

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

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	4:11-CV-0655
JAMES G. TEMME, and	:	(Judge Clark/Mazzant)
STEWARDSHIP FUND, LP,	:	ECF
	:	
Defendants,	:	
	:	
	:	

OBJECTION TO AND MOTION TO STRIKE THE DECLARATION OF JOHN HENRY

COMES NOW the Securities and Exchange Commission (the “Commission”) and submits this Objection to and Motion to Strike the Declaration of John Henry as follows¹:

**I.
BACKGROUND**

On June 5, 2013, the Commission filed its Motion for Summary Judgment and Brief in Support [Dkt. No. 194] demonstrating that the Defendants Jay Temme, Stewardship Fund, LP, and other related entities (together, the “Defendants”) operated a fraudulent scheme defrauding investors of millions of dollars. In response, the Defendants have submitted the Declaration of John Henry, which Defendant attempts to use to raise a fact question regarding the Plaintiff’s evidence. *See* Declaration of John Henry attached as Exhibit 1 to the Defendant’s Response to the SEC’s Motion for Summary Judgment [Dkt. No. 218] (the “Henry Declaration”). Specifically, Defendant attempts to use the Henry Declaration to demonstrate ownership of the

¹ This Motion applies to both the Declaration itself and the spreadsheet that was attached as an Exhibit. The Declaration was labeled Exhibit 1 to Defendant’s Response and the spreadsheet was identified as Exhibit A to Defendant’s Response.

assets owned and managed by the Defendants, and Defendant attempts to use this alleged proof of ownership to dispute the facts provided in the Commission's Motion for Summary Judgment.

The Henry Declaration, however, consists of little more than testimony attempting to introduce a spreadsheet extracted from the AMX Tracker system. The AMX Tracker system is a database maintained by Halo Companies, Inc. ("Halo") to help track the ownership, status, and other information related to assets managed by Halo. [See Declaration of Keith Aurzada in Support of Objection and Motion to Strike the Declaration of John Henry (the "Second Aurzada Declaration.") at paragraph 4.].² The Henry Declaration does not provide any basis for determining whether the information extracted from the AMX Tracker system was reliable or that it accurately reflected the ownership of assets. That defect is glaring given that undisputable evidence demonstrates it is not reliable as a means of determining that information in the context of this case. [Id.]. Indeed, the Henry Declaration does not indicate that Mr. Henry performed any due diligence to determine whether any of the information provided by the AMX Tracker system was accurate. Rather, the Henry Declaration, and in turn the Defendants, wholly accept that the AMX Tracker report accurately reflects the ownership of assets.

But that is not the case. To the contrary, it cannot be disputed that these assumptions are simply wrong, as discussed in detail below. The undisputable fact is that the information contained in the Henry Declaration is not accurate and does not reflect the true ownership of assets. As a result, the Henry Declaration is unreliable and inadmissible. And in any event, as discussed below, to the extent it is considered, even if Mr. Henry's beliefs are taken at face value, comparing what he believes to be the case to what actual evidence demonstrates merely confirms Temme's fraud.

² The Second Aurzada Dec. is attached as Exhibit A. It in turn has 13 Exhibits.

II. OBJECTIONS

A. The Henry Declaration Violates the Best Evidence Rule.

The Henry Declaration is inadmissible because it fails to comply with the best evidence rule, codified in Rule 1002 of the Federal Rules of Evidence. Rule 1002 precludes a party from admitting evidence regarding the contents of a document without producing the original document or a reliable duplicate. *See* Fed. R. Evid. 1002.

The Henry Declaration purports to provide evidence regarding, among other things: (i) the ownership of thousands of mortgages and REO properties (the “Assets”) (identified on the spreadsheet as the “Investor ID”) as of August 2011; (ii) the party from which the investor acquired the assets (identified on the spreadsheet as the “Package ID”); and (iii) the date assets were acquired (only identifiable based on the description of the “Package ID”). However, the ownership of such Assets may only be established through other documents that are not included or even referenced in the Henry Declaration, such as deeds to the REO properties, mortgages (or mortgage assignments), or purchase contracts indicating that the Assets have been or will be transferred.

The Henry Declaration not only fails to include any underlying documents supporting its assertions of ownership of the Assets, it fails to allege that Mr. Henry has reviewed such documents or that such documents were reviewed by the personnel entering the data into the AMX Tracker system. Indeed, Henry admits that his declaration is based entirely on “extracting information directly from AMX Tracker database.” The Henry Declaration provides no evidence that the AMX Tracker database is accurate or supported by any reliable documents. As a result, the Henry Declaration is inadmissible because it purports to prove the contents of documents without providing copies of such documents.

