

NO. D-1-GV-09-000007

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
SOUTHERN STAR TITLE	§	
COMPANY, LLC	§	53rd JUDICIAL DISTRICT

APPLICATION FOR APPROVAL OF AGREEMENT
(Falcon International Bank)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC (“SDR” and “Southern Star”, respectively) and files this *Application for Approval of Agreement (Falcon International Bank)* (“Application”) for Southern Star, and respectfully shows the Court the following:

I. AUTHORITY

1. On January 8, 2009, this Court entered its *Agreed Order Appointing Liquidator and Permanent Injunction* (“Permanent Injunction”) placing Southern Star into liquidation and appointing the Texas Commissioner as Permanent Liquidator of Southern Star (“Receiver”). On March 26, 2009, the Receiver designated Jennifer Ramsey, PC as Special Deputy Receiver (“SDR”). The SDR is authorized to file this application under TEX. INS. CODE § 443.154(y).

2. The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Section III of the Order of Reference to Master entered on January 26, 2009.

II. BACKGROUND

3. Southern Star is a Texas domiciled limited liability company which held a title insurance agent's license issued by the Texas Department of Insurance.

4. Southern Star was owned and/or controlled by Rogelio "Roy" Ibanez ("Ibanez").

5. On July 2, 2009, the SDR filed suit in Travis County District Court against Ibanez seeking recovery of escrow shortages and operating losses of Southern Star as well as the expenses of administering the estate caused by the fraudulent, negligent and/or grossly negligent acts of Ibanez. The case is styled *Jennifer Ramsey, PC, as Special Deputy Receiver for Southern Star Title Company, LLC v. Rogelio "Roy" Ibanez*; Cause No. D1-GN-09-002120, 419th Judicial District Court, Travis County, Texas ("Ibanez Litigation").

6. On December 4, 2009, Falcon International Bank ("Falcon Bank") filed its Petition in Intervention claiming a pre-existing contractual relationship with Ibanez regarding a \$2,050,000 loan secured by Ibanez' ST Banc Corp stock and two tracts of real estate.

7. The SDR obtained an agreed judgment in the amount \$1,036,214.40 against Mr. Ibanez which was entered on February 16, 2010.

8. Subject to the approval of this Court, the SDR has reached an agreement with Falcon Bank, Ibanez, and two companies owned and/or controlled by Ibanez (Santo Andrei, Ltd., and Matico, Inc.) which would avoid the cost and uncertainty of continued litigation and would provide for an orderly liquidation of certain Ibanez assets to satisfy the SDR's claims and the claims of Falcon Bank.

III. AGREEMENT AND RECOMMENDATION

9. The proposed agreement, which would be entered as a Rule 11 agreement in the Ibanez Litigation, is attached to the SDR's affidavit as Exhibit 1. The agreement sets out the

conditions for the sale of Ibanez' ST Banc Corp stock and foreclosure sales of the real property securing the Falcon Bank note and formulas for dividing the proceeds of the sales. The agreement provides that in the event the contemplated bank stock sale closes and is funded and the real estate is foreclosed upon, the SDR and Falcon Bank will release all claims of any kind against one another in the Ibanez Litigation. The agreement provides, however, that the SDR's claims against Ibanez will not be released unless and until the agreed judgment against Ibanez is satisfied.

10. The SDR requests approval of the proposed agreement substantially in the form of the agreement attached to the SDR's affidavit as Exhibit 1. The SDR would show that approval of the agreement is in the best interest of the receivership estate, its creditors and claimants and recommends approval.

IV. NOTICE

Notice of this Application has been provided to all known parties of interest in the manner shown on the Certificate of Service. The Application will also be posted on the SDR's website.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the SDR respectfully requests that this Court enter an Order:

1. Approving this Application in all respects;
2. Authorizing the SDR to enter into an agreement substantially in the form of the agreement attached as Exhibit 1 to the SDR's affidavit;

3. Authorizing the SDR to execute any other documents and adjust the estate's records as necessary to effectuate this settlement.

