

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

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

MEMORANDUM ORDER

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. Plaintiff traced \$3,000,000 to an account in the name of Marshland at the Overseas Development Bank & Trust ("ODBT") of Dominica.¹

Defendants ultimately stipulated to the entry of an order on October 20, 2000 which, as modified by order of December 5, 2000, required them to restore a substantial portion of the alienated funds to plaintiff by a specified date. When defendants failed to honor that order, plaintiff moved to hold defendants in contempt. Contempt hearings scheduled by the court were continued four times on the request of counsel. The

¹ODBT is chartered in Dominica but apparently has been operated from Antigua and Barbuda.

requests were predicated on assurances that defendants were endeavoring to comply with the court order and would shortly overcome various stated obstacles purportedly encountered in effectuating restitution.

The court had also ordered defendant Mason to submit to a deposition and had ordered both defendants to produce various documents. Defendants failed to comply.

A contempt hearing was finally held on March 16, 2001. 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 have 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 only evidence presented of reasonable efforts was the testimony of Mr. Mason. The essence of that testimony was as follows.

Mr. Mason is an "international banking consultant." He obtains investors for an "international trading program" which makes funds available to foreign governments for social programs and capital projects for which Mr. Mason receives commissions.

The program provides a very high rate of return. Many large U.S. banks are invested in the program but none would ever confirm the existence of the program 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 Mr. Mason is approached daily by interested investors, he accepts only one in a thousand whom he deems qualified for the program. 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 which was used to effectuate the investment in the program. It is now impossible to obtain a return of this money as all \$500,000,000 in the program have been "frozen" by the recipient nations or their central banks. Mr. Mason is confident that investors will eventually get their initial investments back but does not know when or whether investors will receive the promised profit.

Defendants intended to honor the court order to repay \$7,500,000 with substitute funds to be "loaned" to them by the investment program. The program director assured Mr. Mason that the necessary funds would be made available imminently. Mr. Mason talked to the program director "daily" regarding the receipt of these funds. The program director finally advised Mr. Mason the afternoon before the hearing that the \$7,500,000 was

now on deposit in U.S. banks and that three cashiers checks for \$2,500,000 each would be issued to plaintiff between March 22, 2001 and March 28, 2001.

Mr. Mason has no documentation regarding the program or his relationship with it. He has no documentation reflecting the deposit of the \$7,500,000 in U.S. banks. He is prohibited by a confidentiality agreement from revealing the name of the program director. He does not have a copy of that agreement. Only when directed to do so by the court did Mr. Mason identify the program director as "Juan Cordona" whose business address he could not recall. Mr. Mason did provide Mr. Cordona's telephone number. When that number is dialed, the caller is advised by a recorded message that "the number you have dialed is incorrect -- please check the number and try again."

Other than Mr. Mason's discussions with the program director about the loan of \$7,500,000, defendants undertook no effort to attempt to comply with the court order.

Mr. Mason's testimony is incredible. The court does not believe that any of plaintiff's \$15,000,000 was invested in an international trading program or that such a program exists. When questioned about the \$3,000,000 in ODBT, Mr. Mason testified that this money "is not available." When asked why, his only response was "it just isn't."

The court determined at the conclusion of the hearing that defendants were in contempt for failure to obey the order of October 20, 2000, as modified on December 5, 2000, and entered a memorandum order to that effect on March 19, 2001. The contempt hearing was recessed until 4:00 p.m. on March 21, 2001 to allow defendants to purge themselves of contempt before imposition of coercive sanctions. At that time, Mr. Mason was to produce competent verification that the funds in ODBT or from other sources were in the process of transfer to plaintiff. The court also instructed Mr. Mason to submit forthwith to deposition and produce the documents requested and subpoenaed by plaintiff or submit an affidavit accounting for the unavailability of these documents which any business or businessman would be expected to maintain. The court granted plaintiff's request for fees and costs necessitated by the prosecution of the contempt motion.

Contempt proceedings resumed on March 21, 2001. Mr. Mason presented a purported e-mail to him from Juan Cordona confirming that the promised \$7,500,000 was on deposit at "the International Money Institution in Dallas, TX." Mr. Mason testified that these funds would be transferred by March 22, 2001 to an account at the Israeli Discount Bank of New York in the name of Honeycomb Investments, and that this bank "already has instructions to cut the checks" to plaintiff. Mr. Mason testified that the funds on deposit with ODBT were unavailable

because they had been pledged to the government of Dominica to help secure a \$10,000,000 capital requirement imposed on offshore banks by that government.

