

its motion subject to and without waiving those objections. Falcon has filed a similar motion in the case styled *Jennifer Ramsey, PC as Special Deputy Receiver of Southern Star Title Company LLC vs. Rogelio “Roy” Ibanez, Santo Andrei, Ltd. and Matico, Inc.* (“Ibanez Litigation”) seeking the same relief from that court. (“Ibanez Court”).

2. The SDR has obtained an Agreed Judgment against Ibanez in the amount of \$1,036,214.40. A copy of the Agreed Judgment is attached hereto as Exhibit A. As a result of the Agreed Judgment, Southern Star has the right to satisfy its judgment from the equity that exists in the non-exempt property held in the name of Ibanez or any company or business owned or controlled by him. That right is property of the Southern Star estate and is protected by the Order Appointing Liquidator and Permanent Injunction (“PI”) issued by this Court in this proceeding, the automatic stay of TEX. INS. CODE ANN. § 443.008(c) and the post-receivership transfer for value provisions of TEX. INS. CODE ANN. § 443.203.

3. The SDR has also obtained a temporary restraining order (“TRO”) in the Ibanez Litigation which has been extended by agreement and is currently in force. The TRO restrains Ibanez and “all persons or entities acting in concert or collaboration with him,” including financial institutions, from selling any non-exempt assets held in his name or in the name of any businesses owned by him, pursuant in part to the authority granted by TEX. INS. CODE ANN. § 443.008(b) for the SDR to seek orders from courts other than the receivership court “for the purpose of pursuing claims against any person.” A copy of the TRO is attached hereto as Exhibit B.

4. The SDR has a reasonable belief that the combined value of all the property making up the Collateral exceeds the balance due on Falcon’s loan and therefore equity exists in the Collateral. Southern Star’s right to satisfy its judgment against Ibanez from the equity that

exists in the Collateral is property of the estate of Southern Star and is protected by the PI and the automatic stay unless or until Falcon can prove by “clear and convincing evidence” that no equity exists in the Collateral. TEX. INS. CODE ANN. § 443.008(h) and (j). Because the receivership court has exclusive jurisdiction of property of the estate, only the receivership court may grant relief from the PI and the automatic stay. TEX. INS. CODE ANN. §§ 443.005(c) and 443.008(h). Falcon may pursue relief from the TRO, but not the PI or automatic stay, from the Ibanez Court in the Ibanez Litigation.

II. PRIOR PROCEEDINGS IN THE RECEIVERSHIP AND IBANEZ LITIGATION

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

6. Southern Star was owned and/or controlled by Rogelio “Roy” Ibanez (“Ibanez”).

7. On January 8, 2009, this court placed Southern Star into liquidation and appointed Mike Geeslin, Commissioner of Insurance for the State of Texas its Receiver.

8. On March 26, 2009, the Receiver designated Jennifer Ramsey, PC, SDR.

9. Prior to receivership, Ibanez owned and operated Southern Star and caused its insolvency primarily by fraudulently transferring and converting approximately \$600,000 in escrow funds deposited with Southern Star by buyers, sellers and lenders involved in real estate sales to himself, his law firm IOLTA account and businesses owned or controlled by him including Santo Andrei, Ltd., leaving multiple liens on real estate and causing great damage to the escrow depositors who had entrusted their money to Southern Star.

10. On July 2, 2009, the SDR filed suit in Travis County District Court against Ibanez seeking recovery of the escrow shortages and operating losses of Southern Star as well as the expenses of administering the estate caused by his fraudulent, negligent and/or grossly negligent

acts in operating Southern Star. See excerpted portions of the depositions of Ibanez and Almadelia Gonzalez taken in the Ibanez Litigation attached hereto as Exhibits C and D and the Affidavit of Almadelia Gonzalez given in the case styled *Darryl Lemke vs. Roy Ibanez*, Cause No. C-2787-08-D, In the 206th Judicial District Court of Hidalgo County, Texas. A copy of which is attached hereto as Exhibit E. Together these documents describe the extent to which Ibanez moved funds from Southern Star escrow accounts to his law firm IOLTA account and Santo Andrei, Ltd. bank accounts and used the Santo Andrei, Ltd. account as his personal account.

11. On July 2, 2009, the Ibanez Court issued a TRO restraining Ibanez and “all persons or entities acting in concert or collaboration with him” including financial institutions from selling any non-exempt assets held in his name or in the name of any business owned by him. The Ibanez Court found that Ibanez, over the course of 2008, probably transferred escrow funds held by Southern Star in violation of the escrow agreements pursuant to which those funds were acquired and placed in the company’s accounts, leaving an escrow shortage at the company. The Ibanez Court further found that Ibanez probably continued to operate Southern Star at a time when he knew or should have known that the company was insolvent, causing additional harm to its creditors and claimants.

12. On December 4, 2009, Falcon intervened in the Ibanez Litigation and subsequently filed a motion to dissolve the TRO, principally upon the grounds that the TRO interfered with its contractual foreclosure rights regarding the Collateral for its loan.

13. On February 16, 2010, the SDR obtained an Agreed Judgment in the amount \$1,036,214.40 against Ibanez.

14. On October 10, 2010, the Ibanez Court denied Falcon's motion to dissolve the TRO.

15. On February 16, 2011, Falcon filed a motion to determine equity in the Ibanez Litigation. That motion is set for hearing on April 26, 2011.

16. On March 4, 2011, the SDR filed its Motion to Enforce Order of Reference in the Ibanez Litigation. That motion is also set for hearing on April 26, 2011.

III. RIGHT TO ENFORCE JUDGMENT IS PROPERTY OF THE ESTATE

17. TEX. INS. CODE ANN. § 443.004(a)(20)(A) defines "property of the estate" to include:

[A]ll right, title and interest of the insurer in property, whether legal or equitable, tangible or intangible, choate or inchoate, and includes choses in action, contract rights, and any other interest recognized under the laws of this state;

18. The SDR obtained an Agreed Judgment against Ibanez in the Ibanez Litigation. Its right to satisfy the judgment from the equity that exists in the non-exempt property held in the name of Ibanez or any company or business owned or controlled by him is property of the estate of Southern Star as that phrase is defined in TEX. INS. CODE ANN. § 443.004(a)(20)(A).

19. More specifically, Southern Star as a judgment creditor has an "interest" in the property of Ibanez as its judgment debtor in order to satisfy the judgment. Southern Star has "right[s]" to proceed against the property of its judgment debtor including the *right* to levy against the property, the *right* to require Ibanez to "turnover" his property and other related "right[s]" flowing from its judgment creditor position, including the right to attach Ibanez' property which the SDR in fact has done. A copy of the Writ of Attachment issued in the Ibanez Litigation is attached as Exhibit F.

20. The SDR's interpretation of TEX. INS. CODE ANN. § 443.004(a)(20) follows the "plain meaning of the words chosen" by the Texas Legislature as the Texas Supreme Court has directed should be done when interpreting a Texas statute. See, e.g., *State of Texas v. Shumake*, 199 S.W.3d 279, 284-285 (Tex. 2006).

21. The SDR has not found any reported case interpreting "all right, title and interest of the insurer in property" as used in TEX. INS. CODE ANN. § 443.004(a)(20)(A). However, in the context of bankruptcy proceedings, the United States Supreme Court has determined that the substantially identical phrase used in the Bankruptcy Code - "all legal or equitable interests" - should be interpreted as a "broad" provision which includes property in which the insolvent estate did not "hold a possessory interest in the property at the commencement" of insolvency proceedings and property "in which a creditor has a secured interest" and that all such property constitutes property of the estate. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203-206 (1983). Applying the Supreme Court's interpretation of "all legal or equitable interests" to define property of the estate to this matter would bring Southern Star's right to collect on the judgment against Ibanez within the meaning property of the estate as defined in TEX. INS. CODE ANN. § 443.004(a)(20)(A).

22. Similarly, in *In re Bibo, Inc.*, 200 B.R. 348, 350-1 (Bkrpty. 9th Cir. 1996), the court held that the same "all legal or equitable interests" language made the insolvent estate's *junior, second lien position* "property of the [insolvent] estate," and the court specifically affirmed the trial court's refusal to permit the first lien holder in that case to foreclose because foreclosure violated the automatic stay's prohibition of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

TEX. INS. CODE ANN. § 443.008(c)(3) contains substantially identical language prohibiting the same acts.

IV. PROTECTIONS AFFORDED PROPERTY OF THE ESTATE

23. The PI entered by this Court enjoins Southern Star from conducting any insurance business and enjoins all other parties, including parties with claims against property of the estate, from taking any action against Southern Star or its property.

24. Specifically, the PI enjoins claimants from:

Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's Property or any part thereof... except as permitted by TEX. INS. CODE ANN. Chapter 443, Subchapter F. (PI Art. III, ¶ 3.8).

25. Article IV, ¶ 4.1 of the PI states that there is an automatic stay against the property of Southern Star as provided by TEX. INS. CODE ANN. § 443.008(c) and that the stay is applicable to any action described in § 443.008(c) commenced either before or after the commencement of the receivership proceeding. TEX. INS. CODE ANN. § 443.008(c)(4) applies to “any act to create, perfect, or enforce any lien against property of the insurer”.

26. TEX. INS. CODE ANN. § 443.008(h), provides that relief from the automatic stay in order to enforce a lien against property of the estate may be granted only by the receivership court “after notice and any hearing the receivership court determines is appropriate” and after a finding that the insolvent insurer has no equity in the property. The party seeking relief “has the burden of proof on each issue which must be established by clear and convincing evidence”. TEX. INS. CODE ANN. § 443.008 (j).

27. Because the right or interest to satisfy the judgment from the equity that exists in the non-exempt property held in the name of Ibanez or any company or business owned or controlled by him is property of the estate of Southern Star as defined by TEX. INS. CODE ANN. § 443.004(a)(20)(a), then it follows that it is afforded all of the protections granted by the PI and the automatic stay of TEX. INS. CODE ANN. § 443.008(c), and Falcon may not foreclose its lien without obtaining relief from the automatic stay.

**V. STANDARDS FOR OBTAINING RELIEF
FROM THE AUTOMATIC STAY**

28. TEX. INS. CODE ANN. § 443.008(c) provides that the commencement of a delinquency proceeding operates as a stay of the commencement or continuation of any action or proceeding against property of the estate. Under TEX. INS. CODE ANN. §443.008 (h), a “party in interest,” may request relief from the stay:

§ 443.008. Injunctions and Orders

.....

(h) On request of a party in interest and after notice and any hearing the receivership court determines is appropriate, the receivership court may grant relief from the stay of Subsection (c) or (d), such as by terminating, annulling, modifying, or conditioning the stay:

.....

(2) with respect to a stay of an act against property under Subsection (c) if:

(A) the insurer does not have equity in the property; and

(B) the property is not necessary to an effective rehabilitation plan.

