

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

F.T. INTERNATIONAL, LTD. : CIVIL ACTION
: :
v. : :
: :
THOMAS E. MASON and : :
MARSHLAND, LTD. : No. 00-5004

M E M O R A N D U M

WALDMAN, J.

August 10, 2001

Plaintiff asserted claims in this action against defendants for RICO violations, fraud, conversion and unjust enrichment. Plaintiff avers that it was fraudulently induced to commit \$15,000,000 to an investment scheme by defendant Mason and defendant Marshland, which he completely controls, and that Mr. Mason then misappropriated plaintiff's funds and transferred a substantial portion of them out of the country.

After this action was initiated, Mr. Mason promised to restore plaintiff's funds and ultimately agreed to a court order to make restitution of a substantial portion of those funds. Defendants failed to comply and subsequent promises of Mr. Mason that compliance was imminent were unfulfilled.¹ Plaintiff moved to hold defendants in contempt. A hearing was held on March 16, 2001.

¹Domestic bank accounts of Mr. Mason containing \$2.4 million were frozen and the funds later surrendered to plaintiff.

Defendants conceded the existence of a valid court order, their knowledge of the order and their failure to obey it. Plaintiff thus readily established a prima facie case of contempt by clear and convincing evidence. See Roe v. Operation Rescue, 54 F.3d 133, 137 (3d Cir. 1995). The hearing then focused on defendants' attempt to demonstrate that they had acted in good faith to make all reasonable efforts to comply with the order. See U.S. v. Rylander, 460 U.S. 752, 755 (1983); Harris v. City of Philadelphia, 47 F.3d 1311, 1324 (3d Cir. 1995). The evidence of reasonable efforts presented by defendants consisted of testimony from Mr. Mason. That testimony was inherently incredible and woefully inadequate to demonstrate reasonable efforts to comply.

Defendants were adjudged in contempt of court for failure to comply with the restitution order. A memorandum order to that effect was entered on March 19, 2001. The court deferred an imposition of sanctions, however, to give defendants an opportunity to purge themselves as Mr. Mason represented they would do. It ultimately became clear that Mr. Mason had misrepresented defendants' willingness and efforts to purge themselves, and instead used the grace period to frustrate plaintiff's ability to retrieve its funds. After a final hearing on May 25, 2001, the court concluded that while assuring the court that compliance was imminent, Mr. Mason had actually attempted to secrete assets, had engaged in shameless

prevarication and had shown a brazen disregard for the judicial process. By memorandum and order of that date, the court confined Mr. Mason at the Federal Detention Center until he took specified steps to comply with the restitution order. He has not done so.

Defendant Mason has now filed a Motion to Modify or Rescind the Order of Contempt in which counsel states that Mr. Mason is "prepared to take immediate and productive steps" to comply. Ordinarily, the court would welcome and promptly explore such a representation. Counsel further states, however, that Mr. Mason cannot do so while incarcerated because he "must communicate with Jesse Cardona" to effect a return of plaintiff's money and requests that Mr. Mason "be released on house arrest." To accept this representation as a basis for the requested relief would make a mockery of the judicial process on the record developed in this case.

Mr. Mason has testified to the following. He obtains investors for an "international trading program" which makes funds available to foreign governments for social programs and capital projects. The program provides a very high rate of return. Many large U.S. banks are invested in the program but none would ever confirm its existence for fear of losing depositors to whom they pay lower rates of interest. The Federal Reserve Bank has falsely certified that no such programs exist to protect U.S. banks. Although plaintiff's \$15,000,000 was transferred by Mr. Mason to accounts under defendants' control,

the money was used to obtain a line of credit to effectuate the investment in the program. All \$500,000,000 in the program was "frozen" by the recipient nations or their central banks. The program is managed by a director with whom Mr. Mason is in regular contact but whose existence cannot be verified.² Mr. Mason has no documentation regarding the program.

Plaintiff traced millions of the dollars entrusted to defendants for investment to accounts controlled by them including an account in the name of Marshland at the Overseas Development Bank & Trust ("ODBT") on the West Indian island of Dominica. Plaintiff documented the retention or use of \$4,365,000 by defendant Mason for personal purposes including the purchase of a home, and the transfer of another \$600,000 to a bank account in the name of J. Cardona.

