

**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-655**

**RECEIVER'S MOTION FOR ORDER TO SHOW CAUSE WHY HP DEBT  
EXCHANGE, LLC AND CHRISTOPHER GANTER SHOULD NOT BE HELD IN  
CONTEMPT AND BRIEF IN SUPPORT THEREOF**

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**COMES NOW**, 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”), and respectfully moves the Court to order HP Debt Exchange, LLC and Christopher Ganter to appear and to show cause why they should not be held in contempt for failure to comply with the Receivership Orders in this matter. The Receiver also seeks its reasonable attorneys’ fees and expenses in bringing and prosecuting this Motion. In support of the Motion, the Receiver would respectfully show the Court as follows:

**I.**

**INTRODUCTION**

1. By this Motion, the Receiver seeks an order (i) holding Christopher Ganter and HP Debt Exchange, LLC (“HP”) in contempt for violations of the Receivership Orders; and (ii) authorizing the sale of certain Receivership assets to the defrauded purchaser Torok (defined below). This Motion arises out of the unauthorized sale of 127 Subject Assets (defined below) by Mr. Ganter and his affiliated entity HP to Torok. The 127 Subject Assets are assets of the Receivership Estate that Mr. Ganter and HP offered to purchase from the Estate in November 2012. Despite the fact that the Receiver did not move forward with the sale, Mr. Ganter and HP, purportedly sold those assets to Torok. As a result, the Receiver seeks an order holding Mr. Ganter and HP in contempt, ordering them to pay to the Estate all funds received from Torok, and authorizing the Estate to convey the assets to Torok in exchange for the funds it paid to Mr. Ganter and HP.

## II.

### BACKGROUND

#### A. The Receivership Orders

2. On October 14, 2011, the Securities and Exchange Commission instituted the above-captioned action, alleging that the Receivership Entities used fraudulent, or otherwise unlawful, means to raise at least \$35 million from investors through the offering and selling of interests in limited partnerships and residential real estate backed mortgages and related promissory notes.

3. As the Receiver has conducted his investigation, it has become apparent that in offering and selling interests in notes and limited partnerships, the Receivership Entities likely made material misrepresentations to investors regarding the value of the interests, the assets owned or to be purchased on behalf of investors, and the expected returns on such investments. Specifically, the Receivership Entities often sold limited partnership interests and other “assets” that either (i) did not exist; (ii) the Receivership Entities did not, in fact, own; or (iii) that the Receivership Entities had no right to convey.

4. As a result, on October 14, 2011, the Securities and Exchange Commission instituted the above-captioned action, and the Receiver was appointed as receiver for the Receivership Entities through the Court’s entry of the Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme [Dkt. No. 24]; Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities [Dkt. No. 25]; and Order Appointing Receiver Over James Temme [Dkt. No. 30] (together, the “Receivership Orders”).

5. The Receivership Orders specifically provide that “Creditors and all other persons are hereby **restrained and enjoined**, without prior approval of the Court, from: (a) Any act to

obtain possession of the Receivership Estate assets; (b) Any act to create, perfect, or enforce any lien against the property of the Receiver, or the Receivership Estate; (c) Any act to collect, assess, or recover a claim against the Receiver or that would attach to or encumber the Receivership Estate.” Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities ¶ 9 (emphasis added) [Dkt. No. 25].

6. Furthermore, the Receivership Orders provide that the Receiver is the exclusive party entitled to “take custody, control, and possession of all the funds, accounts, mail, and other assets of, or in the possession or under the control of, the Receivership Estate, or assets traceable to assets owned or controlled by the Receivership Estate.” Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme ¶ 4 [Dkt. No. 24].

**B. The Subject Assets**

7. Through his investigation, the Receiver determined that in July 2008, Harbour Portfolio I, LLC (“Harbour I”) and Harbour Portfolio II, LLC (“Harbour II”) attempted to purchase from the Receivership Entities 221 and 172 distressed real estate mortgages and corresponding notes. As part of those transactions, each of the mortgages should have been assigned to Harbour I and Harbour II (and the assignments recorded) and an allonge should have been executed for each note indicating that Harbour I and Harbour II were the new holders of the notes. Although the transactions closed in 2008, few, if any, of the mortgage assignments or allonges were ever executed or recorded. As a result, the Receiver claimed an interest in the remaining mortgages and notes owned by Harbour I and Harbour II.

