United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 18, 2023
Lyle W. Cayce
Clerk

No. 23-10891

SECURITY AND EXCHANGE COMMISSION, *Et al.*,

Plaintiffs,

R. ALLEN STANFORD,

Defendant—Appellant,

versus

RALPH S. JANVEY; OFFICIAL STANFORD INVESTORS COMMITTEE; HSBC BANK, P.L.C.; TORONTO-DOMINION BANK; INDEPENDENT BANK GROUP, INCORPORATED,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CV-298

UNPUBLISHED ORDER

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the opposed motion filed by Appellee Ralph S. Janvey to dismiss the appeal is GRANTED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 18, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-10891 Stanford v. Janvey
USDC No. 3:09-CV-298

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Roger B. Cowie
Mr. Peter Daniel Morgenstern
Mr. Kevin M. Sadler
Mr. John K. Schwartz
Mr. R. Allen Stanford

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, et al., Defendants.	:	Case No. 3:09-cv-00298

FINAL BAR ORDER

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with Independent, to Approve the Proposed Notice of Settlement with Independent, and to Enter the Bar Order (ECF No. 3241, the "Motion") filed by Ralph S. Janvey, in his capacity as the Court-appointed Receiver for the Stanford Receivership Estate (the "Receiver"), and the Court-appointed Official Stanford Investors Committee (the "Committee"), the latter being a plaintiff in Rotstain, et al. v. Trustmark National Bank, et al., Civil Action No. 4:22-cv-00800 (S.D. Tex.) (the "Rotstain Litigation").[1] The Motion concerns a proposed settlement (the "Settlement") between and among, on the one hand, the Receiver, the Committee, and the Rotstain Investor Plaintiffs, and on the other hand, Independent Bank formerly known as

[1] Terms used in this Final Bar Order that are defined in the settlement agreement that is attached as Exhibit 1 of the Appendix to the Motion (ECF No. 3242) (the "Settlement Agreement"), unless expressly otherwise defined herein, have the same meaning as in the Settlement Agreement (which is deemed incorporated herein by reference).

Bank of Houston ("Independent"). The Receiver, the Committee, and the Rotstain Investor Plaintiffs are collectively referred to as "Plaintiffs." Plaintiffs, on the one hand, and Independent, on the other hand, are referred to individually as a "Party" and together as the "Parties." John J. Little signed the Settlement Agreement as chair of the Committee. Mr. Little, the Court-appointed Examiner (the "Examiner"), also signed the Settlement Agreement in his capacity as Examiner solely to evidence his support and approval of the Settlement and to confirm his obligation to post the Notice on his website; but Mr. Little as Examiner is not otherwise individually a party to the Settlement Agreement, this litigation, or the Rotstain Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Motion is hereby GRANTED.

I. INTRODUCTION

This litigation and the Rotstain Litigation arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL") and other companies owned or controlled by Robert Allen Stanford (with SIBL, the "Stanford Entities").[2] On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for the Receivership Estate. (ECF No. 10.) After years of investigation, Plaintiffs believe that they have identified claims against a number of third parties, including Independent, which Plaintiffs allege enabled the Stanford Ponzi scheme. In the Rotstain Litigation, some or all of Plaintiffs assert claims against Independent and other defendants for (i) aiding, abetting, or participation in violations of the Texas Securities Act; and (ii) knowing

[2] All references in this Order to the Rotstain Litigation and the action titled Smith, et al. v. Independent Bank, et al., CA No. 4-20-CV-00675 (S.D. Tex.) (the "Smith Litigation") shall also apply to any actions severed from that case.

participation in breach of fiduciary duty.[3] Independent denies that it is liable under any of those claims and asserts numerous defenses to each of those claims.

The Parties have engaged in good-faith, arm's-length negotiations.. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Committee—which the Court appointed to "represent[] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL (the 'Stanford Investors')" (ECF No. 1149)—the Receiver, and the Examiner—who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" (ECF No. 322)—all participated in these extensive, arm's-length negotiations. On February 24, the Parties reached an agreement in principle resulting in the Settlement. The Parties continued negotiating in order to document the exact terms of the Settlement in the written Settlement Agreement.

Under the terms of the Settlement Agreement, Independent will pay $100 million ($100,000,000.00) (the "Settlement Amount") to the Receivership Estate, which (less Attorneys' Fees and expenses) will be distributed to Stanford Investors. In return, Independent is to obtain total peace with respect to all claims that have been, or could have been, asserted against Independent or any other of the Independent Released Parties, arising in any respect out of the events leading to these proceedings. Accordingly, the Settlement is conditioned on the Court's approval and entry of this Final Bar Order enjoining Interested Parties and other Persons holding

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[3] Claims were also brought against Independent for (1) aiding, abetting, or participation in fraudulent transfers; (2) aiding, abetting, or participation in a fraudulent scheme; (3) aiding, abetting, or participation in conversion; (4) civil conspiracy, and (5) breach of fiduciary duty. Those claims were either dismissed by the Court or abandoned by Plaintiffs over the course of the litigation.

any potential claim against Independent relating to these proceedings from asserting or prosecuting claims against Independent or any of the Independent Released Parties.

