

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
	§	
v.	§	Case No. 4:11-CV-655
	§	Judge Clark/Judge Mazzant
JAMES G. TEMME and STEWARDSHIP	§	
FUND, LP	§	

**ORDER CERTIFYING FACTS TO THE DISTRICT JUDGE**

Pending before the Court is the Receiver’s Motion for Order to Show Cause Why HP Debt Exchange, LLC and Christopher Ganter Should Not Be Held in Contempt (Dkt. #190). Pursuant to 28 U.S.C. § 636(e)(6), the Court hereby certifies the following facts:

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”), requests 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.

On October 14, 2011, the Securities and Exchange Commission instituted this 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.

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.

As a result, on October 14, 2011, the Securities and Exchange Commission filed this 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. #24]; Agreed Order Appointing Receiver Over Stewardship Fund, LP and Related Entities [Dkt. #25]; and Order Appointing Receiver Over James G. Temme [Dkt. #30] (together, the “Receivership Orders”).

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 [Dkt. #25].

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. #24].

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.

Based on the Receiver’s potential claims, Harbour I and Harbour II entered into settlement agreements with the Receiver [Dkt. #79 and #95]. 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.

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

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

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. #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. At the end of the public auction period, the 127 Subject Assets would be sold to the highest bidder. Attached to the Lakeside Sales Motion was the list of the 127 Subject Assets subject to the Lakeside Sale Motion [Dkt. #103-1].

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. #181]. After delaying the sale to Lakeside, the Receiver continued to market and preserve the Subject Assets.

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

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”). 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.” The Letter of Intent is signed by Christopher Ganter as president and CEO of HP.

Attached to the Letter of Intent is a list of the assets sought to be purchased by HP. 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. #103-1] with Exhibit A to the Letter of Intent [Doc. #190-1]. 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. As of this date, the Receiver has not sold or authorized others to sell the Subject Assets. 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. #181].

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”). 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>

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. 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 purchase price of \$450,000. 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]

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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 Opposition and Objection to the Receiver’s Sales Motion [Dkt. #114].

agrees to sell to [Torok] ... the Mortgage Loans described in the Mortgage Loan Schedule.”<sup>2</sup> 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 Receivership Estate. However, the Receiver did not consummate the sale of the 127 Subject Assets to HP as proposed in the Letter of Intent.

To the contrary, the Receiver informed Mr. Ganter that the Receivership 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.

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.

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.

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

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<sup>2</sup> The Agreement further represents, (1) 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”; (2) “[HP] requires no approval of the transaction contemplated by the Agreement from any state or federal regulatory authority”; (3) “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 (4) the Mortgage Notes and Mortgage Loans are not the subject of any claim, demand or litigation.” See Agreement ¶ 6.1 (a),(d), (h), (i).

<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.

[Association].”

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.”

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.

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 Receivership Estate, and the Court has not authorized their sale. Nor has the Receiver or the Court authorized the Association to retain a broker to sell the Subject Assets. The Receiver was not aware that the Association had retained HP to broker a sale of Receivership Estate assets until it was contacted by Torok.

It appears that the Master Servicing Agreement from the Association was used to perpetrate a fraudulent sale of the Subject Assets to Torok.

On March 28, 2013, Torok filed suit against Ganter and HP (and their affiliates) in the 429th 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. 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 Assets. 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.

As a result, Torok paid HP over \$450,000 and has received nothing in exchange. At this time, it is unclear where those funds have gone, including whether any funds were provided to the Association. It appears that HP and Ganter have a history of alleged misconduct in the sale of mortgage loans.<sup>4</sup>

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<sup>4</sup> 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”). 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.” 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).” 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.

On July 22, 2011, Summit Real Estate Partners, LP and Series 2010-2 (together, “Summit”) filed a lawsuit against HP in the 101st Judicial District Court of Dallas County. Summit alleges that in December 2010, it entered into a Mortgage Loan Sale Agreement with HP in which it purchased distressed mortgage loans. 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. In March 2011, HP admitted that it could not perform under the Mortgage Loan Sale Agreement and agreed to unwind the transaction. However, HP refused to repay Summit the purchase price. As a result, Summit filed suit for breach of the Mortgage Loan Sale Agreement, fraud, tortious interference with existing contract, and conversion. On May 31, 2012, the 101st 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.