During the grace period afforded by the court, Mr. Mason periodically assured plaintiff and the court that compliance was imminent. He identified various purported sources of funds ranging from the improbable to the fantastic. He

²Mr. Mason at first refused to provide his name, claiming he was precluded from doing so by a confidentiality agreement he could not supply. Mr. Mason has since variously identified this program director as J. Cardona, Juan Cardona, Jesus Cardona and now, Jesse Cardona. Mr. Mason testified that Mr. Cardona is a U.S. citizen and has established relationships with major New York banks. Mr. Mason could provide no address for Mr. Cardona but did supply a cell phone number by which he purportedly communicates with him. When a court officer then dialed that number, the response was a recorded message that this number was not a correct number.

averred that the funds were on deposit at a financial institution in Dallas which turned out to be non-existent. He submitted incredible supporting documentation, including a purported letter from a church in Brazil stating that it was making an unsecured personal loan to him of \$10,000,000.³ When the funds never arrived on the promised date, Mr. Mason offered various shifting and sometimes contradictory explanations. Mr. Mason made false material representations about the disposition of funds obtained from plaintiff and their availability to satisfy the defendants' obligations under the court order.

As a representation was exposed as false, Mr. Mason glibly offered a remarkable explanation and moved on to another dubious representation. When challenged for lack of documentation regarding a purported transaction, Mr. Mason would suddenly produce dubious documents from unidentifiable people in obscure places. At the same time, he claims not to have the most basic types of records which any legitimate business person would maintain. His effort to lull and divert plaintiff and the court has been as brazen as any the court has ever seen.

³These documents were not incredible in their facial appearance. To the contrary, some of them would impress a casual observer as authentic looking. It appears from the records of Mr. Mason's trial and conviction for interstate transportation of forged securities when he operated a printing business that Mr. Mason has the know-how to simulate documents. In any event, it is the substantive content of the documents and the transactions they purport to reflect which make them inherently incredible.

Mr. Mason wired \$600,000 of plaintiff's funds to an account at Commercial Bank of New York in the name of the elusive Mr. Cardona, purportedly to obtain a \$15,000,000 line of credit with which to invest plaintiff in the secret international trading program for which no documentation exists. The court found that Mr. Cardona is a complete fiction or confederate of Mr. Mason. In either event, there has been no credible showing that the \$600,000 is not accessible to Mr. Mason.

From plaintiff's funds Mr. Mason expended \$279,000 for a personal residence, \$37,000 for furnishings and \$34,000 for two automobiles. These assets remain subject to Mr. Mason's control.⁴

Mr. Mason used \$250,000 purportedly to make a donation to a church. This "donation" is undocumented and there is no corresponding charitable deduction on Mr. Mason's tax return. There has been no credible showing that this money is not accessible to Mr. Mason. Mr. Mason purportedly used \$100,000 of the funds for the formation of unidentified and undocumented "international business corporations." There has been no credible showing that this money is not accessible to Mr. Mason.

⁴The court would not ordinarily expect a party to transfer or liquidate a principal residence to satisfy a restitution obligation. Here, however, it is undisputed that this asset was acquired with plaintiff's funds.

Mr. Mason used \$2,750,000 to purchase two certificates of deposit in the name of Marshland at ODBT. Mr. Mason agreed to assign defendants' interest in these funds to plaintiff as partial satisfaction of their obligations and to authorize ODBT to provide plaintiff with defendants' account information.⁵ Christopher Stone, the managing director of ODBT, advised plaintiff's counsel on March 22, 2001 that he would comply with any written authorization from Mr. Mason. By May 17, 2001, however, Mr. Stone advised plaintiff's counsel that the bank would not honor the assignment and disclosure authorization finally executed by Mr. Mason on May 11, 2001. He also stated that he was advised the "whole matter would be settled in [this] court" imminently, without the need for any action by ODBT.