8. Based on the Receiver’s potential claims, Harbour I and Harbour II entered into settlement agreements with the Receiver [Dkt. No. 79]. Under the settlement agreements, Harbour I agreed to transfer its interest in eighty (80) mortgages and notes to the Receivership

Estate and Harbour II agreed to transfer its interest in thirty seven (37) mortgages and notes to the Receivership Estate.

9. The Receiver entered into a similar settlement with ER, LLC (“ER”), in which ER agreed to transfer to the Estate eighteen (18) properties acquired from Receivership Entities [Dkt. Nos. 80 and 95].

10. The mortgages and REO properties acquired from Harbour I, Harbour II, and ER (collectively, the “Subject Assets”) are assets of the Receivership Estate. Accordingly, the Receiver began marketing the Subject Assets for sale.

**C. The Lakeside Sales Motion**

11. On July 20, 2012, Lakeside Portfolio Management, LLC (“Lakeside”) submitted to the Receiver a Letter of Intent to purchase 127 of the Subject Assets for \$195,437.30. On August 6, 2012, the Receiver filed a Motion for Authority to Sell Properties to Lakeside Portfolio Management, LLC (the “Lakeside Sale Motion”) [Dkt. No. 103]. In the Lakeside Sale Motion, the Receiver proposed to sell the Subject Assets to Lakeside subject to a twenty-one day public auction period in which any party could bid. *See id.* At the end of the public auction period, the 127 Subject Assets would be sold to the highest bidder. *See id.* Attached to the Lakeside Sales Motion was the list of the 127 Subject Assets subject to the Lakeside Sale Motion [Dkt. No. 103-1].

12. Based on certain investors’ objections, the Receiver delayed a hearing on the Lakeside Sale Motion, which was eventually denied by the Court, subject to re-instatement [Dkt. No. 181]. After delaying the sale to Lakeside, the Receiver continued to market and preserve the Subject Assets.

13. At this time, the Receiver has **not** sold the Subject Assets or agreed to sell the Subject Assets to any party.

**D. HP Debt Exchange Offers to Purchase the 127 Subject Assets**

14. On November 27, 2012, the Receiver received a non-binding letter of intent from HP Debt Exchange, LLC (“HP”) to purchase 127 of the Subject Assets for \$250,000 (the “Letter of Intent”). *See* Formal Letter of Intent to Purchase 127 Assets executed by Christopher Ganter on behalf of HP Debt Exchange, LLC dated November 27, 2012, attached as Exhibit 1 to the Declaration of Keith M. Aurzada in Support of Receiver’s Motion for Order to Show Cause why HP Debt Exchange, LLC and Christopher Ganter should not be held in Contempt and Brief in Support Thereof, attached hereto as Exhibit A (the “Aurzada Declaration”).

15. Specifically, the Letter of Intent provides “This letter constitutes an offer to purchase from Stewardship Fund a pool of REO properties and non-performing mortgage Assets by HP Debt Exchange, LLC ... The purchase price for the Assets is \$250,000 ... All Due Diligence has been performed and assets have been valued accordingly ... HP Debt Exchange, LLC will fund purchase on or before December 7, 2012.” *Id.* (parentheticals omitted). The Letter of Intent is signed by Christopher Ganter as president and CEO of HP. *See id.*

16. Attached to the Letter of Intent is a list of the assets sought to be purchased by HP. *See* Exhibit A to the Letter of Intent, attached as Exhibit 1 to the Aurzada Declaration. The assets that HP sought to purchase are the same 127 Subject Assets that were included in the Lakeside Sale Motion. *Compare* Exhibit A to the Lakeside Sale Motion [Dkt. No. 103-1] *with* Exhibit A to the Letter of Intent. The Receiver did not move forward with a sale of the Subject Assets to HP or any other party due to the continued objections of certain investors.



