

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

HOLT CARGO SYSTEMS, INC., et al. : CIVIL ACTION  
:   
v. :   
:   
DELAWARE RIVER PORT AUTHORITY, :   
et al. : NO. 94-7778

MEMORANDUM and ORDER

Norma L. Shapiro, J.

March 27, 1998

Plaintiffs Holt Cargo Systems, Inc. ("Holt Cargo"), Holt Hauling & Warehousing, Inc. ("Holt Hauling") and Astro Holdings, Inc. ("Astro") (collectively the "plaintiffs"), alleging violation of their constitutional rights under 42 U.S.C. § 1983, filed an action against defendants the Delaware River Port Authority ("DRPA"), the Port of Philadelphia & Camden, Inc. ("PPC") and Philadelphia Regional Port Authority ("PRPA") (collectively the "defendants"). On February 3, 1998, defendants filed a motion to hold plaintiffs in contempt. By Memorandum and Order dated March 23, 1998, the court granted defendants' motions for summary judgment.<sup>1</sup> Defendants' outstanding motion for contempt will be denied.

DISCUSSION

By Order entered April 11, 1995, this court referred all discovery matters to United States Magistrate Judge M. Faith

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<sup>1</sup> For a full discussion of the facts of this case, see Holt Cargo Sys., Inc. v. Delaware River Port Auth., No. 94-7778, (E.D. Pa. Mar. 23, 1998).

Angell ("Judge Angell"). Over the course of this litigation, Judge Angell entered dozens of discovery-related Orders, many of which were appealed to this court. Defendants argue plaintiffs violated Orders entered by this court on December 2, 1997 and January 29, 1998; they claim plaintiffs violated discovery Orders entered by Judge Angell on November 26, 1997, December 10, 1997 and January 16, 1998.

This court's December 2, 1997 Order permitted requests for production of documents to non-party Holt entities regarding:

1. The nature of the business which the Holt affiliates conduct;
2. Any commonality between the Holt affiliates and any of the plaintiffs, in terms of space, customers, services, governance and/or ownership;
3. Any movement of money between the plaintiffs and any Holt affiliates; and
4. Except as required by paragraph (3), no inquiry is permitted into the private wealth of any member of the Holt family or personal assets, liabilities and holdings of members of the Holt family without ownership interest in the plaintiffs.

This court's January 29, 1998 Order directed plaintiffs to produce various portions of Leo Holt's tax return in un-redacted form. The court further warned that further dilatory conduct and obstruction of the discovery process could result in dismissal of plaintiffs' action or entry of default against defendants.

Judge Angell's November 26, 1997 Order required plaintiffs to produce:

- a. Tax returns for Plaintiffs and the related Holt entities, 1996 auditors; work papers and the auditor's general files and interim financial statements for 1997.
- b. Tax returns for Tom Holt, Sr.
- c. Forecasts and projections for all years.
- d. Agreements to sell major assets, stock transactions, Articles of Incorporation, partnership agreements and a list of stockholders/partners for Plaintiffs and related Holt entities.
- e. Appraisals of Plaintiffs' assets, valuations of their businesses, invoices for additions/improvements to their facilities, or copies of leases, contracts, management agreements and any other written agreement between and/or among Plaintiffs and/or the related Holt entities.
- f. A schedule of officers' compensation, an organizational chart, copies of leases and loans, minutes of Board of Directors meetings and management's employment agreements.
- g. Any business plans for Plaintiffs and the related Holt entities.
- h. Financial statements of all entities for each year, copies of budgets for all years and comparisons to the actual results, if done, and copies of gift tax returns.

Judge Angell's December 10, 1997 Order directed plaintiffs to produce all of the documents listed in the November 26, 1997 Order by 5:00 p.m. on December 12, 1997. Judge Angell's January 16, 1998 Order directed that:

- a. To the extent that Plaintiffs intend to assert that requested tax returns are subject to an extension, they are to produce documentation which establishes the granting of an extension by the IRS.
- b. Production of responsive documents is not limited to

those documents in the possession of Plaintiffs or owner(s) of Plaintiff[s]. Plaintiffs are required to produce all responsive documents in the possession of the related Holt affiliates and/or any Holt representatives or agents.

