is the only individual qualified under Antiguan law to certify the returns of these eleven corporations given his persona as shareholder and sole director.<sup>8</sup> If Mr. Stanford does not comply with the certification requirements imposed by Antiguan law, eight of these corporations will be struck off the Antiguan Companies Register in short order, and the other three corporations will suffer the same fate soon thereafter.<sup>9</sup> In effect, these corporations will be forced out of business.<sup>10</sup> To avoid these dire consequences, all that is required of Mr. Stanford is that he examine and certify the filings that have already been prepared by Antiguan counsel.<sup>11</sup>

Allowing Mr. Stanford to certify the returns of these corporations—which are not subject to the Receivership Estate—would in no way “jeopardize the investing public and risk the dissipation and misappropriation of Estate assets,” as the Receiver suggests.<sup>12</sup> Mr. Stanford

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<sup>8</sup> See Rec. Doc. 557, at p. 1-2.

<sup>9</sup> See Rec. Doc. 557, at p. 2. The eight corporations facing imminent removal from the Antiguan Companies Register are Stanford Bank Holding Ltd., Sun Printing and Publishing Ltd., Sun Publishing Ltd., The Sticky Wicket Ltd., Antigua Athletic Club Ltd., The Antigua Sun Ltd., Stanford Development Company Ltd., and Porpoise Industries Ltd. In addition, Mr. Stanford controls three other Antiguan Corporations—Gilbert Resort Development Ltd., Maiden Island Holding Ltd., and Pelican Island Properties Ltd.—that risk removal as well. *Id.* at 4.

<sup>10</sup> See Rec. Doc. 557, at p. 4.

<sup>11</sup> See Rec. Doc. 557, at p. 4.

<sup>12</sup> See Rec. Doc. 641, at p. 2.

simply seeks to comply with his requirements under Antiguan law and ensure that these eleven Antiguan-registered corporations continue to exist as going concerns.

### ARGUMENT

#### **1. The Eleven Antiguan Corporations at Issue are Not Subject to the Receivership**

The Receiver cannot hide from the decision in the Eastern Caribbean Supreme Court that held that the Court's Order appointing a U.S. Receiver has neither extraterritorial affect nor the force of law in Antigua and Barbuda.<sup>13</sup> That decision made clear that the "U.S. receiver, by virtue of the US District Court Order, has no legal entitlement to standing in Antigua and Barbuda."<sup>14</sup> The Receiver has no basis, then, to assert that these eleven corporations are part of the Receivership Estate when the Eastern Caribbean Supreme Court has ruled otherwise. Accordingly, the Receiver cannot reasonably claim that modifying the Receivership Order to allow Mr. Stanford to certify the returns of these corporations would infringe upon his authority to manage the Receivership.<sup>15</sup>

Moreover, even if the decision of the Eastern Caribbean Supreme Court is somehow ignored—as the Receiver apparently desires—the law of receivership does not support the Receiver's contention that he has authority over these eleven Antiguan resident corporations. A receiver is an officer or arm of the court that appointed him.<sup>16</sup> It is axiomatic that the authority of a receiver is limited by the same boundaries that limit the authority of the appointing court. "The power of an equity receiver is coextensive only with that of the territorial jurisdiction of the

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<sup>13</sup> ANUHCV 0126, *Fundora v. Stanford International Bank Limited*, para. 41, ECarSC (24 April 2009).

<sup>14</sup> *Id.* para. 43.

<sup>15</sup> *See* Rec. Doc. 641, at p. 6.

<sup>16</sup> *Crites, Inc., v. Prudential Ins. Co. of America*, 322 U.S. 408, 414 (1944).

court appointing him.”<sup>17</sup> As an officer of the appointing court, a receiver cannot assert extraterritorial jurisdiction or power of official action that extends beyond the reach of the court itself.<sup>18</sup>

Therefore, as a matter of receivership law alone, the Receiver cannot claim extraterritorial authority over these eleven Antiguan corporations. The power granted in the Appointment Order does not—and cannot—confer legal status or extraterritorial recognition upon the Receiver in Antigua. Further, that the Eastern Caribbean Supreme Court has already held that the Receiver is not entitled to legal standing in Antigua forecloses the Receiver’s attempt to stretch his authority to reach these corporations. The Receiver must abide by the Eastern Caribbean Supreme Court’s ruling and accept that these eleven corporations are not subject to the Receivership Estate.