17. To be clear, **to date, the Receiver has not sold or authorized others to sell the Subject Assets.** Indeed, the Subject Assets are not even the subject of a pending motion to sell. *See, e.g.*, Order (denying the Lakeside Sale Motion subject to reinstatement) [Dkt. No. 181].

**E. HP Debt Exchange Purportedly Sells the 127 Subject Assets to Toroklaw Equity Management Company**

**(i) The Mortgage Loan Sale Agreement**

18. On or about March 25, 2013, the Receiver and his counsel were contacted by Mark Torok, attorney for, and principal of, Toroklaw Equity Management Company, LLC and Toroklaw Equity Management Fund I, LLC (collectively “Torok”). *See* Email from Mark Torok to Jay Krystinik, dated March 25, 2013, attached as Exhibit 2 to the Aurzada Declaration.

19. Mr. Torok suggested that he and his affiliated entities had purchased certain assets from HP and Ganter that were acquired from, or sold with the permission of, the Stewardship Receivership Claimants Association (the “Association”) and requested the Receiver’s help acquiring documents from the Association.<sup>1</sup> *See id.*

20. Further investigation revealed that the assets purportedly sold to Torok were, in fact, **the 127 Subject Assets that were the subject of the Lakeside Sale Motion**, which was never consummated. *See e.g.*, Mortgage Loan Sale Agreement dated February 27, 2013, at Exhibit A, attached to Email from Kristi DuVall to Bradley Purcell dated March 25, 2013, attached as Exhibit 3 to the Aurzada Declaration.

21. Despite the fact that the Receiver did not move forward with a sale of the Subject Assets to HP, it appears that HP entered into a Mortgage Loan Sale Agreement (the “Agreement”) with Torok in which it purportedly sold the 127 Subject Assets to Torok for a

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<sup>1</sup> The Stewardship Receivership Claimants Association is comprised of certain investors in the Receivership Entities. *See e.g.*, Stewardship Receivership Claimants Association’s Response in Opposing and Objection to the Receiver’s Sales Motion [Dkt. No. 114]. On information and belief, Linda Hayes is the manager of the Association.

purchase price of \$450,000. *See id.* The Agreement provides that “[HP] is the owner of those certain Mortgage Loans (the 127 Subject Assets), with the power to sell, transfer, assign and convey the Mortgage Loans” and that “[HP] agrees to sell to [Torok] ... the Mortgage Loans described in the Mortgage Loan Schedule.”<sup>2</sup> *See id.* ¶ 2.1. A review of the Mortgage Loan Schedule reveals that, except for a few spacing differences, **it is identical to the list of 127 Subject Assets that was attached to the Letter of Intent**, in which HP offered to purchase the Subject Assets from the Estate. *Compare* Exhibit A to the Letter of Intent *with* Exhibit A to the Mortgage Loan Sale Agreement dated February 27, 2013. However, **the Receiver did not consummate the sale of the 127 Subject Assets to HP as proposed in the Letter of Intent.**

22. To the contrary, the Receiver informed Mr. Ganter that the Estate would not move forward with a sale of the Subject Assets until certain objections to the Lakeside Sale Motion were resolved and until a motion to sell the Subject Assets was approved by the Court. *See* Aurzada Declaration ¶ 10.

**(ii) The Association and Linda Hayes**

23. Additional information provided to the Receiver indicates that HP was holding itself out as a liquidating agent for the Association, with the authority to sell, or broker a sale of, the Subject Assets on behalf of the Association. *See* Email from Mark Torok to Bradley Purcell, dated March 25, 2013, including attached Master Services Agreement dated September 14, 2012, attached as Exhibit 4 to the Aurzada Declaration.