29. To obtain relief from the automatic stay, Falcon must prove by “clear and convincing evidence” that Southern Star has no equity in the Collateral. Guidance has been

provided recently in a matter referred to the Master appointed in *State of Texas v. Webb County Title & Abstract Co.*; Cause No. D-1-GV-08-000050 in the 201st District Court, Travis County, Texas. There the Master considered a case in which a bank as a secured creditor sought relief under TEX. INS. CODE ANN. § 443.008(h) from the stay to foreclose its lien on certain real estate which was property of the estate of Webb County. To determine whether relief from the stay should be granted, the Master concluded that the bank creditor:

[M]ust by clear and convincing evidence prove that ‘the insurer does not have equity in the property.’ *This requires a comparison between the fair market value of the property and the amount of secured debt against the property.*” [emphasis added]. Master’s Memorandum Recommendation, at 2.

A copy of the Memorandum Recommendation is attached hereto as Exhibit G.

30. The master’s conclusion that “equity” must be determined by comparing “the fair market value of the property” to the “amount of secured debt” is consistent with the Third Circuit’s opinion in *In re Indian Palms Associates, Ltd.*, 61 F.3d 197, 206-7 (3rd Cir. 1995). There the court said that the “classic test for determining equity under [Bankruptcy Code] § 362(d)(2) focuses on a comparison between the total liens against the property and the property’s current value.”¹ See also *In re Beaver Valley Builder’s Supply, Inc.*, 177 B.R. 507, 515 (Bkrpty. W.D. Pa. 1995) (the court, interpreting § 362(d)(2) and citing *Matter of Sutton*, 904 F.2d 327, 329 (5th Cir. 1990), found that “equity is the difference between the value of the property subject to liens and encumbrances and the amount of those liens and encumbrances.”).

31. Falcon argues that the fair market value of the McAllen Real Estate is far less than the balance due on its loan and therefore there is no equity in the McAllen Real Estate. If

¹ 11 U.S.C. § 362(d)(2) is the Bankruptcy Code analog of TEX. INS. CODE § 443.008(h) with similarly worded provisions.

there is no equity in the McAllen Real Estate, Falcon argues, then Southern Star has no right or interest which attaches thereto because Southern Star's right is only to collect from the excess proceeds after a foreclosure sale and then only if it can prove that its position is superior to all other junior lien holders. See Falcon's Motion to Determine Equity, footnote 20. Falcon, in effect, argues that Southern Star has no right or interest in the McAllen Real Estate unless or until a foreclosure has occurred and excess proceeds spring forth. Falcon's reasoning is flawed and inconsistent with the TEX. INS. CODE ANN. § 443.004(a)(20)(A) definition of property of the estate and the protections afforded property of the estate by the PI and automatic stay.

32. To be clear, the right and interest the SDR claims to be property of the estate of Southern Star is its right to pursue satisfaction of the Agreed Judgment from the equity that exists in the non-exempt property held in the name of Ibanez or any company or business owned or controlled by him. That right or interest arose when the Agreed Judgment was entered, and the protections of the PI and automatic stay likewise attached to protect the value of that right or interest from other parties with claims, including parties like Falcon with a contractual right of foreclosure, preventing them from foreclosing unless and until that party received permission to foreclose from the court having jurisdiction over the property of the estate. See *First Southern Properties, Inc. v. Vallone* 533 S.W.2d 339 (Tex 1976). Falcon's position that Southern Star's right or interest is only perfected after a sale occurs particularly if that sale is not for fair market value, ignores the plain meaning of the TEX. INS. CODE ANN. § 443.004(a)(20)(A) definition of property of the estate which include "inchoate" rights and denies the protections provided to property of the estate by the PI and the automatic stay of TEX. INS. CODE ANN. § 443.008(c) to preserve its value for the benefit of its creditors and claimants.

33. To the extent that other law may be inconsistent with TEX. INS. CODE ANN. Chapter 443, Chapter 443 “prevail[s]” and trumps any inconsistent law. See TEX. INS. CODE ANN. § 443.002. The Texas Supreme Court routinely recognizes and upholds the authority of the Texas Legislature to provide for specialized laws to govern the conduct and operation of insurance receiverships because of the consistently recognized “Texas public policy” importance of those proceedings. See e.g., *Bard v. Charles R. Myers, Inc.*, 839 S.W.2d 791, 797 (Tex. 1992); and *Langdeau v. Bouknight*, 344 S.W.2d 435, 442 (Tex. 1961).

34. Falcon has failed to recognize or perhaps accept that to the extent that its “perfection” argument and the authorities cited in support are inconsistent with Chapter 443, they are overruled. As the United States Supreme Court held in a similar setting, insolvency “law . . . modifies the procedural rights available to creditors to protect and satisfy their liens.” *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 206-7 (1983) (additional citation omitted). Further, the *Vallone* case holds that the rights of a contractual foreclosure rights of a lien holder is suspended as against property of the estate until permission is obtained from the receivership court to proceed.

35. While Falcon’s “perfection” argument may or may not be the law outside Chapter 443, it certainly does not state the law which governs this matter.

36. TEX. INS. CODE ANN. § 443.004(20)(A) specifically makes “inchoate” interests “property of the insurer” or “property of the estate.” Falcon improperly has attempted to rewrite the statute, and read “inchoate” in the statute out of existence. “Inchoate” interests are interests not yet “perfected,” See *Pacific Indemnity Co. v. Bowles & Edens Supply Co.*, 290 S.W.2d 353, 357 (Tex. Civ. App. – Dallas 1956, writ ref’d n.r.e.).

37. “Inchoate” interests or liens are interests or liens which are not “perfected” but which are property of the estate yet Falcon argues just the contrary, seeking to stand the statute on its head. *United States v. Ray Thomas Gravel Co.*, 373 S.W.2d 333, 336 (Tex. Civ. App. – Waco 1963, rev’d o.g.) 380 S.W.2d 576 (Tex. 1964) (“whether liens created by state law are inchoate or choate, so as to become attached for priority purposes, is tested by whether they are perfected, i.e., they become choate when the identity of the lienor, the property subject to the lien, and the amount are established.”). Falcon attempts to repeal the statute *de facto* by arguing exactly the opposite by reference to non-receivership law. In case of conflict, Chapter 443 “prevail[s].” TEX. INS. CODE ANN. § 443.002.

VI. DETERMINING PIECEMEAL EQUITY IS IMPROPER

38. Falcon’s attempt to split the Collateral into its constituent pieces and compare the value of only the McAllen Real Estate against the loan balance to prove there is no equity is similarly flawed. This request deprives Southern Star of the protections granted by the PI and automatic stay to preserve the value of its right or interest in the Collateral.

39. A simplified example may be illustrative. Instead of the Collateral actually being two pieces of real estate, bank stock and a title plant, the collateral in this example will be assumed to be three dollar bills with the real estate valued at \$2 and the remaining assets valued at a total of \$1. Instead of the Falcon loan being approximately \$2 million and the SDR’s judgment being approximately \$1 million, the amounts of the Falcon loan will be \$2 and the SDR’s judgment will be \$1. Thus, the collateral’s value is \$3 and the Falcon loan totals \$2, leaving \$1 in equity in the collateral to satisfy the estate’s \$1 judgment. In order to protect the \$1 value in the remaining collateral in the event Falcon is permitted to foreclose on the real estate valued at \$2, Falcon must reduce the outstanding balance of its loan by the \$2 fair market

value of the real estate; otherwise the estate's \$1 of equity in the remaining collateral will be unfairly reduced. For example, if Falcon was to bid under "fair market value" and bid \$1 while foreclosing on the \$2 of collateral, the estate's equity would be taken by Falcon and the estate would be left with nothing.

40. In this example, if Falcon was permitted to foreclose on a portion of the collateral without reducing its loan by the fair market value of the real estate, Falcon could then appear in court at a second hearing arguing that "the bank still has \$1 in unsatisfied loans and the remaining collateral is only worth \$1 and so there is 'no equity' and the stay should be lifted again so the bank can foreclose on the remaining collateral."

41. The example dramatically demonstrates the injustice that would result if equity is determined by comparing the value of each piece of property making up the collateral for the loan to the outstanding indebtedness separately rather than comparing the value of all of the pieces of property making up the collateral to the outstanding indebtedness. Only by bundling all of the individual pieces that make up the Collateral and only after the fair market value of each of these pieces are determined can it be known if the value of the collateral exceeds the debt and whether equity exists. See *In re Beaver Valley Builder's Supply*, supra., at 515 (the value of *all* the assets subject to the lien at issue must be included in order to determine if equity exists) (emphasis added).

42. Additionally, TEX. INS. CODE ANN. § 443.203 provides that the SDR may avoid any "transfer of an interest of the insurer in property" made post-receivership and which was not authorized by the SDR and approved by the receivership court. If the transferee gave "value", the transferee has a lien or may retain the interest transferred at the option of the receivership court. To the extent a creditor bids less than the fair market value of the property at a foreclosure

sale and/or fails to reduce the outstanding balance due on its loan by the fair market value of the property, “value” has not been given for the transfer and the estate has been harmed by the diminution in the value of its property.

VII. FALCON’S BURDEN OF PROOF

43. To obtain relief from the automatic stay, Falcon has the burden to establish “equity” and the “fair market value” of the property by “clear and convincing evidence.” TEX. INS. CODE ANN. § 443.008(j). The “clear and convincing” standard imposes a heavy burden. *See, e.g., Huckabee v. Time Warner Entertainment Co. L.P.*, 19 S.W.3d 413, 421 (Tex. 2000) (“clear and convincing evidence” is a “heightened evidentiary standard”); *Price v. Lewis*, 45 S.W.3d 215, 218 (Tex. App.–Houston (1st Dist.) 2001) (under the clear and convincing evidence standard, the “burden is a heavy one,” requiring “more proof than the preponderance of the evidence standard in ordinary civil cases.”).

VIII. RESPONSE TO FALCON’S OBJECTIONS

44. Falcon complains that the SDR did not sue Falcon nor served it notice that its rights, including pre-receivership contractual rights to foreclose on the McAllen Real Estate, would be adjudicated in the receivership proceeding thereby denying it its due process rights guaranteed by the United States Constitution and the Texas Constitution. Falcon is correct that it has not been sued in this receivership and if by served it means that no process server has appeared at its door and formally served it with the PI it is also correct. However, if Falcon means that its first notice of the SDR’s positions as set forth in this response and its Motion to Enforce the Order of Reference came in a recent “informal telephone conversation” it has either failed to read the SDR’s pleadings and briefing in the Ibanez Litigation or to understand their plain meaning.

45. Nevertheless, the Texas Supreme Court addressed this issue in *Vallone*, where it pointed out that whether or not a third party was aware of the receivership proceeding, its contractual rights to foreclose its lien against real property were suspended until it obtained consent of the receivership court to exercise those rights. Therefore, no rights of Falcon, due process or otherwise have been denied by the receivership proceeding.

46. Falcon also argues that because TEX. INS. CODE ANN. § 443.155 provides for notice of the receivership to be given to all creditors and because it was never given notice it is not a creditor of the estate and Southern Star has no property right in the McAllen Real Estate. Besides the circularity of the argument, it seems inconceivable at this point in time that Falcon still maintains it is unaware of the Southern Star receivership proceeding. The *Vallone* opinion is dispositive on this point also.