Respectfully submitted,

BRIAN E. RIEWE, P.C.
4408 Spicewood Springs Rd.
Austin, Texas 78759
Telephone: 512/236-9955
Facsimile: 512/236-9966

Brian E. Riewe
State Bar No. 16915600

Gregory C. Douglass
State Bar No. 06049200

Brian E. Riewe

By: _____

Attorneys for the Special Deputy Receiver

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the *Application for Approval of Agreement (Falcon International Bank)* is hereby set for written submission before the Special Master, Tom Collins, on **Monday, June 28, 2010**.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by such date on:
 - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, (**Hand Delivery**) 333 Guadalupe, Hobby Tower 3, Room 550, Austin, Texas; or (**Mail To**) P. O. Box 149104, Austin, Texas 78714-9104
 - (b) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the master's docket clerk [(512) 463-6450] to obtain an oral hearing, unless the master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.
5. Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

Brian E. Riewe

Brian E. Riewe

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. § 443.007(d) this 11th day of June 2010.

Mr. Tom Collins, Special Master
by serving his Docket Clerk, Ms. Jean Sustaita
Texas Department of Insurance
333 Guadalupe, Tower III, 5th Fl., MC-305-1D
Austin, Texas 78701
Email: jean.sustaita@tdi.state.tx.us

Ms. John Walker
Ms. Leanne Layne
Ms. Rachel Giani
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714
Email: john.walker@tdi.state.tx.us
Email: leanne.layne@tdi.state.tx.us
Email: rachel.giani@tdi.state.tx.us

Ms. Karen Pettigrew, Asst. Attorney General
Attorney General's Office – Financial Litigation
P.O. Box 12548
Austin, Texas 78711-2548
Email: karen.pettigrew@oag.state.tx.us

Mr. James E. Davis, Atty for Southern Star Title
Locke, Lord, Bissell & Liddell, L.L.P.
100 Congress Avenue, Suite 300
Austin, Texas 78701
Email: jdavis@lockelord.com

Mr. Bruce McCandless
Mr. Burnie Burner
Mitchell, Williams, Selig, Gates & Woodyard
106 E. 6th Street, Suite 300
Austin, Texas 78701
Email: bmccandless@mwlaw.com
Email: bburner@mwlaw.com

Mr. Randall W. Hill
Hill & Villarreal, P.C.
719 S. Shoreline, Suite 300
Corpus Christi, Texas 78401
Email: rhill@hvlegal.com

Mr. Darryl Lemke
Bank of South of Texas
506 E. Dove Avenue
McAllen, Texas 78504
Email: darryl.lemke@bankofsouthtexas.com

Mr. Edmundo O. Ramirez, Atty for R. Ibanez
Ellis, Koeneke & Ramirez
1101 Chicago
McAllen, Texas 78501-4822
Email: eor@ekrattorneys.com

Alison White Haynes, Atty Falcon Int'l Bank
Trevino, Vallas Haynes, LLP
6909 Springfield Ave., Suite 200
Laredo, Texas 78041
Email: ahaynes@tvhlawfirm.com

Terry Scarborough, Atty for Falcon Int'l Bank
Hance Scarborough
111 Congress Ave., Suite 500
Austin, Texas 78701
Email: tscarborough@hslawmail.com

Brian E. Riewe

Brian E. Riewe

THE STATE OF TEXAS

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COUNTY OF TRAVIS

AFFIDAVIT

BEFORE ME, the undersigned authority appeared Jennifer Ramsey, who after being duly sworn by me, states the following under oath:

1. My name is Jennifer Ramsey. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

2. I am the President of Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC ("Southern Star"). I am duly authorized to make this certification and affidavit on behalf of the Special Deputy Receiver.

3. Southern Star was owned and/or controlled by Rogelio "Roy" Ibanez ("Ibanez").

4. The Special Deputy Receiver filed suit against Ibanez to recover escrow shortages and operating losses of Southern Star as well as the expenses of administering the receivership estate caused by the fraudulent, negligent and/or grossly negligent acts of Ibanez. The case is styled *Jennifer Ramsey, PC, as Special Deputy Receiver for Southern Star Title Company, LLC v. Rogelio "Roy" Ibanez*; Cause No. D1-GN-09-002120, 419th Judicial District Court, Travis County, Texas ("Ibanez Litigation").

5. Falcon International Bank ("Falcon Bank") filed a Petition in Intervention claiming a pre-existing contractual relationship with Ibanez regarding a \$2,050,000 loan secured by Ibanez' ST Banc Corp stock and two tracts of real estate.

