

Cause No. 2015-33079

POST OAK BANK, N.A.,

Plaintiff,

v.

SUPEROX HOLDINGS, LLC, and  
TODD D. GRAHAM,

Defendants.

§ IN THE 113<sup>th</sup> DISTRICT COURT

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§

§ IN AND FOR

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§ HARRIS COUNTY, TEXAS

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## RECEIVER'S FIRST BENCH BRIEF

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TO THE HONORABLE COURT:

***Relief Requested.*** Your Receiver, Seth Kretzer, respectfully presents this Bench Brief, explaining the issues and applicable law.

<b><i>Aspect</i></b>	<b><i>Party</i></b>	<b><i>Relationship</i></b>	<b><i>Attorney</i></b>
<b>Parties</b>	Post Oak Bank, NA	<i>Plaintiff and Judgment Creditor</i>	Mr. Robert Kruckemeyer, Houston
	Mr. Todd D. Graham	<i>Defendant and Judgment Debtor</i>	Mr. Manfred Sternberg, Houston
	Mr. Seth Kretzer	<i>Receiver</i>	
<b>Type of case</b>	Receivership		
<b>Discovery</b>	Contested. Mr. Graham refuses to comply with the Court's discovery requirements in the turnover order.		
<b>Depositions</b>	None. Receiver will seek to depose Mr. Graham.		
<b>Mediation</b>	Not applicable		
<b>Hearings</b>	April 29		
<b>Trial</b>	Not applicable		

**I**  
**WHAT IS THIS CASE ABOUT?**

This is a receivership case. This Court rendered final judgment against Todd Graham, a Houston investor and businessman. Graham did not appeal, because he signed a profitable forbearance agreement that shaved hundreds of thousands of dollars off his judgment. But Graham still refuses to use his wealth to pay any of this reduced judgment.

Graham has ample money to pay at least some of the judgment. This Court appointed a Receiver. Under Texas law a receiver works only for the judge, not the parties. Your Receiver is trying to seize non-exempt assets from Graham. Graham and his wife, Traci Graham, have created a nest of shell companies to hide his money. He claims your Receiver should not be able to seize the money nested in his shell companies. But Texas law does not allow defendants to hide money in shell companies. All of the companies and their assets are non-exempt and therefore belong to your Receiver. Your Receiver will shortly sue the wife for conspiracy and fraudulent transfers.

Today your Receiver needs: (1) orders allowing banks to turn over money and records; (2) the Court to compel Graham to turn over his financial records; (3) the Court to force Graham to answer asset questions on the stand; (4) an order compelling a date for Graham's deposition by your Receiver.

## **II**

### **HOW DID WE GET TO THE UNDERLYING JUDGMENT?**

Post Oak Bank sued Todd Graham and one of his companies when they defaulted on a loan agreement. The Court rendered summary judgment for the Bank January 15, 2016 for \$600,788.89. The Bank agreed to a reduced judgment of \$125,000 for Todd Graham and \$174,000 for his company SuperOx. When Graham refused to pay the judgment, this Court appointed your Receiver May 24, 2018. Mr. Graham still refuses to turn over a single document ordered by the Court. He still refuses to pay a cent to the judgment. He claims all his money is protected by his nest of shell companies.

## **III**

### **MR. GRAHAM AND HIS WIFE HAVE BEEN SPENDING MONEY ON EXPENSIVE ASSETS SINCE THE JUDGEMENT**

Mr. Graham has money to pay the judgment. Since the Court's 2016 judgment, he and his wife have purchased and sold expensive assets:

- In July 2017 the couple purchased a 3,134 square foot house at 1517 Cunningham Park in Houston, appraised for tax purposes at \$752,000. They paid a \$100,000 down payment and obtained a \$650,000 mortgage.
- In August 2018 the couple leased a new 2018 Toyota RAV4. In April 2017 they also leased a 2017 Lexus RX and also owned or leased a 2015 Lexus RX, which they may have traded in for the Toyota. They pay \$1,400 per month in lease payments for these luxury cars.

In August 2014 the couple purchased a \$1.6 million, 9,360 square foot mansion at 8802 Burkhart Road, Houston. In 2003, the couple purchased a \$1.1 million, 12,480 square foot mansion at 914 Magdalene Drive, Houston.

In 2016 Mr. Graham reported that SuperOx held \$276,000 of equipment and four patents. There is \$250,000 of missing cash that existed in 2017 in one of the shell companies but has now disappeared.