On March 8, 2023, Plaintiffs filed the Motion. (ECF No. 3241). The Court thereafter entered a Scheduling Order on March 14, 2023 (ECF No. 3256), which, inter alia, authorized the Receiver to provide notice of the Settlement, established a briefing schedule on the Motion, and set the Motion for a hearing. On August 8, 2023, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable, and that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of this Final Bar Order is appropriate and necessary.

II. ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. SEC v. Kaleta, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted); see also Zacarias v. Stanford Int'l Bank, Ltd., 945 F.3d 883, 897 (5th Cir. 2019) (receivership court authority includes entering "bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation"). Moreover, the Court has jurisdiction over the subject matter of this action, and the Receiver and the Committee are proper parties to seek entry of this Final Bar Order.

2. The Court finds that the methodology, form, content, and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the Settlement, the releases and dismissal therein, and the injunctions provided for in this Final Bar Order; (iv) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the right to object to the Settlement and this Final

Bar Order, and to appear at the final approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

3. The Court finds that the Settlement, including, without limitation, the Settlement Amount, was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length negotiations involving experienced and competent counsel. The Court further finds that (i) significant issues exist as to the merits and value of the claims asserted against Independent by Plaintiffs and by others whose potential claims are foreclosed by this Final Bar Order; (ii) such claims contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with uncertainty regarding whether such claims would be successful; (iii) a significant risk exists that future litigation costs would dissipate Receivership Assets and that Plaintiffs and Claimants may not ultimately prevail on their claims; (iv) Plaintiffs and other Claimants will receive partial satisfaction of their claims from the Settlement Amount being paid pursuant to the Settlement; and (v) Independent would not have agreed to the terms of the Settlement in the absence of this Final Bar Order and assurance of "total peace" with respect to all claims that have been, or could be, asserted by any Persons arising from any aspect of Independent's relationship with the Stanford Entities. See SEC v. Kaleta, No. 4:09-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012), aff'd, 530 F. App'x 360 (5th Cir. 2013) (approving these factors for consideration in evaluating whether a settlement and bar order are sufficient, fair, and necessary). The injunction against such claims as set forth herein is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the Stanford Ponzi

scheme pursuant to the Settlement. See Kaleta, 530 F. App'x at 362 (affirming a bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding). After careful consideration of the record and applicable law, the Court concludes that the Settlement is the best option for maximizing the net amount recoverable from Independent for the Receivership Estate, Plaintiffs, and the Claimants.

4. Pursuant to the Settlement Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Settlement to Stanford Investors who have Claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the Settlement Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their Claims through the Receiver's claims process previously approved by the Court (ECF No. 1584).

5. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

6. Accordingly, the Court finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Independent, the Stanford Entities, or the Receivership Estate, including but not limited to Plaintiffs and the Interested Parties. The Court also finds that this Final Bar Order is a necessary component to achieve the Settlement. The Settlement, the terms of which are set forth in the Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement and this Final Bar Order.

7. Pursuant to the provisions of paragraph 42 of the Settlement Agreement, as of the Settlement Effective Date, Independent and the Independent Released Parties shall be completely released, acquitted, and forever discharged from any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that Plaintiffs, including without limitation the Receiver on behalf of the Receivership Estate (including the Stanford Entities); the Committee; the Claimants; and the Persons, entities and interests represented by those parties ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the Stanford Entities; (ii) any certificate of deposit, depository account, or investment of any type with any one or more of the Stanford Entities; (iii) Independent's or any of the Independent Released Parties' relationships with any one or more of the Stanford Entities and/or any of their personnel or any Person acting by, through, or in concert with any Stanford Entity; (iv) Independent's or any of the other Independent Released Parties' provision of services to or for the benefit of or on behalf of any one or more of the Stanford Entities; or (v) any matter that was asserted in, could have been asserted in, or relates in any respect to the subject matter of this action, the Rotstain Litigation, the Smith Litigation, or any other proceeding concerning any of the Stanford Entities pending or commenced in any Forum.

8. Pursuant to the provisions of paragraph 43 of the Settlement Agreement, as of the Settlement Effective Date, Plaintiffs Released Parties shall be completely released, acquitted, and forever discharged from all Settled Claims by Independent.

9. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Settlement or the Settlement Agreement or bar the Parties from enforcing or effectuating the terms of the Settlement or the Settlement Agreement. Further, the foregoing releases do not bar or release any claims, including but not limited to the Settled Claims, that Independent may have against any Independent Released Party, including but not limited to Independent's insurers, reinsurers, employees, and agents.

10. The Court hereby permanently bars, restrains, and enjoins Plaintiffs, the Claimants, the Interested Parties, and all other Persons or entities anywhere in the world, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against Independent or any of the Independent Released Parties, the Rotstain Litigation, the Smith Litigation, or any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Stanford Entities; this case; the subject matter of this case; the Rotstain Litigation; the Smith Litigation; or any Settled Claim. The foregoing specifically includes any claim, however denominated and whether brought in the Rotstain Litigation, the Smith Litigation, or any other Forum, seeking

contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims, including but not limited to the Settled Claims, that Independent may have against any Independent Released Party, including but not limited to Independent's insurers, reinsurers, employees, and agents. Further, the Parties retain the right to sue for alleged breaches of the Settlement Agreement.

