

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.

May 25, 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. Plaintiff moved to hold defendants in contempt. A hearing was held on March 16, 2001.

Mr. Mason 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 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 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. 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. The program is managed by a director with whom Mr. Mason is in regular contact but whose existence cannot be verified.¹ Mr. Mason has no documentation regarding the program.

Plaintiff traced millions of the dollars entrusted to defendants for investment to accounts controlled by defendants including an account in the name of Marshland at the Overseas Development Bank & Trust ("ODBT") on the West Indian island of Dominica. Plaintiff ultimately 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 the purported director of the international trading program.

Defendants were adjudged in contempt on March 16, 2001

¹Mr. 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 and Jesus Cardona.

for disobeying the court order of 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.²

The court has now deferred the imposition of sanctions for eight weeks to give defendants an opportunity to purge themselves as Mr. Mason represented they would do. Instead, defendants have persisted in their refusal to comply with the court order while Mr. Mason shamelessly engaged in a pattern of prevarication and secreted assets.

He periodically assured plaintiff and the court that compliance was imminent. He has identified various purported sources of funds ranging from the improbable to the fantastic. On one occasion he averred that the funds were on deposit at a financial institution in Dallas which turned out to be non-existent. He has submitted incredible supporting documentation, most recently 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 arrive on the promised date, Mr. Mason offers various shifting and sometimes contradictory

²Additional background information is set forth in the court's memoranda of March 20, 2001 and May 1, 2001.

³The court does not mean to suggest that these documents are incredible in their facial appearance. To the contrary, some of them would impress a casual observer as authentic looking. It would appear 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.

explanations. Mr. Mason has also 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 is exposed as false, Mr. Mason glibly offers a remarkable explanation and moves on to another dubious representation. When he is challenged for lack of documentation regarding a purported transaction, Mr. Mason suddenly produces 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 is as brazen as any the court has ever seen.

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. As the court has already found, 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.

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

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.

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.

plaintiff's counsel on March 22, 2001 that he would comply with any written authorization from Mr. Mason regarding defendants' funds at the bank. By May 17, 2001, however, Mr. Stone advised plaintiff's counsel that the bank would not honor the unequivocal 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 would have been advised that this matter would be resolved imminently without further action by the bank if not by Mr. Mason.

Local counsel for plaintiff in Dominica has advised that there is no legal reason why ODBT cannot act on the assignment and authorization documents which he reviewed. Defense counsel accepted this and indeed he himself characterized

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

the bank's peculiar turnabout as outrageous. Nevertheless, defense counsel has advised that Mr. Mason refuses to pursue legal procedures available in Dominica to compel ODBT to comply with the assignment and authorization. The court concludes that these funds are available to satisfy defendants' obligations under the court order were Mr. Mason truly interested in complying.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 which he did not have but had left in "safe keeping" at ODBT. Mr. Mason later produced an unexecuted 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

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, 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 v. City of Philadelphia, 47 F.3d 1311, 1324 (3d Cir. 1995).

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).

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 contempt hearing of March 16, 2001. 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 is no evidence of any "loan" repayments by Mr. Mason to the purported Mr. Webster. Plaintiff subsequently documented that the source of the \$175,000 to Mr. Mason was 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.

On April 18, 2001 while Mr. Mason was assuring

⁹Even assuming this money was truly loaned to Mr. West, the repayments with interest would be an asset of Mr. Mason's. 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 has ever been presented.

plaintiff and the court 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 has since documented that this money was actually transferred to Mr. Mason from ODBT. There has been 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 has provided an endless array of fantastic explanations and inherently incredible documents. Persons who purportedly could corroborate his averments, although close business associates, friends or family of Mr. Mason, are never called by defendants to appear. Plaintiff has clearly and convincingly shown 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 admittedly controls assets purchased with plaintiff's funds which he refuses to transfer or liquidate to comply with the court order.

Plaintiff is justified in asserting that "defendants have no interest in complying with the Court's orders" and that "[t]heir affront to the judicial process is startling." The

court concludes that Mr. Mason has misrepresented defendants' willingness and efforts to purge themselves, and instead used the time provided to him to frustrate the attempt to retrieve plaintiff's funds. The court's patience is exhausted. To ignore or further tolerate defendants' flagrant contempt would undermine the credibility of our processes of justice.

Marshland is wholly controlled by Mr. Mason and as a practical matter no discrete sanction could be imposed upon it which would induce compliance. It is virtually certain that any monetary sanctions imposed on either defendant would be ignored and would be enforceable, if at all, only with great effort and expense. The only realistic sanction likely to induce compliance is the incarceration of Mr. Mason.

Accordingly, Mr. Mason will be confined until such time as he and Marshland through him comply with the restitution order.¹⁰ An appropriate order and direction to the U.S. Marshal will be entered.

¹⁰Defendants are obligated by the court order to restore \$7,500,000. Amounts totaling \$2.4 million in bank accounts in Mr. Mason's name in this District were frozen after this action was initiated and later surrendered by Mr. Mason to plaintiff. Prior to the initiation of this action, Mr. Mason returned \$5 million to plaintiff which he represented to be a return on plaintiff's investment. The court 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 confirm plaintiff's belief that there are additional funds accessible more fully to effect compliance.

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

O R D E R

AND NOW, this day of May, 2001, consistent with the accompanying memorandum and the adjudication of contempt by memorandum order of March 19, 2001 herein, **IT IS HEREBY ORDERED** that defendant Thomas E. Mason is committed to the custody of the U.S. Marshal for this District for confinement at the Federal Detention Center in Philadelphia, or such other federal facility as may hereafter be determined by the Bureau of Prisons to be more suitable, to be held until further order of court to be entered when Mr. Mason, individually and as sole owner of Marshland, purges defendants of contempt by complying with the court's restitution order of October 20, 2000 as modified by order of December 5, 2000; the U.S. Marshal is directed to take all appropriate measures to effectuate this order; and, the Federal Bureau of Prisons shall house defendant Mason with pretrial detainees and ensure his sustenance, receipt of any needed medical attention and opportunity to communicate with counsel.

BY THE COURT:

JAY C. WALDMAN, J.