

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

In re: SENTINEL TRUST CO. )  
 ) No. 4781  
 )  
 KEVIN P. LAVENDER, In his official )  
 capacity as Commissioner-In- )  
 Possession of Sentinel Trust Company )  
 and Receivership Management, Inc., )  
 Received of Sentinel Trust, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4980  
 )  
 DANNY N. BATES, et al., )  
 )  
 Defendant. )  
 )

**SUPPLEMENT TO SENTINEL TRUST RECEIVER'S SEPTEMBER 9, 2009  
STATUS REPORT AND REQUEST FOR STATUS CONFERENCE**

On September 9, 2009, the Sentinel Trust Receiver ("Receiver") filed its Status Report and Request for Status Conference ("September 9<sup>th</sup> Status Report").<sup>1</sup> On September 10, 2009, the Court signed an Order ("September 10<sup>th</sup> Order") requiring the Receiver to supply, within ten (10) days, further information relating to three specific areas of inquiry. This Supplement addresses those further requests of the Court.

**a) Bates Criminal Restitution Order of \$600,000**

Attached as Exhibit A to this Supplement are the criminal judgment and restitution orders for the two counts of theft upon which Bates was found guilty. The victim is identified as "Commissioner Greg Gonzales as Commissioner-in-Possession of Sentinel Trust Co." There is no information set forth in the criminal judgment relating to the timing of payment or the scheduling of payment of the restitution amount. Review of

<sup>1</sup> That filing was made pursuant to the Court's August 11, 2009 Order.

the transcript of the restitution hearing (copy attached as Exhibit B<sup>2</sup>) does not provide guidance as to the scheduling or timing of payments, nor has undersigned counsel's contact with the state probation officer or state prosecutor been of assistance on that point.

The Court noted in its September 10<sup>th</sup> Order that a restitution order can be converted to a civil judgment under T.C.A. §40-35-304(h). The Receiver agrees, but there is a question, at least in this case, as to when that transformation from criminal restitution to civil judgment can properly occur. T.C.A. §40-35-304(h)(1) states as follows:

Notwithstanding the provisions of any law to the contrary, upon expiration of the time of payment or the payment schedule imposed pursuant to subsection (c) or (g),<sup>3</sup> if any portion of restitution remains unpaid, then the victim . . . may convert the unpaid balance into a civil judgment. . . .

Id. (emphasis added). T.C.A. §40-35-304(c) states as follows:

The court shall specify at the time of the sentencing hearing the amount and time of payment or other restitution to the victim and may permit payment or performance in installments. The court may not establish a payment or performance schedule extending beyond the statutory maximum term of probation supervision that could have been imposed for the offense.

Under subsection (h)(1), a restitution order cannot be converted into a civil judgment until the time for payment, or the schedule set forth for payment by the sentencing court, has been disregarded or has passed. Here, of course, the criminal judgment and restitution orders -- by stating nothing in the "Per Month" area of the form (see Exhibit

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<sup>2</sup> The exhibits to the restitution hearing have been requested, but not yet received. So as to reduce copying charges, a copy of Exhibit B is included only as to the original filed with the Clerk & Master's Office, a copy to Judge Kurtz's chambers and a copy to Mr. Bates' counsel.

<sup>3</sup> T.C.A. §40-35-304(g), the Receiver asserts, is not applicable (i.e., to the Receiver's understanding restitution was not ordered pursuant to T.C.A. §40-35-104(c)(2)), or otherwise does not add to an analysis under T.C.A. §40-35-304(c).

A) -- set forth no schedule for payment. Therefore, it would appear that either 1) the restitution amount of \$600,000 is owed now, and, thus, can be converted to a civil judgment if not paid now, or 2) the restitution amount of \$600,000 is to be paid whenever Bates has the ability to pay it (or portions of it) over the term of his eight year probation, and, thus, conversion to a civil judgment would have to await the expiration of the eight year probation sentence. Thus, while the Court notes that T.C.A. §40-35-304(h) is available, it is likely that the ability to convert an unpaid restitution amount to a civil judgment is eight years in the future. That would, in turn, necessitate that the Sentinel Trust Receivership proceedings remain open for that length of time.

The Sentinel Trust Receiver is convinced, however, that Mr. Bates, in substance, if not form, has the ability to pay the \$600,000 restitution amount because of the debt-free multi-million dollar residence in which he and his wife live. One of the theft counts (Count 3) for which Mr. Bates was found guilty -- and for which \$600,000 in restitution has been ordered -- involved his theft of well over a \$1.6 million to build and furnish that house. Less than one month before the May 2004 institution of the Sentinel Trust Company receivership, Mr. Bates (who at the time was the sole titled owner of the land and house) quitclaimed all of it to his wife, June Bates, for \$10.00. See Exhibit C. The Lavender v. Bates action attacks this transfer as fraudulent and sues Mr. Bates and his wife for conversion, unjust enrichment and fraudulent transfer, amongst other matters. If through the efforts of Lavender v. Bates (e.g., the summary judgment motions referenced in the Receiver's September 9<sup>th</sup> Status Report), title to the house can be placed back into Mr. Bates' name, then it is believed that the criminal restitution amount (or at least the majority of it) can be collected as against the house, and then a determination could be

made as whether to request that the restitution amount be modified to the amount then collected, because, at that point, Bates likely would be without material assets.

