

FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:05-CV-1328-L (BD)
	§	
MEGAFUND CORPORATION, STANLEY A.	§	ECF
LEITNER, SARDAUKAR HOLDINGS, IBC.,	§	
BRADLEY C. STARK, CIG, LTD., and	§	Referred to U.S. Magistrate Judge
JAMES A. RUMPF, Individually and d/b/a	§	
CILAK INTERNATIONAL,	§	
Defendants,	§	
and	§	
	§	
PAMELA C. STARK,	§	
Relief Defendant.	§	

**MOTION TO COMPEL RELEASE OF FUNDS HELD BY THE
INTERNAL REVENUE SERVICE AND BRIEF IN SUPPORT**

TO THE HONORABLE JEFF KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW Michael J. Quilling, as the Receiver for Lancorp Financial Group, LLC and Lancorp Financial Fund Business Trust, (“Plaintiff” or “Receiver”) and files this his Motion to Compel Release of Funds Held by the Internal Revenue Service¹ in a civil forfeiture action before the United States District Court for the Central District of California. In support of his motion, the Receiver would respectfully show the Court as follows:

¹ On June 5, 2007, the undersigned counsel mistakenly caused this motion to be filed in an ancillary case relating to the same Lancorp Receivership Assets addressed in this motion. *See Motion to Compel Release of Funds* [Dkt. No. 7] (3:07-CV-0682). At all times, however, the Receiver intended to file the motion in these proceedings because (1) the Court’s *in rem* jurisdiction originated in these proceedings and (2) this motion essentially seeks to enforce the Order Appointing Receiver that was entered in these proceedings. Before counsel corrected his filing error, the Court denied the motion without prejudice. *Order* [Dkt. No. 8] (3:07-CV-0682). The Receiver now respectfully asks the Court to consider the motion in these proceedings—where it should have been filed in the first place.

**I.
INTRODUCTION**

On January 20, 2007, the United States District Court for the Northern District of Texas took exclusive *in rem* jurisdiction over all Receivership Assets claimed by Lancorp and its related entities. On January 27, 2006, the Receiver directed Max International, a brokerage house in New York, to surrender \$2,000,000.00 held on behalf of Lancorp investors in account number M03-002704. Although that account was held in the name of First National Ban Corp, Lancorp's director was one of its authorized signatories so that investor funds could not be moved without his authority.

After this Court took exclusive jurisdiction over Lancorp's assets, the United States Attorney's office initiated an *in rem* civil forfeiture action in the United States District Court for the Central District of California. In connection with that case, the Internal Revenue Service took possession of some of the \$2,000,000.00 already claimed by the Receiver.

The funds at issue cannot be subject to two *in rem* actions pending before different courts. Therefore, case law has established a "first in time" rule to determine which court enjoys exclusive *in rem* jurisdiction over those assets. Under that rule, it appears that the United States District Court for the Northern District of Texas obtained jurisdiction over the \$2,000,000.00 first and still maintains exclusive jurisdiction over those assets. Accordingly, this Court should enter an order directing the Internal Revenue Service to release the balance of the \$2,000,000.00 in its possession to the Receiver.

**II.
BACKGROUND FACTS**

1. On July 1, 2005, the Securities and Exchange Commission ("SEC") filed an action against numerous individuals and entities accused of defrauding millions of dollars from investors.

That case is pending before the United States District Court for the Northern District of Texas in *SEC v. Megafund Corporation, et al.*, Cause No. 3:05-CV-1328. In connection with that case, the Court appointed Michael J. Quilling as Receiver for Lancorp Financial Group, LLC and the entities under its control (collectively, "Lancorp"). See *Agreed Order Expanding Receivership and Appointing Receiver* ("Order Appointing Receiver") [Dkt. No. 84] (3:05-CV-1328).

2. In that capacity, the Receiver has obtained possession of Lancorp's bank accounts, conducted numerous interviews with its director, subpoenaed volumes of records, and investigated the underlying transfers of investor funds. He has also taken possession of Lancorp's account records at Bank of America and Max International and examined the documents reflecting Lancorp's relationship with Robert Tringham and First National Ban Corp.

Transfer of Lancorp Investor Funds Totaling \$2,000,000.00

3. Lancorp entered into an investment agreement with Robert Tringham, the director of First National Ban Corp ("FNBC"), in late 2005. According to that agreement, FNBC was to oversee Lancorp funds deposited in account number M03-002704 at Max International. FNBC also deposited funds from other sources into that account as well.

