

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

F.T. INTERNATIONAL, LTD. : CIVIL ACTION
: :
v. : :
: :
THOMAS E. MASON, MARSHLAND, LTD.; :
and MAIN STREET BANK (Trading :
as BERKS COUNTY BANK and :
HERITAGE BANK) and SOVEREIGN :
BANK : NO. 00-5004

MEMORANDUM ORDER

Presently before the court is plaintiff's Motion to Authorize the Clerk to Accept a Deposit of Funds. There has been no objection or indeed timely response of any kind.

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. Following a hearing, defendants were adjudged in contempt of court for failure to comply with the

restitution order, however, the court deferred an imposition of sanctions 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.

Plaintiff traced millions of the dollars entrusted to defendants for investment to accounts controlled by Mr. Mason, 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.

After a further hearing, the court determined that while assuring the court that compliance was imminent, Mr. Mason had actually attempted to secrete assets and shown a brazen disregard for the judicial process. The court ordered Mr. Mason confined at the Federal Detention Center until he took specified steps to comply with the restitution order, including the release of almost \$3,000,000 in the ODBT account.

Plaintiff's counsel have recently learned from an officer at ODBT that \$2,750,000 in a Marshland account at ODBT, now renamed Investors Bank & Trust Limited ("IBT"), will be forwarded to Mr. Mason. The Managing Director of IBT has now

stated in writing to plaintiff that, despite defendant's prior representations to the contrary, the bank has acted strictly as directed by Mr. Mason with respect to the funds received from him. It is these funds which are the subject of plaintiff's motion.

District courts are generally divested of jurisdiction upon the filing of an appeal. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); Bensalem Twp. v. International Surplus Lines Ins. Co., 38 F.3d 1303, 1314 (3d Cir. 1994). The essential purpose of the rule divesting district courts of jurisdiction upon the filing of an appeal is to prevent confusion and inefficiency resulting from the consideration of similar issues by two courts simultaneously. See Venen v. Sweet, 758 F.2d 117, 121 (3d Cir. 1985). Mr. Mason's purported ability to effectuate a transfer of the funds at IBT and to purge himself of contempt while housed at the FDC is a subject of the court's memorandum and order of August 10, 2001 from which Mr. Mason has appealed.

The divestiture rule does allow for limited exceptions consistent with its essential purpose. See Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 97 (3d Cir. 1988). The circumstances presented are rather unique and would appear to qualify as such an exception.

The entry of the restitution order was not contested and in any event the time for any appeal from that order has long expired. If Mr. Mason were to succeed in retrieving and again secreting or dissipating funds received from plaintiff while challenging his contempt adjudication on the ground he is unable to restore those funds to plaintiff as ordered, he would make a mockery of the process of both courts. Should Mr. Mason obtain and dissipate or alienate these funds, he could render largely ineffectual any decision by the appellate court affirming the adjudication of contempt.

Also, plaintiff has suggested with some force that if IBT through its Managing Director were knowingly to facilitate Mr. Mason's retrieval of funds found by a court with jurisdiction over him to have been fraudulently obtained from plaintiff and payable to it, they could face potential civil and criminal liability. In such circumstances, they should have the opportunity to deposit these funds with a court which has jurisdiction to adjudicate the proper disposition of the funds and any claim by Mr. Mason to them.

To grant plaintiff's uncontested motion would not require the simultaneous consideration of similar issues by two courts. This court has already considered the question of whether Mr. Mason has the ability to produce the \$2,750,000 and has found that he does. No juridical inefficiency or confusion

would result from a measure to secure those funds if Mr. Mason is in fact about to obtain them while contending on appeal that he is unable to do so. The integrity of the judicial processes of both courts would be protected if these funds could be secured.

If Mr. Mason himself were now to direct payment of these funds into the registry of the court, he would go far toward purging himself of contempt. He should continue to have an opportunity to do so and the court will provide for that option as well. Should Mr. Mason obtain and then again hide or dispose of these funds at this time, he would give new meaning to the concept of contumacy.

The court concludes that it has the authority to grant plaintiff's motion and provide for the deposit of the IBT funds into the court registry at the behest of defendants or the bank.

ACCORDINGLY, this day of May, 2002, upon consideration of plaintiff's Motion to Authorize the Clerk to Accept a Deposit of Funds (Doc. #82) and in the absence of any timely response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the Clerk will be authorized to accept the funds in question for deposit.

BY THE COURT:

JAY C. WALDMAN, J.