

I. Inspection of the Dover Drive Residence Is Fully Authorized

A. Ms. Cook Has Conceded to the Inspection

Ms. Cook has conceded to the Receiver's right to inspect the Dover Drive residence. She has asked that the search not be "limitless"; specifically, she only asks that the inspection take place at a mutually convenient time and that she and a representative be allowed to attend. (SEC v. Cook et al., 09-cv-3333, Gina Cook Resp. Br., Docket 173, at 3).

Time is of the essence in this matter because Ms. Cook has been shown to be in possession of, and disposing of, Receivership assets, despite having been served with this Court's Orders requiring her to turn over all such assets to the Receiver. (See Ostrom Decl., ¶¶ 5-7, 20-30, 32, 35, 37-38). Moreover, Ms. Cook has not responded to a subpoena served on her by the Receiver on December 10, 2010. (Ostrom Decl., ¶ 5). The hearing on this matter is set for Thursday, January 28, 2010, at 10 a.m. The Receiver does not object to Ms. Cook or her representative being present, however the Receiver respectfully requests that he be allowed to conduct his inspection of the Dover Drive residence after the hearing.

B. The Dover Drive Residence is An Asset of the Receivership

Mr. Cook has submitted a brief in opposition to the Receivers' request to inspect the Dover Drive residence. Mr. Cook has no basis for his objection.

The Dover Drive residence is an asset of the Receivership Estate. (See Ostrom Decl., ¶¶ 20-25). The Receiver has not yet moved to seize the home

because he is cognizant that Ms. Cook, who is not presently named as a Defendant or Relief Defendant in the SEC or CFTC actions, is living there.

The allowance of Ms. Cook to remain in the home for the present time does not in any way diminish the Receiver's right to seize the Dover Drive residence and any of its contents that are Receivership assets. Nor does this allowance in any way diminish the Receiver's right to fully inspect that premises. Indeed, the Receiver has been ordered by this Court to identify, collect, and preserve assets of the Receivership. It is uncontroverted that the Dover Drive residence contains assets of the Receivership. (See SEC v. Cook et al., 09-cv-3333, Mem. Op. & Order, Docket 167, at 28-29; CFTC v. Cook et al., 09-cv-3332, Mem. Op. & Order, Docket 178, at 28-29; Ostrom Decl., ¶¶ 6-10; 12-14, 16-17, 26-27, 29-32). An inspection of the Dover Drive residence is required for the Receiver to fulfill his duties and obligations to the Court.

C. Even If It Were Not An Asset of the Receivership, Ms. Cook, This Court's Orders, and Federal Rule of Civil Procedure 45 Allow for the Inspection of the Dover Drive Residence

Even if the Dover Drive residence were not an asset of the Receivership, which is assumed only for purposes of this argument, there are several reasons why Mr. Cook's objection is untenable.

First, Ms. Cook has conceded that the Receiver has the right to inspect the Dover Drive residence. Although the Receiver does not believe Mr. Cook has any viable Fourth Amendment objection to a search of the Dover Drive residence

given that this is a civil case and that the inspection is fully authorized in civil cases by the Federal Rules of Civil Procedure, see infra, Ms. Cook's concession would prevail. Cf. e.g., Ill. v. Rodriguez, 497 U.S. 177, 179 (1990); United States v. Almeida-Perez, 549 F.3d 1162, 1170-71 (8th Cir. 2008); cf. Downeast Ventures, Ltd. v. Washington County, 2007 U.S. Dist. LEXIS 43461, * 33 (D. Me. June 13, 2007) ("That order empowered the Receiver not only to take possession, but also to require third parties to turn over collateral into the Receiver's possession. In the face of such authority, I find no merit in Downeast's position that the County Defendants violated its Fourth Amendment rights when they assisted the Receiver's efforts to enter onto the land of third parties and prevented others from interfering with the Receiver's exercise of authority.").