4. On October 18, 2005, Lancorp transferred \$2,000,000.00 into that account. Those funds originated from Lancorp's Bank of America account and the entire amount can be traced to investor contributions. Lancorp's director, Gary Lancaster, was made a signatory on the account to ensure that no money moved without his consent.

5. It soon became apparent, however, that FNBC failed to invest those funds for Lancorp's benefit. Accordingly, before this Court appointed a Receiver for Lancorp, Gary Lancaster directed FNBC to return the full \$2,000,000.00, without success.

Receivership Action in the Northern District of Texas

6. This Court appointed Michael J. Quilling as the Receiver for Lancorp and its related entities on January 20, 2006. *See Order Appointing Receiver* [Dkt. No. 84] (3:05-CV-1328). In relevant part, that Order provides as follows:

This Court hereby takes exclusive jurisdiction and possession of the assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of Lancorp Financial Group, LLC (“Lancorp”) and any entities it controls . . .

Id. at ¶ 1 (emphasis added). The Receiver sent a copy of that Order to Max International on January 27, 2006, and directed that it surrender \$2,000,000.00 in account number M03-002704 to the Lancorp Receivership Estate. *Demand Letter*, Jan. 27, 2006, Exhibit “A”.

7. As required by 28 U.S.C. § 754, the Receiver timely filed notice of his appointment in this case in the United States District Courts for both the Southern District of New York and the Central District of California.

Civil Forfeiture Action in the Central District of California

8. On January 26, 2006, the United States Attorney’s office served a seizure warrant on Max International issued from the United States District Court for the Central District of California. That warrant covered, among other things, all of the funds in account number M03-002704. At that time, the account held approximately \$3,500,000.00—including \$2,000,000.00 claimed by Lancorp. Without prejudice to any future action by the Receiver with respect to those funds, the Receiver and the United States Attorney’s office reached a preliminary agreement on February 2, 2006, wherein Max International surrendered \$1,115,628.77 of those funds to the Receiver and the balance to the Internal Revenue Service (“IRS”). *Letter of Agreement*, Feb. 2, 2006, Exhibit “B”.

9. On March 31, 2006, the United States Attorney's office for the Central District of California filed a civil forfeiture action against that portion of the funds surrendered by Max International to the IRS. *Complaint* [Dkt. No. 1] (2:06-CV-1971). The IRS is still holding those funds as custodian in that case—including \$884,371.23 claimed by the Receiver as part of Lancorp's \$2,000,000.00 contribution. *Order Appointing the Internal Revenue Service as Substitute Custodian* [Dkt. No. 5] (2:06-CV-1971).

10. On August 21, 2006, the United States District Court for the Central District of California entered an Order to stay its civil forfeiture case indefinitely pending a federal criminal investigation. *Order*, Aug. 21, 2006 [Dkt. No. 21] (2:06-CV-1971). To date, that action remains stayed and will continue to do so for the foreseeable future. *See Plaintiff's First Report Regarding Status of Ongoing Criminal Investigation* [Dkt. No. 24] (2:06-CV-1971).

11. As briefed below, this Court was the first to obtain exclusive nationwide jurisdiction over the \$884,371.23 currently held by the IRS and it never surrendered that jurisdiction to another District Court. Therefore, under the "first in time" rule, the United States District Court for the Central District of California never acquired jurisdiction over those funds and they must be released to the Receiver.

III. ARGUMENTS AND ANALYSIS

A. **The United States District Court for the Northern District of Texas Has Exclusive Jurisdiction over the \$884,371.23 Currently Held by the IRS.**

1. **Funds Totaling \$884,371.23 from Account Number M03-002704 Are Subject to Two Separate *In Rem* Actions.**

A portion of the funds from account number M03-002704 are now subject to two *in rem*

actions in different United States District Courts. The first *in rem* action was initiated in this Court on January 20, 2006, when the Court entered its Order appointing a receiver for Lancorp. That Order expressly asserts exclusive nationwide jurisdiction over all property claimed by Lancorp:

This Court hereby takes exclusive jurisdiction and possession of the assets, monies, securities, claims in action, and properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated, of Lancorp Financial Group, LLC (“Lancorp”) and any entities it controls (“Receivership Assets”) . . .