- c. To the extent that Plaintiffs' production of responsive documents does not include documents referenced in the depositions of Plaintiffs' employees/witnesses/principals, Plaintiffs are to explain in writing what documents have not been produced and why.

Defendants claim plaintiffs failed to turn over the following documents:

- a. Holt Cargo budgets showing the costs of providing stevedoring services; projections of revenues on stevedoring services on Pier 82;
- b. Holt Cargo budgets showing the costs of providing wharfage and dockage;
- c. Projections of revenues on wharfage and dockage on Pier 82;
- d. Refrigerated Distribution Center leases, financial statements and tax returns; records of actual or projected construction costs at Publicker;
- e. Agreements and budget projections of Holt Hauling for project management and/or development;
- f. The study or calculation done by Plaintiffs' employee, Arthur Davis, on these costs;
- g. Documents regarding proposed diverted ocean carriers, including budgets, customer financial history or marketing files for any ocean carriers, whether lost or forced to absorb higher costs;
- h. Documents regarding intermodal business allegedly diverted;
- i. Leases between Holt Hauling and tenants at the Gloucester Marine Terminal;
- j. Documents regarding Plaintiffs' costs associated with

cranes;

- k. Records of out-of-pocket expenses relating to advertising;
- l. Plaintiff Astro Holdings' financial documents. Holt has only produced one interim financial statement for 1997. It has not produced any financial information prior to that, including financial statements on the rent records of what it has been collecting from its subtenants to the Packer Avenue Marine Terminal;
- m. Plaintiffs' accounting and marketing records which are in the possession of SLS Services, Inc. d/b/a H.O.L.T., a company owned by Holt's sons, which provides the accounting and marketing for Plaintiffs and other Holt entities for substantial fees;
- n. The records of Holt related companies, which are directly relevant to this litigation but are not "Combined Financial Entities" on the audited financial statements produced by Holt. This includes Plaintiff Astro Holdings as mentioned above. It also includes H.O.L.T. which provides the accounting and marketing services for all the "Combined Financial Entities" and other Holt related companies, as well as Plaintiff Holt Hauling and Warehousing at Gloucester Marine Terminal, which are owned by Holt relatives and business associates. Finally, it includes Delaware Avenue Enterprises, Inc., the entity which owns and has sought permits on the Publicker site with which Defendants allegedly interfered, and Crestmont Limited Partnership and Orchard Hill Development Corp., which according to accounting records now own Delaware Avenue Enterprises;
- o. H.O.L.T.'s marketing and accounting service contracts with Plaintiff Holt Hauling and Warehousing's tenants at Gloucester Terminal, which include: Dockside Refrigerated Warehouse, Gloucester Marine Refrigerated Warehouse, Gloucester Marine Terminal, Inc. and Trans Ocean Maritime Services ("TOMS"). Each of these "tenants" is owned by Holt relatives or business associates; each is marketed by H.O.L.T., the same Holt company marketing for Packer Avenue Marine Terminal and they provide the same services and compete for the same customers as Holt does at Packer;
- p. The missing tax returns for Plaintiffs. Holt has not

produced tax returns or written documentation of extensions for Holt Hauling and Warehousing for 1994, 1995 and 1996; Holt Cargo Systems for 1995 and 1996 and Astro for 1996; and

- q. The tax returns for Holt entities not in the "Combined Financial Entities" list but clearly involved in this litigation, such as H.O.L.T., Delaware Avenue Enterprises, Inc., Crestmont Limited Partnership and Orchard Hill Development Corp.

Defs.' Brief at 6-8.

