

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**ALYSSON MILLS, in her capacity as  
Receiver for Arthur Lamar Adams and  
Madison Timber Properties, LLC**

**PLAINTIFF**

**V.**

**CAUSE NO. 3:19-CV-364-CWR-FKB**

**THE UPS STORE, INC.; HERRING  
VENTURES, LLC, d/b/a The UPS Store;  
AUSTIN ELSER; TAMMIE ELSER;  
COURTNEY HERRING; DIANE  
LOFTON; CHANDLER WESTOVER;  
RAWLINGS & MACINNIS, PA; TAMMY  
VINSON; and JEANNIE CHISHOLM**

**DEFENDANTS**

**ORDER**

Before the Court is the UPS Store's motion to certify the March 1, 2021 Order for immediate interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Docket No. 183. The motion is opposed.

For the reasons that follow, the motion for certification will be denied.

**I. Background**

From at least 2010 until April 2018, Lamar Adams operated timber investment companies called Madison Timber Company LLC and Madison Timber Properties LLC. He told investors they were purchasing shares of timber tracts that would be harvested and sold to lumber mills at a significant profit. The demand for lumber was so great, he said, he could guarantee investors a fixed rate of return in excess of 10%. Investors believed him. They collectively gave him hundreds of millions of dollars.

Adams was lying. He had, with the help of others, faked everything about the scheme. There were no timber deeds, tracts of land, or lumber mills. He was actually using new investors'

money to pay old investors—a classic Ponzi scheme. It worked only as long as Adams and his associates could continue to bring in new money.

The scheme collapsed in April 2018. Adams turned himself in to the United States Attorney’s Office in Jackson, Mississippi and quickly pleaded guilty to wire fraud. He is now serving a 19.5-year sentence in federal prison. The sentence reflects the significance of the fraud; the criminal proceeding established that Adams’ victims lost approximately \$85 million.

When the Ponzi scheme collapsed, the U.S. Securities and Exchange Commission asked this Court to appoint a receiver to take charge of Adams’ companies and provide some measure of financial relief to his victims. The Court appointed Alysson Mills to be that receiver. To date, she has sold Adams’ assets, negotiated settlements with Adams’ enablers, and filed lawsuits against persons and entities that contributed to the fraud. This is one of those lawsuits.

In this action, the receiver alleges that the UPS Store aided and abetted Adams’ fraud. “Defendants are the notaries and their employers on whom Adams principally relied to notarize fake timber deeds for thousands of investments,” she alleges. Docket No. 14 at 2. “Defendants attested that landowners signed the deeds—but those attestations were knowingly false.” *Id.* Rather, “[t]he grantors-landowners never ‘personally appeared’ before Defendants. In many instances, the grantors-landowners did not exist.” *Id.* at 10. The notarizations therefore violated Mississippi law governing notaries and contributed to the success of the Ponzi scheme. *Id.* at 11-12 (citations omitted).

In 2019, the UPS Store filed a motion to dismiss concerning its franchising relationship with Herring Ventures. Docket No. 41. The Court denied relief, finding first that the UPS Store’s defense “will turn on the facts adduced during discovery,” and then specifically inviting summary judgment motions to be filed if not adjudicated in 2020. Docket No. 49. In 2020,

though, the UPS Store filed a motion to dismiss for lack of standing. Docket No. 138. That motion was denied in March 2021. Docket No. 169. The present motion for certification followed shortly thereafter. Docket No. 183.

## II. Law

“A court may certify an interlocutory appeal under Section 1292(b) if “(1) a controlling question of law is involved, (2) there is substantial ground for difference of opinion about the question of law, and (3) immediate appeal will materially advance the ultimate termination of the litigation.” *Rico v. Flores*, 481 F.3d 234, 238 (5th Cir. 2007).

The basic rule of appellate jurisdiction restricts review to final judgments, avoiding the delay and extra effort of piecemeal appeals. Section 1292(b) appeals are exceptional. They are permitted only when there is a substantial difference of opinion about a controlling question of law and the resolution of that question will materially advance, not retard, ultimate termination of the litigation.

*Clark-Dietz & Associates-Engineers, Inc. v. Basic Const. Co.*, 702 F.2d 67, 69 (5th Cir. 1983) (denying leave to appeal). “An interlocutory appeal assuredly does not lie simply to determine the correctness of a judgment of liability.” *Id.* at 68 (citation omitted).

## III. Discussion

Because this is an ordinary rather than extraordinary dispute, the Court will respectfully decline to amend its prior Order to include § 1292(b) certification language.

First, the undersigned is not persuaded that there is substantial ground for difference of opinion about the receiver’s standing. The March 1 Order was a “plain vanilla” application of the Fifth Circuit’s decision in *Zacarias v. Stanford International Bank*, 945 F.3d 883 (5th Cir. 2019). The *Rotstain* decision, meanwhile, casts further doubt on the UPS Store’s argument that the Fifth Circuit has created insurmountable “confusion” in its precedent. Docket No. 183 at 7; *see Rotstain v. Mendez*, 986 F.3d 931, 940-41 (5th Cir. 2021).

Second, there is doubt as to whether an immediate appeal will materially advance the ultimate termination of the litigation. If the receiver is found to lack standing, she will simply amend her complaint and sue the UPS Store again with dozens of assignments she has received from victims, as she has in several other cases. The fastest way through this litigation may simply be to conclude it here via summary judgment motions or a trial. The Court understands that a motions deadline is forthcoming in the Magistrate Judge's omnibus discovery plan.

#### **IV. Conclusion**

Requests to certify an interlocutory appeal are rarely granted. *See Clark-Dietz*, 702 F.2d at 69. In the past 10 years, this Court has certified an order for interlocutory appeal only twice. *See Vaughan v. Anderson Regional Medical Ctr.*, No. 3:14-CV-979-CWR-FKB, 2015 WL 10663140, at \*1 (S.D. Miss. Dec. 7, 2015), *aff'd*, 843 F.3d 1055 (5th Cir. 2016), *opinion withdrawn and superseded on denial of reh'g*, 849 F.3d 588 (5th Cir.), and *aff'd*, 849 F.3d 588 (5th Cir.), *cert. denied*, 138 S.Ct. 101 (2017); *Greenwich Insurance Co. v. Mississippi Windstorm Underwriting Ass'n*, No. 3:14-CV-190-CWR-LRA (S.D. Miss. May 11, 2016), *aff'd*, 808 F.3d 652 (5th Cir. 2015).

Parties spend valuable time and resources to prepare and file motions. Recognizing this labor and expense, and the impact rulings have on the parties (and occasionally the public), this Court takes seriously its duty to carefully consider each motion that parties file, including motions for extraordinary relief. This includes a motion to certify an order for interlocutory appeal. Unfortunately for the UPS Store, a review of the record and applicable law reveal that it has not met the high standard necessary to secure an interlocutory appeal.

**SO ORDERED**, this the 10th day of November, 2021.

s/ Carlton W. Reeves  
UNITED STATES DISTRICT JUDGE