**b) Judgment in Lavender v. Bates Can be Collected**

Based on information known to the Receiver, a judgment against Defendant Danny Bates, and/or Defendant June Bates in the Lavender v. Bates case, could be collected to the extent of the value of the Lewis County residence. The house was built at a cost of over \$1.6 million. As noted earlier, it is debt-free. What it is worth now or would sell for is unknown to the Receiver, but in good faith, the Receiver would expect the value of the house, and the tract of land upon which it sits, would be at or around \$600,000.

The Receiver is aware of properties in Lewis and/or Hickman Counties titled either in Danny Bates' name or in the name of a shell company (Sentinel Services Corporation) or a shell family trust (Bates Family Trust) wholly owned and/or controlled by Bates. See Exhibits D and E for Quitclaim Deeds dated after the institution of the Sentinel Trust Receivership and Exhibit B at pp. 14-19. To the Receiver's understanding, these properties, while pledged currently as collateral to other debt, could nevertheless be available regarding a judgment in the Lavender v. Bates case against Mr. Bates or Defendant Sentinel Services Corporation. The Receiver has not had appraisals conducted on these tracts, but, in good faith, does not expect the unencumbered value of all of the tracts to exceed \$50,000.00.

The Receiver is aware that Defendant Clifton Todd Bates owns property and assets that could be pursued to satisfy a judgment -- e.g., his house at 312 Baston Cemetery Road, Hohenwald, Lewis County, Tennessee, as well as other real estate held in his name (see Exhibit F for Quitclaim Deed dated after the institution of the Sentinel

Trust Receivership) and an interest in a timber cutting business and property owned by that business. Moreover, Ms. Bates is titled owner of property other than that upon which the multi-million dollar home is built (see Exhibit G for Quitclaim Deed dated after the institution of Sentinel Trust Receivership). These properties could provide funds to collect upon regarding judgments against Clifton Todd Bates and Ms. Bates in the Lavender v. Bates action.

The Receiver concedes that Defendant Gary L. O'Brien and Defendant Howard H. Cochran (to the extent they would not be dismissed from the Lavender v. Bates action) are likely not to have material assets to pay any judgment obtained against them in the Lavender v. Bates action.

**c) Cost-Benefit Analysis of Continuing Lavender v. Bates Action**

Before addressing the cost-benefit analysis requested by the Court in its September 10<sup>th</sup> Order, the Receiver (in concert with the Commissioner-in-Possession) wants to make one matter perfectly clear. On behalf of the Sentinel Trust Receivership, the Commissioner-in-Possession will receive the criminal restitution payments and the Commissioner-in-Possession will receive payments on judgments obtained in the Lavender v. Bates case. Because the most significant asset at issue is the Bates residence, most, if not all, of the "benefit" in pursuing the Lavender v. Bates action goes away if the Bates residence is made available to address the criminal restitution order. Candidly, this is why the Receiver, in the September 9<sup>th</sup> Status Report, requested a status conference be held to discuss whether agreement can be made in relation to the Bates (and whomever else is involved) giving up the house and attendant properties as part of a global settlement of both the Lavender v. Bates case and the restitution obligation. Such would

seem to make sense in relation to a house built and furnished with what has been undisputedly determined as funds stolen by Mr. Bates.

Accordingly, the most favorable cost-benefit result for the Sentinel Trust Receivership Estate -- and one that the Receiver and Commissioner-in-Possession would seek this Court's aid in exploring at a status conference -- is the global settlement of the restitution order and Lavender v. Bates action. Such would not cost the Sentinel Trust Receivership Estate a significant amount and would result in the Estate receiving \$600,000, or more, dependent upon what the house and attendant properties were worth.

In its September 10<sup>th</sup> Order, the Court requested a "detailed cost-benefit analysis (to include attorney's fees) as to whether continuing Lavender v. Bates will be of benefit to Sentinel Trust Company." As to the "benefit" side of the equation, there is the Bates residence and furnishings built and/or purchased with money stolen by Bates and there is the equity in the properties held by the Bates, Sentinel Services Corporation and/or the Bates Family Trust. In good faith, the Receiver would estimate, for purposes of this analysis, that these assets would be worth at least \$600,000.