## DISCUSSION

### **I. Jurisdiction**

The court retains jurisdiction over "collateral matters" such as motions for sanctions and contempt filed prior to entry of judgment; such motions do not become moot upon entry of judgment. The court retains jurisdiction over the motions even after a notice of appeal has been filed. See Schering Corp. v. Vitarine Pharmaceuticals, Inc., 889 F.2d 490, 495 (3d Cir. 1989); Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 98 (3d Cir. 1988).

### **II. Contempt of a Magistrate Judge's Orders**

"In a proceeding before a magistrate, any of the following acts or conduct shall constitute a contempt of the district court for the district wherein the magistrate is sitting: ... (3) failure to produce, after having been ordered to do so, any pertinent document ...." 28 U.S.C. § 636(e).

Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court .... A judge of the district

court shall thereupon, in summary manner, hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a judge of the court, or commit such person upon the conditions applicable in the case of defiance of the process of the district court or misconduct in the presence of a judge of that court.

Id.

The proper procedure for a party moving for contempt of a magistrate judge's Order is to file the motion with the magistrate judge; the magistrate judge then acts as fact-finder and "certifies the facts" to the district judge for determination whether the facts establish a contempt of court. See id. Here, defendants asked this court to examine Judge Angell's discovery Orders and establish the facts in dispute, and also determine whether the facts establish a contempt.<sup>2</sup> All alleged instances of contempt of Judge Angell's Orders should have been raised first with Judge Angell for fact-finding. The motion for contempt of Judge Angell's discovery Orders will be denied.

**III. Contempt of this Court's Orders**

The discovery Orders issued by this court upon which defendants base their contempt motion are the December 2, 1997 and January 29, 1998 Orders. Motions for contempt of those

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<sup>2</sup> This court subsequently affirmed Judge Angell's November 26, 1997, December 10, 1997 and January 16, 1998 discovery Orders, see January 26, 1998 Order, but that disposition does not require this court to review initially compliance with Orders issued by a magistrate judge.

Orders were properly raised in this court. Those Orders address the production of Leo Holt's tax returns and discovery of business activities and financial matters of non-party Holt affiliates. The acts of contempt cited by defendants are failure to produce:

...

4. Refrigerated Distribution Center leases, financial statements and tax returns; records of actual or projected construction costs at Publicker;

...

13. Plaintiffs' accounting and marketing records which are in the possession of SLS Services, Inc. d/b/a H.O.L.T., a company owned by Holt's sons, which provides the accounting and marketing for Plaintiffs and other Holt entities for substantial fees;
14. The records of Holt related companies, which are directly relevant to this litigation but are not "Combined Financial Entities" on the audited financial statements produced by Holt. This includes Plaintiff Astro Holdings as mentioned above. It also includes H.O.L.T. which provides the accounting and marketing services for all the "Combined Financial Entities" and other Holt related companies, as well as Plaintiff Holt Hauling and Warehousing at Gloucester Marine Terminal, which are owned by Holt relatives and business associates. Finally, it includes Delaware Avenue Enterprises, Inc., the entity which owns and has sought permits on the Publicker site with which Defendants allegedly interfered, and Crestmont Limited Partnership and Orchard Hill Development Corp., which according to accounting records now own Delaware Avenue Enterprises;
15. H.O.L.T.'s marketing and accounting service contracts with Plaintiff Holt Hauling and Warehousing's tenants at Gloucester Terminal, which include: Dockside Refrigerated Warehouse,

Gloucester Marine Refrigerated Warehouse, Gloucester Marine Terminal, Inc. and Trans Ocean Maritime Services ("TOMS"). Each of these "tenants" is owned by Holt relatives or business associates; each is marketed by H.O.L.T., the same Holt company marketing for Packer Avenue Marine Terminal and they provide the same services and compete for the same customers as Holt does at Packer;

...

17. The tax returns for Holt entities not in the "Combined Financial Entities" list but clearly involved in this litigation, such as H.O.L.T., Delaware Avenue Enterprises, Inc., Crestmont Limited Partnership and Orchard Hill Development Corp.