6. The Special Deputy Receiver obtained an agreed judgment against Ibanez in the amount \$1,036,214.40.

7. An agreement has been reached with Falcon Bank, Ibanez, and two companies owned


and/or controlled by Ibanez (Santo Andrei, Ltd., and Matico, Inc.) which would avoid the cost and uncertainty of continued litigation and would provide for an orderly liquidation of certain Ibanez assets to satisfy the Special Deputy Receiver's and Falcon Bank's claims.

8. The proposed agreement, which would be entered as a Rule 11 agreement in the Ibanez Litigation, is attached as Exhibit 1. The agreement sets out the conditions for the sale of Ibanez' ST Banc Corp stock and foreclosure sales of the real property securing the Falcon Bank note and formulas for dividing the proceeds of the sales. The agreement provides that in the event the contemplated bank stock sale closes and is funded and the real estate is foreclosed upon, the Special Deputy Receiver and Falcon Bank will release all claims of any kind against one another in the Ibanez Litigation.

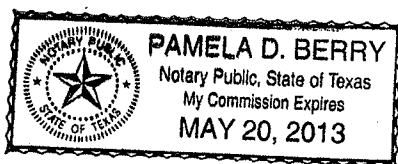
9. The agreement also provides that the Special Deputy Receiver's claims against Ibanez will not be released unless and until the agreed judgment against Ibanez is satisfied.

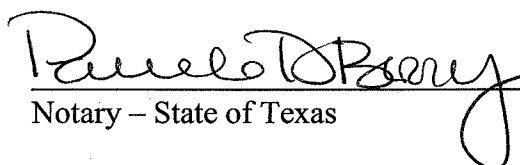
10. I further state that I have read the statements contained in the attached application and that they are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and sub-contractors.

11. Further affiant sayeth not.


Jennifer Ramsey, President of Jennifer Ramsey, PC,
Special Deputy Receiver of Southern Star Title
Company, LLC

SWORN TO, SUBSCRIBED, and ACKNOWLEDGED BEFORE ME by Jennifer Ramsey,
President of Jennifer Ramsey, PC, on this the 10th day of June, 2010.




Notary – State of Texas

RULE 11 AGREEMENT

The parties to this Agreement are as follows: Jennifer Ramsey, PC, as Special Deputy Receiver of Southern Star Title Company, LLC (“SDR”); Rogelio “Roy” Ibanez (“Ibanez”); Santo Andrei, Ltd. (“Andrei”); Matico Inc., General Partner to Santo Andrei, Ltd. (“General Partner”); Southern Star Title Plant, Inc. (“Title Plant”); and Falcon International Bank (“Falcon”). Collectively, the aforementioned are referred to herein as “Parties.”

It is agreed that the stipulations set forth herein and approved by the Parties as well as their respective counsel are binding and shall be further consummated by a formal, global settlement agreement and release.

STIPULATIONS

1. The Parties agree that, in the event an Agreement is made by and between Ibanez and a third party for the sale of 480,050 shares of the ST Banc Corp stock currently issued in Ibanez’ name and pledged in favor of Falcon, there will be a division of stock proceeds by and between SDR and Falcon.
 - a. With regard to any potential sales price negotiated between Ibanez and a third party, this Agreement specifically contemplates that said purchase price per share is at a minimum of \$5.00 per share. Ibanez further consents and agrees to sell said shares at the minimum price of \$5.00 per share to the 3rd party bidder at mediation.
 - b. Should the aforementioned sale be consummated with full regulatory approval by all federal and state authorities, the Parties agree to divide said stock sale proceeds pursuant to the following formula: (i) \$200,000 to I.R.S. for the benefit of Rogelio “Roy” Ibanez; (ii) Falcon is to receive 2/3rds of said remaining stock sale proceeds; and (iii) SDR is to receive 1/3rd of said remaining stock sale proceeds.
2. Additionally, if and only if there is complete regulatory approval and an escrow of full stock purchase price funds, then the Parties agree to the following terms regarding the two parcels of real estate securing the Promissory Note originally entered into on September 5, 2006 and in the principal amount of \$2,050,000.00 and in favor of Falcon, whereby Title Plant is the borrower with Andrei and Ibanez as guarantors.
 - a. With regard to the contemplated foreclosure of the real estate, SDR and Falcon agree that Falcon will secure an appraisal prior to any such foreclosure. Falcon is entitled to receive reimbursement from any such foreclosure proceeds, all expenses incurred in connection with the maintenance, preservation and sale of said property, including but not limited to, attorneys fees, posting fees, as well as payment of taxes, insurance, trustee fees, and other reasonable and necessary costs incurred.
 - b. Falcon and SDR agree that Falcon has no obligation to begin bidding at foreclosure in an amount in excess of the subject property’s appraised fair market value as determined by the new appraisal. The Parties agree that RGV Appraisal Services, LLC, will conduct the

appraisal and that the minimum bid price at foreclosure will be the Fair Market Appraised Value.