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<sup>2</sup> The Agreement provides further misrepresentations, including (i) that “[HP] has taken all necessary action to authorize its execution, delivery and performance of this Agreement, has complied with all laws, rules and regulations to which it may be subject ... and has the power and authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby;” (ii) “[HP] requires no approval of the transaction contemplated by the Agreement from any state or federal regulatory authority;” (iii) “To the best of [HP’s] knowledge, no person or entity holds any competing claim of an interest in any of the Mortgage Loans;” and (iv) the Mortgage Notes and Mortgage Loans are not the subject of any claim, demand or litigation.” *See* Agreement ¶ 6.1 (a),(d), (h), (i).

24. Specifically, HP provided Torok with a copy of a Master Services Agreement between HP<sup>3</sup> and the Association (executed by Linda Hayes) that provides for HP to act as a broker for certain assets of the Association. *See* Master Services Agreement attached to the email from Mark Torok to Bradley Purcell, dated March 25, 2013; *see also* Email from Linda Hayes to Keith Aurzada and Bradley Purcell, including attached Master Services Agreement dated September 14, 2012, attached as Exhibit 5 to the Aurzada Declaration.

25. The Master Services Agreement provides that HP will “Manage Asset disposition through HP network of buyers and servicers” and that “HP will conduct all dispositions as a receiver for the [Association].” *See* Attachment A “Statement of Work” attached to Master Services Agreement attached to the email from Mark Torok to Bradley Purcell, dated March 25, 2013. In exchange, for brokering the sale of the “Assets” on behalf of the Association, the Master Services Agreement provides for compensation to HP of 5% of “all sales of assets initiated, managed or closed by HP.” *See* Schedule A, attached to Master Services Agreement, attached to email from Linda Hayes to Keith Aurzada and Bradley Purcell.

26. The Master Servicing Agreement further provides that **the Association “owns all right, title, and interest to all accounts that are placed with HP”** and indemnifies HP for any liability arising from the Association’s negligence in providing materials and information to HP. *See id.* ¶¶ 5.4, 7.1.

27. Much to the Receiver’s dismay, it appears that the “accounts” the Association provided to HP were the Subject Assets. As the Association is aware, the Subject Assets are property of the Estate and the Court has not authorized their sale. *See* Stewardship Receivership

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<sup>3</sup> Although the Master Services Agreement is between Heritage Pacific Financial, LLC and the Association and the Scope of Work attached thereto is between HP Locate, LLC and the Association, because both are believed to be affiliates of HP, they will be referred to simply as HP.

Claimants Association's Response in Opposing and Objection to the Receiver's Sales Motion [Dkt. No. 14]. Nor has the Receiver or the Court authorized the Association to retain a broker to sell the Subject Assets. Indeed, the Receiver was not aware that the Association had retained HP to broker a sale of Estate assets until it was contacted by Torok.

28. Even more troubling is the fact that the Master Servicing Agreement from the Association was used to perpetrate a fraudulent sale of the Subject Assets to Torok.

**(iii) Torok Sues HP and Ganter**

29. On March 28, 2013, Torok filed suit against Ganter and HP (and their affiliates) in the 429<sup>th</sup> Judicial District Court of Collin County, Texas for breach of the Mortgage Loan Sale Agreement, fraud, negligent misrepresentations, intentional interference with a prospective contract, and violations of the Texas Deceptive Trade Practices Act. *See* Plaintiff's Original Petition, Application for Temporary Restraining Order, and Request for Disclosure, *Toroklaw Equity Management, et al v. Chris Ganter, et al.*, No 429-01209-2013, attached as Exhibit 6 to the Aurzada Declaration.

30. In the Original Petition, Torok asserts that HP made material misrepresentations in the Mortgage Loan Sale Agreement, including that it owned the "assets" or that it had the exclusive right to control the disposition of the assets. *See id.* ¶ 16. On information and belief, Ganter supported his misrepresentations by providing Torok with a copy of the Master Services Agreement—thereby, providing evidence that HP had the authority to broker a sale of the Subject Assets on behalf of the Association. However, neither HP nor the Association had the authority to broker a sale of the Subject Asset. Moreover, HP, the Association, and Linda Hayes each knew that they did not have the authority to dispose of the Subject Assets, and that any disposition would require Court authority, which had not been obtained. *See e.g.*, Aurzada

Declaration ¶ 10; Stewardship Receivership Claimants Association’s Response in Opposing and Objection to the Receiver’s Sales Motion [Dkt. No. 114].