#### **IV**

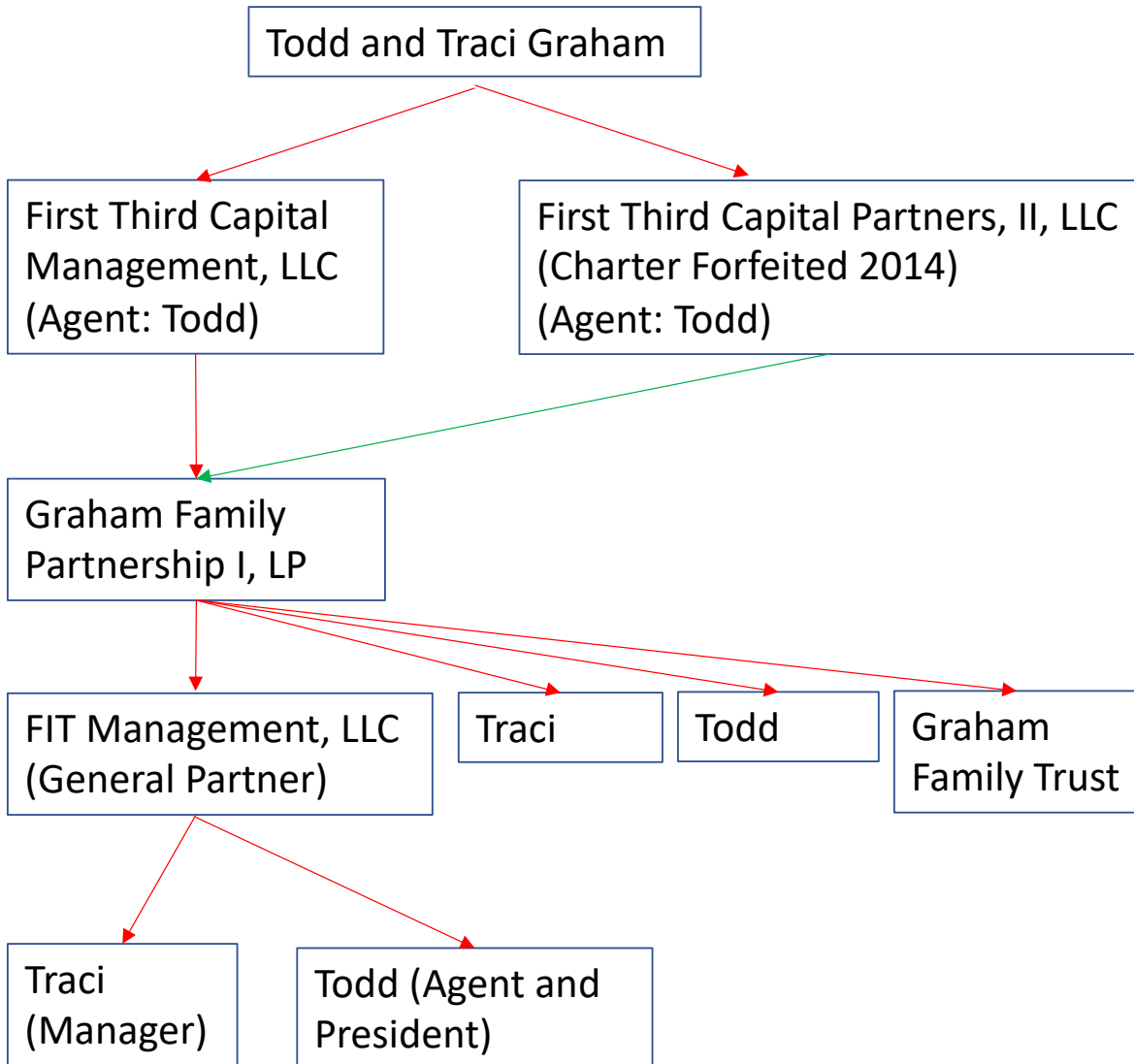
#### **WHAT DOES YOUR RECEIVER NEED TODAY?**

Here is what your Receiver needs today:

- Order Todd Graham to testify today and answer questions about his financial holdings, accounts, and activities, and documents.
- Sign three turnover orders to permit the cooperating banks to release records and funds to your Receiver. Your Receiver will hold this money until future court hearings.
- Order Todd Graham held in contempt and put in jail immediately until he delivers the 16 categories of financial records to your Receiver's offices. Graham was ordered by this Court to deliver these records a year ago but defies this Court. The Court should order him to pay \$10,000 as sanctions.