Second, this Court's Orders provide the Receiver with the authority to inspect the Dover Drive premises. The Court's Second Amended Order Appointing Receiver and the Order Continuing Appointment of the Temporary Receiver, specifically provide the Receiver with the authority to conduct discovery and issue subpoenas in furtherance of the identification, preservation, collection and liquidation of the Receiver Estates. (See SEC v. Cook et al., 09-cv-3333, Second Amended Order Continuing Appointment of Receiver, Docket 68, Pt. I.H; CFTC v. Cook et al., 09-cv-3332, Order Continuing Appointment of the Temporary Receiver, Docket 96, Pt. I.H.).

Third, as noted above, the Federal Rules of Civil Procedure specifically allow for the Receiver to inspect the Dover Drive residence. Federal Rule of Civil Procedure 45 states that a command to permit an inspection may be set out in a subpoena. Fed. R. Civ. P. 45(a)(1)(c). Indeed, the District of Minnesota even makes a form available to the public for “Subpoena to Produce Documents, Information or Objects, or to permit Inspection of Premises.” See http://www.mnd.uscourts.gov/FORMS/court_forms.shtml#civilforms. In addition, Federal Rule of Civil Procedure 34 provides for a request “to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.” Fed. R. Civ. P. 34(a)(2).

II. Ms. Cook’s Argument as to the Lexus Is Moot—And Unfounded

In her response brief, Ms. Cook submits attorney argument about one of the vehicles that is the subject of the Receiver’s motion: the Lexus SUV. Ms. Cook acknowledges receipt of the Court’s January 25, 2010 Order. Among other things, that Order requires the Lexus SUV to be surrendered to the Receiver. Any objection to the Receiver’s request for this vehicle is moot in view of the Court’s January 25, 2010 Order.

Ms. Cook also states that she “believes she can demonstrate a connection between that vehicle and untainted assets.” This is at odds with her testimony at

the January 12, 2010 hearing, where she invoked the 5th Amendment and refused to answer questions about when Trevor Cook gave her the Lexus SUV, whether she know what method was used to purchase the car, and how much was paid for the car. (Jan. 12, 2010 Hrg. Tr. at 186-87).

Ms. Cook apparently no longer invokes the 5th Amendment on these points, yet submits no proof whatsoever in support of her argument that the vehicle is not connected to Receivership assets. In fact, what Ms. Cook has submitted to the Court is sworn testimony that Trevor Cook “*gave*” the Lexus SUV to her. (Id. (emphasis added)). In response to the present motion, she reiterates this point that “the 2005 Lexus was *given to her*” by Mr. Cook. (SEC v. Cook et al., 09-cv-3333).

In addition to Ms. Cook’s admissions on this point, the Receiver has submitted uncontroverted evidence showing that the 2005 Lexus was purchased with Receivership assets. Even if there were evidence to support the attorney argument submitted in Ms. Cook’s brief suggesting a link to “untainted” assets, it would not constitute a valid objection to seizure of the vehicle. Ms. Cook admits that her earlier-owned vehicle was sold by Trevor Cook and used by him to purchase another Lexus. (SEC v. Cook et al., 09-cv-3333, Gina Cook Resp. Br., Docket 173, at 2 (emphasis added)). Once commingled, the assets were tainted. See SEC v. Byers, 2009 U.S. Dist. LEXIS 63741, at *10 (S.D.N.Y. July 23, 2009); SEC v. Lauer, 2009 U.S. Dist. LEXIS 23510, at **14-15 (S.D. Fla. March 25,

2009) (the presence of some funds tainted by securities fraud is sufficient to taint all funds in that account) (citations omitted); SEC v. Better Life Club of Am., Inc., 995 F. Supp. 167, 181 (D.D.C. 1998) aff'd 203 F.3d 53 (D.C. Cir. 2000); SEC v. Great Lakes Equities Co., 775 F. Supp. 211, 214 (E.D. Mich. 1991), aff'd 12 F.3d 214 (6th Cir. 1993).

The 2005 Lexus is property of the Receivership and the Receiver respectfully requests that Ms. Cook be ordered to turn that vehicle over to the Receiver immediately.

Respectfully submitted,

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