31. As a result, Torok paid HP over \$450,000 and has received nothing in exchange. *See* Plaintiff’s Original Petition, Application for Temporary Restraining Order, and Request for Disclosure. At this time, it is unclear where those funds have gone, including whether any funds were provided to the Association.

32. However, it is clear that HP and Ganter have a long history of alleged misconduct in the sale of mortgage loans.

**F. Ganter and his Affiliated Entities have a History of Alleged Misconduct in the Sale of Mortgage Loans**

**(i) The Arkansas Securities Commissioner**

33. On December 6, 2011, the Arkansas Securities Commissioner issued a Cease and Desist Order against Ganter, Heritage Pacific Financial, LLC (“HPF”) (an affiliate of HP), and HPAC 18, LLC (“HPAC”). *See* Cease and Desist Order issued by the Arkansas Securities Commissioner on December 7, 2011, *In the Matter of: Heritage Pacific Financial, LLC; HPAC 18, LLC; and Chris Ganter* attached as Exhibit 9 to the Aurzada Declaration.

34. The Cease and Desist Order provides that Ganter, individually and as managing member and chief executive officer of HPF and HPAC, committed multiple violations of the Arkansas Securities Act through the offering and sale of “delinquent second-lien debt [that was] purchased] from the primary market then packaged and [sold] to individual investors.” *See* Cease and Desist Order ¶¶ 1-4. The Cease and Desist Order further provides that neither Ganter nor his affiliated entities were licensed to offer or sell securities in the State of Arkansas. As a result, HPF, HPAC, and Ganter were ordered to “immediately cease and desist from further violations of Ark. Code Ann. § 23-42-501 ... § 23-42-301 ... [and] § 23-42-209(a)(2)(A).” *Id.* ¶¶ 23-25.

35. In addition to the Cease and Desist Order, Ganter and his affiliated entities are the subject of multiple, recent or ongoing lawsuits involving allegations of fraud and dishonesty in the sale of mortgage loans.

**(ii) Summit Real Estate Partners**

36. On July 22, 2011, Summit Real Estate Partners, LP and Series 2010-2 (together, “Summit”) filed a lawsuit against HP in the 101<sup>st</sup> Judicial District Court of Dallas County. *See* Plaintiff’s First Amended Petition and Application for Temporary Injunction attached as Exhibit 10 to the Aurzada Declaration; Register of Actions/Docket Sheet No. DC-11-09104-E, 101<sup>st</sup> District Court, Dallas County, Texas attached as Exhibit 11 to the Aurzada Declaration.

37. Summit alleges that in December 2010, it entered into a Mortgage Loan Sale Agreement with HP in which it purchased distressed mortgage loans. *See* Plaintiff’s First Amended Petition and Application for Temporary Injunction ¶¶ 6-7. Despite entering into the Mortgage Loan Sale Agreement and accepting payment of over \$175,000 from Summit, HP did not own the loans or possess the loan documents it purportedly sold. *See id.* ¶¶ 7-9. In March 2011, HP admitted that it could not perform under the Mortgage Loan Sale Agreement and agreed to unwind the transaction. *See id.* ¶ 11. However, HP refused to repay Summit the purchase price. *See id.* ¶ 11-12. As a result, Summit filed suit for breach of the Mortgage Loan Sale Agreement, fraud, tortious interference with existing contract, and conversion. *See id.* ¶¶ 13-23.

38. On May 31, 2012, the 101<sup>st</sup> Judicial District Court entered a Final Judgment in favor of Summit and against HP that rescinded the Mortgage Loan Sale Agreement and required HP to pay over \$183,000. *See* Final Judgment, attached as Exhibit 12 to the Aurzada Declaration.