In the interim, Mr. Mason unilaterally sent to ODBT a qualified and equivocal assignment.⁶ Mr. Mason also signaled the bank with a telefax in which he volunteered that "I did not think [it] was possible" for the bank to provide information to plaintiff's counsel. He also asked the bank to communicate only with him, and not even defense counsel, with regard to this matter. It is also quite difficult to discern by whom Mr. Stone

⁵Although Mr. Mason answered no to question 7a on schedule B of his 2000 federal income tax return asking if he had any interest in or authority over a financial account in a foreign country, it is undisputed that he is the sole owner of Marshland and has an ownership interest in these funds on deposit at ODBT.

⁶For example, the document states that defendants make "no representations concerning the validity of the assignment and transfer sought to be effected."

would have been advised that this matter would be resolved imminently without further action by the bank if not by Mr. Mason.

Although counsel for plaintiff in Dominica advised that there is no legal reason why ODBT could not comply with the assignment and authorization documents, defense counsel advised that Mr. Mason refused to pursue legal procedures available in Dominica to compel ODBT to comply. The court found that these funds are available to satisfy defendants' obligations under the court order.⁷

Mr. Mason transferred \$350,000 to Malcolm West which Mr. Mason averred was a "loan" for use by ODBT with which Mr. West is affiliated.⁸ Mr. Mason averred that he received a promissory note from Mr. West, but produced only an unexecuted

⁷When the explanation for the disposition or unavailability of funds by one who indisputably received them is incredible, it is reasonable to conclude that the funds are accessible. See, e.g., U.S. v. Copple, 74 F.3d 479, 484 (3d Cir. 1996) (in ordering restitution courts may deem available to a criminal defendant proceeds he received unless he proves he does not retain them and cannot recoup them). Whether in the context of criminal fraud or civil contempt, the person who has received money is in a unique position honestly to account for it. Also, as noted, the disobedient party in contempt proceedings bears the burden of proving he has acted in good faith to make all reasonable efforts to comply with the pertinent court order. See Harris, 47 F.3d at 1324.

⁸It appears that at least as of February 2001, Mr. West was the sole owner of ODBT whose shares he acquired in July 1999. See Min. Staff of Senate Perm. Subcomm. on Investigations, 107th Cong., Report on Correspondent Banking: A Gateway to Money Laundering 115-116 (Subcomm. Print 2001).

copy of the purported promissory note. The telefax by which Mr. Mason instructed ODBT to communicate only directly with him was sent to the attention of C. Stone and M. West. There has been no credible showing that these funds are not available to satisfy defendants' obligations under the court order.⁹

Mr. Mason transferred \$365,000 to family members which he avers were "gifts." Mr. Mason filed no gift tax returns. One of these transfers was made to his daughter in the amount of \$100,000 three days before the scheduled initial contempt hearing. Mr. Mason averred that the source of these funds was a \$175,000 loan from a friend identified as A. Webster. Mr. Mason produced a copy of an e-mail purporting to confirm a secured loan of \$175,000 at 6% interest to Mr. Mason from Bluedawn Investments Limited of Belize in Central America which bore the signature of "A. Webster." There was no evidence of any "loan" repayments by Mr. Mason to the purported Mr. Webster and plaintiff documented that the source of the \$175,000 to Mr. Mason was actually a transfer from ODBT. It appears that at least some of these funds or assets acquired with them may be held for the benefit of Mr. Mason or otherwise available to comply with the court order.

⁹Even if this money had truly been loaned to Mr. West, the repayments with interest would be an asset of Mr. Mason. That the purpose of the purported loan was to provide temporary business capital to ODBT would suggest more of a relationship between ODBT and Mr. Mason than that of banker and depositor. In fact, no credible evidence of any loan or loan repayments was ever presented.

While Mr. Mason was assuring plaintiff and the court during the grace period that he was in the process of purging himself of contempt, Mr. Mason received a \$125,000 wire transfer. He averred that he received this money from a co-defendant in a civil suit to cover Mr. Mason's share of a settlement and legal fees. Plaintiff documented that this money was actually transferred to Mr. Mason from ODBT. There was no credible showing that these funds are not accessible to Mr. Mason. The same is true of \$75,000 Mr. Mason claims to have paid to the sister of his former business partner to repay an old debt.

