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IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE
(Administratively Transferred from Lewis County Chancery Court)

KEVIN P. LAVENDER, In his official capacity as Commissioner-In-Possession of Sentinel Trust Company and Receivership Management, Inc., Receiver of Sentinel Trust Company,	)	
Plaintiffs,	)	No. 4980
v.	)	
DANNY N. BATES, ET AL	)	
Defendants	)	

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BY: Sue Smith D.C.

DEFENDANT DIRECTOR GARY L. O'BRIEN'S MOTION TO DISMISS PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

Pursuant to Rule 56.03, Tenn. R. Civ. P., Defendant Director Gary L. O'Brien, *pro se*, submits this Response to Plaintiffs' "Statement of Undisputed Facts" in support of his motion to dismiss Plaintiffs' Motion for Summary Judgment as to Various Claims Against Various Defendants and asserts a genuine dispute as to material facts exists and that the subject Motion should be dismissed. Defendant incorporates by reference his Answer and Special Defenses previously filed with the Court in this matter.

Response to Statement of Facts Enumerated by Plaintiffs

1. Defendant disputes as fact that the conviction of Danny N. Bates on Count III is relevant to the claims asserted against him as Director of Sentinel Trust Company.

2. Defendant disputes as fact that the conviction of Danny N. Bates on Count I is relevant to the claims asserted against him as Director of Sentinel Trust Company.

3. Defendant disputes as fact that the jury instructions in the Danny N. Bates trial are relevant to the claims asserted against him as Director of Sentinel Trust Company.

4. Defendant disputes as fact that the sentencing and restitution hearings of Danny N. Bates are relevant to the claims asserted against him as Director of Sentinel Trust Company.

5. Defendant does not dispute as fact that at the restitution hearing of Danny N. Bates the Commissioner-in-Possession was named as the person to whom restitution would be paid.

6. Defendant disputes as fact that the payments made prior to Defendant's service as Director described in Plaintiffs' Collective Exhibit 5 are relevant to the claims asserted against him as Director of Sentinel Trust Company. Defendant disputes as fact that the payment of the $575,000 judgment described in Plaintiffs' Collective Exhibit 6 was made with fiduciary funds.

7. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, that Danny Bates' defense to the criminal charges was that he used his own funds to build and furnish the 205 Bastin Road house and that the $575,000 used to pay for a settlement of a civil judgment were not trust funds.

8. Defendant disputes as fact that the June 1993 Chapter 7 bankruptcy of Danny N. Bates is relevant to the claims asserted against him as Director of Sentinel Trust Company.

9. Defendant disputes as fact that Danny Bates had bought out his own bankruptcy three parcels

of property in Lewis County, Tennessee in 1994 is relevant to the claims asserted against him as Director of Sentinel Trust Company.

10. Defendant disputes as fact that Danny Bates's ownership of the 205 Bastin Road property or the lack of debt or mortgage thereon is relevant to the claims asserted against him as Director of Sentinel Trust Company.

11. Defendant disputes as fact that Danny Bates quitclaimed his interest in the 205 Bastin Road property to his wife is relevant to the claims asserted against him as Director of Sentinel Trust Company.

12. Defendant disputes as fact that he knew that Danny Bates knew that transferring the 205 Bastin Road house to his wife would limit his own net worth to basically his holdings of Sentinel Trust stock is relevant to the claims asserted against him as Director of Sentinel Trust Company.

13. Defendant disputes as fact that the transfer of ownership from Danny Bates to Deanna J. Bates in April 2004 is relevant to the claims asserted against him as Director of Sentinel Trust Company.

14. Defendant disputes as fact that the transfer of property to Deanna J. Bates in April 2004 is relevant to the claims asserted against him as Director of Sentinel Trust Company.

15. Defendant disputes as fact that he could have known that Danny Bates knew, at the time of his ownership transfer, that there was an approximate $5.7 million shortfall in the Sentinel Trust fiduciary account.

16. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, that Danny Bates had admitted that any shortfall in the Sentinel Trust fiduciary account was ultimately the responsibility of Sentinel Trust Company. .

17. Defendant disputes as fact that he knew what Danny Bates knew on April 23, 2004. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, that the prior use of fiduciary funds for defaulted bond issues had created a fiduciary cash shortfall.

18. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, that, at the end of the April 2004 time frame, the net worth of Sentinel Trust was in excess of $1.3 million and that the deficiency in the pooled fiduciary account was between $5.8 million and $7.25 million. Defendant disputes as fact that he had knowledge of Danny Bates' net worth.

19. Defendant disputes as fact that he knew what Danny Bates knew at the time of his transfer of the Bastin Road property. Defendant does not dispute the fact that the Commissioner's demand for additional capital was delivered on or about 3 May 2004.