V  
HOW DO TRACI AND TODD GRAHAM HIDE THEIR MONEY?

The couple has created a crude and easily traced nest of shell companies that serve no purpose but to hide their money. Here is a diagram:



For example, the Graham Family Partnership I, LP's account at Fidelity Investments contained \$218,569.40 on January 30, 2017, having received \$242,771.01:



Envelope # BCPLJMBBCBZGW

GRAHAM FAMILY PARTNERSHIP I LP  
8802 BURKHART RD  
HOUSTON TX 77055-6614

INVESTMENT REPORT  
January 1, 2017 - January 31, 2017

Fidelity Account GRAHAM FAMILY PARTNERSHIP I LP A  
PARTNERSHIP FIT MANAGEMENT LLC PARTNER  
► Account Number: Z73-553190

**Your Account Value: \$218,569.40**

Change from Last Period: ▲ \$217,788.68

	This Period	Year-to-Date
<b>Beginning Account Value</b>	<b>\$780.72</b>	<b>\$780.72</b>
Additions	242,771.01	242,771.01
Subtractions	-25,000.00	-25,000.00
Change in Investment Value *	17.67	17.67
<b>Ending Account Value **</b>	<b>\$218,569.40</b>	<b>\$218,569.40</b>
Accrued Interest (AI)	0.00	
Ending Account Value Incl. AI	\$218,569.40	

But over the next twelve months the Grahams transferred the cash elsewhere, until one year later the balance was \$24,431.10:



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GRAHAM FAMILY PARTNERSHIP I LP  
1517 CUNNINGHAM PARK LN  
HOUSTON TX 77055-1265

INVESTMENT REPORT  
January 1, 2018 - January 31, 2018

Fidelity Account GRAHAM FAMILY PARTNERSHIP I LP A  
PARTNERSHIP FIT MANAGEMENT LLC PARTNER  
► Account Number: Z73-553190

**Your Account Value: \$24,431.10**

Change from Last Period: ▼ \$7,691.46

	This Period	Year-to-Date
<b>Beginning Account Value</b>	<b>\$32,122.56</b>	<b>\$32,122.56</b>
Subtractions	-7,715.58	-7,715.58
Change in Investment Value *	24.12	24.12
<b>Ending Account Value **</b>	<b>\$24,431.10</b>	<b>\$24,431.10</b>
Accrued Interest (AI)	0.00	
Ending Account Value Incl. AI	\$24,431.10	

But even this money is gone. By January 31, 2019, the balance was only \$69.80:



INVESTMENT REPORT  
January 1, 2019 - January 31, 2019

Fidelity Account GRAHAM FAMILY PARTNERSHIP I LP A  
PARTNERSHIP FIT MANAGEMENT LLC PARTNER  
▶ Account Number: Z73-553190

Envelope # BGQBDPBBBCXGF

GRAHAM FAMILY PARTNERSHIP I LP  
1517 CUNNINGHAM PARK LN  
HOUSTON TX 77055-1265

**Your Account Value: \$69.80**

Change from Last Period: ▼ \$2,022.51

	This Period	Year-to-Date
<b>Beginning Account Value</b>	<b>\$2,092.31</b>	<b>\$2,092.31</b>
Subtractions	-2,025.00	-2,025.00
Change in Investment Value *	2.49	2.49
<b>Ending Account Value **</b>	<b>\$69.80</b>	<b>\$69.80</b>

Your Receiver needs to know where Mr. Graham transferred this \$242,771.01. It belongs to the receivership.

## VI DO TRACI AND TODD GRAHAM HAVE OTHER SHELL COMPANIES?

Yes. Todd Graham has created many shell companies. The Secretary of State revoked most of the charters because Graham did not pay required taxes or file returns.