Order Appointing Receiver [Dkt. No. 84] at ¶ 1 (3:05-CV-1328) (emphasis added). As required by 28 U.S.C. § 754, the Receiver duly filed notice of his appointment in the Southern District of New York on January 27, 2006, and in the Central District of California on January 30, 2006. In relevant part, 28 U.S.C. § 754 states that:

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall . . . be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

28 U.S.C. § 754 (emphasis added). It is well-settled that, in the context of equitable receivership proceedings, § 754 gives this Court nationwide *in rem* jurisdiction over all assets claimed by the Receiver. *See, e.g., Gilchrist v. Gen. Elec. Capital Corp.*, 262 F.3d 295, 302 (4th Cir. 2001) (“when it appointed the receiver, the district court created a receivership estate over which it had *in rem* jurisdiction, even though the property might be located in other districts”); *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1144-45 (9th Cir. 1996) (holding “meritless” the notion that district courts lack “full traditional *in rem* jurisdiction” under § 754).

After this Court entered its Order Appointing Receiver, the United States District Court for the Central District of California initiated a second *in rem* action against the funds claimed by

Lancorp in account number M03-002704. *Complaint for Forfeiture in Rem* [Dkt. No. 1], as amended on May 23, 2006 [Dkt. No. 8] (2:06-CV-1971); *see also Scarabin v. DEA*, 966 F.2d 989, 993 (5th Cir. 1992) (“Under the federal civil forfeiture statutes . . . the proceeding is *in rem* against the property”). The IRS has now taken possession of those funds—including the \$884,371.23 claimed by Lancorp—as custodian for the United States District Court for the Central District of California.

2. Under the “First in Time” Rule, the United States District Court for the Northern District of Texas Enjoys Exclusive *In Rem* Jurisdiction over the Funds Claimed by Lancorp.

It is well-settled that two courts cannot exercise *in rem* jurisdiction over an asset at the same time. The very purpose of *in rem* jurisdiction is to grant one court “exclusive possession or control over the property in order to consider the suit and grant or deny the relief sought.” *Scarabin*, 966 F.2d at 994. Therefore, case law has established a “first in time” rule to determine which court enjoys exclusive *in rem* jurisdiction over the assets at issue in this case. The United States Supreme Court explained that rule in *Penn Gen. Casualty Co. v. Pennsylvania*, 294 U.S. 189 (1935):

[T]he principle, applicable to both federal and state courts, is established that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other. This is the settled rule with respect to suits in equity for the control by receivership of the assets of an insolvent corporation.

Id. at 195; *see also United States v. \$174,206.00*, 320 F.3d 658, 660 (6th Cir. 2003) (“a court may not exercise *in rem* jurisdiction if another court is exercising *in rem* jurisdiction over the same *res*”); *Madewell v. Downs*, 68 F.3d 1030, 1041 n.13 (8th Cir. 1995) (“it was, and is, well-settled law that . . . the first court to obtain *in rem* jurisdiction maintains it to the exclusion of all others, whether that court be state or federal”); *Scarabin*, 966 F.2d at 993; *United States v. One 1986 Chevrolet Van*, 927

F.2d 39, 44 (1st Cir.1991). The long-standing purpose of this rule is to “avoid conflicts in the administration of justice and the unseemliness of two courts vying simultaneously for control of the same property.” *Scarabin*, 966 F.2d at 994.

Without question, the United States District Court for the Northern District of Texas assumed “exclusive jurisdiction and possession” of the \$2,000,000.00 in account number M03-002704 on January 20, 2006, when it issued its Order Appointing Receiver. *Order Appointing Receiver* [Dkt. No. 84] at ¶ 1 (3:05-CV-1328). Once this Court had *in rem* jurisdiction over the \$2,000,000.00, the United States District Court for the Central District of California could not issue a seizure warrant or initiate a civil forfeiture action against it. *See in re Seizure of Approx. 28 Grams of Marijuana*, 278 F. Supp. 2d 1097, 1107-09 (N.D. Cal. 2003) (once another court has *in rem* jurisdiction, “issuance of a seizure warrant is no less forbidden than commencement of a forfeiture action”).

The United States Attorney’s office initiated the second *in rem* action only after this Court asserted exclusive jurisdiction over Lancorp’s assets in the Order Appointing Receiver. Therefore, under the “first in time” rule, the United States District court for the Northern District of Texas has exclusive jurisdiction over those assets and the sole right to determine ownership and possession of them. *See Penn Gen. Casualty Co.*, 294 U.S. at 197 (when a district court asserts *in rem* jurisdiction first, “it alone can rightfully assert control over the property and proceed with litigation which affects that control”). Accordingly, the California forfeiture action cannot interfere with this Court’s jurisdiction and should be deemed only to address that portion of the funds not claimed by Lancorp. *Id.* at 198 (the second court asserting *in rem* jurisdiction may “make orders which do not conflict with the authority of the court having jurisdiction over the control and disposition of the property”); *United States v. Klein*, 303 U.S. 276, 282 (1938); *United States v. One Parcel of Property Located*

at *Lot 85*, 100 F.3d 740, 743 (10th Cir. 1996); *First Charter Land Corp. v. Fitzgerald*, 643 F.2d 1011, 1015 (4th Cir. 1981).