20. Defendant disputes as fact that Danny Bates' transfer of his property on April 23, 2004 is relevant to the claims asserted against him as Director of Sentinel Trust Company.

21. Defendant disputes as fact that ownership of the Bastin Road property is relevant to the claims asserted against him as Director of Sentinel Trust Company.

22. Defendant disputes as fact that transfer of 126.83 acres and 7.91 acres to Deanna June Bates by Danny N. Bates is relevant to the claims asserted against him as Director of Sentinel Trust Company.

23. Defendant disputes as fact that transfer of 9.25 acres to Clifton T. & Allyson R. Bates is relevant to the claims asserted against him as Director of Sentinel Trust Company.

24. Defendant disputes as fact that he knew what Danny Bates knew at the time of his transfer of the 9.25 acre property about Sentinel's deficit fiduciary cash position.

25. Defendant does not dispute as fact, for purposes of ruling on the motion for summary judgment,

at the time of these transfers, that Sentinel Trust had been taken over by the Commissioner-in-Possession and the Notice of Liquidation of Sentinel Trust Company had been filed.

26. Defendant disputes as fact the referenced property was an asset of Sentinel Trust Company and disputes as fact that the net worth of Danny Bates is relevant to the claims asserted against him as Director of Sentinel Trust Company.

27. Defendant disputes as fact that post-receivership actions of Plaintiffs are factually relevant to the claims asserted against him as Director of Sentinel Trust Company for actions which took place after the receivership was imposed.

28. Defendant disputes as fact that the affairs of Sentinel Services Corporation are relevant to the claims asserted against him as Director of Sentinel Trust Company.

29. Defendant disputes as fact that the affairs of Sentinel Services Corporation are relevant to the claims asserted against him as Director of Sentinel Trust Company for actions which took place after the receivership was imposed.

30. Defendant disputes as fact that the affairs of the Bates Family Trust are relevant to the claims asserted against him as Director of Sentinel Trust Company for actions which took place after the receivership was imposed.

31. Defendant disputes as fact that the affairs of the Bates Family Trust are relevant to the claims asserted against him as Director of Sentinel Trust Company.

32. Defendant disputes as fact that he knew what Danny Bates knew in October 2004 or what the shortfall in fiduciary cash amounted to at that time.

33. Defendant disputes as fact that he knew the value of Danny Bates's stock or what his net

worth amounted to in October 2004.

34. Defendant disputes as fact that the Defendant Directors' post-receivership duty and actions to protect the corporate and fiduciary interests of Sentinel Trust Company are relevant to pre-receivership claims asserted against him as Director of Sentinel Trust Company.

35. Defendant disputes as fact that he was privy to discussions concerning the appointment of successor fiduciaries or payment of Receivership fees and expenses.

36. Defendant does not dispute as fact for purposes of ruling on the motion for summary judgment, from and after 1987 until the May 18, 2004 seizure of Sentinel Trust Company, Danny Bates owned and controlled Sentinel Trust Company.

37. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, that he was elected as director of Sentinel Trust Company on December 30, 1999 and was serving as director at the May 18, 2004 institution of the Sentinel Trust Receivership.

38. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, that Directors of the Sentinel Trust Company were plaintiffs in a lawsuit filed in Chancery Court of Davidson County (04-1934-I) which challenged the Commissioner's authority to takeover Sentinel Trust Company and were "appellants" in the In re: Sentinel Trust decision reported at 205 S.W.3d 501.

39. Defendant does not dispute, for purposes of ruling on the motion for summary judgment, the Plaintiffs' report of findings of the Court in the In re: Sentinel Trust case.

40. Defendant disputes as fact that he knew what Danny Bates knew, or that Defendant had the duty to inform bond issuers about expenditure of trust funds made on behalf of unrelated, defaulted bond issuers or that unrelated bond issuers or borrowers were charged with the expenses of defaulted

bond issues.

41. Defendant disputes as fact that the manner and method of funding the recovery of collateral of defaulted bond issues had been concealed from parties entitled to know or that the same represented a misuse of trust funds.

42. Defendant disputes as fact that there is or should be a $4.395 million shortfall in fiduciary funds as reported by Jeanne Barnes Bryant, Receiver in Exhibit 27 to Plaintiffs' "Statement of Undisputed Facts."

43. Defendant does not dispute as fact, for purposes of ruling on the motion for summary judgment, that, as a "grandfathered" trust company regulated by the Tennessee Department of Financial Institution, Sentinel Trust Company had until July 1, 2002 to comply with certain requirements of that Department.

Accordingly, Defendant requests entry of an order dismissing Plaintiffs' motion for summary judgment.

Respectfully submitted,

Gary L. O'Brien, Defendant, Pro Se
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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, on this the 10 day of February, 2010.

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