Defs.' Brief at 6-8.

A court's contempt power is an essential element of its ability to enforce its orders.

The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings; and to the enforcement of the judgments, orders and writs of the courts and, consequently, to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.

Ex parte Robinson, 86 U.S. (19 Wall.) 505, 510 (1874).

There are two forms of civil contempt sanctions: "Coercive contempt sanctions 'look to the future and are designed to aid the plaintiff by bringing a defiant party into compliance with the court order;'" "compensatory sanctions seek to 'compensate the complainant through the payment of money for damages caused by past acts of disobedience.'" United States v. Basil

Investment Corp., 528 F. Supp. 1225, 1228 (E.D. Pa. 1981) (Shapiro, J.) (quoting Latrobe Steel Co. v. United Steelworkers, 545 F.2d 1336, 1344 (3d Cir. 1976)), aff'd, 707 F.2d 1401 (3d Cir. 1983). Because summary judgment has been entered in favor of defendants, only compensatory sanctions are at issue.

In civil contempt proceedings the petitioner bears the burden of establishing the respondent's non-compliance. The petitioner must show by "clear and convincing evidence" that the respondent has disobeyed the court's order. See Quinter v. Volkswagen of Am., 676 F.2d 969, 974 (3d Cir. 1982); Schauffler v. Local 1291, 292 F.2d 182, 190 (3d Cir. 1961); Fox v. Capital Co., 96 F.2d 684, 686 (3d Cir. 1938). If there is "ground to doubt the wrongfulness of [respondent's] conduct," the petitioner has not met his burden. Quinter, 676 F.2d at 974; see Fox, 96 F.2d at 686.

To establish contempt, the petitioner must prove: "1) that a valid order of the court existed; 2) that the defendants had knowledge of the order; and 3) that the defendants disobeyed the order." Roe v. Operation Rescue, 54 F.3d 133, 137 (3d Cir. 1995) (citation omitted).

"Plaintiffs acknowledge the validity and existence of the relevant Orders for production of documents." Pltffs.' Brief at 9. Therefore, defendants have met the first and second steps of the civil contempt test; they have established the existence of

valid court Orders entered December 2, 1997 and January 29, 1998.

The burden is also on defendants to show that plaintiffs violated this court's Orders, although defendants need not prove that plaintiffs' disobedience was wilful. See McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949); Harley-Davidson, Inc. v. William Morris d/b/a Bill's Custom Cycles, 19 F.3d 142, 148 (3d Cir. 1994); Waste Conversion, Inc. v. Rollins Environmental Services, Inc., 893 F.2d 605, 609 (3d Cir. 1990). The disobedient party's good faith does not bar a finding of contempt. See Harley-Davidson, 19 F.3d at 148.

"[S]ubstantial compliance with a court order is a defense to an action for civil contempt.... If a violating party has taken 'all reasonable steps' to comply with the court order, technical or inadvertent violations of the order will not support a finding of civil contempt." General Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1379 (9th Cir. 1986); see United States Steel Corp. v. United Mine Workers, 598 F.2d 363, 368 (5th Cir. 1979); Washington Metropolitan Area Transit Authority v. Amalgamated Transit Union, 531 F.2d 617, 621 (D.C. Cir. 1976). Whether substantial compliance is a defense to civil contempt is still undecided in the Third Circuit. See Robin Woods Inc. v. Woods, 28 F.3d 396, 399 (3d Cir. 1994) ("Even if this court were to recognize substantial compliance as a defense to contempt, however, it would not apply" in this case.). However, distric

courts have accepted substantial compliance as a defense. See Halderman v. Pennhurst State Sch. & Hosp., 154 F.R.D. 594, 608 (E.D. Pa. 1994); Merchant & Evans, Inc. v. Roosevelt Building Products Co., Inc., No. 90-7973, 1991 WL 261654, at \*1 (E.D. Pa. Dec. 6, 1991).