Shell Company	Owner / Manager	Comments
Mesa Wine LLC	Todd Graham	Charter forfeited
Stonegate Capital, L.L.C.	Todd Graham	Charter forfeited
Loucal Partners, L.L.C.	Todd Graham	Charter forfeited
Saragossa Wine Group, L.L.C.	Todd Graham	Voluntarily dissolved
Eclipse Beverage Group, L.L.C.	Todd Graham	Charter forfeited
Vector Capital, L.L.C.	Todd Graham	Charter forfeited
Lone Star Brewing Company	Todd Graham (agent)	Charter forfeited
Ste. Genevieve Wine Company, L.L.C.	Todd Graham	Charter forfeited
Eclipse Distribution Services, L.P.	Todd Graham (agent)	Charter forfeited
Sun Imports, L.P.	Todd Graham (agent)	Charter forfeited
Vinquor GP, LLC	Todd Graham	Charter forfeited

Shell Company	Owner / Manager	Comments
ReflecShield Technologies, LLC	Todd Graham (agent)	Charter forfeited
GreenLeap Technologies, LLC	Todd Graham (agent)	Charter forfeited
AquaSource Technology, LLC	Todd Graham (agent)	Charter forfeited
SuperOx Wastewater NA, LP	Todd Graham (agent)	Charter forfeited
du Ciel Designs, LLC	Traci Graham	In existence

**VII**  
**WHY DOES TEXAS FAVOR RECEIVERSHIPS?**

Texas has favored receiverships for more than 100 years. Under Texas law, the power of a receivership derives from the doctrine of *custodia legis*. Once a turnover order is signed all of the judgment debtor’s nonexempt property becomes property in *custodia legis*, or “in the custody of the law.” *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976). *Custodia Legis* occurs immediately upon the appointment of the receiver, even prior to his or her qualifying by filing the bond and oath of office. *Cline v. Cline*, 323 S.W.2d 276, 282 (Tex. Civ. App. – Houston 1959, writ ref’d, n.r.e.). The judgment debtor’s property is considered to be in the constructive possession of the court. **During the pendency of a receivership, the receiver has exclusive possession and custody of the judgment debtor’s property to which the receivership relates.** *First S. Props.*, 533 S.W.2d at 343; *Ellis v. Vernon Ice Co. & Water Co.*, 86 Tex. 109, S.W. 858 (1893). No one, not even a lien holder with a deed of trust, can sell property held *in custodia legis* by a duly appointed receiver. *First S. Props.* at 533 S.W.2d at 341; *Huffmeyer v. Mann*, 49 S.W.3d 554, 560 (Tex. Civ. App. – Corpus



Christi, 2001). **Any unauthorized transfer of property in the custody of a receiver is not merely voidable, it is void.** *First S. Props.*, 533 S.W.2d at 341. Any conveyance of property in the custody of a receiver without approval by the court has no effect upon the receivership and the accomplishment of its purposes. *T.H. Neelv. W.L. Fuller*, 557 S.W2d 73, 76 (Tex. 1977). Therefore, any payment of money after the turnover and receivership order was signed is void and can be called back by the receiver and enforced by contempt if necessary. *See Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991).

What this means is that your Receiver now has complete legal custody of all of Mr. Graham's non-exempt assets. That includes his nest of shell companies and their accounts.

### **VIII**

#### **WHAT STATUTES CONTROL RECEIVERSHIPS AND GIVE THE COURT AUTHORITY TO COMPEL TURNOVER OF ASSETS AND RECORDS?**

The Court's authority for this turnover request comes from two sources: (1) the general post-judgment turnover provision of Civil Practice and Remedies Code section 31.002, and (2) the remedies provision of the Uniform Fraudulent Transfer Act, Texas Business & Commerce Code, chapter 24. Here is the TCPRC provision:

Sec. 31.002. *Collection of Judgment Through Court Proceeding.*

- (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

(b) The court may:

(1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution;

(2) otherwise apply the property to the satisfaction of the judgment;  
or

(3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

(c) The court may enforce the order by contempt proceedings or by other appropriate means in the event of refusal or disobedience.

(d) The judgment creditor may move for the court's assistance under this section in the same proceeding in which the judgment is rendered or in an independent proceeding.

Tex. Civ. Prac. & Rem. Code § 31.002 (2017); *see generally Goggans v. Ford*, No. 05-15-00052-CV, 2016 Tex. App. LEXIS 4995 (App. May 11, 2016) (turnover of insurance rights).