Mr. Mason provided an endless array of fantastic explanations and inherently incredible documents. Plaintiff clearly and convincingly showed that there are funds at ODBT with which defendants could at least partially comply with the court order, and that additional funds are available which may well be located through defendants' withheld ODBT records. Mr. Mason undisputably controls assets purchased with plaintiff's funds which he refuses to transfer or liquidate to comply with the court order. Plaintiff has asserted with justification that defendants' "affront to the judicial process is startling."

The court concluded that the only sanction likely to produce compliance was the incarceration of Mr. Mason and, as noted, on May 25, 2001 ordered that he be confined until such time as he and Marshland through him comply with the restitution order. The court stated that it would view as sufficiently substantial compliance the retrieval and transfer of the

\$4,965,000 in identified funds and assets, or \$4,600,000 plus a credible accounting for the \$365,000 in payments to family against whom plaintiff may proceed, and the production of defendants' ODBT account records unless they confirmed plaintiff's belief that there are additional funds accessible more fully to effect compliance.

In his latest expression of professed interest in compliance, Mr. Mason ignores this \$4,965,000. Rather, despite overwhelming evidence to the contrary, Mr. Mason simply again suggests that plaintiff's funds really were invested in a secret international trading program directed by the elusive Mr. Cardona from whom he can secure their return if only released to home confinement.

The only thing new Mr. Mason has proffered is the statement of his son that he has communicated with a "J.M. Cardona" to obtain the return of plaintiff's funds, accompanied by copies of purported e-mail dated June 3 through July 24, 2001 between the two.¹⁰ These read much the same as copies of purported e-mail produced by Mr. Mason during the pre-incarceration grace period and are just as inherently incredible. For example, "Jess" Cardona advises Mr. Mason's son that he is in the process of Transferring \$50 million to the Honeycomb

¹⁰Anyone can obtain free e-mail addresses by internet using any names and then, if desired, effectively generate e-mail from himself to himself under different names.

Investments account at Commercial Bank of New York. Although this was purportedly six weeks ago, no documentation has been submitted to substantiate such a transfer or even the existence of such an account. Mr. Mason testified in March 2001 to an imminent transfer of funds by Mr. Cardona to a Honeycomb Investments account at the Israeli Discount Bank of New York which had instructions to issue a check to plaintiff. The bank's counsel subsequently confirmed that the bank had no such account.

Even if one were to accept Mr. Mason's remarkable tale, it would not follow that compliance is impossible without his release to home confinement. If there were a Mr. Cardona who directs a legitimate investment program, there is no acceptable reason why he would be willing to meet or speak with Mr. Mason at his home but not to meet with defense counsel and come to a court proceeding. If Mr. Cardona is a confederate of Mr. Mason or otherwise involved in nefarious activity but nevertheless able and willing to make funds available for Mr. Mason, there is no logical reason why he would do so if Mr. Mason is in the comfort of a luxurious home purchased with plaintiff's money but not to help secure his release from prison. If the suggestion is that Mr. Cardona will only respond to Mr. Mason directly, it may be noted that he testified to having numerous conversations with Mr. Cardona without result. Further, Mr. Mason has not asked for expanded access to a telephone or use of e-mail subject to prison oversight, but rather to be released.

Moreover, Mr. Mason need not communicate with the elusive Mr. Cardona to obtain funds from a phantom international investment program to achieve substantial compliance and release. He need only provide counsel with an appropriate power of attorney and transfer or credibly account for the almost \$5 million traced to him and the company he controls.

Defendant cites several cases in support of his request which are inapplicable and unavailing. Some simply stand for the unremarkable proposition that the essential purpose of incarcerating a civil contemnor is to overcome his obstinacy and achieve compliance with a court order. As the court's memorandum and order of May 25, 2001 make clear, this is precisely why Mr. Mason has been incarcerated.