On June 15, 2012, Truestar Investments, Ltd., HVAC 50, JV, and TILHP3 (together, “Truestar”) filed a lawsuit against HPF, HP, and Ganter in the 162nd Judicial District Court of Dallas County. Truestar alleges that in October 2011, its predecessor in interest entered into a joint venture with HPF. Truestar’s predecessor contributed \$1,000,000 to the joint venture for the acquisition of a “portfolio of debts” from HP. 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). In January 2012, Truestar entered into another joint venture with HPF. Truestar contributed \$200,000 to the joint venture for the acquisition of another portfolio of debts from HP. 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). 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. 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. Truestar’s case



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. This notice is sufficient to impose on HP and Ganter an obligation not to encumber or dispose of Receivership Estate assets. Second, the Subject Assets are plainly part of the Receivership Estate. The Subject Assets were acquired by the Receivership Estate pursuant to settlements approved by the Court, and the Receivership Estate sought permission from the Court to sell them. 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." 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

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against HPF, HP, and Ganter appears to be in the discovery phase.

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. 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." 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. Trybus purchased another pool of second lien mortgages in October 2009 for \$100,000. In November 2009 Ganter, on behalf of HPF, executed a promissory note for \$200,000 in favor of Trybus. 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. As a result, Trybus filed suit for breach of the promissory note, breach of the joint venture agreement, fraud, and fraudulent inducement. Trybus's case against HP, HPF, and Ganter appears to be in the preliminary stages.

On February 4, 2013, Razor Capital, LLC ("Razor") filed a lawsuit against HP in the United States District Court for the District of Minnesota. In its Complaint, Razor alleges that in September 2012, it entered into a Mortgage Loan Sale Agreement with HP, in which it paid \$729,862.22 to purchase a pool of 305 mortgage loans from HP. Under the agreement, HP represented that the unpaid principal balance of the mortgages was \$18,338,246.74. However, in October 2012, Razor received information indicating that the majority of the mortgages had been restructured, reducing the principal balance to \$2,326,337.01. As a result, Razor filed suit against HP for breach of the Mortgage Loan Sale Agreement.

Court, from: (a) Any act to obtain possession of the Receivership Estate Assets.”

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. This evidence of bad motive alone supports a contempt finding here.

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, the Court order HP and Ganter to pay the costs and fees incurred by the Receiver and his counsel in investigating, drafting, and prosecuting this Motion.

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 Receivership 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; and (iii) providing a 21-day public auction period, under the same procedures as provided in the Lakeside Sale Motion [Dkt. #103].

The Receiver requests the following: (1) that this Court set a show cause hearing on an expedited basis; (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 turn over 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. #103].

### **Legal Standard**

To prove that respondents should be held in civil contempt, the Receiver “must establish by clear and convincing evidence that (1) a Court Order was in effect, (2) the Order required specified conduct by the respondent, and (3) the respondent failed to comply with the Court's Order.” *United States v. City of Jackson, Miss.*, 359 F.3d 727, 731 (5th Cir. 2004). “The contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order.” *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000) (citing *NLRB v. Trailways, Inc.*, 729 F.2d 1013, 1017 (5th Cir. 1984)). “ ‘[I]n civil contempt proceedings the question is not one of intent but whether the alleged contemnors have complied with the court's order.’ ” *Jim Walter Res., Inc. v. Int'l Union, United Mine Workers of Am.*, 609 F.2d 165, 168 (5th Cir.1980) (quoting *United States v. Ross*, 243 F.Supp. 496, 499 (S.D.N.Y. 1965)). “Good faith is not a defense to a civil contempt; the question is whether the alleged contemnor complied with the court's order.” *Chao v. Transocean Offshore, Inc.*, 276 F.3d 725, 728 (5th Cir. 2002). In the contempt context, “clear and convincing evidence” is “that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to truth of the allegations sought to be established, evidence so clear, direct,

weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case.” *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (citation omitted).

**CONCLUSION**

Because HP Debt Exchange, LLC and Christopher Ganter have failed to comply with the Receivership Order, the Receiver requested that the Court set a hearing at which HP Debt Exchange, LLC and Christopher Ganter be compelled to appear and show cause why they should not be held in contempt for violating the Court’s order.

The undersigned certifies that the facts set out above constitute an act of civil contempt. HP Debt Exchange, LLC and Christopher Ganter should be required to appear before the District Judge to show cause for their disobedience of the Receivership Order and why they should not be held 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).

**SIGNED this 19th day of June, 2013.**

  
AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE