IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:21-cv-01310-O-BP**
	§	
THE HEARTLAND GROUP VENTURES, LLC, *et al.*,	§	
	§	
Defendants.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are Movant John Rogers's Motion to Lift Stay (ECF No. 272), the Receiver's Objection to the Motion (ECF No. 279), Brief in Support of Movant's Motion to Lift Stay (ECF No. 336), and the Receiver's Response to the Brief (ECF No. 337). After considering the pleadings and applicable legal authorities, the undersigned **RECOMMENDS** that United States District Judge Reed O'Connor **DENY** the Motion.

I. BACKGROUND

On December 1, 2021, the Securities and Exchange Commission ("SEC") filed an "Emergency Motion for a Temporary Restraining Order and Emergency Ancillary Relief," which included an application for the appointment of a Receiver for the Receivership Parties, including ArcoOil Corporation ("ArcoOil") and Barron Petroleum LLC ("Barron"). ECF No. 3. On December 2, 2021, the Court entered its Order Appointing Receiver. ECF No. 17.

Under the terms of the Order, the Court took "exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of [the Receivership Parties, including ArcoOil and Barron]." *Id*. at 2. The Order also directed the Receiver to take possession and control over all

funds, property, and other assets in the possession of, or under the control of, the Receivership Parties. *Id*. at 4 Finally, the Order stayed all civil litigation involving the Receivership Parties, including enjoining others from commencing or continuing any ancillary legal proceedings. *Id*. at 15.

One such stayed case was a civil action that movant John Rodgers ("Rodgers") had filed against ArcoOil and Barron in the 90th Judicial District Court of Young County, Texas. *See* ECF No. 272 at 2. In that case, filed before the SEC's initiation of this action, Rogers seeks to recover damages for an on-the-job injury. *Id.* He now moves the Court to lift the stay so that he may pursue his state case to conclusion. *Id*. at 4.

II. LEGAL STANDARDS

"The court has wide discretion to fashion equitable remedies in the context of an SEC civil enforcement action." *S.E.C. v. Faulkner*, No. 3:16-cv-1735-D, 2018 WL 5279321, at *2 (N.D. Tex. 2018) (citing *S.E.C. v. Posner*, 16 F.3d 520, 521 (2d Cir. 1994)). It is "axiomatic" that this discretion includes "broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions." *S.E.C v. Stanford Int'l Bank Ltd*., 424 F. App'x 338, 340 (5th Cir. 2011); *Schauss v. Metals Depository Corp*., 757 F.2d 649, 654 (5th Cir. 1985). "Such orders can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales." *Schauss*, 757 F.2d at 654.

A district court can stay ancillary lawsuits to the extent necessary to protect receivership assets. *See Rishmague v. Winter*, 616 F. App'x 138, 139-40 (5th Cir. 2015); *S.E.C. v. Kaleta*, 530 F. App'x 360, 361-63 (5th Cir. 2013); *Stanford*, 424 F. App'x at 340-41; *Schauss*, 757 F.2d at 654. The movant bears the burden to show that the stay should be lifted for these ancillary actions.

S.E.C. v. Faulkner, No. 3:16-cv-1735-D, 2020 WL 905354, at *2 (N.D. Tex. 2020) ("*Faulkner II*") (citing *United States v. Acorn Tech. Fund, L.P.*, 429 F.3d 438, 450 (3d Cir. 2005)).

III. ANALYSIS

The Court's Order Appointing Receiver stayed until further order of the Court:

> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings and voluntary or involuntary bankruptcy cases or petitions, arbitration proceedings, foreclosure actions, Texas Railroad Commission proceedings, default proceedings, or other actions of any nature involving: (a) the Receiver, in the Receiver's capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Parties, including subsidiaries and partnerships; or, (d) any of the Receivership Parties' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

ECF No. 17 at 15. Rogers's state court action against ArcoOil and Barron are within the scope of the Court's Order.

When determining whether to lift a stay of litigation entered pursuant to a receivership order, the Court must weigh the interests of the moving party against those of the Receivership Estate. *See Stanford*, 424 F. App'x at 340-42. In *Stanford*, the Fifth Circuit set forth three factors that the Court should consider: (1) whether refusing to lift the stay genuinely preserves the *status quo* or whether the moving party will suffer substantial injury if it is not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merits of the moving party's underlying claim. *Id.* at 341 (citing *S.E.C v. Wencke*, 742 F.2d 1230, 1231 (9th Cir. 1984)).

The first factor weighs in favor of maintaining the stay. This factor balances Rogers's interests in continuing his personal injury claim against maintaining the *status quo* of the receivership. *Id.* at 341. Rogers argues that the stay has caused him to suffer substantial harm

because he is unable to litigate issues of liability and damages, must rely on aging evidence, and does not have the financial resources to obtain needed medical care and treatment. ECF No. 336 at 4. He further claims that his suit will not prejudice the Receivership Estate as he will limit his damages to the amount of insurance coverage that ArcoOil and Barron may have that would cover his claim. ECF No. 272 at 3. In the absence of insurance coverage, however, Rogers wishes to liquidate his damage claim and secure his rights as a creditor of ArcoOil and Barron.

While the Court is sympathetic to Rogers's situation, his claims do not outweigh the interest the receivership has in maintaining the Receivership Estate. The Receiver has not identified any insurance policy or insurance coverage related to Rogers's claim. *See* ECF No. 279 at 5. Thus, lifting the stay would only have the effect of permitting Rogers to liquidate his claim and potentially improve his priority as to other potential creditors. Moreover, Rogers's claims are for money damages, and he would not be "irreparably injure[d]" if the stay remains since he can bring his claim once the Court approves of a distribution plan. *See Wencke*, 742 F.2d at 1232 (holding that the appellants would be irreparably injured and forever lose their ability to litigate their claim to the PSI stock once that stock was distributed).

Finally, the Receiver is still pursuing receivership assets from which she will make distributions, and any state court action against the receivership properties would deplete the Receivership Estate since the Receiver would have to pay the litigation costs required to defend Rogers's suit. *See Stanford*, 424 F. App'x at 341. This would disrupt the *status quo* to the detriment of the Receivership. *S.E.C. v. Kaleta*, No. CIV.A. 4:09-3674, 2012 WL 2577537, at *3 (S.D. Tex. July 3, 2012); *see also Stanford*, 424 F. App'x at 341 (the receiver's need to stay any ancillary proceedings outweighed the movant's injury because requiring a receiver "to monitor and possibly

intervene in ancillary actions" would cost the estate "money and efficiency"). Thus, the first *Stanford* factor weighs in favor of maintaining the stay.

The second factor, the timing of the request, also weighs in favor of maintaining the stay. The Receiver was appointed in December 2021. ECF No. 17. She continues to pursue various claims for the Receivership Estate and is, therefore, not yet prepared to distribute the Receivership Estate's assets. ECF No. 337 at 7. Thus, her need to organize and understand the entities under her control weighs heavier under this factor. *S.E.C. v. Wencke*, 622 F.2d 1235, 1273-74 (9th Cir. 1980). If the Court permitted Rogers to proceed, the Receiver would lose necessary control over the Receivership Estate's assets for purposes of administering the receivership to the detriment of other claimants and stakeholders. *Faulkner II*, 2020 WL 905354, at *4; *Kaleta*, 2012 WL 2577537 at *3. Therefore, Rogers's request to lift the stay comes relatively early in the receivership process, and the Receiver's interest in gathering and controlling the assets of the receivership outweighs Rogers's interest in liquidating his claim.

The final factor, the merits of Rogers's claims, is neutral in the Court's analysis since it is unclear whether Rogers is likely to prevail in the state court. A court will frequently decline to comment on the merits of an underlying claim if, as here, the other two factors weigh in favor of preserving the stay. *Id*. Moreover, even if Rogers ultimately prevails, his claims are contested at this point, and the expense of the litigation required to adjudicate them would come out of the Receivership Estate's resources. Thus, the third factor does not outweigh the previous two factors, which weigh in favor of preserving the stay.

IV. CONCLUSION

The *Stanford* factors suggest that it is in the best interest of the Receivership Estate to maintain the *status quo* and stay all current ancillary proceedings against the Receivership Parties,

including John Rogers's personal injury claim. Accordingly, the undersigned **RECOMMENDS** that Judge O'Connor **DENY** Rogers's Motion to Lift Stay (ECF No. 272).

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). To be specific, an objection must identify the particular finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

SIGNED on May 18, 2023.

Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE