

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

MEMORANDUM ORDER

Defendant Mason has filed a Motion to Schedule Hearing. The purpose of the requested hearing would be to show that he has now attempted to transfer for plaintiff's benefit funds he took from plaintiff and placed in an account under his control at a bank in Dominica which allegedly has recently been placed into receivership and is under investigation for "money laundering and fraud." Defendant asks that the court then order his release "as the reason for his continued incarceration no longer exists" since "it may be impossible for Mr. Mason to obtain [this] money."¹

Defendant's persistent refusal to return the money on account in Dominica is a manifestation of his contempt but not per se the reason for his incarceration. Defendant refused to obey a court order to return millions of dollars taken from plaintiff including substantial amounts traced to him in addition to the funds in Dominica, as detailed in the court's memoranda of

¹Plaintiff documented the transfer of at least \$300,000 from the bank to Mr. Mason during the period he last claimed the funds he had placed in the bank were unobtainable.

May 25, 2001 and August 10, 2001, and to provide financial records from which other funds could be traced.²

In a related submission filed on September 10, 2002 in response to a court inquiry regarding the promised transfer of funds, defendant Mason suggests that a "Mr. Cardonna does in fact exist."³ This would not explain or excuse defendant's use of money taken from plaintiff for a promised high yield investment to purchase a house, furnishings and automobiles for Mr. Mason or to make unreported cash "gifts" and "loans" to family members and associates of Mr. Mason. As the court noted in its memorandum of August 10, 2001, Mr. Mason "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 Mason's pending appeal from the order confining him for contempt would ordinarily divest the court of jurisdiction. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982); Bensalem Twp. v. International Surplus Lines

² As summarized in the court's memorandum of August 10, 2002, substantial compliance would be "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."

³ Mr. Mason testified that he was well acquainted with this individual who purportedly directed the investment program into which defendant promised to place plaintiff's funds and then spelled his name as Cardona.

Ins. Co., 38 F. 3d 1303, 1314 (3d Cir. 1994). Insofar as defendant had suggested as a basis for release the improbability of eventual compliance despite continued confinement, as addressed in the court's memorandum of August 10, 2001, his appeal may be moot as he now appears to acknowledge that confinement has induced an effort toward at least partial compliance. Also, see Chadwick v. Janecka, ___ F.3d ___, 2002 U.S. App. LEXIS 17172, *30 (3d Cir. Aug. 20, 2002) (questioning but not deciding whether the "no substantial likelihood of compliance" standard remains good law after United Mine Workers v. Bagwell, 512 U.S. 821 (1994)).⁴ In any event, that a claim on which an appeal was predicated may be moot would not extinguish the appeal.

Also, defendant did not serve a copy of this motion on counsel for plaintiff which clearly has a critical interest and a right to file a response. Unless certified as uncontested, every motion and supporting brief must be accompanied by a written verification of service. See L.R. Civ. P. 7.1(d). Defendant

⁴ The court applied this standard in response to defendant's motion to rescind the order of contempt and 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."

filed no supporting brief as required by L.R. Civ. P. 7.1(c).⁵ Defendant did submit a certificate of service with the instant motion, however, it shows only that a copy of the motion was served upon defendant's current local counsel, John I. McMahon, Jr., and an Assistant U.S. Attorney who is apparently directing an investigation into the activities of Mr. Mason which gave rise to this action.⁶

ACCORDINGLY, this day of September, 2002, **IT IS HEREBY ORDERED** that defendant Mason's Motion to Schedule Hearing (Doc. #97) is **DENIED**, without prejudice to renew with proper service upon plaintiff and with a supporting memorandum including an explanation of the court's jurisdiction to act in the present circumstances.

BY THE COURT:

JAY C. WALDMAN, J.

⁵As noted, defendant filed a submission on September 10, 2002 regarding the status of the promised and overdue transfer of funds from Dominica. In this submission defendant elaborated upon the efforts purportedly underway to effect a transfer and on the current state of the offshore bank. This submission was unaccompanied by any certificate of service and there is otherwise no indication that it has been served on any other party.

⁶In the submission of September 10, 2002, defense counsel requests that the court ask the government to investigate the true circumstances of the bank in Dominica. Counsel candidly acknowledged that she cannot determine or state that Mr. Mason has had no role in the fate of the bank in Dominica or any depletion of funds therein "without further investigation by the United States Government." While any investigation of Mr. Mason's conduct by the U.S. Attorney's Office would logically include some inquiry in this regard, it is not the role of the court to advise or direct the executive branch in the conduct of a criminal investigation.