47. Additionally, Falcon argues that the SDR elected its forum for the determination of Falcon's rights by filing suit against Ibanez and seeking the TRO, and complains that the SDR now seeks to force Falcon to get relief from the TRO in both the Ibanez Litigation and in the receivership proceeding. Falcon does not explain how filing suit against Ibanez was an election of a forum to determine Falcon's rights when the SDR did not make Falcon a party defendant and Falcon's presence in that proceeding is by its own intervention. Neither does Falcon understand the SDR's position regarding the respective authorities of the Ibanez Court and this receivership court.

48. Falcon appears to argue that that the SDR's decision to file the Ibanez Litigation and to seek a TRO was somehow not only an election of forum but also a waiver of the rights, procedures and protections provided by the PI and TEX. INS. CODE Chapter 443 for the protection of Southern Star and its property, creditors and claimants. Falcon is incorrect on both counts.

49. The PI vests title to all property of Southern Star, including “all rights, claims or causes of action belonging to Defendant” in the SDR, and the SDR is authorized to “file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce” the PI. TEX. INS. CODE ANN. § 443.154(l) authorizes the SDR “to prosecute and institute in the name of the insurer or in the liquidator’s own name any and all suits and other legal proceedings, in this state or elsewhere”. TEX. INS. CODE ANN. § 443.154(m) authorizes the SDR to “prosecute any action or the public against any person”. TEX. INS. CODE ANN. § 443.008(a) provides that the receivership court can issue “any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter”. Importantly, TEX. INS. CODE ANN. § 443.008(b) provides that:

This chapter may not be construed to limit the ability of the receiver to apply to a court *other than the receivership court* in any jurisdiction to carry out any provision of this chapter or *for the purpose of pursuing claims against any person*. (emphasis added).

TEX. INS. CODE ANN. § 443.001(d) provides that all of powers and authority of the SDR under Chapter 443 are cumulative “to all powers and authority that are available to a receiver under law other than this chapter.” Finally, the court in *English Freight Co. v. Knox*, 180 S.W.2d 633, 640 (Tex.Civ.App.-Austin 1944, writ ref’d w.o.m.) acknowledged the propriety of the receiver of an insolvent insurance company “to maintain and defend actions involving acts done in fraud of creditors.”

50. The SDR filed the Ibanez Litigation to recover on behalf of Southern Star and its creditors and claimants for the damages caused by Ibanez’ wrongdoing. The SDR pursued and obtained a TRO from the Ibanez Court as it is authorized and empowered by TEX. INS. CODE ANN. § 443.008(b) to do “for the purpose of pursuing claims against any person.” Falcon cites

no authority for its proposition that the SDR's exercise of rights and authorities granted in the PI and TEX. INS. CODE Chapter 443 can constitute a selection of forum, an election of remedies or a waiver of the receivership court's exclusive jurisdiction over property of the estate or its authority to modify the automatic stay against property of the estate. In fact, Texas authority exists for the exact opposite proposition that pursuing collection of a debt owed to the insolvent insurer in a court other than the receivership court does not vitiate the injunctive orders of the receivership court. See *Bard v. Charles R. Meyers Insurance Agency*, 839 S.W. 2d 791, 796-797 (Tex. 1992) (the court held that the act of a receiver of a Vermont domiciled insolvent insurance company in filing suit in Texas to collect premium due from an agent did not invalidate the Vermont court's injunction barring the agent from asserting a counterclaim against the receiver). The court in *Bard* held that the agent could only assert his claim in the Vermont receivership proceeding, and concluded that the same result would have occurred under Texas law, citing a provision in a prior Texas receivership statute very similar to TEX. INS. CODE ANN. § 443.008(a).

51. Falcon complains that the SDR now seeks to force Falcon to get relief from the TRO in both the Ibanez Litigation and in the receivership proceeding. Falcon has confused the SDR's position.

52. In its pleadings and briefing on this point in the Ibanez Litigation, the SDR has consistently maintained that the receivership court has exclusive jurisdiction over property of the estate and that only the receivership court can lift the automatic stay upon a finding by clear and convincing evidence that there is no equity in the entire Collateral making up the security for Falcon's loan. To obtain a declaration by a court confirming its rights to foreclose on the McAllen Real Estate, Falcon must obtain relief from both the TRO and the automatic stay. While the Ibanez Court may grant relief from the TRO, only the receivership court may grant

relief from the automatic stay against property of the estate of Southern Star because it retains exclusive jurisdiction over property of the estate. Just as Falcon has the right to assert and pursue the remedies it is entitled to under the law, so is the SDR entitled to assert its rights and pursue its remedies.

53. TEX. INS. CODE Chapter 443 sets out a comprehensive plan for the administration of receivership proceedings:

[A]s part of the regulation of the business of insurance in this state because proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern. TEX. INS. CODE § 443.001(e)(7).

54. Texas courts have recognized the importance of this comprehensive approach, particularly in the area of claims against and protection of property of the estate.

55. In upholding the validity of a prior version of the receivership statute, the court in *Langdeau v. Boatknight*, 344 S.W.2d 435, 442, (Tex. 1961) noted the unique nature of the laws pertaining to the liquidation of insurance companies and said:

Due to the character and extent of the insurance business; the fact that it affects the public interest, and the fact that the State, acting through the Legislature, has seen fit to regulate the insurance industry in great detail; the extent of injury which can result from insolvent insurance companies doing business or liquidating except under state supervision; the enormous expense involved in unregulated liquidation and the necessity for a fair and impartial handling of liquidation in order to recover the highest possible maximum of assets for distribution to creditors and policyholders, we hold that ...

56. In *Bard*, the court pointed out that the provision under a prior Texas receivership statute that authorized the receivership court to issue additional injunctions barring suits being filed by claimants elsewhere “recognized the benefit, if not the practical necessity, of requiring

that all claims against an insolvent insurer's estate be adjudicated in the receivership proceedings to ensure a fair and consistent treatment of all claims". *Id.*

57. Falcon's suggestion that the SDR has elected its remedy and waived the protections provided by the PI and TEX. INS. CODE Chapter 443 is clearly incorrect and contrary to the public policy of this state.

58. Falcon also asserts that any property interest that is property of the estate is derivative of the property rights of Southern Star and in Footnote 21 of its motion seems to be arguing that property of the estate includes only property in which Southern Star would have "a right, title or interest" sufficient to pass title to. Falcon cites language used in a quit claim deed, noting that the phrase "right, title and interest" does not convey the property but only whatever right, title and interest the grantor had in the property. Falcon then cites *Farmers Bank v. March (In re March)*, 140 B.R. 387 (E.D. Virginia 1992) *aff'd* 988 F.2d 498 (4th Cir. 1993) for the proposition that while a debtor's junior liens in real estate are property of the estate, the real estate itself was not included in the estate. Falcon concludes that its argument that only property in which Southern Star owns a right, title and interest can be property of the estate "is analogous to a debtor who is a partner in a partnership – the debtor's interest in the partnership is part of the bankruptcy estate, but the partnership property is not." Falcon cites the decision in *In re Madden*, 153 B.R. 119, 122 (Bkrcty.E.D.N.Y. 1993) which held that the debtor's estate did not include property owned by the partnership because the partner/debtor does not have the right to assign specific partnership property to the debtor's creditor.

59. While the SDR does not agree that property of the estate is limited to only property in which Southern Star holds a fee simple title and therefore has a right to convey or transfer such title, Falcon's argument is not relevant. The SDR is not asserting that the Collateral

is property of the estate of Southern Star. Rather, the SDR asserts that as a result of the Agreed Judgment, Southern Star has the right to satisfy its judgment from the equity that exists in the Collateral. That right is property of the Southern Star estate and its value is protected by the TRO issued by the Ibanez Court pursuant in part to TEX. INS. CODE ANN. § 443.008(b), the PI issued by this Court in this proceeding, the automatic stay of TEX. INS. CODE ANN. § 443.008(c) and the post-receivership transfer for value provisions of TEX. INS. CODE ANN. § 443.203 unless and until Falcon obtains relief from the TRO and the automatic stay. The cases Falcon cites in support of its interpretation of the definition of property of the estate support, rather than refute the SDR's position.

IX. CONCLUSION

60. TEX. INS. CODE CHAPTER 443 provides many protections to the insolvent estate, its property and the creditors and claimants of the estate. Its stated purpose is to protect the interests of “insureds, claimants, creditors and the public generally” by among other things:

(7) providing for a comprehensive scheme for the receivership of insurers and those subject to this chapter as part of the regulation of the business of insurance in this state because proceeding in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern. TEX. INS. CODE § 443.001(e)(7).

The stated purpose of TEX. INS. CODE CHAPTER 443 distinguishes this case from an ordinary foreclosure action. In the latter case, usually the only party injured is the borrower who must assume substantial if not sole responsibility for his situation. On the other hand, in this case, we have innocent parties who have already been injured and who risk being damaged further if Southern Star's interest in the equity in the Collateral is not afforded the protections mandated by statute. Falcon's frustration with the conflict it sees between the receivership world and the legal

world that it is familiar with is obvious. To the extent there is conflict, “the insurer receivership laws prevail”. TEX. INS. CODE ANN. § 443.002.

61. Falcon’s loan is secured by three pieces of property which together form the Collateral for its loan. The equity remaining in that Collateral is determined by comparing the total fair market value of each piece of the Collateral to the amount of the debt against the secured property. That equity, and Southern Star’s interest in that equity, is property of the estate of Southern Star. The Southern Star receivership court has exclusive jurisdiction over property of the estate. Falcon is restrained by the TRO issued in the Ibanez Litigation from conducting a foreclosure sale. Falcon is also enjoined by the PI, stayed by TEX. INS. CODE ANN. § 443.008(c) and prohibited by the holding in *Vallone* from conducting a foreclosure sale unless and until it obtains relief pursuant to TEX. INS. CODE ANN. § 443.008(h) and (j). Falcon is prohibited by TEX. INS. CODE ANN. § 443.203 from a post-receivership sale of the property that does not produce “fair” value for Southern Star’s interest in the property.

62. The SDR recognizes that ultimately the Collateral must be sold, through foreclosure or otherwise, in order for Falcon and Southern Star to collect on their respective interests in the Collateral and the equity in the Collateral. Any such sale, however, must be done in a way that obtains fair value for each piece of the Collateral and the appropriate corresponding reductions to Falcon’s loan balance to preserve and protect the equity in the Collateral. This same result could also be achieved if Falcon would reduce its loan balance by the fair market value of the McAllen Real Estate.

PRAYER

63. WHEREFORE PREMISES CONSIDERED, SDR requests that the Court deny Falcon's Motion to Determine Equity and grant such other and further relief to which SDR may be entitled, whether at law or in equity.