11. The releases and the covenants not to sue set forth in the Settlement Agreement, and the releases, bars, injunctions, and restraints set forth in this Final Bar Order, do not limit in any way the evidence that Plaintiffs may offer against the remaining defendants in the Rotstain Litigation or the Smith Litigation.

12. Nothing in this Final Bar Order shall impair, affect, or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (i) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Settlement or payment of the Settlement Amount; (ii) designate a "responsible third party" or "settling person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (iii) take discovery under applicable rules in litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize any action or claim seeking to impose any liability of any kind

(including but not limited to liability for contribution, indemnification or otherwise) upon Independent or any other Independent Released Party.

13. Independent and the Independent Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Settlement; the management, investment, distribution, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Settlement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the Settlement or the Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Settlement Agreement, or this Final Bar Order.

14. Nothing in this Final Bar Order or the Settlement Agreement and no aspect of the Settlement or negotiation or mediation thereof is or shall be construed to be an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the Rotstain Litigation, the Smith Litigation, or any other proceeding.

15. The Committee and the Rotstain Investor Plaintiffs are hereby ordered to file the agreed motion to dismiss and motion for final judgment in the Rotstain Litigation as specified in paragraph 25 of the Settlement Agreement by the deadline set forth in that paragraph. The Receiver and the Committee are hereby ordered to file the agreed motion to enforce the Bar Order

and to dismiss all claims against Independent in the Smith Litigation as specified in paragraph 26 of the Settlement Agreement by the deadline set forth in that paragraph. Independent is hereby ordered to deliver or cause to be delivered the Settlement Amount ($100 million) pursuant to the terms and subject to the conditions in paragraph 27 of the Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the Settlement Agreement.

16. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement, the Settlement Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders concerning implementation of the Settlement, the Settlement Agreement, the Distribution Plan, and any payment of Attorneys' Fees and expenses to Plaintiffs' counsel.

17. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

18. This Final Bar Order shall be served by counsel for Plaintiffs, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Settlement, the Settlement Agreement, or this Final Bar Order.

Signed on August 8, 2023.

David C. Godbey
Chief United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, et al., Defendants.	:	Case No. 3:09-cv-00298

FINAL BAR ORDER

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with HSBC, to Approve the Proposed Notice of Settlement with HSBC, and to Enter the Bar Order (ECF No. 3243, the "Motion") filed by Ralph S. Janvey, in his capacity as the Court-appointed Receiver for the Stanford Receivership Estate (the "Receiver"), and the Court-appointed Official Stanford Investors Committee (the "Committee"), the latter being a plaintiff in Rotstain, et al. v. Trustmark National Bank, et al., Civil Action No. 4:22-cv-00800 (S.D. Tex.) (the "Rotstain Litigation").[1] The Motion concerns a proposed settlement (the "Settlement") between and among, on the one hand, the Receiver, the Committee, and the Rotstain Investor Plaintiffs, and on the other hand, and HSBC Bank plc ("HSBC") on the other. The

[1] Terms used in this Final Bar Order that are defined in the settlement agreement that is attached as Exhibit 1 of the Appendix to the Motion (ECF No. 3244) (the "Settlement Agreement"), unless expressly otherwise defined herein, have the same meaning as in the Settlement Agreement (which is deemed incorporated herein by reference).

Receiver, the Committee, and the Rotstain Investor Plaintiffs are collectively referred to as "Plaintiffs." Plaintiffs, on the one hand, and HSBC, on the other hand, are referred to individually as a "Party" and together as the "Parties." John J. Little signed the Settlement Agreement as chair of the Committee. Mr. Little, the Court-appointed Examiner (the "Examiner"), also signed the Settlement Agreement in his capacity as Examiner solely to evidence his support and approval of the Settlement and to confirm his obligation to post the Notice on his website; but Mr. Little as Examiner is not otherwise individually a party to the Settlement Agreement, this litigation, or the Rotstain Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Motion is hereby GRANTED.

I. INTRODUCTION

This litigation and the Rotstain Litigation arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL") and other companies owned or controlled by Robert Allen Stanford (with SIBL, the "Stanford Entities").[2] On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for the Receivership Estate. (ECF No. 10.) After years of investigation, Plaintiffs believe that they have identified claims against a number of third parties, including HSBC, which Plaintiffs allege enabled the Stanford Ponzi scheme. In the Rotstain Litigation, some or all of Plaintiffs assert claims against HSBC and other defendants for (i) aiding, abetting, or participation in violations of the Texas Securities Act; and (ii) aiding,

[2] All references in this Order to the Rotstain Litigation and the action titled Smith, et al. v. Independent Bank, et al., CA No. 4-20-CV-00675 (S.D. Tex.) (the "Smith Litigation") shall also apply to any actions severed from those cases.