B. The Henry Declaration is Inadmissible as a Summary Because it is Not Reliable or Accurate.

Moreover, the Henry Declaration is inadmissible as a summary of documents. Under Rule 1006 of the Federal Rules of Evidence, a party may use a summary or chart to prove the contents of voluminous documents if: (i) the underlying documents are so voluminous that they cannot be conveniently examined; (ii) the proponent makes the original documents available for examination; (iii) the underlying documents are admissible; (iv) the summary or chart summary is “accurate and non-prejudicial;” and (v) the summary is properly introduced by a witness that supervised its preparation. *See United States v. Modena*, 302 F.3d 626, 633 (6th Cir. 2002).

The Henry Declaration fails to satisfy numerous requirements of Rule 1006. Most importantly, the Henry Declaration is not reliable or accurate.³ As noted above, the Henry Declaration is based entirely on the AMX Tracker system. The Henry Declaration does not provide any evidence that the AMX Tracker system accurately reflects the ownership of the Assets or that Mr. Henry performed any due diligence to determine whether the AMX Tracker system accurately reflects ownership of the Assets. Moreover, as discussed below, actual evidence obtained from the Receiver (as opposed to Mr. Henry’s speculation), demonstrates that Mr. Henry’s purported spreadsheet is riddled with errors and inaccuracies.

Several examples sufficiently demonstrate this inaccuracy. Below is an analysis of five properties taken from Mr. Henry’s offered spreadsheet. The analysis includes a comparison of how Mr. Henry describes the relevant ownership of those properties based on his complete reliance on what was found in August 2011 in the AMX system to the ownership as established by actual evidence:

³ In fact, there is not even an attempt to comply with Rule 1006.

- **2993 Parsons Avenue, Columbus, Ohio** is identified in the Henry Declaration as being owned by Cavco Holdings, LLC (*see* p. 52 of 60). In fact:
 - On March 10, 2009, Vose Investments, LP (later Cavco Holdings, LLC) executed a Charged Off, Non-Performing Note Sale, Mortgage and Real Estate Owned Agreement with Home Servicing, LLC, in which it purchased certain assets, including 2993 Parsons Avenue, attached as Exhibit 1 to the Second Aurzada Declaration).⁴
 - In March 2011, Stewardship Fund, LP sold an Agreement for Deed and Promissory Note for 2993 Parsons Avenue to John Graves, attached as Exhibit 2 to the Second Aurzada Declaration.⁵ As a part of his acquisition of 2993 Parsons Avenue, the Defendants provided Mr. Graves with a collateral file containing copies of the Agreement for Deed and Promissory Note. [*See* Second Aurzada Dec. at 7].
 - In May 2011, Stewardship Fund, LP sold the original Agreement for Deed and Promissory Note for 2993 Parsons Avenue to another entity Millennial Holdings, LLC (“Millennial”), attached as Exhibit 2 to the Second Aurzada Declaration (the documents held by Millennial are originals, copies of the same documents were sold to Mr. Graves). [*See* Second Aurzada Dec. at 7].
 - Publicly available documents from the Franklin County Auditor’s Office show that the current owner of 2993 Parsons Avenue is Stewardship Fund, LP, attached as Exhibit 3 to the Second Aurzada Declaration.
- **53 Henry Street, Coldwater, Michigan** Ohio is identified in the Henry Declaration as being owned by Stewardship Fund No. 5, LP (*see* p. 50 of 60). In fact:
 - AMX Tracker currently identifies 53 Henry Street as being owned by Stewardship Fund No. 3, LP. Attached as Exhibit 4 to the Second Aurzada Declaration is a true and correct copy of a screen image of AMX taken on August 20, 2013 for 53 Henry Street.
 - In March 2011, Stewardship Fund, LP sold an Agreement for Deed and Promissory Note for 53 Henry Street Avenue to John Graves, attached as Exhibit 5 to the Second Aurzada Declaration. Additionally, receivership records show that the Defendants provided Mr. Graves with a collateral file for 53

⁴ Mr. Aurzada serves as the court-appointed Receiver over, among other entities, Stewardship Fund, LP. The Commission submitted a separate declaration from Mr. Aurzada as part of its Appendix supporting its motion for summary judgment.

⁵ The Commission has not found any documents indicating that the property or underlying mortgage were transferred or sold from Cavco Holdings, LLC to the Defendants. Indeed, the principals of Cavco have indicated that 2993 Parsons Avenue was not transferred to the Defendants. As a result, the sale of 2993 Parsons Avenue to Mr. Graves and other appears to be a fraudulent.

Henry Street, which contains copies of the Agreement for Deed and Promissory Note. [See Second Aurzada Declaration at 11].