**(iii) Truestar Investments**

39. On June 15, 2012, Truestar Investments, Ltd., HVAC 50, JV, and TILHP3 (together, “Truestar”) filed a lawsuit against HPF, HP, and Ganter in the 162<sup>nd</sup> Judicial District Court of Dallas County. *See* Plaintiff’s First Amended Petition Against Defendants Heritage Pacific Financial, Inc., HP Debt Exchange, and Chris Ganter attached as Exhibit 13 to the Aurzada Declaration; Register of Actions/Docket Sheet No. DC-12-06634, 162nd District Court, Dallas County, Texas, attached as Exhibit 14 to the Aurzada Declaration.

40. Truestar alleges that in October 2011, its predecessor in interest entered into a joint venture with HPF. *See* Plaintiff’s First Amended Petition Against Defendants Heritage Pacific Financial, Inc., HP Debt Exchange, and Chris Ganter ¶ 9. Truestar’s predecessor contributed \$1,000,000 to the joint venture for the acquisition of a “portfolio of debts” from HP. *See id.* As part of the sale, HP provided the joint venture with a call option in which it could require HP to buy back the portfolio for \$1,180,000 (which Ganter personally guaranteed). *See id.*

41. In January 2012, Truestar entered into another joint venture with HPF. *See id.* ¶ 11. Truestar contributed \$200,000 to the joint venture for the acquisition of another portfolio of debts from HP. *See id.* As with the first sale, HP provided the joint venture with a call option in which it could require HP to buy back the portfolio for \$216,000 (which Ganter also personally guaranteed). *See id.*

42. Truestar alleges that it never received any distributions from the joint venture and, as a result, attempted to exercise the joint ventures’ call options with HP. *See id.* ¶ 13. HP and Ganter, however, refused to repurchase the debt. As a result, Truestar filed suit for breach of the

joint venture agreements, breach of the option agreements, breach of personal guaranties, and breach of fiduciary duties. *See id.* ¶¶ 14-17.

43. Truestar's case against HPF, HP, and Ganter appears to be in the discovery phase. *See* Register of Actions/Docket Sheet No. DC-12-06634, 162nd District Court, Dallas County, Texas.

**(iv) Trybus and JJT Financial**

44. On November 9, 2012, John Trybus and JJT Financial, LLC (together, "Trybus") filed a lawsuit against HPF, HP, and Ganter in the 193rd Judicial District Court of Dallas County. *See* Plaintiff's Original Petition and Request for Disclosure attached as Exhibit 15 to the Aurzada Declaration; Register of Actions/Docket Sheet No. DC-12-13294, 193rd District Court, Dallas County, Texas, attached as Exhibit 16 to the Aurzada Declaration.

45. In its Petition, Trybus alleges that in April 2009, Trybus executed a Joint Venture Agreement and Management Agreement with HP for the purpose of "acquiring, holding, owning, maintaining, improving, operating, managing, leasing or selling a second lien mortgage note pool." *See* Plaintiff's Original Petition and Request for Disclosure ¶¶ 9-10.

46. Trybus further alleges that in April 2012, it entered into a mortgage loan sale agreement in which it purchased from Ganter d/b/a Heritage Pacific a pool of second lien mortgages for \$100,000. *See id.* ¶¶ 11-12. Trybus purchase another pool of second lien mortgages in October 2009 for \$100,000. *See id.* ¶¶ 13-16. Additionally, in November 2009 Ganter, on behalf of HPF, executed a promissory note for \$200,000 in favor of Trybus. *See id.* ¶¶ 13-16.

47. Despite the various transactions between Trybus, HPF, HP, and Ganter, Trybus received few payments from the joint venture and few payments on the promissory note. *See id.*



¶¶ 13-16. As a result, Trybus filed suit for breach of the promissory note, breach of the joint venture agreement, fraud, and fraudulent inducement. *See id.* ¶¶ 31-45.

48. Trybus's case against HP, HPF, and Ganter appears to be in the preliminary stages. *See* Register of Actions/Docket Sheet No. DC-12-13294, 193rd District Court, Dallas County, Texas.