- c. Further, with regard to any foreclosure of the real estate by Falcon, the Parties agree that the proceeds of any sale to a third party either at foreclosure or subsequent sale, should Falcon purchase property at foreclosure, shall be shared. The formula for sharing said real estate sale proceeds is as follows: (i) if Falcon purchases same at foreclosure, then Falcon is to first be repaid all holding costs which include – taxes, insurance, trustee fees, marketing expenses, brokerage fees, appraisal fees, legal fees and other reasonable and necessary costs incurred for the preservation, maintenance and sale of the real estate upon sale of the foreclosed real estate to a 3rd party. Then, the Parties agree that Falcon is to receive 2/3^{rds} of said real estate sale proceeds and SDR is to receive 1/3rd of said real estate sale proceeds; and (ii) if a third party purchases said real estate at foreclosure, then the Parties agree that Falcon is to be reimbursed all expenses referenced above in Paragraph 2(a) prior to any division of foreclosure sale proceeds, which will be disbursed with 2/3^{rds} of same going to Falcon and 1/3rd going to SDR.
3. Subject to Paragraph 3(c) below, in the event the real estate is foreclosed upon and the contemplated stock sale is closed and funded, the Parties agree that there will be full releases of any and all claims, known and unknown which in any way pertain to the subject matter of the following litigation as well as the named parties to said litigation:
 - a. Santo Andrei, Ltd. v. Falcon International Bank, Roberto Martinez, Jr. Trustee, Cause Number C-1154-09-I, filed in the District Court in the 398th Judicial District Court, Hidalgo County, Texas;
 - b. Jennifer Ramsey, PC, as Special Deputy Receiver for Southern Star Title, LLC v. Rogelio “Roy” Ibanez, Cause No. D1—GN-09-002120, filed in the District Court in the 419th Judicial District Court, Travis County, Texas.
 - c. The SDR will not issue a final release in favor of Ibanez until the Agreed Judgment attached as Exhibit “A” hereto, is satisfied. It is expressly agreed and understood that a full release between Falcon and SDR as well as Falcon and Ibanez will be executed upon completion of both the aforementioned foreclosure and stock sale closing.
 4. The Parties stipulate that the maximum amount of damages to be sought and repaid are as follows:

Falcon International Bank:	\$2,050,000.00
Special Deputy Receiver:	\$1,036,214.00
 5. The Parties agree that any funds recovered in excess of the amounts listed above in favor of Falcon and SDR shall be for the benefit of Ibanez. The Parties hereto agree that, in the event the contemplated stock sale is not consummated, there is no agreement, meaning there is no settlement, no stipulations, and no releases. In such case, the Parties are restored to the original

pre-mediation status quo, save and except the Agreed Judgment which is attached as Exhibit "A".

6. The final release language shall specifically include the following:
 - a. All Parties, for themselves, their representatives, agents, employees, their officers, directors, shareholders partners, predecessors, successors, assigns, insurers, reinsurers, parent companies, subsidiaries, related companies, affiliates, and attorneys, completely RELEASE, DISCHARGE, and RELINQUISH each other, their representatives, agents, employees, officers, directors, shareholders, partners, predecessors, successors, assigns, insurers, reinsurers, parent companies, subsidiaries, related companies, affiliates, attorneys, and anyone else acting for their respective behalf from any and all past, present or future claims, whether known or unknown, and whether based on a tort, contract, or other theory of recovery, that have accrued or that may accrue later or otherwise be acquired on account of or in any way growing out of or that are the subject of the Lawsuit.
 - b. This release specifically includes, but is not limited to any and all claims which are known or unknown, whether arising in tort, contract, common law or statutory authority, including but not limited to any other federal, state or local statute, ordinance or regulation, or the Constitution of the United States or the State of Texas.
7. This Agreement is expressly conditioned on the I.R.S. not claiming a right superior to Falcon and/or the SDR in any of the collateral identified herein and/or proceeds from a 3rd party sale and/or foreclosure sale.
8. The Parties agree that Falcon will wait 45 days from the earliest date of any notification that the stock sale transaction will not be consummated before conducting a foreclosure on the ST Banc Corp stock. This Agreement does not preclude Falcon from noticing and/or posting said stock for foreclosure. Falcon and SDR shall be notified within 24 hours of Ibanez and/or his attorney's receipt of any notice by the Purchasers, as identified in the intent agreement dated February 11th, 2010, that the contemplated Acquisition subject to that Agreement will not be consummated.
9. The Parties agree to execute any and all further documents, releases, agreements and the like which are necessary to give full and final force and effect to agreements and stipulations set forth herein.
10. It is expressly agreed and stipulated that all Parties participated in the drafting of this Agreement and that no provision of this Agreement shall be more strictly construed against any party.
11. It is further agreed, stipulated and understood that this Agreement shall not be binding upon the SDR unless and until all required regulatory and court approval of this Agreement is obtained.
12. All Parties and signatories hereto expressly agree, represent and stipulate that they have read each and every term set forth herein and that by executing this Agreement, each of the Parties hereto agree, consent and ratify same set forth herein.