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

By: _____

BRIAN E. RIEWE
State Bar No. 16915600

GREGORY C. DOUGLASS
State Bar No. 06049200

RICHARDS RODRIGUEZ & SKEITH, LLP
816 Congress Ave., Suite 706
Austin, Texas 78701
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Facsimile: 512/476-1513

DANIEL RICHARDS
State Bar No. 00791520
CLARK RICHARDS
State Bar No. 90001613
CASEY BELL
State Bar No. 24012271

Attorneys for the Special Deputy Receiver

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 25th day of March 2011.

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

Ms. Sharon Williams
United States Department of Justice
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Washington, DC 20044-0875
Email: sharon.williams@usdoj.gov

Mr. James E. Davis, Atty for Southern Star Title
Locke, Lord, Bissell & Liddell, L.L.P.
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Mr. Burnie Burner
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Mr. Randall W. Hill
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Corpus Christi, Texas 78401
Email: rhill@hvlegal.com

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McAllen, Texas 78504
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Mr. Roy Ibanez, Pro Se
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Mission, Texas 78753
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Mr. Casey Bell
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Ms. Alison White Haynes, Atty-Falcon Intl Bank
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Mr. Terry Scarborough, Atty-Falcon Intl Bank
Hance Scarborough
111 Congress Ave., Suite 500
Austin, Texas 78701
Email: tscarborough@hslawmail.com
Email: jblair@hslawmail.com

Brian E. Riewe

Brian E. Riewe

FEB 16 2010 TH

At 2:24 P.M. Amalia Rodriguez-Mendoza, Clerk

NO. D-1-GN-09-002120

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

§
§
§
§
§
§
§

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 16th day of February, 2010.


PRESIDING JUDGE



PRM

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" Ibanez
Rogelio "Roy" Ibanez

AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Tarrant County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 2-16-2010



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy: Jenni Jones



NO. D-1-GN-09-002120

JAN 18 2011 TE

IN THE DISTRICT COURT OF
Amalia Rodriguez-Mendoza, Clerk

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

VS. §
§
§
§

ROGELIO "ROY" IBANEZ, SANTO
ANDREI, LTD, and MATICO, INC. §
§

TRAVIS COUNTY, TEXAS

419TH JUDICIAL DISTRICT

FILED TEMPORARY RESTRAINING ORDER AND
ORDER SETTING HEARING FOR PRELIMINARY INJUNCTION

On July 2, 2009, came before the Court the request of Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC, Plaintiff, complaining of Defendants Rogelio "Roy" Ibanez, Santo Andrei, Ltd and Matico, Inc., and requesting the issuance of a Temporary Restraining Order in connection with Plaintiff's pleadings.

A hearing was held at 4:15 p.m. on July 2, 2009 after providing notice to counsel for Mr. Ibanez. The plaintiff appeared in person and through counsel. The Defendant did not appear on July 2, 2009, but has subsequently appeared as reflected by his signature below (additionally Defendant is an attorney representing Santo Andrei, Ltd and Matico, Inc.), and Defendants have agreed to extend this Temporary Restraining Order through and including March 31, 2011.

After hearing the evidence presented and the arguments of counsel, the Court finds as follows:

1. The Plaintiff has demonstrated a probable right of recovery against Mr. Ibanez for losses sustained and to be sustained by Southern Star Title Company, LLC ("Southern Star"). The Court finds that Mr. Ibanez probably did, over the course of 2008, transfer client trust funds of Southern Star in violation of the escrow agreements pursuant to which those trust funds were placed in the company's accounts, leaving an escrow shortage at the company. The Court further finds that Mr. Ibanez probably continued to operate Southern Star at a time when he

knew or should have known that the company was insolvent, exposing Southern Star to liability to its creditors, and causing harm to those creditors.

2. The Plaintiff has also demonstrated probable harm will occur if Mr. Ibanez is not immediately restrained as requested. The Court finds that Mr. Ibanez is attempting to engage in a liquidation of his property, including property titled in entities owned by Mr. Ibanez, and has refused to deliver the proceeds to the Plaintiff, or to provide assurance to the Plaintiff that those funds will not be dissipated during the pendency of this proceeding.

3. The Court finds that the requested temporary orders are necessary in order to preserve the *status quo* during the pendency of this proceeding, and that balancing the equities as between Mr. Ibanez and the Special Deputy Receiver, issuance of temporary order is just, equitable, and appropriate.

It is therefore, ORDERED, as follows:

Rogelio “Roy” Ibanez, and any and all persons or entities acting in concert or collaboration with him (including, without limitation, his spouse, parents, children or other members of his family, employers, employees, lenders, trustees, fiduciaries, or financial institutions), are hereby ENJOINED from selling, transferring, pledging, encumbering, hypothecating or impairing any non-exempt assets of Rogelio “Roy” Ibanez, whether held by him in his name, or held by him in the name of a business organization owned by him, including but not limited to the following entities:

- a. Southern Star Title Company, LLC,
- b. Southern Star Title Plant, Inc.,
- c. Santo Andrei, Ltd.,
- d. Santo Andrei Investments, Ltd.,
- e. Santo Andrei Real Estate, Ltd.,
- f. Santo Andrei Properties, Ltd.,
- g. Matico Investments, LLC,
- h. Matico Real Estate, LLC, and
- i. Matico Properties, LLC.

The assets to which this prohibition applies include, but are not limited to:

- a. The proceeds of the sale of land, including, but not limited to a one acre parcel out of Lot 1, Block 8 Steel & Pershing, McAllen Texas, set to close on or about June 30, 2009 to N.M. Edificios, LLC and/or members of the LaMantilla family or their companies;
- b. An interest in the Bank of South Texas;
- c. An interest in the Hidalgo County Title Plant; and
- d. An interest in the real property described in the attached Exhibit A.

Any violation of this order shall be grounds for contempt.

This matter is set for hearing on Plaintiff's request for a temporary injunction on March 31, 2011, at 2:00 p.m.

This order became effective on July 2, 2009, when a bond in the amount of \$500.00 was posted by the Plaintiff. That bond is continued in effect to serve as the bond for this extension of this Temporary Restraining Order.

SIGNED this 18 day of January, 2011.


JUDGE PRESIDING

AGREED and APPROVED:



Gregory C. Douglass
State Bar No. 06049200
BRIAN E. RIEWE, P.C.
4408 Spicewood Springs Rd.
Austin, Texas 78759
Telephone: 512/236-9955
Facsimile: 512/236-9966

Attorneys for the Plaintiff

Rogelio Roy Ibanez, Individually and as
Attorney for Defendants Roy Ibanez, Santo
Andrei, Ltd, and Matico, Inc.
2400 Dorado Drive
Mission, Texas 78573
State Bar No. 10382930
Telephone 956/638-2735
Facsimile 956/686-1663

The assets to which this prohibition applies include, but are not limited to:

- a. The proceeds of the sale of land, including, but not limited to a one acre parcel out of Lot 1, Block 8 Steel & Pershing, McAllen Texas, set to close on or about June 30, 2009 to N.M. Edificios, LLC and/or members of the LaMantilla family or their companies;
- b. An interest in the Bank of South Texas;
- c. An interest in the Hidalgo County Title Plant; and
- d. An interest in the real property described in the attached Exhibit A.

Any violation of this order shall be grounds for contempt.

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This order became effective on July 2, 2009, when a bond in the amount of \$500.00 was posted by the Plaintiff. That bond is continued in effect to serve as the bond for this extension of this Temporary Restraining Order.

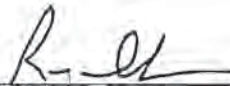
SIGNED this _____ day of January, 2011.

JUDGE PRESIDING

AGREED and APPROVED:

Gregory C. Douglass
State Bar No. 06049200
BRIAN E. RIEWE, P.C.
4408 Spicewood Springs Rd.
Austin, Texas 78759
Telephone: 512/236-9955
Facsimile: 512/236-9966

Attorneys for the Plaintiff



Rogelio Roy Ibanez, Individually and as
Attorney for Defendants Roy Ibanez, Santo
Andrei, Ltd, and Matico, Inc.
2400 Dorado Drive
Mission, Texas 78573
State Bar No. 10382930
Telephone 956/638-2735
Facsimile 956/686-1663

Page 3

**Real Estate Owned by
Santo Andrei, Ltd.**

1. Condominium Property - Unit 4102, Sea Island Tower, South Padre Island, Cameron County Texas
2. 30 acres at 10th Street & Highway 107 - Tract out of Lot 12 Section 277, Tex-Mex Survey, City of McAllen, Hidalgo County, Texas
3. 10 Acres McColl (behind Laredo National Bank) - Tract out of Lot 1, Block 8, Steele & Pershing Subdivision, City of McAllen, Hidalgo County, Texas
4. North 10th (Prichard Property) - Tract out of Lot 12, Section 277, Tex-Mex Survey, City of McAllen, Hidalgo County, Texas
5. 1 acre behind Laredo National Bank
6. 14 acres on 10th & Schunior - Tract out of Lot 15, Block 237, Tex-Mex Survey, City of Edinburg, Hidalgo County, Texas
7. 36 acres 10th & 17 & 1/2 Mile - Tract out of Lot 2, Section 238, Tex-Mex Survey, City of Edinburg, Hidalgo County, Texas
8. 1 acre Lot 49 LeHigh Plaza, City of Edinburg, Hidalgo County, Texas
9. 36 acres Wisconsin & McColl - Tract out of Lot 6 Steel & Pershing Subdivision, City of Edinburg Hidalgo County, Texas
10. 77.74 acres Rooth Road - Tract out of Lots 11, 19 & 20, Block 234, Tex-Mex Survey, City of Edinburg, Hidalgo County, Texas
11. 158 residential lots Wisconsin & 281 (Bella Vista Subdivision) - Tract out of Lot 28, Kelly Pharr Tract City of Edinburg, Hidalgo County, Texas
12. 51.41 acres - Racquet Club Subdivision - Tract out of Lot 13, Section 277, Tex-Mex Survey and Lots 1-8 Raquet Club Subdivision, City of Edinburg, Hidalgo County, Texas
13. 6 acres at Dove & Ware Rd - Tract out of Lot 93 La Lomita (HOIT), City of McAllen, Hidalgo County, Texas
14. Lot 10 & 11, Remington Square, City of Edinburg, Hidalgo County, Texas
15. Lots 5 & 6, Block 6, Cornerstone Medical Park, Phase 2, City of Edinburg, Hidalgo County, Texas
16. Lots 7 & 8, Las Cruces, City of Edinburg, Hidalgo County, Texas.

* # 14 was in the name of Investments by D.D.R., LLC but it was transferred into Santo Andrei, Ltd. and the debt of \$500,000.00 was assumed by Santo Andrei, Ltd.

* # 15 was in the name of ProCare Investments, Ltd. but it was transferred into Santo Andrei, Ltd. and the debt of \$355,000.00 was assumed by Santo Andrei, Ltd.

