

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**JAMES G. TEMME, and
STEWARDSHIP FUND, LP,**

Defendants,

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: Civil Action No.
: 4:11-CV-00655-MHS
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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S AND RECEIVER’S
JOINT RESPONSE TO MOTION TO BE ADDED AS PLAINTIFF**
[regarding Docket No. 126]

The Commission and Keith M. Aurzada, as receiver in the above-captioned matter (the “Receiver”) for James G. Temme (“Temme”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the “Receivership Entities”) file this Response to the motion by Istivan Clevondon Douglas to be added as Plaintiff in the above-referenced matter. The Commission and Receiver understand that Mr. Douglas wishes to protect his interests in property that he believes is subject to a contract he had with Stewardship Fund, LP. But because adding individuals as parties to this litigation would only add unnecessary complexity to what is already a complex proceeding and receivership and because the Receiver adequately represent the interests at issue, the Commission and Receiver respectfully submit that the motion to intervene should be denied. In

addition, this Court's receivership orders and well-established law prohibit Mr. Douglas from adding a separate claim to this enforcement action.

I. PROCEDURAL BACKGROUND

The Receiver appointed in October 2011 in this matter has been charged with complete and exclusive control over assets of any entity formerly owned or controlled by Stewardship Fund, LP, James G. Temme or any other entity Stewardship or Temme owned or controlled.¹ Since his appointment, the Receiver has taken a variety of steps to discharge those duties and is continuing to do so.

In his Motion, which is styled a "Motion To Be Added As Plaintiff," Mr. Douglas notes that in May 2011 he entered into a contract with Stewardship Fund in connection with a certain property to which, according to Ms. Douglas, Stewardship Fund holds title. Mr. Douglas asks the Court to issue an order transferring title of that property to him.

II. ARGUMENT

It is unclear whether Mr. Douglas's motion is intended to be a motion to intervene or rather as an attempt to assert a separate claim against the Receiver (or perhaps both). Regardless, it should be denied.

First, there is no basis in the law for Mr. Douglas to be added as a Plaintiff in this case and to the extent Mr. Douglas' motion is a motion to intervene, it should be denied. An application for non-statutory intervention as of right under Federal Rule of Civil Procedure 24(a)(2) must meet four requirements. The application must: (1) be timely; (2) show an interest in the subject matter of the action; (3) show that the protection of that interest may be impaired by the disposition of the action; and (4) show that the interest is not adequately represented by an existing

¹ This control also extends to assets traceable to receivership assets.

party. See *League of United Latin Am. Citizens v. Clements*, 884 F.2d 185 (5th Cir. 1989) (applicant must meet all four requirements of Rule 24(a)(2) to intervene as of right). Here, the claimed interests in the subject matter of this action are best protected by the duly-appointed Receiver, subject to oversight by the Court.²

If Mr. Douglas is concerned about the status of property he believes he has a claim to, it is well-established that a receiver, acting under the supervision of the Court, can establish procedures that adequately protect the rights of investors and claimants. *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992) (due process rights of the investors or claimants would be protected by adequate notice and opportunity to be heard in the context of a receivership; *SEC v. Hardy*, 803 F.2d 1034, 1036, 1039-40 (9th Cir.1986) (approving of the claims procedures used by a district court in a receivership case when all claimants were given reasonable notice and opportunities to be heard at hearings); *SEC v. TLC Investments and Trade Co.* 147 F. Supp.2d 1031 (C.D. Cal. 2001) (noting two basic principles to the application of equitable receiverships in securities enforcement actions: a district court's power to supervise an equity receivership and

² As the Fifth Circuit has clearly explained, a receiver frequently plays a critical role in securities enforcement actions:

The appointment of a receiver is a well-established equitable remedy available to the SEC in its civil enforcement proceedings for injunctive relief. See section 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a); section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa.<http://web2.westlaw.com/result/-FN:F01414> The district court's exercise of its equity power in this respect is particularly necessary in instances in which the corporate defendant, through its management, has defrauded members of the investing public; in such cases, it is likely that, in the absence of the appointment of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme and for whose benefit, in some measure, the SEC injunctive action was brought.

Securities and Exch. Comm. v. First Financial Group of Texas, 645 F.2d 429 (5th Cir. 1981). Moreover, courts recognize that the focus of a receivership is to help protect defrauded investors, returning as much of their money to them as possible. See *S.E.C. v. TLC Investments and Trade Co.*, 147 F. Supp.2d 1031 (C.D. Cal. 2001). For the same reasons, leave for permissive intervention pursuant to Rule 24(b) should be denied.

to determine the appropriate action to be taken in the administration of the receivership is extremely broad, and a primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors, including defrauded investors).³ The Receiver has also investigated Mr. Douglas's claims regarding his purported interests in certain property. The Receiver has been unable to locate any signed assignment of deed to Mr. Douglas in the receiver's files. Additionally, appraisal district records from Cabarrus County, North Carolina indicate that Stewardship-Bridgepoint Group (not Mr. Douglas) owns the subject property. The Receiver will work with Mr. Douglas regarding his claims.