APPROVED, AGREED AND ACCEPTED BY:

By: Jennifer Ramsey
Jennifer Ramsey, as Special Deputy
Receiver for Southern Star Title, LLC

By: Brian E. Riewe
Brian Riewe, counsel for Jennifer Ramsey,
as Special Deputy Receiver for Southern
Star Title, LLC

By: Nicholas Van Steenberg
Nicholas Van Steenberg,
General Counsel and Executive Vice President
Falcon International Bank

By: Alison White Haynes
Alison White Haynes,
Counsel for Falcon International Bank

By: Rogelio Roy Ibanez
Rogelio Roy Ibanez, Individually and as
Authorized Representative of Santo Andrei, Ltd.,
Matico, Inc., Southern Star Title Plant, Inc.

By: Edmundo Ramirez
Edmundo Ramirez counsel for Rogelio
Roy Ibanez, Santo Andrei, Ltd., Matico, Inc.,
Southern Star Title Plant, Inc.

Exhibit "A"

NO. D-1-GN-09-002120

JENNIFER RAMSEY, PC as Special
Deputy Receiver of SOUTHERN STAR
TITLE COMPANY, LLC

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IN THE DISTRICT COURT OF

VS.

TRAVIS COUNTY, TEXAS

ROGELIO "ROY" IBANEZ

419TH JUDICIAL DISTRICT

AGREED JUDGMENT

BE IT REMEMBERED, that on this day in the above entitled and numbered cause, Plaintiff, JENNIFER RAMSEY, PC as Special Deputy Receiver of Southern Star Title Company, LLC and Defendant, ROGELIO "ROY" IBANEZ, appeared and advised that all matters in controversy between them have been compromised and settled, and that they agree to the entry of this judgment as indicated by the signatures below.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, JENNIFER RAMSEY, PC as Special Deputy Receiver of Southern Star Title Company, LLC, shall have and recover from Defendant damages in the amount of \$1,036,214.40 together with post judgment interest on that amount at the annual rate of 10% and court costs.

This judgment is interlocutory and the temporary restraining order as extended together with the writs of attachment, which have previously issued, remain in effect.

SIGNED this _____ day of _____, 2010.

PRESIDING JUDGE

PRD

OR *OR*

APPROVED AS TO FORM AND CONTENT:

ATTORNEYS FOR THE PLAINTIFF

BRIAN E. RIEWE, P.C.
4408 Spicewood Springs Rd.
Austin, Texas 78759
Telephone: 512/236-9955
Facsimile: 512/236-9966

By: Brian E. Riewe
Brian E. Riewe
State Bar No. 16915600

Gregory C. Douglass
State Bar No. 06049200

Jennifer Ramsey
Jennifer Ramsey, President of
Jennifer Ramsey, PC as Special Deputy
Receiver of Southern Star Title Company, LLC

ATTORNEYS FOR THE DEFENDANTS

ELLIS, KOENEKE & RAMIREZ
1101 Chicago
McAllen, Texas 78501-4822
Telephone: 956/682-2440
Facsimile: 956/682-0820

By: Edmundo O. Ramirez
Edmundo O. Ramirez
State Bar No. 16501420

Rogelio "Roy" Ibarrez
Rogelio "Roy" Ibarrez