Defendant cites Tinsley v. Mitchell, 804 F.2d 1254 (D.C. Cir. 1986) for the proposition that impossibility of performance is a defense to a contempt charge. The Court in Tinsley merely held that the district court should have made findings in response to a colorable claim of impossibility of performance supported by uncontroverted affidavits before adjudicating a party in contempt. In the instant case, plaintiff presented clear and convincing documentary evidence of Mr. Mason's ability to comply. Indeed, Mr. Mason himself did not claim impossibility of performance. To the contrary, he lulled plaintiff and the court with repeated assurances of imminent

compliance. Mr. Mason is simply playing the same shell game of claiming that the route to compliance is via the purported Mr. Cardona who can supply the needed funds if Mr. Mason is only allowed endlessly to pursue him. The court has already found that Mr. Mason is lying. He does not need the elusive Mr. Cardona to effect a transfer of defendants' interest in millions of plaintiff's dollars irrefutably traced to him.

Defendant cites U.S. v. Lippitt, 180 F.3d 873 (7th Cir. 1999) for the proposition that a court should periodically assess whether there has ceased to be any reasonable possibility of eventual compliance by a contemnor. The Court recognized that such an assessment necessarily involves a prediction about a particular individual and characterized a district court's conclusion in this regard as "virtually unreviewable." Id. at 878. The Court in Lippitt did not suggest that periodic reassessment means an opportunity for a contemnor on his terms periodically to repeat testimony already found to be blatantly false.

The court has had a considerable opportunity to observe and assess Mr. Mason. Despite the statement in the defense memorandum that "[p]rison is not the home environment in which defendant is accustomed," the fact is that Mr. Mason spent two years in prison following a conviction for interstate transportation of forged securities. Some persons less brazen

than Mr. Mason would be willing to spend many months in a federal detention center while testing a court's resolve in an effort to retain millions of dollars. The court has concluded that there is a realistic possibility of compliance by Mr. Mason once he recognizes that he cannot con his way to release while retaining millions of plaintiff's dollars.

Mr. Mason notes that his wife is ill and that his son and daughter are being inconvenienced by having to assist her. The short answer is that Mr. Mason can ameliorate this situation forthwith by complying with the court's order.

Mr. Mason also suggests that he is not receiving adequate medical attention for his diabetic condition. The FDC is a new facility with a medical clinic and two staff physicians. According to FDC records, Mr. Mason has been seen regularly by the diabetic unit and treated by Dr. Gary Reynolds. He receives daily medication. Mr. Mason deferred his final hearing and imposition of sanctions last May by claiming to suffer from physical symptoms which could not then be medically verified. His former attorney stated at court proceedings at the time that Mr. Mason had misrepresented his medical condition to him. Nevertheless, the court wishes to ensure that Mr. Mason receives all proper medical attention.

Mr. Mason can authorize the release of his medical records to his counsel and family physician, Dr. Winans. If,

after review of these records and consultation with Drs. Winans and Reynolds, counsel in good faith concludes that Mr. Mason is being denied adequate medical care and so states in a written filing subject to Fed. R. Civ. P. 11(b)(3), the court will schedule a hearing forthwith on this discrete issue. If it is shown that Mr. Mason is being denied needed care for his type II diabetes, or other serious medical condition, the court will direct the BOP to do whatever may be required to ensure that Mr. Mason receives proper care at the FDC.

The court is prepared periodically to reassess its sanction. The court would receive with interest an affidavit of defense counsel that he has met with Mr. Cardona, has verified his identity and association with a legitimate investment program, and is prepared to present him at a court proceeding. The court will not, however, ignore Mr. Mason's failure to take specified steps to comply which would have nothing to do with any Mr. Cardona who did exist. It will not permit Mr. Mason to toy with the court or to consume precious court time and plaintiff's resources by conducting proceedings whenever Mr. Mason elects to reiterate his fantastic story.

Defendant's motion will be denied. An appropriate order will be entered.

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O R D E R

AND NOW, this day of August, 2001, upon
consideration of defendant Mason's Motion to Modify or Rescind
Order of Contempt (Doc. #61), and plaintiff's opposition thereto,
consistent with the accompanying memorandum, **IT IS HEREBY ORDERED**
that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.