Here is the TFTA act remedies provision:

Sec. 24.008. *Remedies Of Creditors.*

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 24.009 of this code, may obtain:

(1) ***avoidance of the transfer*** or obligation to the extent necessary to satisfy the creditor's claim;

(2) ***an attachment or other provisional remedy against the asset*** transferred or other property of the transferee in accordance with the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code relating to ancillary proceedings; or

- (3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
  - (A) an ***injunction against further disposition*** by the debtor or a transferee, or both, of the asset transferred or of other property;
  - (B) appointment of a ***receiver to take charge of the asset*** transferred or of other property of the transferee; or
  - (C) ***any other relief the circumstances may require.***
- (b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Tex. Bus. & Com. Code § 24.008 (2015) (emphases added).

The Texas turnover statute is a procedural device to assist judgment creditors in post-judgment collection. A judgment creditor is entitled to receive aid from a court in order to reach property to obtain satisfaction on a judgment “if the judgment debtor owns property . . . that: (1) cannot readily be attached or levied on by ordinary legal process; and (2) is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.” Tex. Civ. Prac. & Rem. Code § 31.002 (a) (2017). The statute empowers courts to order a judgment debtor to turn over nonexempt property that is in the debtor’s possession or subject to the debtor’s control, including present or future rights to property. *Id.* § 31.002 (b)(1). It also allows a court to appoint a receiver “with the authority to take possession of the nonexempt property, sell it and pay the proceeds to the judgment creditor to the extent to satisfy the judgment.” *Id.* § 31.002(b)(3). The trial court is not required to identify in the order the specific property subject to turnover. *Id.* § 31.002(h). In addition, the trial court may enforce

the turnover order by contempt proceedings. *Id.* § 31.002(c); *Davis v. West*, 317 S.W.3d 301, 309, 2009 Tex. App. LEXIS 9921, 14-15 (Tex. App. --- Houston [1st Dist.] 2009, pet. denied).

Under state law, a judgment creditor is not required to exhaust other remedies before seeking a receivership. See *In re Estate of Trevino*, 195 S.W.3d 223, 231 (Tex. App. --- San Antonio 2006, no pet.) (“A receiver appointed pursuant to § 64.001(a) and (b) . . . is not required to show that no other adequate remedy exists.”). Receivership may be the first, not the last, remedy. See *Universe Life Insurance Company v. Giles*, 982 S.W.2d 488 (Tex. App.—Texarkana 1998, pet. denied). *Hennigan v. Hennigan*, 666 S.W.2d 322, 323 (Tex. App.—Houston [14th Dist.] 1984, writ ref’d n.r.e.); *Childre v. Great Sw. Life Ins. Co.*, 700 S.W. 2d 284, 288 (Tex. App.—Dallas 1985, no writ). It is not necessary to show that a writ of execution has been returned *nulla bona*. *Childre*, 700 S.W. 2d at 288.

Receivership fees are costs of court. See *Lost Creek Ventures, LLC v. Pilgrim*, No. 01-15-00375-CV, 2016 Tex. App. LEXIS 6974, at \*23 (Tex. App. June 30, 2016, no pet). Generally, receivership fees are paid as a percentage of funds collected, usually 25% in state court, but also on a contingency hourly basis. *United States SEC v. Harris*, 2016 U.S. Dist. LEXIS 51708 (allocating funds recovered by receiver in bankruptcy case and paying fees).

No bond is required of the receiver. This is because the court has already adjudicated the claims and concluded that the debtor owes money. Therefore, the risk

that your Receiver might harm the debtor by seizing property is low. *See Schultz v. Cadle Company*, 825 S.W.2d 151 (Tex. App.--Dallas), *writ denied per curiam*, 852 S.W.2d 499 (Tex. 1993).

## XI

### WHAT IS THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT?

This is a classic Texas Uniform Fraudulent Transfer Act case. Your Receiver will easily be able to prove the elements of FTA and breach of corporate fiduciary duty. For cases just like this, the Legislature created a mechanism by which courts can freeze or order turnover of fraudulently transferred assets pending trial, through the Texas Uniform Fraudulent Transfer Act:

#### Sec. 24.008. *Remedies Of Creditors.*

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 24.009 of this code, may obtain:

(1) ***avoidance of the transfer*** or obligation to the extent necessary to satisfy the creditor's claim;

(2) ***an attachment or other provisional remedy against the asset transferred*** or other property of the transferee in accordance with the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code relating to ancillary proceedings; or

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(A) ***an injunction against further disposition*** by the debtor or a transferee, or both, of the asset transferred or of other property;

(B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(C) ***any other relief the circumstances may require.***

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Tex. Bus. & Comm. Code § 24.008(a)(3) (2015) (emphases added).