Here, investors and claimants – in their entirety – are best protected by allowing the Receiver to recommend reasonable procedures for approval by the Court. Such an approach will ensure an opportunity for all investors and other claimants to pursue their claims of interest in the receivership estate and allow all investors and claimants to be treated equally. On the other hand, allowing intervention will only introduce unnecessary inefficiencies, complexity, overlapping discoveries, and the risk of conflicting interests, competing legal theories and other burdens. Adding additional complexity and expenses to what is already a complicated task will

³ The Commission also notes that in securities enforcement actions, efforts to intervene without Commission consent are frequently denied. Indeed, courts have broadly applied Section 21(g) of the Exchange Act to preclude any interference by private parties in Commission law enforcement proceedings without Commission consent. *See e.g., Aaron v. SEC*, 446 U.S. 680 at 717 n.9 (1980) (Blackmun, J., concurring); *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322 at 332 n.17 (1979); *SEC v. Qualified Pensions, Inc.*, 1998 U.S. Dist. LEXIS 942 at *14 (D.D.C. Jan. 16, 1998) (intervention); *SEC v. McCaskey*, 56 F. Supp.2d 323, 325 (S.D.N.Y. 1999); *SEC v. Bradt*, 1995 WL 215220 (S.D. Fla. Mar. 7, 1995); *SEC v. Egan*, 821 F. Supp. 1274 (N.D.Ill. 1993) (third-party complaint); *SEC v. Downe*, 1994 U.S. Dist. LEXIS 2292 at *7 (S.D.N.Y. March 3, 1994) (cross-claims); *S.E.C. v. Keating*, 1992 U.S. Dist. LEXIS 14630 at *10 (C.D. Cal. July 23, 1992) (indemnification and contribution). A few courts, exercising their broad discretionary authority, have allowed intervention. *See, e.g., SEC v. Credit Bancorp., Ltd.*, 194 F.R.D. 457, 465-66 (S.D.N.Y. 2000), *SEC v. Hollinger Int'l, Inc.*, 2004 WL 422729 (N.D. Ill. Mar. 2, 2004), and *SEC v. Heartland Group, Inc.*, 2003 WL 1089366 (N.D. Ill. Mar. 11, 2003). Nothing in those cases, however, rebuts the arguments above that allowing intervention in this case is unnecessary and unwarranted.

serve only to interfere with the effective administration of this enforcement action, reduce eventual recovery available to all investors and risk disparate treatment among claimants.

Finally, if Mr. Douglas's motion is read as seeking to assert a claim in this case under the Federal Rules of Civil Procedure, it should be denied. First, such a claim against the Receiver is explicitly prohibited by the receivership orders. In addition, courts rightly refuse to consolidate other actions in a SEC enforcement proceeding absent the Commission's consent, which is not present here, because Section 21(g) of the Securities Exchange Act of 1934 bars consolidating other actions with an SEC enforcement proceeding when the SEC does not consent. *See* 15 U.S.C. 78u(g) (Notwithstanding the provisions of section 1407(a) Title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consent to by the Commission.); *SEC v. Wealth Management LLC*, 2009 WL 3765395, *2 (E.D. Wisc. Nov. 9, 2009) ("Section 21(g) acts as an 'impenetrable wall'"); *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322, 332 n.17 (1979) (dictum) ("consolidation of a private action with one brought by the SEC without its consent is prohibited by statute"); *SEC v. McCaskey*, 56 F. Supp. 2d 323 (S.D.N.Y. 1999) (same)

III. CONCLUSION

The Commission and Receiver respectfully request that the Court deny Mr. Douglas's Motion. The Receiver adequately represents his interests with regard to the property at issue. And to the extent Mr. Douglas believes he has claim, he may assert that in the receivership proceeding in due course.

Respectfully submitted,

/s/ David B. Reece (with permission)

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CERTIFICATE OF SERVICE

I certify that on September 7, 2012, I electronically filed the foregoing ***Plaintiff's Response to Motion to be Added As Plaintiff*** with the Clerk of the Court for the Eastern District of Texas, using the CM/ECF system. The electronic case filing system will send a "Notice of Electronic Filing" to all counsel of record who has consented in writing to accept service of this document by electronic means.

I further certify that on this 7th day of September, 2012, I served a true and correct copy of the foregoing ***Plaintiff's Response to Motion to be Added As Plaintiff*** by United States First Class Mail, postage prepaid, to the following parties and persons:

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Additionally, the foregoing will be uploaded to www.stewardshipfundreceivership.com

//s// Jay L. Krystinik _____
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