T:\data\personal\Army-pch\Santo Andrei Ltd\Real Estate Owned by Santo Andrei, Ltd

EXHIBIT A to TRO



NO. D-A-G-09-002120

JENNIFER RAMSEY, PC AS	*	IN THE DISTRICT COURT OF
SPECIAL DEPUTY RECEIVER OF	*	
SOUTHERN STAR TITLE COMPANY,	*	
LLC	*	
	*	
VS.	*	TRAVIS COUNTY, TEXAS
	*	
ROGELIO "ROY" IBANEZ	*	419TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
 ROGELIO "ROY" IBANEZ
 FEBRUARY 3, 2010

ORAL DEPOSITION of ROGELIO "ROY" IBANEZ, produced as a witness at the instance of the Special Deputy Receiver, and duly sworn, was taken in the above-styled and numbered cause on the 3rd day of February, 2010, from 10:07 a.m. to 3:06 p.m. before Carolyn Newman, CSR in and for the State of Texas, reported by oral stenography at the offices of Ellis, Koeneke & Ramirez, L.L.P., 1101 Chicago, Mcallen, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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A P P E A R A N C E S

FOR JENNIFER RAMSEY, PC AS SPECIAL DEPUTY RECEIVER
OF SOUTHERN STAR TITLE COMPANY, LLC

Mr. Gregory C. Douglass
BRIAN E. RIEWE, P.C.
4408 Spicewood Springs Road
Austin, Texas 78759

FOR THE DEFENDANT ROGELIO "ROY" IBANEZ

Mr. Jaime Aranda
ELLIS, KOENEKE & RAMIREZ, L.L.P.
1101 Chicago
McAllen, Texas 78501

FOR THE INTERVENOR FALCON INTERNATIONAL BANK

Ms. Rebecca G. Marroquin
TREVINO, VALLS, HAYNES, LLP
6909 Springfield Avenue, Suite 200
Laredo, Texas 78041

1 of the Southern Star Title escrow account, correct?

2 A. On the advice of counsel, I plead the Fifth.

3 MR. DOUGLASS: Would you mark this as the
4 next exhibit?

5 (Ibanez Exhibit 28 marked)

6 Q. (BY MR. DOUGLASS) Let me show you Exhibit 28.
7 Can you identify Exhibit 28?

8 A. No.

9 Q. But you signed Exhibit 28, correct?

10 A. On the advice of counsel, I plead the Fifth.

11 Q. Why did you transfer almost \$34,000 out of the
12 Southern Star Title escrow account on August 4th, 2008?

13 A. On the advice of counsel, I plead the Fifth.

14 Q. On August 4th, 2008, almost \$34,000 was
15 transferred to Santo Andrei, correct?

16 A. I don't know.

17 Q. Are you aware of any papers, books, or records
18 of Southern Star Title that would suggest that on
19 August 4th, 2008, \$33,821 was not transferred from the
20 Southern Star Title escrow account to Santo Andrei?

21 A. On the advice of counsel, I plead the Fifth.

22 Q. Now, you own Santo Andrei, correct?

23 A. Yes.

24 Q. And this \$33,821 was -- was used for your
25 personal obligations, correct?

1 A. Page 16 is the first Settlement Statement. It
2 appears to be 3.25 acres out of Lot 1, Block 8, Steele &
3 Pershing. Page 29 is the second Settlement Statement and
4 it appears to be 4.204 acres out of Lot 1, Block 8,
5 Steele & Pershing. Page 22 is the third Settlement
6 Statement which is 1 acre out of Lot 1, Block 8, Steele &
7 Pershing, and then there's page 25 which is a fourth
8 Settlement Statement which is 75 feet out of Lot 1,
9 Block 8, Steele & Pershing.

10 Q. Okay. Is the seller with respect to all of
11 those Settlement Statements the same entity?

12 A. Yes.

13 Q. And the seller is Santo Andrei?

14 A. Limited.

15 Q. Limited. And that's a company that you own and
16 operate.

17 A. Yes.

18 Q. And is the buyer the same with respect to all
19 the Settlement Statements?

20 A. Yes.

21 Q. All right. Is this a sale that you negotiated
22 yourself?

23 A. Yes.

24 Q. Okay. And let me invite your attention to
25 page 3 of Exhibit 43.

1 companies have assets at this time?

2 A. The Santo Andrei Real Estate.

3 Q. What assets does Santo Andrei Real Estate have?

4 A. It's got that lots in Bella Vista Subdivision
5 and that's the property that's subject to Inter National
6 Bank's lien.

7 Q. And -- and how did you -- I didn't hear --

8 A. It's -- it's a subdivision --

9 Q. -- what you said. How did you describe the
10 property?

11 A. It's a subdivision called Bella Vista and
12 there's -- there's lots that have -- you know, we've been
13 continuously selling, and that also has another tract of
14 land which is six acres which acts as the second lien on
15 that Inter National Bank loan.

16 Q. Does Santo Andrei Real Estate have any other
17 property or assets?

18 A. No. Those are the only two.

19 Q. What other entities have any assets?

20 A. Those are the only two.

21 Q. The two Santo Andrei entities?

22 A. (Moving head up and down)

23 Q. What -- what assets does Matico Investments or
24 Matico Real Estate or Matico Properties have?

25 A. They are the general partners to -- Santo Andrei

1 is Matico. Matico Real Estate is the general partner to
2 Santo Andrei Real Estate. Matico Investments is the
3 general partner to Santo Andrei Investments.

4 Q. Did the Matico entities have any assets separate
5 from Santo Andrei?

6 A. No. They only own a one percent interest in the
7 limited partnership.

8 Q. And the Pediatric Health entities, are they
9 operating, generating any income?

10 A. Nope.

11 Q. What about Procure?

12 A. That's sold.

13 Q. When was it sold?

14 A. Oh, I don't remember, a couple of years ago.

15 Q. What about Rapid Cash Pawn?

16 A. No, no assets.

17 Q. Did you have an ownership interest in Southern
18 States Gas Company?

19 A. No, no.

20 Q. Did you have an affiliation with Southern States
21 Gas Company?

22 A. No. I believe that's a company I set up and I
23 was listed as -- as the general partner -- as the
24 registered agent, but, no, I never had an interest in
25 Southern States Gas. That would be one of Dustin's --

NO. D-A-G-09-002120

1
2 JENNIFER RAMSEY, PC AS * IN THE DISTRICT COURT OF
SPECIAL DEPUTY RECEIVER OF *
3 SOUTHERN STAR TITLE COMPANY, *
LLC *
4 *
VS. * TRAVIS COUNTY, TEXAS
5 *
ROGELIO "ROY" IBANEZ * 419TH JUDICIAL DISTRICT
6

7 REPORTER'S CERTIFICATION
DEPOSITION OF ROGELIO "ROY" IBANEZ
FEBRUARY 4, 2010
8

9 I, CAROLYN NEWMAN, a Certified Shorthand Reporter in
10 and for the State of Texas, hereby certify to the
11 following:

12 That the witness, ROGELIO "ROY" IBANEZ, was duly
13 sworn by the officer and that the transcript of the oral
14 deposition is a true record of the testimony given by the
15 witness;

16 That the deposition transcript was submitted on
17 February 4th, 2010, to the witness or to the attorney
18 for the witness for examination, signature, and return to
19 me by 3/2, 2010.

20 That the amount of time used by each party at the
21 deposition is as follows:

- 22 MR. GREGORY C. DOUGLASS - 3 Hours, 16 Minutes;
- 23 MR. JAIME ARANDA - 0 Hours, 0 Minutes;
- 24 MS. REBECCA G. MARROQUIN - 0 Hours, 0 Minutes.

25 That pursuant to information given to the deposition

1 officer at the time said testimony was taken, the
2 following includes all counsel for all parties of record:

3 Mr. Gregory C. Douglass, Attorney for Jennifer
4 Ramsey, P.C. as Special Deputy Receiver of Southern Star
5 Title Company, L.L.C.;

6 Mr. Jaime Aranda, Attorney for Defendant Rogelio
7 "Roy" Ibanez;

8 Ms. Rebecca G. Marroquin, Attorney for Intervenor
9 Falcon International Bank.

10 I further certify that I am neither counsel for,
11 related to, nor employed by any of the parties in the
12 action in which this proceeding was taken, and further
13 that I am not financially or otherwise interested in the
14 outcome of the action.

15 Further certification requirements pursuant to
16 Rule 203 of TRCP will be certified to after they have
17 occurred.

18 Certified to by me this 8th day of February, 2010.



Carolyn Newman

Carolyn Newman, Texas CSR 4193
Expiration Date: 12/31/11

No. D-1-GN-09-002120

JENNIFER RAMSEY, PC	*	419TH DISTRICT COURT
AS SPECIAL DEPUTY	*	
RECEIVER OF SOUTHERN	*	
STAR TITLE COMPANY, LLC	*	
	*	
VS.	*	OF
	*	
ROGELIO "ROY" IBANEZ	*	TRAVIS COUNTY, TEXAS

ORAL DEPOSITION OF

ALMADELIA GONZALEZ

February 4, 2010

Oral deposition of ALMADELIA GONZALEZ, produced as a witness at the instance of the Special Deputy Receiver, and duly sworn, was taken in the above-styled and numbered cause on the 4th day of February, 2010, from 10:29 a.m. to 11:06 a.m. before GERALD SMITH, CSR in and for the State of Texas, reported by oral stenography at the offices of Ellis, Koeneke & Ramirez, 1101 Chicago, McAllen, Hidalgo County, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFF, JENNIFER RAMSEY, PC AS
SPECIAL DEPUTY RECEIVER OF SOUTHERN
STAR TITLE COMPANY, LLC:

MR. GREGORY C. DOUGLASS

Brian E. Riewe, P.C.

4408 Spicewood Springs Road

Austin, Texas 78759

FOR THE DEFENDANTS, ROGELIO "ROY" IBANEZ:

MR. JAIME ARANDA

Ellis, Koeneke & Ramirez

1101 Chicago

McAllen, Texas 78501

FOR THE INTERVENOR, FALCON INTERNATIONAL BANK:

MR. REBECCA G. MARROQUIN

Trevino, Vallas, Haynes, LLP

6909 Springfield Ave., Suite 200

Laredo, Texas 78041

1 (Exhibit No. 53 was marked.)

2 Q (Mr. Douglass) Let me show you what has
3 been marked in this case as Exhibit 53.

4 A It is another check from the IOLTA account,
5 the law firm, Santo Andrei, for 7,400, for sale
6 proceeds.

7 Q Okay. Did you prepare that check?

8 A Yes, I did.

9 Q Was the \$7,400 reflected on Exhibit 53 truly
10 proceeds of a sale?

11 A No. How do I know that? Easily. On the
12 memo, if it was an actual closing, they would have
13 the file name, and who was the seller and the buyer.
14 In this case, there's only sale proceeds.

15 Q Okay. And what was the -- who asked you to
16 prepare that check?

17 A Mr. Roy Ibanez.

18 Q And what was the purpose of that check?

19 A It was to go into Santo Andrei, Ltd. to
20 maybe -- I don't know, specifically. Usually, it
21 would be to cover certain checks that are coming in
22 his personal account, which is Santo Andrei.