"There is general support for the proposition that a [party] may not be held in contempt as long as it took all reasonable steps to comply." Harris v. City of Phila., 47 F.3d 1311, 1324 (3d Cir. 1995). The respondent must "show that it has made 'in good faith all reasonable efforts to comply.'" Id. (quoting Citronelle-Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1301 (11th Cir. 1991)).

#### **A. Refrigerated Distribution Center Documents**

In response to defendants' request for leases, financial statements, tax returns and records of actual or projected construction costs for Refrigerated Distribution Center ("RDC"), plaintiffs produced the following documents: 1) 11/1/95 lease; 2) 3/5/96 lease; 3) 1991 tax return; 4) 1992 tax return; 5) 1993 tax return; 6) 1994 tax return; 7) 1995 tax return; 8) 1996 tax return; 9) 3/31/92 quarterly report; 10) 6/30/92 quarterly report; 11) 9/30/92 quarterly report; 12) 3/31/93 quarterly report; 13) 6/30/93 quarterly report; 14) 9/30/93 quarterly report; 15) 3/31/94 quarterly report; 16) 6/30/94 quarterly report; 17) 9/30/94 quarterly report; 18) 3/31/95 quarterly

report; 19) 6/30/95 quarterly report; 20) 9/30/95 quarterly report; 21) 3/31/96 quarterly report; 22) 6/30/96 quarterly report; 23) 9/30/96 quarterly report; 24) 3/31/97 quarterly report; 25) 6/30/97 quarterly report; and 26) 9/30/97 quarterly report. Plaintiffs assert RDC does not prepare actual or projected costs for development at the Publicker site, so no such documents are available. Defendants have not proved the contrary.

Plaintiffs have shown substantial compliance with the discovery Order requiring production of documents related to Holt affiliates. They will not be held in contempt for failing to produce documents not shown to exist by clear and convincing evidence.

**B. Accounting & Marketing Records Possessed by H.O.L.T.**

Defendants requested "plaintiffs' accounting and marketing records which are in possession of SLS Services, Inc. d/b/a H.O.L.T." Plaintiffs objected to this request on the grounds of vagueness and overbreadth. "Accounting records can define a broad range of documents including, but not limited to, H.O.L.T.'s canceled checks, ledgers, invoices, accounts payable, accounts receivable, payroll records and insurance records. Similarly, marketing records can include all H.O.L.T. correspondence with all actual and/or potential customers." Pltffs.' Brief Ex. B at 8-9. Defendants retained an accountant

to clarify what financial documents were necessary to defend against plaintiffs' allegations of financial harm. If defendants filed a motion to compel production of these documents, Judge Angell could have clarified the precise documents plaintiffs were required to produce. But plaintiffs' actions in regard to H.O.L.T. accounting and marketing records did not clearly violate a specific Order of this court.

**C. Records of Non-Party Holt Entities**

Defendants requested plaintiffs to produce financial documents from plaintiffs and non-party Holt entities to help defendants establish siphoning of monies from plaintiffs to other Holt entities. Plaintiffs produced the following documents from Holt Hauling: 1) 1992 tax return; 2) 1993 tax return; 3) 1994 tax return extension; 4) 1995 tax return extension; 5) 1996 tax return extension; 6) 3/31/92 quarterly report; 7) 6/30/92 quarterly report; 8) 9/30/92 quarterly report; 9) 3/31/93 quarterly report; 10) 6/30/93 quarterly report; 11) 9/30/93 quarterly report; 12) 3/31/94 quarterly report; 13) 6/30/94 quarterly report; 14) 9/30/94 quarterly report; 15) 3/31/95 quarterly report; 16) 6/30/95 quarterly report; 17) 9/30/95 quarterly report; 18) 3/31/96 quarterly report; 19) 6/30/96 quarterly report; 20) 9/30/96 quarterly report; 21) 3/31/97 quarterly report; 22) 6/30/97 quarterly report; 23) 9/30/97 quarterly report; and 24) Articles of Incorporation.