The telephone company in Dallas has no record of a listed or unlisted telephone number for an "International Money Institution." When confronted with this information, Mr. Mason testified that this is a "private" financial institution and speculated that everyone working there uses cellular phones.

The proceedings were recessed until March 23, 2001 to permit verification of this latest promise of imminent compliance. At these proceedings the court learned that in response to a subpoena, counsel for the Israeli Discount Bank of New York represented that the bank has no account in the name of Honeycomb Investments. The court noted that whatever restrictions may exist on the withdrawal of the funds at ODBT, absolutely no reason had been given why defendants could not assign their interest in those funds to plaintiff. Defense counsel represented that Mr. Mason "is quite happy to agree to that" and to "execute whatever documents are necessary for that."

The court directed Mr. Mason to execute the necessary documentation to assign and transfer all rights and interest of defendants in the funds at ODBT to plaintiff, and to provide to plaintiff all pertinent information regarding their accounts at ODBT. The court directed Mr. Mason to submit to a deposition and

to produce the financial and other records long requested by plaintiff. The court recessed the contempt proceedings pending a report from counsel on defendants' compliance with these directions.

In the interim, the court has been apprised by counsel of the following pertinent information. David Corriette, Supervisor of Financial Institutions of Dominica, confirmed that the capital requirement for ODBT is in fact only \$1,000,000. Christopher Stone, the managing director of ODBT, confirmed that at Mr. Mason's instruction, \$2.75 million were placed in certificates of deposit in the name of Marshland Ltd. and were fully redeemable in July 2002. Mr. Stone advised that upon receipt of a letter of authorization from Mr. Mason, ODBT would provide all records pertaining to defendants' accounts at the bank.

The court was recently advised by plaintiff's counsel that Mr. Mason has failed to execute a categorical assignment of defendants' rights and interest in the ODBT funds, but has insisted on plaintiff's agreement to various qualifications and concessions. Mr. Mason has failed to authorize ODBT to provide pertinent account information to plaintiff to help it effectuate any assignment and locate other millions of dollars yet accounted for. Mr. Mason was deposed but was less than forthcoming and

produced virtually none of the subpoenaed documents.²

Mr. Mason has acknowledged control only of those funds of plaintiff which it has succeeded in tracing to him. He has otherwise continued to claim he has no assets and to refuse to account for an outstanding millions of dollars.³ He has persisted in his fanciful account of a secret \$500,000,000 foreign investment program and of the always imminent transfer of funds from the elusive Mr. Cordona to effect compliance with the court's order. The court is confident that whether he is a confederate or complete fiction, Mr. Cordona does not administer any such program and has not transferred \$7.5 million to the united States for payment to plaintiff. Mr. Mason has presented false testimony and fabricated e-mail. He has apparently failed even to honor his promise and the court's direction regarding the assignment of the ODBT funds.

The court has been quite tolerant in providing defendants with an opportunity to purge themselves of contempt. The court has attempted to importune rather than coerce compliance. The court, however, cannot conscientiously give

²These include records of a type any legitimate business or businessman would be expected to maintain. Also, by now, copies of defendants' respective corporate and individual tax returns covering the pertinent period should be available.

³When the only explanation for the disposition of funds by one who indisputably obtained them is fantastic, it is reasonable to conclude that the funds are elsewhere subject to his control or at least an accounting by him.

still further leeway to defendants in the face of such a blatant affront to the judicial process. In short, enough is enough. Either defendants will comply with the obligations they agreed to assume and as directed by the court or coercive sanctions will be imposed.

ACCORDINGLY, this day of May, 2001, **IT IS**
HEREBY ORDERED that defendants shall by noon on May 9, 2001 provide proof, with confirmation of plaintiff's counsel, that they have provided to plaintiff: written authorization to obtain all information about their accounts at ODBT from that bank; an unqualified assignment of all rights and interest in the certificates of deposit identified by Mr. Stone; all of the financial and other records requested and subpoenaed by plaintiff; and, a documented accounting for at least the \$4.25 million as discussed at proceedings on March 23, 2001; or, defendants shall appear before the court on May 10, 2001 at 2:00 p.m. for a hearing on the imposition of appropriate sanctions.

BY THE COURT:

JAY C. WALDMAN, J.