23 Q Okay. Who signed that check?

24 A Mr. Roy Ibanez.

25 Q Do you recognize his signature?

No. D-1-GN-09-002120

JENNIFER RAMSEY, PC	*	419TH DISTRICT COURT
AS SPECIAL DEPUTY	*	
RECEIVER OF SOUTHERN	*	
STAR TITLE COMPANY, LLC	*	
	*	
VS.	*	OF
	*	
ROGELIO "ROY" IBANEZ	*	TRAVIS COUNTY, TEXAS

REPORTER'S CERTIFICATION
 DEPOSITION OF ALMADELIA GONZALEZ
 Taken on 2-4-10

I, GERALD SMITH, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, ALMADELIA GONZALEZ, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on 2/11/10, to the witness or to the attorney for the witness for examination, signature and return to me by 3/2/10;

That the amount of time used by each party at the deposition was as follows:

Mr. Gregory Douglass:	0 Hrs; 37 Min;
Ms. Rebecca Marroquin:	0 Hrs; 00 Min;
Mr. Jaime Aranda:	0 Hrs; 00 Min.

That pursuant to information given to the

deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

FOR THE PLAINTIFF, JENNIFER RAMSEY, PC AS
SPECIAL DEPUTY RECEIVER OF SOUTHERN
STAR TITLE COMPANY, LLC:

MR. GREGORY C. DOUGLASS
Brian E. Riewe, P.C.
4408 Spicewood Springs Road
Austin, Texas 78759

FOR THE DEFENDANTS, ROGELIO "ROY" IBANEZ:

MR. JAIME ARANDA
Ellis, Koeneke & Ramirez
1101 Chicago
McAllen, Texas 78501

FOR THE INTERVENOR, FALCON INTERNATIONAL BANK:

MR. REBECCA G. MARROQUIN
Trevino, Vallas, Haynes, LLP
6909 Springfield Ave., Suite 200
Laredo, Texas 78041

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further, that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 9th day of February,
2010.



Gerald Smith

GERALD SMITH, Texas CSR #2305

Expiration Date: 12-31-11

P. O. Box 4513

McAllen, Texas 78502

(956) 631-1024

AFFIDAVIT

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority on this day personally appeared ALMADELIA GONZALEZ who upon her oath deposed and stated the following:

1. "My name is ALMADELIA GONZALEZ. I am over eighteen (18) years of age, of sound mind and capable of making this affidavit. I have personal knowledge of the facts stated herein and they are true and correct.
2. "I was employed by the Law Firm of Roy Ibanez from 2003 until May of 2008 as the office manager and bookkeeper. My duties included preparing payroll, reconciling the various bank accounts for the law firm, and Mr. Ibanez' various business ventures (including Santo Andrei, Ltd.). Mr. Ibanez instructed me that the Trust accounts balance out so I was not supposed to reconcile any Trust or IOLTA accounts, or keep a running tabulation of the clients' credits.
3. "When Mr. Ibanez was handling real estate closings for various clients including Bank of South Texas, the funds would be deposited or wired into his Trust account (recently he has opened IOLTA

accounts). He would direct his secretary to write the appropriate checks utilizing the office Real Estate software to comply with the closing statements, however, Mr. Ibanez would decide which of these checks, if any, would go out and when. Mr. Ibanez would then instruct me to cut additional checks from the Trust accounts to his personal partnership, Santo Andrei, Ltd., and would call them loan proceeds from nonexistent/improper transactions and pay personal debts which would look like they should be paid from a Trust account or simply withdraw cash for personal use.

4. "Attached hereto as Exhibit "A" is a copy of a bank statement of the Law Firm of Roy Ibanez IOLTA Account, account number 2500607481, at San Antonio National Bank. There is a cashiers check drawn from his IOLTA account dated 4/21/08 in the amount of \$41,121.19 and payable to Stephen C. Reynolds. Check no. 1051 is dated 4/18/08 and is payable to Laredo National in the amount of \$9,461.74. There is another cashiers check drawn from his IOLTA account dated 4/28/08 in the amount of \$63,293.75 payable to Falcon International Bank. Check no. 1069 is dated 4/28/08 and is also made payable to Santo Andrei, Ltd. Check no. 1085 is dated 4/30/08 and is also made payable to Mr. Ibanez' personal

partnership, Santo Andrei, Ltd., and is in the amount of \$40,000.00. Additionally, this bank statement reflects that on April 1 and 2 this IOLTA account had a negative bank balance in the amount of \$34,328.17. None of these checks are related to closings or reflected funds held in the IOLTA account for the benefit of the particular client who had an interest in those funds.

5. Attached hereto as Exhibit "B" is an account detail of the Law Firm of Roy Ibanez IOLTA Account, account number 2500607481, at San Antonio National Bank for the period from March 6, 2008 through May 19, 2008. This account shows a negative balance on May 7, 8, and 9, 2008. On Tuesday May 20, 2008, Anita Casanova with San Antonio National Bank contacted me and informed me that check no. 1090 dated May 12, 2008 payable to Frank Cepeda in the amount of \$61,885.82 had not cleared the account because of NSF checks. (See Exhibit "C").

6. Attached hereto as Exhibit "D" is a Notice of Insufficient Funds from First National Bank for the IOLTA Foundation Trust The Law Firm of Roy Ibanez account, account number 470000015, for check number 1232 in the amount of \$175,828.55.

7. Attached here as Exhibit "E" is a copy of the statement from First National Bank for the IOLTA Foundation Trust The Law Firm of Roy Ibanez account number 470000015, dated 4/30/2008. On 4/2 the check for \$175,828.55 addressed in the above paragraph was presented and rejected for NSF. Because of the history of NSF checks written against this account and the overdrawn balances, the bank closed his IOLTA account.

8. Attached hereto as Exhibit "F" is a copy of the statement from First National Bank for the IOLTA Foundation Trust The Law Firm of Roy Ibanez account number 470000015, dated 3/31/2008. On 3/6 his account was overdrawn by \$6,566.46 and on 3/13 it was overdrawn by \$98,159.67.

9. Attached hereto as Exhibit "G" is a copy of the statement from First National Bank for the IOLTA Foundation Trust The Law Firm of Roy Ibanez account number 470000015, dated January 1, 2008. On 1/25 the account was overdrawn by \$11,018.24. On 1/28 his account was still overdrawn by \$12,018.24 and remained overdrawn until 1/31 when it was overdrawn by \$7,485.32.

10. Attached hereto as Exhibit "H" is a copy of a wire transfer request to First National Bank and email communication between

Roy Ibanez, Dustin Roach and Gil Peralez. Mr. Ibanez is wiring funds to cover an NSF check and is sending funds from the Southern Star Title Co. Escrow Account for a personal loan.

11. Attached hereto as Exhibits "I-1 and I-2" are copies of transfers to Mr. Ibanez' First National Bank IOLTA account. These transfers, however, are actually loans from two of Mr. Ibanez' business ventures. In the past, he would also transfer money to these business interests. He would make these transfers to his companies such as Professional Medical Supplies (DME) Ltd. from the Real Estate Trust Account at the Bank of South Texas.

12. Attached hereto as Exhibits "J-1 and J-2" are copies of check no. 1063 and check no. 1089 made payable to Adriana Rubio written from Mr. Ibanez' IOLTA account at San Antonio National Bank. These checks purport to be for the payment of attorneys fees, however, Ms. Rubio is not an attorney but rather one of Mr. Ibanez' staff. This was how Mr. Ibanez would obtain cash quickly. Because the local banks would no longer accept checks payable to Mr. Ibanez unless they had cleared, he would issue checks this way to Ms. Rubio who would then give the money to Mr. Ibanez. Mr. Ibanez had

begun this practice on the Real Estate Trust Account at the Bank of South Texas.

13. On or about February 6, 2008 Mr. Ibanez received into his IOLTA account funds for Horacio Gonzalez as a result of a real estate closing. Though Mr. Ibanez had a check issued to pay off the mortgage lien on the pertinent property, he realized he had insufficient funds to cover this check and issued a stop payment on March 14, 2008. (See Exhibit "K-1" attached hereto). Although Mr. Ibanez claimed the stop payment was because of a lost check, that is not true. Despite stopping payment on March 14, 2008, Mr. Ibanez did not pay off the mortgage lien until April 28, 2008 through a wire transfer. (See Exhibit "K-2 attached hereto).

14. While he was operating the Real Estate Trust Account at the Bank of South Texas, he made numerous transfers and loans to his business interests and his law firm. These transactions included loans and transfers to his firm's operating account of at least \$55,000.00. He also made very large transfers from the Bank of South Texas Real Estate Trust Account (\$325,990.52) as well as loans and transfers ranging from several thousand dollars to tens of thousands of dollars. From opening the account in September of

2006 till October 2007, he transferred and loaned his law firm and business venture over \$450,000 from the Bank of South Texas Real Estate Trust Account. While this was occurring, Mr. Ibanez wrote many checks on this account which were rejected as a result of the account being overdrawn.


15. Attached hereto as Exhibit "L" is a copy of the QuickBooks printout of the Santo Andrei, Ltd. account. This account report shows activity from The Law Office of Roy Ibanez Real Estate Trust Accounts and IOLTA Accounts from 9/3/02 to 3/12/08. As of 3/12/08, Santo Andrei, Ltd. had an outstanding debt in the amount of \$1,024,600.79 to Mr. Ibanez' Real Estate Trust Accounts and IOLTA Accounts, not counting interest.

15. "Further Affiant Sayeth Not."


Almadelia Gonzalez

SUBSCRIBED AND SWORN TO before me y ALMADELIA GONZALEZ on this 22nd day of May, 2008, to certify which witness my hand and seal of office.




Notary Public, State of Texas

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg, TX 78540



70 2010 02070231

Instrument Number: 2010-2070231

Recorded On: January 27, 2010

As
Recording

Parties:

To

Billable Pages: 8

Number of Pages: 9

Comment: PROPERTY ATTACHMENT

**** Examined and Charged as Follows: ****

Recording	44.00
Total Recording:	44.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2010-2070231
Receipt Number: 1095669
Recorded Date/Time: January 27, 2010 02:47P

Record and Return To:

BRIAN E RIEWE PC/JENNIFER MEINERS
4408 SPICEWOOD SPRINGS RD
AUSTIN TX 78759

User / Station: M Cantu - Cash Station 01



**STATE OF TEXAS
COUNTY OF HIDALGO**

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas

Arturo Guajardo Jr.
County Clerk
Hidalgo County, TX

PROPERTY ATTACHMENT

THE STATE OF TEXAS

2070231

CAUSE NO: D-1-GN-09-002120

JENNIFER RAMSEY, PC AS SPECIAL DEPUTY RECEIVER OF SOUTHERN STAR TITLE COMPANY LLC	§	IN THE 419TH JUDICIAL DISTRICT COURT
vs.	§	OF TRAVIS COUNTY, TEXAS
ROGELIO "ROY" IBANEZ	§	

TO THE SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS, GREETINGS:

WHEREAS, in the above numbered and entitled cause, heretofore, and on JULY 2, 2009,
JENNIFER RAMSEY, PC AS SPECIAL DEPUTY RECEIVER OF SOUTHERN STAR TITLE COMPANY LLC Plaintiff(s)

made and filed an affidavit in writing and bond as required by law, as a prerequisite to, and for the purpose of applying for, and in due course of law has applied for a Writ of Attachment against:

ROGELIO "ROY" IBANEZ Defendant(s)

NOW THEREFORE, we command you attach certain properties whether held by him or in his name, or held by him in the name of a business organization owned by him, including but not limited to the following entities: Southern Star Title Company, LLC; Southern Star Title Plant, Inc.; Santo Andrei, Ltd. Santo Andrei Investments, Ltd. Santo Andrei Properties, Ltd.; Matico Investments, LLC; Matico Real Estates, LLC; Matico Properties, LLC, as well as property described in paragraphs A,B, C, and D of the temporary restraining order of the said DEFENDANT, ROGELIO "ROY" IBANEZ if to be found in your county, replevable on security, as shall be of value sufficient to make the sum of \$1,000,000.00 Dollars and the probable cost of suit, to satisfy the demand of PLAINTIFF, JENNIFER RAMSEY, PC as Special Deputy Receiver of SOUTHERN STAR TITLE COMPANY and that you keep and secure in your hands the property so attached, or otherwise attach or make disposition as required by CHAPTER 6 OF THE TEXAS PRACTICE AND REMEDIES CODES, unless repleived that the same may be liable to further proceedings thereon to be had before our District Court, 419TH JUDICIAL DISTRICT COURT in Austin, Travis County, Texas.