## **2. The Receiver Provides No Factual Basis on Which to Disregard the Corporate Separateness of These Eleven Antiguan Corporations**

Instead of addressing the issue of jurisdiction in light of the decision of the Eastern Caribbean Supreme Court or receivership law generally, the Receiver seeks authority over these eleven corporations by asking the Court to “disregard the separate corporate structure of these companies.”<sup>19</sup> This is an extraordinary request given that corporate form is not lightly disregarded and it is done so only under exceptional circumstances.<sup>20</sup> Before disregarding the existence of a corporation as a separate entity there must be evidence of abuse, *e.g.*, “that the corporate structure should not shield-fraud, evasion of existing obligations, circumvention of

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<sup>17</sup> *First Nat. Bank in Albuquerque v. Robinson*, 107 F.2d 50, 54 (1939).

<sup>18</sup> *See Booth v. Clarke*, 58 U.S. 322, 331-32 (1854).

<sup>19</sup> *See* Rec. Doc. 641, at p. 5-7.

<sup>20</sup> *See Krivo Indus. Supply Co. v. National Distillers & Chemical Corp.*, 483 F.2d 1098, 1102 (5th Cir. 1973); *See Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003).

statutes, monopolization, criminal conduct, and the like.”<sup>21</sup> Disregarding the corporate structure without requiring this evidence of abuse “would seriously compromise...a ‘bedrock principle of corporate law’ – that a legitimate purpose for forming a corporation is to limit individual liability for the corporation’s obligations.”<sup>22</sup>

In spite of the high evidentiary showing required to disregard the corporate form, the Receiver asks this Court to disregard the corporate structures of these eleven corporations without offering a scintilla of evidence that any one, let alone all eleven, of these Antiguan corporations abused its corporate form. Instead, the Receiver offers only unsubstantiated, conclusory statements such as “each of the Stanford entities was ‘organized and operated as a mere tool or business conduit’ of each other Stanford entity, and of Stanford himself,” and “[t]hese entities were operated as a single scheme to perpetrate a massive fraud.”<sup>23</sup> It is apparent that the Receiver cannot show how any of these corporations participated in or benefited from the alleged fraud. Absent evidence of abuse that is specific to each of these corporations, the Receiver offers no factual basis to warrant disregarding the separate corporate structure of any of these corporations.

### **3. The Receiver Cannot Act as Mr. Stanford’s Agent for These Antiguan Corporations Under Antiguan Law**

The Receiver requests that the Court appoint him as Mr. Stanford’s agent for the eleven Antiguan corporations and authorize him to perform any acts, including certifying these corporations’ returns, that are required by Antiguan law.<sup>24</sup> However, appointing the Receiver as

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<sup>21</sup> *SSP Partners v. Gladstrong Investments Corp.*, 275 S.W.3d 444, 455 (Tex. 2008).

<sup>22</sup> *Id.* (internal citation omitted).

<sup>23</sup> *See* Rec. Doc. 641, at p. 5-6.

<sup>24</sup> *See* Rec. Doc. 641, at p. 6-7.

agent for these corporations is contrary to Antiguan law. As stated above, the Receiver has no legal standing in Antigua. Without standing, the Court cannot designate the Receiver to act as agent for these corporations because Antiguan law would not recognize the Receiver's agency and therefore the Receiver would have no authority under Antiguan law to certify the returns of these corporations. In his persona as shareholder and sole director of these corporations, Mr. Stanford—and Mr. Stanford alone—is the only individual qualified to certify these returns as a matter of Antiguan law.<sup>25</sup> This fact cannot be changed by an order from the Court appointing the Receiver, who lacks standing in Antigua, to act on Mr. Stanford's behalf for these corporations.