The "cost" side of the equation is dependent upon at what point judgment would be obtained in the Lavender v. Bates matter. As noted in the Receiver's September 9<sup>th</sup> Status Report, summary judgment motions as to various claims such as conversion (Mr. and Ms. Bates), breach of common law fiduciary duties (Mr. Bates and Clifton Todd Bates) and unjust enrichment (Ms. Bates) can be made now. The Receiver, in good faith, sets forth the following costs<sup>4</sup> expected in relation to immediately and affirmatively moving for summary judgment on these claims:

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<sup>4</sup> Since the beginning of the Sentinel Trust Receivership, and by virtue of Order of Court entered on June 30, 2004 (copy attached as Exhibit H), the detailed billing information regarding fees and expenses has

Attorneys' Fees and Expenses

Review Materials Relating to Factual Development Supporting MSJ	20 hours
Drafting and Finalization of Motion, Memo and Statement of Undisputed Facts	40 hours
Review Response and Draft and Finalize Reply	15 hours
Prepare for and Argue Motion	5 hours
Draft Appellate Brief and Prepare and Argue Appeal	20 hours
Judgment Execution Efforts	20 hours
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	120 hours (@\$25,000)
Out of Pocket Expenses:	\$1,000

Receiver Fees and Expenses

Involvement in MSJ Process	@\$4,000
Review and Consultation Re: Same	
	<hr/>
Total:	\$30,000

Therefore, if successful at obtaining summary judgment -- in particular as against Mr. and Ms. Bates -- the cost-benefit analysis would yield (based on the good faith positions taken herein) a \$30,000 cost vs. at least a \$600,000 benefit.<sup>5</sup> Respectfully, given the criminal conviction of Mr. Bates (and the preclusive effect such has on various matters

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been filed under seal so as to protect against disclosure of confidential, protected information (e.g., attorney work product/mental impression set forth in detailed billing descriptions). The Court's September 10<sup>th</sup> Order requested a detailed cost-benefit analysis. To the extent that the Court desires further break down of the costs set forth herein, the Receiver and Commissioner-in-Possession stand ready to do so, but would respectfully request that such be submitted to the Court under seal consistent with the Court's June 30, 2004 Order.

<sup>5</sup> This analysis does not include the cost of responding to and defeating any motion for summary judgment pursued by any of the defendants in the Lavender v. Bates matter.

flowing therefrom) and given the factual findings in In re: Sentinel Trust Company, 206 S.W.3d 501 (Tenn. Ct. App. 2005), the Receiver and Commissioner-in-Possession assert that a “likelihood of winning/risk of losing” analysis weighs decidedly in their favor.

If, however, summary judgment sufficient to execute as against the Bates residence is not obtained, then the “costs” would include pursuit of the Lavender v. Bates matter to trial. In addition to the motion for summary judgment amount noted above,<sup>6</sup> the Receiver would, in good faith, expect the following additional fees and expenses:

Attorneys’ Fees and Expenses

Additional Discovery/Motions to Compel	40 hours
Depositions	80 hours
Pre-Trial Briefing/Jury Instructions/ Motions in Limine	40 hours
Depositions for Proof	40 hours
All Miscellaneous Pre-Trial Matters	80 hours
Trial	50 hours
Post-Trial Motions	30 hours
Appeal	40 hours
	400 hours (@\$85,000)
Out of Pocket Expenses	\$15,000

Receiver Fees and Expenses

Involvement in All Matters re: PreTrial/ Trial/Post-Trial Efforts	@\$25,000
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<sup>6</sup> The \$30,000 MSJ estimated amount would be reduced to approximately \$25,000 because there would likely not be any cost of appeal vis-à-vis the summary judgment decision if the matter proceeded to trial.

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@\$125,000  
25,000  
(MSJ estimate --  
see fn. 5)

Total: 

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\$150,000

Therefore, if this matter was prosecuted through trial and appeals, the cost-benefit analysis would yield (based on the good faith positions taken herein) a \$150,000 cost vs. at least a \$600,000 benefit.<sup>7</sup>

**d) Renewal of Request for Status Conference**

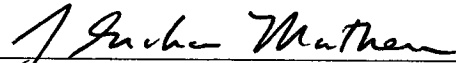
The Receiver and the Commissioner-in-Possession renew their request that a status conference in this matter be set at the earliest time available to the Court. And the Receiver and Commissioner-in-Possession would request that the focus of that status conference be the exploration of global resolution of the Lavender v. Bates case and criminal restitution order. If good faith exploration yields reaction that mediation or a settlement conference would be constructive, the Receiver and Commissioner-in-Possession would request that the Court order such. If not, the parties should come to the requested status conference prepared to set deadlines for matters relating to the Lavender v. Bates action, including a time frame for the immediate filing of motions for summary judgment.

Undersigned counsel has presented this Supplement to counsel for the Commissioner-in-Possession and has been provided permission to state that the Commissioner-in-Possession supports all matters set forth herein.

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<sup>7</sup> Again, and respectfully, given the criminal conviction of Mr. Bates and the preclusive effect such has on numerous matters and given the factual findings in In re: Sentinel Trust Company, 206 S.W.3d 501 (Tenn. Ct. App. 2005), the Receiver and Commissioner-In-Possession are confident that a “likelihood of winning/risk of losing” analysis weighs decidedly in their favor.

Respectfully submitted,



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J. Graham Matherne, BPR 11294

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail and via Federal Express as noted, on this the 17<sup>th</sup> day of September, 2009.

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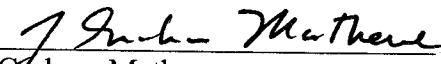
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