Plaintiffs produced the following documents for Delaware Avenue Enterprises in response to defendants' requests: 1) 1991 tax return; 2) 1992 tax return; 3) 1993 tax return; 4) 1994 tax return; 5) 1995 tax return; 6) 1996 tax return extension; and 7) Articles of Incorporation.

Plaintiffs provided the following documents for Crestmont Limited Partnership in response to defendants' requests: 1) 1992 tax return; 2) 1993 tax return; 3) 1994 tax return; 4) 1995 tax return; 5) 1996 tax return extension; and 6) Partnership Agreement.

Plaintiffs produced the following documents for Orchard Hill Development Company in response to defendants' requests: 1) 1992 tax return; 2) 1993 tax return; 3) 1994 tax return; 4) 1995 tax return; 5) 1996 tax return extension; and 6) Articles of Incorporation.

Plaintiffs assert no financial statements are prepared for these entities. There is no clear and convincing evidence evidence plaintiffs were not in substantial compliance with this court's Orders.

**D. H.O.L.T.'s Marketing & Accounting Contracts with Holt Hauling's Tenants at Gloucester Terminal**

Defendants requested marketing and accounting contracts between non-party H.O.L.T. and the following tenants of Holt Hauling at Gloucester: 1) Dockside Refrigerated Warehouse; 2) Gloucester Marine Refrigerated Warehouse; 3) Gloucester Marine

Terminal, Inc.; and 4) Trans Ocean Maritime Services. Plaintiffs produced one contract for Dockside Refrigerated Warehouse; two contracts for Gloucester Marine Refrigerated Warehouse; two contracts for Gloucester Marine Terminal, Inc.; and two contracts for Trans Ocean Marine Services. There is no clear and convincing evidence of contempt.

**E. Tax Returns for Various Holt Entities**

Defendants requested tax returns for non-party Holt entities H.O.L.T., Delaware Avenue Enterprises, Inc., Crestmont Limited Partnership and Orchard Hill Development Corp. For H.O.L.T., plaintiffs produced: 1) 1994 tax return; 2) 1995 tax return; and 3) 1996 tax return. Plaintiffs assert neither tax returns nor additional extensions exist for 1996. See Pltffs.' Brief Ex. B at 14.

For Delaware Avenue Enterprises, Inc., plaintiffs produced: 1) 1991 tax return; 2) 1992 tax return; 3) 1993 tax return; 4) 1994 tax return; 5) 1995 tax return; 6) 1996 tax return extension. Plaintiffs assert neither tax returns not additional extensions exist for 1996. See id.

For Crestmont Limited Partnership, plaintiffs produced: 1) 1992 tax return; 2) 1993 tax return; 3) 1994 tax return; 4) 1995 tax return; and 5) 1996 tax return extension.

For Orchard Hill Development Corp., plaintiffs produced: 1) 1992 tax return; 2) 1993 tax return; 3) 1994 tax return; 4) 1995

tax return; and 5) 1996 tax return extension. There is no clear and convincing evidence of contempt.

#### **CONCLUSION**

Defendants argue that plaintiffs engaged in a pattern of delay and obfuscation over the course of the three and one-third years of litigation in this action. Plaintiffs argue that "defendants ... come to Court with unclean hands." Pltffs.' Brief at 10-11. Both sides in this matter must share equally the blame for the needlessly lengthy, expensive and exhausting discovery process. Having granted summary judgment in favor of defendants, their complaints of plaintiffs' failure to produce documents for trial is essentially moot.

An appropriate Order follows.

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ORDER

AND NOW, this 27th day of March, 1998, upon consideration of defendants' motion for contempt, plaintiffs' response thereto, defendants' reply, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Defendants' motion for contempt is **DENIED**.
2. Plaintiffs' motion to compel production of documents is **DENIED AS MOOT**.

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Norma L. Shapiro, J.