You will true return make of this writ on or before 10:00 A.M. of Monday, July 20, 2009 showing how you have executed the same.

GIVEN under my hand and the seal of said Court at Austin, July 02, 2009.

REQUESTED BY:
BRIAN E RIEWE
BRIAN E RIEWE PC
4408 SPICEWOOD SPRINGS RD SUITE 101
AUSTIN, TX 78759
BUSINESS PHONE:(512)236-9955 FAX:(512)236-9966

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



By Brittany Hannah
BRITTANY HANNAH, Deputy

To _____, Defendant:
You are hereby notified that certain properties alleged to be owned by you have been attached. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A ' REPLEVY ' BOND.

YOU HAVE RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.

PROPERTY ATTACHMENT

THE STATE OF TEXAS

CAUSE NO: D-1-GN-09-002120

JENNIFER RAMSEY, PC AS SPECIAL DEPUTY RECEIVER OF SOUTHERN STAR TITLE COMPANY LLC

vs. ROGELIO "ROY" IBANEZ

§ IN THE 419TH JUDICIAL DISTRICT COURT § OF TRAVIS COUNTY, TEXAS §

OFFICER'S RETURN

Came to hand this the ___ day of ___, ___ at ___ o'clock ___M., Executed the ___ day of ___, ___, at ___ o'clock ___M., in ___ County, Texas, by levying upon and attaching the following described personal property belonging to the said ___ defendant, to-wit:

All of the said property still remains in my hands/ if not describe the disposition made of same: _____

This distance actually traveled by me in executing and serving this writ was ___ miles

Service Fee: \$ _____

Sworn to and subscribed before me this the ___ day of _____, _____

Notary Public, THE STATE OF TEXAS

Sheriff / Constable / Authorized Person

By: _____

Printed Name of Servor

D-1-GN-09-002120

SERVICE FEE NOT PAID

County, Texas

D29 - 00010

Original

Service Copy

COPY

NO. D-1-GN-09-002120

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

VS.

ROGELIO "ROY" IBANEZ

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419# JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

AUG 02 2009 BH

At 5:13 P.M.
Amalia Rodriguez-Mendoza, Clerk

ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT

On July 2, 2009 the application of plaintiff in this cause, for issuance of a writ of attachment was presented ex parte supported by the affidavits of Jennifer Ramsey and Gregory C. Douglass.

After considering the pleadings and other papers on file with the Court, the evidence presented, and the arguments of counsel, the Court finds that plaintiff is entitled to a writ of attachment as requested on the grounds that defendant is in hiding so that ordinary process of law cannot be served, defendant has hidden or is about to hide his property for the purpose of defrauding creditors, defendant has disposed of or is about to dispose of part of his property with the intent to defraud creditors, defendant is about to convert part of his property into money for the purpose of placing it beyond the reach of creditors and defendant owes plaintiff for property obtained from the escrow beneficiaries represented by plaintiff because defendant obtained that property under false pretenses.

More specifically, the Court makes the following findings of fact: defendant has sold or is in the process of selling property which he controls or owns located on McColl Road in McAllen, he has avoided service of process of subpoenas lawfully issued requiring his testimony on July 3, 2009, and he has taken property not belonging to him in violation of escrow agreements which he has used for his personal benefit and has failed to make restitution of



property. The Court further finds that issuance of the writ without notice to the defendant or a prior hearing is justified in the circumstances because there is an immediate danger that defendant will sell assets. Without these business assets, defendant likely would not have sufficient assets to satisfy a judgment).

IT IS, THEREFORE, ORDERED that the clerk shall issue a writ of attachment that command a sheriff or constable of any county within the State of Texas to attach and hold property of Roy Ibanez, defendant, that may be found within the sheriff or constable's county, up to a maximum value of \$1,000,000.⁰⁰ When attached, the property shall be kept safe and preserved, subject to the further order of this Court in the registry of this Court, unless the property is replevied according to the provisions of the law and the Texas Rules of Civil Procedure.

IT IS FURTHER ORDERED that this order shall not be effective unless and until plaintiff executes and files with the clerk a bond, in conformity with the law, in the amount of \$ 500.⁰⁰.

IT IS FURTHER ORDERED that the defendant, in order to replevy property attached pursuant to the writ, must file with the officer who levied the writ a bond, in conformity with the law, in the amount of \$1,000,000.⁰⁰ *or the fair market value of each specific asset if less than \$1,000,000.00* unless the defendant files bond in an amount otherwise provided by the law and the Texas Rules of Civil Procedure.

SIGNED July 2, 2009 [date]

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on July 2, 2009



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy: Bethany A. Hernal

[Signature]
JUDGE PRESIDING



COPY

NO. D-1-GN-09-002120

Filed in The District Court
of Travis County, Texas

JUL 02 2009 BH

At 5:13 P.M.
Amalia Rodriguez-Mendoza, Clerk

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

419# JUDICIAL ISTRICT

TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

On this date came before the Court the request of Jennifer Ramsey, PC, Special Deputy Receiver of Southern Star Title Company, LLC, Plaintiff, complaining of Defendant Rogelio "Roy" Ibanez, and the request for issuance of the Temporary Restraining Order in connection with the complaint.

A hearing was held at 4:15 p.m., after providing notice to counsel for Mr. Ibanez. The plaintiff appeared in person and through counsel. The defendant did not appear/also appeared through counsel.

After hearing the evidence presented and the arguments of counsel, the Court finds as follows:

1. The Plaintiff has demonstrated a probable right of recovery against Mr. Ibanez for losses sustained and to be sustained by Southern Star Title Company, LLC. The Court finds that Mr. Ibanez probably did, over the course of 2008, transfer client trust funds of Southern Star Title Company in violation of the escrow agreements pursuant to which those trust funds were placed in the company's accounts, leaving an escrow shortage at the company. The Court further finds that Mr. Ibanez probably continued to operate Southern Star Title Company at a



time when he knew or should have known that the company was insolvent, exposing Southern Star to liability to its creditors, and causing harm to those creditors.

2. The Plaintiff has also demonstrated probable harm will befall it in the event Mr. Ibanez is not immediately restrained as requested. The Court finds that Mr. Ibanez is attempting to engage in a liquidation of his property, including property titled in entities owned by Mr. Ibanez, and has refused to deliver the proceeds to the Plaintiff, or to provide assurance to the Plaintiff that those funds will not be dissipated during the pendency of this proceeding.

3. The Court finds that the requested temporary orders are necessary in order to preserve the *status quo* during the pendency of this proceeding, and that balancing the equities as between Mr. Ibanez and the Special Deputy Receiver, issuance of temporary order is just, equitable, and appropriate.

It is therefore, ORDERED, as follows:

Rogelio "Roy" Ibanez, and any and all persons or entities acting in concert or collaboration with him (including, without limitation, his spouse, parents, children or other members of his family, employers, employees, lenders, trustees, fiduciaries, or financial institutions), are hereby ENJOINED from selling, transferring, pledging, encumbering, hypothecating or impairing any non-exempt assets of Rogelio "Roy" Ibanez, whether held by him in his name, or held by him in the name of a business organization owned by him, including but not limited to the following entities:

Southern Star Title Company, LLC

Southern Star Title Plant, Inc.

Santo Andrei, Ltd.

Santo Andrei Investments, Ltd.

Santo Andrei Real Estate, Ltd.

Santo Andrei Properties, Ltd.

Matico Investments, LLC

Matico Real Estate, LLC

Matico Properties, LLC

The assets to which this prohibition applies include, but are not limited to:

- a. The proceeds of the sale of land, including, but not limited to a one acre parcel out of Lot 1, Block 8 Steel & Pershing, McAllen Texas, set to close on or about June 30, 2009 to N.M. Edificios, LLC and/or members of the LaMantilla family or their companies;
- b. An interest in the Bank of South Texas;
- c. An interest in the Hidalgo County Title Plant; and
- d. An interest in the real property described in the attached Exhibit A.

Any violation of this order shall be grounds for contempt.

This matter is set for hearing on Plaintiff's request for a temporary injunction on

July 16, 2009 at 2:00 P.m.

This order shall become effective upon the posting of a bond in the amount of \$ 500.00 by the Plaintiff.

Signed this 2 day of July, 2009


JUDGE PRESIDING

↓

**Real Estate Owned by
Santo Andrei, Ltd.**

1. Condominium Property - Unit 4102, Sea Island Tower, South Padre Island, Cameron County Texas
2. 30 acres at 10th Street & Highway 107 - Tract out of Lot 12 Section 277, Tex-Mex Survey, City of McAllen, Hidalgo County, Texas
3. 10 Acres McColl (behind Laredo National Bank) - Tract out of Lot 1, Block 8, Steele & Pershing Subdivision, City of McAllen, Hidalgo County, Texas
4. North 10th (Prichard Property) - Tract out of Lot 12, Section 277, Tex-Mex Survey, City of McAllen, Hidalgo County, Texas
5. 1 acre behind Laredo National Bank
6. 14 acres on 10th & Schunior - Tract out of Lot 15, Block 237, Tex-Mex Survey, City of Edinburg, Hidalgo County, Texas
7. 36 acres 10th & 17 & 1/2 Mile - Tract out of Lot 2, Section 238, Tex-Mex Survey, City of Edinburg, Hidalgo County, Texas
8. 1 acre Lot 49 LeHigh Plaza, City of Edinburg, Hidalgo County, Texas
9. 36 acres Wisconsin & McColl - Tract out of Lot 6 Steel & Pershing Subdivision, City of Edinburg Hidalgo County, Texas
10. 77.74 acres Rooth Road - Tract out of Lots 11, 19 & 20, Block 234, Tex-Mex Survey, City of Edinburg, Hidalgo County, Texas
11. 158 residential lots Wisconsin & 281 (Bella Vista Subdivision) - Tract out of Lot 28, Kelly Pharr Tract City of Edinburg, Hidalgo County, Texas
12. 51.41 acres - Racquet Club Subdivision - Tract out of Lot 13, Section 277, Tex-Mex Survey and Lots 1-8 Raquet Club Subdivision, City of Edinburg, Hidalgo County, Texas
13. 6 acres at Dove & Ware Rd - Tract out of Lot 93 La Lomita (HOIT), City of McAllen, Hidalgo County, Texas
14. Lot 10 & 11, Remington Square, City of Edinburg, Hidalgo County, Texas
15. Lots 5 & 6, Block 6, Cornerstone Medical Park, Phase 2, City of Edinburg, Hidalgo County, Texas
16. Lots 7 & 8, Las Cruces, City of Edinburg, Hidalgo County, Texas.