(v) **Razor Capital**

49. On February 4, 2013, Razor Capital, LLC ("Razor") filed a lawsuit against HP in the United States District Court for the District of Minnesota. *See* Complaint, *RAzOR Capital, LLC v. HP Debt Exchange, LLC*, No. 13-cv-00272 [Dkt. No. 1].

50. In its Complaint, Razor alleges that in September 2012, it entered in to a Mortgage Loan Sale Agreement with HP, in which it paid \$729,862.22 to purchase a pool of 305 mortgage loans from HP. *See id.* Under the agreement, HP represented that the unpaid principal balance of the mortgages was \$18,338,246.74. *See id.* However, in October 2012, Razor received information indication that the majority of the mortgages had been restructured reducing the principal balance to \$2,326,337.01. *See id.* ¶23. As a result, Razor filed suit against HP for breach of the Mortgage Loan Sale Agreement. *See id.* ¶¶ 27-36.

III.

**ARGUMENTS AND AUTHORITIES**

51. HP and Ganter purported to sell to Torok assets of the Estate in direct, and knowing, violation of the injunction in the Receivership Orders.

A. **This Court has Inherent Equitable Power to Enforce its Orders by Finding HP and Ganter in Contempt**

52. A federal court's power to enforce its own injunctive decrees is inherent and necessary to properly perform the functions of the court. *Waffenschmidt v. MacKay*, 763 F.2d

711, 716 (5th Cir. 1985); *Powell v. Ward*, 643 F.2d 924, 931 (2d Cir. 1981); *Myers v. United States*, 264 U.S. 95, 103 (1924).

53. In addition to having inherent equity power to enforce its orders, the Court is also empowered by the United States Code to find HP and Ganter in contempt. The United States Code provides that “[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command.” 18 U.S.C. § 401(3) (2009).

**B. The Purported Sale of the Subject Assets by HP and Ganter Violates the Receivership Orders**

54. There is no question that the purported sale of the Subject Assets by HP and Ganter is a violation of the Court’s Receivership Orders. First, HP and Ganter were undoubtedly actually aware of the Court’s orders and requirement that the Court approve any disposition of the Subject Assets. HP and Ganter were not only aware of the Receivership generally, they were aware of the Lakeside Sale Motion and had been told by the Receiver that any sale of the Subject Assets would require Court approval. *See* Letter of Intent; Aurzada Declaration ¶ 11. This notice is sufficient to impose on HP and Ganter an obligation not to encumber or dispose of Estate assets. *See Sec & Exch. Comm’n v. Elfindapan S.A.*, No. 1:00CV00742, 2002 WL 31165146, at \* 5 (M.D.N.C. Aug. 30, 2002).

55. Second, the Subject Assets are plainly part of the Receivership Estate. The Subject Assets were acquired by the Estate pursuant to settlements approved by the Court and the Estate sought permission from the Court to sell them. *See e.g.*, Lakeside Sale Motion. As the Receivership Orders make clear, the Receiver has the exclusive authority to take control of

all “assets traceable to assets owned or controlled by the Receivership Estate.” Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme ¶ 4 [Dkt. No. 24].

56. For all such assets, disposition without Court approval is prohibited. The Receivership Orders state: “Creditors and all other persons are hereby **restrained and enjoined**, without prior approval from the Court, from: (a) Any act to obtain possession of the Receivership Estate Assets.” Agreed order Appointing Receiver Over Stewardship Fund, LP, and Related Entities ¶ 9 (emphasis added).

57. Moreover, HP and Ganter’s conduct strongly suggests an actual awareness that they were acting in contravention of the Receivership Orders. After the Receiver became aware of the purported sale to Torok, he received an email from Ganter, and subsequent phone call, in which Ganter inquired about the potential **future** sale of the Subject Assets. See Aurzada Declaration ¶¶ 10-11. This evidence of bad motive alone supports a contempt finding here. See *In re BKS Properties, Inc. v. Shumate*, 271 B.R. 794, 802 (N.D. Tex. 2002) (holding that knowing and deliberate violations of court orders must be sanctioned by contempt).