Without jurisdiction, the United States District Court for the Central District of California has no basis for retaining the \$884,371.23 claimed by the Lancorp Receivership Estate. The civil forfeiture action simply gives the government possession of those funds—not title or any permanent ownership interest. *United States v. 92 Buena Vista Avenue*, 507 U.S. 111, 124 (1993) (noting that “someone else owns the property” until the government obtains a judgment in its forfeiture case); *Counihan v. Allstate Ins. Co.*, 25 F.3d 109, 112 (2d Cir. 1994) (ruling that civil forfeiture statutes “cannot serve to transfer ownership of the property until there is a final judgment of forfeiture”); see also *In re Seizure of \$82,000*, 119 F.Supp.2d 1013, 1021 (W.D. Mo. 2000); *United States v. 500 Delaware Street*, 868 F. Supp. 513, 518 n. 2 (W.D.N.Y. 1994). Rather, the United States District Court for the Northern District of Texas has the exclusive right to determine title and ownership of those funds. See *Order Appointing Receiver* [Dkt. No. 84] (3:05-CV-1328) at ¶ 5. This Court should, therefore, order the IRS to immediately release custody of the remaining \$884,371.23 to the Receiver in these proceedings.

3. Not Releasing \$884,371.23 to the Receiver Will Unreasonably Prolong these Receivership Proceedings.

If the IRS does not release the \$884,371.23 claimed by the Lancorp Receivership Estate, it will unreasonably prolong these receivership proceedings. On August 21, 2006, the United States District Court for the Central District of California entered an Order to stay its civil forfeiture case indefinitely pending a federal criminal investigation. *Order* [Dkt. No. 21] (2:06-CV-1971). To date, that stay remains in effect and will likely do so for the foreseeable future. See *Plaintiff's First Report*

Regarding Status of Ongoing Criminal Investigation [Dkt. No. 24] (2:06-CV-1971). In the Receiver's experience, it is also likely that the stay will remain in effect until after the U.S. Attorney's office issues its indictment and concludes the criminal trial. See 18 U.S.C. §981(g) (providing for a stay of the civil forfeiture action pending "prosecution of a related criminal case").

If this Court does not order the IRS to release the \$884,371.23 at issue, then the Receiver will have to wait until the criminal investigation concludes before he can assert Lancorp's right to those assets. Obviously, the California criminal investigation could take months, if not years, to complete, which would needlessly waste the time and resources of both this Court and the Receivership Estate. Therefore, in the interest of bringing these receivership proceedings to a timely conclusion, this Court ought to exercise its exclusive jurisdiction over the \$884,371.23 at issue and order the IRS to release those funds plus any accumulated interest to the Receiver.

IV. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests as follows:

- (1) that this Court set a date to hear this motion;
- (2) that this Court direct counsel for the Plaintiff in *United States v. \$2,457,472.07, et al.*, Cause No. 2:06-CV-1971 (C.D. Cal.) to attend the hearing;
- (3) that, following the hearing, this Court enter an Order exercising its exclusive jurisdiction over \$884,371.23 currently held by the Internal Revenue Service and directing it to release that amount to the Receiver in this case along with any accumulated interest. The Receiver also seeks such other and further relief, general or special, at law or in equity, to which he might show himself otherwise entitled.

Respectfully submitted,

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF CONFERENCE

Pursuant to Local Civil Rule 7.1, I participated in a telephone conference with Monica Tait of the United States Attorney's office for the Central District of California on June 5, 2007. It was determined that the United States Attorney's office takes no position on the requested relief at this time.

/s/ Brent J. Rodine

CERTIFICATE OF SERVICE

On June 7, 2007, a true and correct copy of this motion was served on all interested parties through the Court's electronic filing system and by U.S. Mail, first-class postage prepaid, to:

Monica E. Tait
Assistant U.S. Attorney
Asset Forfeiture Division
312 North Spring Street, 14th Floor
Los Angeles, California 90012

/s/ Brent J. Rodine