* # 14 was in the name of Investments by D.D.R., LLC but it was transferred into Santo Andrei, Ltd. and the debt of \$500,000.00 was assumed by Santo Andrei, Ltd.

* # 15 was in the name of ProCare Investments, Ltd. but it was transferred into Santo Andrei, Ltd. and the debt of \$355,000.00 was assumed by Santo Andrei, Ltd.

T:\data\personals\Amy-per\Santo Andrei Ltd\Real Estate Owned by Santo Andrei.wpd

NO. D-1-GV-08-000050

OCT 15 2009 TR

At 4:57 P.M.
Antonio Mendez, Clerk

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
v.	§	TRAVIS COUNTY, TEXAS
WEBB COUNTY TITLE	§	
& ABSTRACT COMPANY, INC.	§	201 st JUDICIAL DISTRICT

MEMORANDUM RECOMMENDATION
(International Bank of Commerce Motion for Relief from Automatic Stay)

International Bank of Commerce (“IBC”) is a secured creditor in this case. IBC holds a real estate lien note dated December 6, 2006, and the lien applies to the building in Laredo, Texas out of which the insurer Webb County Title & Abstract Company, Inc. conducted its business prior to being placed in the instant receivership and liquidation proceeding by the Texas Department of Insurance. The building, although secured by and subject to IBC’s lien, appears to be the only major remaining hard asset in this Estate.

In the absence of judicial permission, IBC is stayed by TEX. INS. CODE § 443.008(c)(4) from enforcing its lien rights against the property. IBC by its motion seeks an Order lifting the automatic stay so that it may enforce its lien.

1. Status of the Estate and its Computer System. IBC’s motion is challenging in part because this Estate has special challenges:

1. As noted above, at this time it appears that the Estate has no real hard assets other than the building on which IBC possesses the lien, and the approximate \$5,000 per month in rent paid by the building’s sole tenant to the Estate. The tenant occupies approximately half the space, and the other half is not rented and therefore empty. The Estate generally is using the rental income each month to maintain and support the building and its obligations under the lease to its one tenant.
2. In the absence of any monies or other assets, the Estate is operating off of periodic loans from the Abandoned Property Fund.
3. One real dilemma involving the building is the Webb County computer system that has on it records of the company. The computer system, called an AIMS system, is, according to the Special Deputy Receiver’s primary representative Susan Salch (“SDR”), a very old system. Incredible as it sounds, the SDR credibly reported at the hearing on IBC’s motion that her IT subcontractor has told her that if the computer system is turned off to be moved out of the building, it may not come back on with accessible data. And it appears from the SDR’s testimony that, were the AIMS system unplugged

and later unable to work, it would be very expensive to purchase the software that would be necessary to read the data off of the back-up hard drives. Thus, the computer and its records presents a special, hard-to-solve challenge.

2. Legal Requirements for Lifting the Stay. Section 443.008(h) sets forth the standards for a Court to grant relief from the stay. IBC as the moving party has the burden under Subsection (j) of proving each issue by clear and convincing evidence.

Section 443.008(h)(1) provides for relief from the stay “for cause as described by Subsection (i).” IBC does not come within the descriptions of “cause” set forth in Subsection (i).

Section 443.008(h)(2) is the applicable provision here because it relates to a stay of an act against property, which would include IBC’s request to enforce its lien rights against the property. IBC must by clear and convincing evidence prove that “the insurer does not have equity in the property.” This requires a comparison between the fair market value of the property and the amount of secured debt against the property.

3. Analysis of the Equity Question. IBC introduced through its appraiser Scott Speck an appraisal of the property as of January 20, 2009, for a fair market value of \$1,260,000.00. Mr. Speck made certain assumptions regarding occupancy, etc., that are more optimistic than the present reality. Nevertheless, the \$1,260,000.00 is the only definitive proof of value in the record.

IBC in October, 2008, filed a Proof of Claim in this proceeding (not yet acted upon by the SDR) in the amount of \$1,104,597.06. IBC asserts that this \$1,104,597.06 figure reflects the amount owed on the underlying note secured by the building as of the date this insolvency proceeding was filed. If this is the relevant debt figure to compare with the building’s value (and the SDR so argues), then there is equity in the property based on the \$1.26 million value, and the motion should be denied.

IBC of course contends that the relevant debt figure for comparison purposes must also include (calculated as of June 9, 2009) the additional accrued interest (\$117,610), late charges (\$13,875.00), unpaid taxes, penalties and interest (\$114,714.87) and attorney’s fees (\$32,453.00), and a continuing per diem of approximately \$170.00 per day. IBC thus argues that this results as of June 9, 2009, in a total debt figure of \$1,276,743.00—or slightly more (approximately \$17,000 more) than the \$1,260,000.00 fair market value of the property.

The parties argue at length as to whether these additional amounts are properly included in the debt calculation or not. There is no clear guidance in the Insurer Receivership Act. Like most issues under the Act, the legal questions raised in the parties’ briefing are of first impression because there are no case authorities addressing these issues. The federal Bankruptcy Code may be useful by analogy and IBC has cited to certain federal case authorities speaking to the manner of calculating debt (and post-petition accruals) in bankruptcy proceedings. However, the Bankruptcy Code may differ

in substance from the provisions in the Insurer Receivership Act such that guidance from that source may not be appropriate---or it may.

For now, the Master's analysis is as follows: If IBC is correct that its \$1,276,743 debt calculation should be used, resulting in a lack of equity of approximately \$17,000.00 as of June, 2009, or approximately \$30,000.00 as of the present time using IBC's per diem figure, this results in a margin that is too small to prove "no equity" by the stringent "clear and convincing evidence" standard required by the statute. There are many variables here, and a margin of 2-3% **at this time** based upon the evidence adduced at the hearing simply is too close to warrant lifting the stay as to the building in this particular Estate.

4. Special Status of IBC as a Secured Creditor. A secured creditor has special rights not to be taken lightly in a receivership proceeding. Here, while not pointing blame because this is a very difficult receivership to move forward given the absence of any non-secured assets/money, the fact remains that IBC as a secured creditor with substantial rights in the building has sat for almost two years with no meaningful action taken by the Estate with regard to its secured claim or its security for its unpaid claim. Its POC, a year old, has not been acted upon by the SDR. The amount owed IBC, whether secured or unsecured, continues to grow. The building is 50% occupied. The SDR is using rents that are subject to IBC's security agreement to maintain the building, etc. (as permitted by Section 443.260(i)), but is not providing to IBC any detailed accounting of the rental income received and the building-related use of such income. There is no marketing plan to sell the building so that IBC's security can be liquidated and its secured debt paid down or off. The Special Master is not aware of the SDR's intentions with regard to its compliance with Section 443.260(a). Finally, the SDR just prior to the hearing sent a demand letter to IBC regarding a potential claim in order to set up a "set-off" argument at the hearing, but no formal claim ever has been filed against IBC during the pendency of this receivership.

Therefore, although IBC's request to lift the stay is denied at this time, substantial progress now must be made on all fronts to liquidate IBC's claim consistent with Section 443.260(a).

5. Recommended Course of Action.

a. The Special Master recommends that IBC's motion to lift the stay be denied at this time.

b. This matter is set for further hearing before the Special Master on January 25, 2010, at 2:00 p.m. The matters to be considered at the hearing are set forth in sub-parts (c.) and (d.) below.

c. The Special Master is mindful that as interest and other amounts continue to accrue or be incurred, the differential may become substantial enough to warrant a "no

equity” finding if it later is determined that IBC is correct in its legal arguments. In addition, the IBC appraiser used some overly-optimistic assumptions such that the true fair market value of the property determined anew under current economic conditions in general and as to the building in particular might very well be less than Mr. Speck’s prior opinion as to value. This could result, depending on any new opinion as to value, in a “no equity” determination even if the SDR’s arguments are sustained that the relevant debt number is the number as of the date of receivership filing without any post-receivership accruals or additions.

Therefore, IBC will be afforded the opportunity at the January 25, 2010 hearing to present evidence of an updated appraisal and its expert’s updated opinion of the building’s fair market value under current conditions. The Master also will consider any evidence from the SDR as to fair market value.

In addition, regarding the legal issues raised by the parties as to how to calculate the debt element of the equity analysis, the Special Master requests further briefing from both parties (1) as to how the debt-calculation issues present here have been resolved in the federal bankruptcy context and whether or not an analogy to the Bankruptcy Code for guidance is warranted or not; and (2) a discussion of any legislative history, if any, relating to the calculation of debt under Section 443.008(h)(2)(A), with each side to file initial briefs on or before January 8, 2010, and responses on or before January 20, 2010.

d. Based on the above, the Special Master further expects that the SDR will have substantially moved forward or accomplished the following by the January 25, 2010 hearing:

- (1) That the SDR has processed and allowed or disallowed IBC’s Proof of Claim, unless the SDR has good reason why such has not occurred.
- (2) That if the SDR intends to assert any formal claim against IBC, that such claim formally has been asserted and filed of record (the Master taking no position on the merits or not of any such claim).
- (3) That the SDR continues to use rental income from the building as necessary to preserve and maintain the building and in order to comply with the terms of the existing lease. If any funds remain after all such expenditures on a monthly basis, such funds should be maintained in trust for possible future distribution to IBC. The SDR further should provide to IBC on a monthly basis an accounting of all income received from the building and all expenses paid by the SDR out of such income.
- (4) That the SDR continues to maintain adequate and suitable insurance on the building.
- (5) That the SDR has solved the problems posed by the computer system. The Special Master appreciates the special problems presented by the computer system on site. However, Section 443.008(h) does not allow the Court to deny IBC’s motion to

lift the stay simply because the computer system may be necessary to an effective liquidation and cannot be unplugged. Moreover, a stalemate regarding IBC's security cannot continue to exist because the computer system cannot be unplugged for fear of losing data. No matter how untenable, that problem needs to be solved now on some basis.

(6) That the SDR has commenced steps to actively market and sell the property, preferably in coordination with IBC as the secured creditor on the property.

The status on all these fronts plus any updated value analyses and the briefing requested herein will be considered at the further hearing on January 25, 2010, on IBC's motion to lift the stay.

SIGNED this 15th day of October, 2009.



Tom Collins, Special Master