**C. Relief Requested**

**(i) Order of Contempt**

58. Because the purported sale of the Subject Assets from HP to Torok was in knowing violation of the Receivership Orders, the Receiver requests that this Court find HP and Mr. Ganter in contempt. The Receiver further requests that, as a part of its Order of contempt, it order HP and Ganter to pay the costs and fees incurred by the Receiver and his counsel in investigating, drafting, and prosecuting this Motion.

**(ii) Turnover of Funds**

59. The Receiver further requests that the Court order HP and Torok to pay into the registry of the Court the all funds received from Torok. Under the Agreement, Torok believed that it was acquiring the 127 Subject Assets that were the subject of the Lakeside Sale Motion for a purchase price of \$450,000. In order to minimize the impact of HP and Mr. Ganter's fraudulent conduct on Torok, and because the purchase price is substantially higher than any other offers received for the 127 Subject Assets, the Receiver requests that the Court further order (i) the turnover of all proceeds paid by Torok to HP (and all affiliates) and Ganter (and all affiliates); (ii) subject to the limitations set forth below, permitting the Receiver to convey to Torok the Estate's interest in the 127 Subject Assets in exchange for a release and assignment to the Receiver of all funds previously provided to HP;<sup>4</sup> and (iii) providing a 21-day public auction period, under the same procedures as provided in the Lakeside Sale Motion [Dkt. No. 103].<sup>5</sup>

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests as follows: (1) that this Court set a show cause hearing on an expedited basis for May 21, 2013; (2) that it order HP and Mr. Ganter to appear and respond to this Motion; (3) that, following a hearing on this motion, the Court hold HP and Ganter in contempt and order HP and Ganter to turnover all payments received from Torok into the registry of the Court; and (4) that this Court enter an Order permitting the Receiver to convey the 127 Subject Assets to Torok in exchange for the funds previously paid to HP and Mr. Ganter under the sales procedures provided in the Lakeside Sale Motion [Dkt. No. 103]. The Receiver also requests that the Court expedite its

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<sup>4</sup> Assuming HP and Mr. Ganter are still in possession of such funds and, in fact, turn them over to the Court. If HP and Mr. Ganter do not have and/or do not turnover the funds, Torok's bid for the 127 Subject Assets will be deemed to be the total amount of funds turned over by HP and Mr. Ganter.

<sup>5</sup> Including a waiver of 28 U.S.C. §§ 2001(a), 2001(b), 2002, and 2004.

consideration of this motion, adopt summary procedures, and grant the Receiver such other and further relief, general or special, at law or in equity, to which he might show himself otherwise entitled.

Dated: May 13, 2013

**BRYAN CAVE LLP**

By: //s// Bradley Purcell  
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**CERTIFICATE OF SERVICE**

I certify that on May 13, 2013, I served a true and correct copy of the foregoing pleading by electronic mail through the Court's CM/ECF system to all parties consenting to service through same, including to counsel for the SEC, the Defendants, and the Objectors.

Additionally, a true and correct copy of the foregoing pleading was served on Respondents via first class mail at the following address:

Christopher Ganter  
2200 K Avenue STE 100  
Plano, Texas 75074  
(also hand delivered on May 14, 2013)

David Reece  
United States Securities and Exchange Commission  
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Moreover, the foregoing will be uploaded to [www.stewardshipfundreceivership.com](http://www.stewardshipfundreceivership.com)

//s// Bradley Purcell  
Bradley Purcell

**CERTIFICATE OF CONFERENCE**

I certify that on May 9, 2013, I conferred with the SEC regarding the foregoing pleading and they are not opposed to the relief requested herein.

I certify that on May 9, 2013, I conferred with the Respondents regarding the foregoing pleading and they are opposed to the relief requested herein.

//s// Bradley Purcell \_\_\_\_\_  
Bradley Purcell