Furthermore, in making his request to be appointed as Mr. Stanford's agent for these Antiguan corporations, the Receiver mistakenly relies on *United States v. Ross*.<sup>26</sup> Not only does *Ross* involve distinguishable facts—namely, that the Receiver took possession of property located outside of the United States that had been transferred from the United States to the Bahamas—but it also contains this explicit instruction: “[N]o court should order the performance of an act in a foreign country when that act will violate the foreign country's laws.”<sup>27</sup> Immediately following that instruction the *Ross* court wrote:

The only foreign law cited by appellant is the Bahamian foreign exchange regulations which, he says, require the consent of the Controller of Exchange for the transfer of securities to persons outside the sterling area. Although there is no reason to believe that such consent would not be forthcoming on request, it seems to us wiser to provide against any possibility that any action ordered by our courts will violate foreign law. We will, therefore, modify the order to require that Ross apply for the required consent before transferring the stock certificates.<sup>28</sup>

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<sup>25</sup> See Rec. Doc. 557, at p. 1-2.

<sup>26</sup> 302 F.2d 831 (2d Cir. 1962).

<sup>27</sup> *Id.* at 834.

<sup>28</sup> *Id.* (citation omitted).

Here, it is already settled that the Court's Order appointing the Receiver has no extraterritorial affect or force of law in Antigua. Appointing the Receiver as Mr. Stanford's agent in Antigua would therefore contravene the ruling of the Eastern Caribbean Supreme Court and defy *Ross's* warning against issuing orders that violate foreign law. Accordingly, this Court should deny the Receiver's request to appoint himself as Mr. Stanford's agent for these eleven Antiguan corporations.

**4. Mr. Stanford's Invocation of His Fifth Amendment Rights Does Not Permit the Court to Conclude That These Corporations are Receivership Assets**

The Receiver asks the Court to use Mr. Stanford's Fifth Amendment invocation as a basis to conclude that these eleven corporations were involved in the alleged fraudulent scheme and are therefore subject to the Receivership.<sup>29</sup> This request is farfetched. Although it is true that courts may draw an adverse inference from a Fifth Amendment invocation in a civil action, that fact alone is not sufficient to support the Receiver's claim that these eleven corporations "were instruments in Stanford's fraudulent scheme, and that [Stanford International Bank] CD investor funds were diverted to these entities."<sup>30</sup>

Indeed, the case law cited by the Receiver makes clear that while an adverse inference may be based on a Fifth Amendment invocation, a court must also consider actual evidence to ultimately conclude that fraud was afoot. In *Breeden v. Kirkpatrick & Lockhart LLP*, for example, the court evaluated witness testimony and admissions, in addition to a Fifth Amendment invocation, before making its determination on the alleged fraud.<sup>31</sup> Here, the Receiver offers nothing more than Mr. Stanford's invocation of his Fifth Amendment rights. He

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<sup>29</sup> See Rec. Doc. 641, at p. 7-8.

<sup>30</sup> *Id.* at p. 8.

<sup>31</sup> *Breeden v. Kirkpatrick & Lockhart LLP*, 268 B.R. 704, 712 n.6 (S.D.N.Y. 2001).



offers no evidence, in any form, that any one of these eleven Antiguan corporations is in any way linked to the alleged fraud at Stanford International Bank. Accordingly, there is no basis to conclude that these eleven corporations hold Receivership assets subject to the Receiver's exclusive control.

**CONCLUSION**

For the foregoing reasons and those set forth in Mr. Stanford's opening brief, Mr. Stanford respectfully requests the Court grant his Motion to Amend the Receivership Order for the Limited Purpose of Allowing for the Certification of the Annual Returns of Certain Antiguan Corporations.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on August 6, 2009.

/s/ Ruth Brewer Schuster