- Despite having “sold” this asset to Mr. Graves in March 2011, in May 2011, Stewardship Fund, LP “sold” the original Agreement for Deed and Promissory Note related to 53 Henry Street to Millennial, attached as Exhibit 5 to the Second Aurzada Declaration (the documents held by Millennial are originals). [Id.].
- **825 West Charles Street, Muncie, Indiana** is identified in the Henry Declaration as being owned by Stewardship Fund No. 4, LP (*see* p. 43 of 60). In fact:
 - On January 14, 2010, Stewardship Fund No. 4, LP acquired the mortgage and note related to 825 West Charles Street in the Agreement of Limited Partnership of Stewardship Fund No. 4, LP, attached as Exhibit 6 to the Second Aurzada Declaration.
 - Despite Stewardship Fund No. 4’s apparent acquisition, in May 2011, Stewardship Fund, LP sold an original Agreement for Deed and Promissory Note related to 825 West Charles Street to Millennial, attached as Exhibit 7 to the Second Aurzada Declaration (the documents held by Millennial are originals).
 - On July 8, 2011, James Temme executed an affidavit that lists 825 West Charles Street as “Disposed Inventory” of Stewardship Fund No. 4, LP attached as Exhibit 8 to the Second Aurzada Declaration (p. 40).⁶
- **300 N. Hodson Avenue, Muncie, Indiana** is identified in the Henry Declaration as being owned by Stewardship Fund No. 17, LP (*see* p. 60 of 60). In fact:
 - The current AMX Tracker system lists the owner of 300 N. Hodson Avenue as Cavco Holdings, LLC (“Cavco”). Attached as Exhibit 9 to the Second Aurzada Declaration is a true and correct copy of a screen image showing the current listing on the AMX Tracker system.
 - In June 2009, Cavco entered into a Servicing Contract with Stewardship Fund, LP that provides that 300 N. Hodson was an asset of Cavco, attached as Exhibit 10 to the Second Aurzada Declaration.
 - In September 2011, James Temme executed an Affidavit providing that “To the best of my knowledge, Cavco Holdings, LLC is the legal owner and has the true and rightful claim of ownership of the Assets attached hereto as Exhibit A.”

⁶ The reference to “disposed” refers to an impairment of the underlying collateral. [See Second Aurzada Declaration at 15]. In other words, Temme claims in 2011 that Stewardship Fund No. 4 “owns” the underlying asset, when Temme also purported to sell the same asset to Millennial.

Exhibit A includes 300 N. Hodson Avenue. Attached as Exhibit 11 to the Second Aurzada Declaration is a true and correct copy of the Affidavit.

- **527 Norris, Norristown, Pennsylvania** is identified in the Henry Declaration as being owned by Equitas Housing Fund III, LP (*see* p. 26 of 60). In fact:
 - The current AMX Tracker system lists the owner of 527 Norris as Helping Hands Housing I, LLC. Attached as Exhibit 12 to the Second Aurzada Declaration is a true and correct copy of a screen image showing the current listing on the AMX Tracker system.
 - In June 2009, Home Solutions Partners II, LP (“HSP II”) entered into a Charged Off, Non-Performing Note Sale, Mortgage and Real Estate Owned Agreement that provides that 527 Norris was an asset of HSP II, attached as Exhibit 13 to the Second Aurzada Declaration. And neither Mr. Henry nor Defendant has offered any evidence that HSP II sold or conveyed this asset to Equitas Housing Fund III, LP.

These representative examples demonstrate that the Henry Declaration is inaccurate and unreliable. Because the Henry Declaration does not accurately reflect ownership of the Assets or provide any evidence of reliability, it is not admissible as a summary of voluminous documents under Rule 1006. Accordingly, the court should strike it. And, as reflected above, to the extent it is considered, the fact that Mr. Henry apparently believed that the data reflected in the AMX system was accurate merely confirms that Defendant Temme and Stewardship Fund’s business was built on misrepresentations and falsehoods.

In addition, the Court should strike the Henry Declaration because the Defendant has used his privilege under the Fifth Amendment to shield himself from discovery. *See, e.g.*, Plaintiff's Motion for Summary Judgment and Brief at pp. 21-22 (Doc. No. 194, page 29 and 39), which is incorporate herein.

Respectfully submitted,

/s/ David B. Reece

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CERTIFICATE OF CONFERENCE

I certify that I have complied with the meet and confer requirement in Local Rule CV-7(h). On August 22, 2013, I telephoned and spoke with counsel for Defendant, John Helms, regarding this motion. Given the nature of the relief sought and the fact that the evidence at issue relates to a dispositive motion, no agreement could be reached.

/s/ David B. Reece

David B. Reece

CERTIFICATE OF SERVICE

I certify that on August 22, 2013, I electronically filed the foregoing *Objection to and Motion to Strike the Declaration of John Henry* with the Clerk of the Court for the Eastern District of Texas, Sherman Division, 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.

/s/ David B. Reece
David B. Reece