If the elements of the Texas Uniform Fraudulent Transfer Act (“TUFTA”) are satisfied, TUFTA allows for an injunction against further disposition of “the asset transferred or of other property.” Tex. Bus. & Comm. Code § 24.008(a)(3) (2015); *see Tele. Equip. Network, Inc. v. TA/Westchase Place, Ltd.*, 80 S.W.3d 601, 610 (Tex. App. — Houston [1st Dist.] 2002, no pet.); *accord Sargeant v. Al Saleh*, 512 S.W.3d 399 (Tex. App. — Corpus Christi 2016, mand. denied). The FTA expressly provides that the Court may grant a wide variety of monetary and injunctive/equitable relief, including the broad catch all of “any ***other relief the circumstances may require.***” Tex. Bus. & Comm. Code § 24.008(a)(3)(C) (2015).

FTA injunctions are not pre-judgment attachment but rather “the type of” remedy “the legislature contemplated.” *Tel. Equip. Network, Inc.*, 80 S.W.3d at 610. An injunction requiring the debtor to deposit all of its assets into an escrow account is within a trial court’s discretion. *Williams Indus., Inc. v. Fry’s Elecs., Inc.*, 2003 WL 21357441, at \*5–6 (Tex. App. — Houston [1st Dist.] June 12, 2003, no pet.).

For instance, the court in *Metra United Escalante, L.P. v. Lynd Co.*, 158 S.W.3d 535, 540, 544 (Tex. App. — San Antonio 2004, no pet.), enjoined the sale of one of the defendants’ apartment complexes, though it was not the fraudulently transferred asset,

ruling that it constituted “other property” under the FTA. 158 S.W.3d at 540. The court found that the complex’s management company would suffer irreparable harm if the complex owners were allowed “unfettered control of their assets.” *Id.*

**X**  
**WHY DOES MR. GRAHAM ASSERT THAT THE**  
**RECEIVER CANNOT TOUCH HIS SHELL COMPANIES?**

Mr. Graham claims that his shell companies are off limits because they are not in his name—they are held by his other shell companies and his wife, Traci. Further, the companies were created before Post Oak Bank loaned him money and the Bank knew about them.

These contentions go nowhere. It makes no difference that Mr. Graham created some of his shell companies before the Bank loaned money or that the Bank knew of them. What matters is that Mr. Graham *owns* the shell companies—therefore your Receiver owns them. Your Receiver now owns what Mr. Graham owns. Further, all of Mr. Graham’s transfers of cash in and out of these shell companies since 2015 most likely constitute *fraudulent transfers* which can be set aside. Finally, Traci Graham appears to be a co-conspirator to these insider shell transfers. Your Receiver will shortly sue her to recover these transfers—not because she is co-liable on the judgment, but because she holds receivership money that must be recovered.

**CONCLUSION**

The game is up. Todd Graham for years has evaded payment on this judgment by concealing assets in his nest of shell companies, blatantly declaring that he owns no

exempt assets at all. It is a farce. The companies and their assets must be turned over to your Receiver. The money will not be distributed without approval by this Court. Your Receiver asks the Court to sign the proposed turnover orders, find Graham in contempt, and place him in jail until he turns over ordered documents. Your Receiver also requests such other and further relief as Receiver may show himself justly entitled to receive either at law or in equity.

Respectfully submitted this 28 day of April  
2019,

*Seth Kretzer*

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**SETH KRETZER**  
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SBN: 24043764

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RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been delivered this 28 day of April 2019 (by electronic filing) to:

Mr. Manfred Sternberg  
Manfred Sternberg & Assoc.  
1700 Post Oak Boulevard  
2 Blvd. Place  
Suite 600  
Houston, Texas 77056  
(713) 622-4300  
(713) 622-9899 (fax)

***Via Email: [Manfred@msternberg.com](mailto:Manfred@msternberg.com)***



by the following means:

- By U.S. Postal Service Certified Mail, R.R.R.
- By First Class U.S. Mail to Mr. Graham
- By Special Courier \_\_\_\_\_
- By Hand Delivery at hearing.
- By Fax before 5 p.m.
- By Fax after 5 p.m.
- By email to \_\_\_\_\_
- By email with PDF \_\_\_\_\_
- By e-filing service.

*/s/ Seth Kretzer*

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**SETH KRETZER**