

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, Receiver for
SARDAUKAR HOLDINGS, IBC and
BRADLEY C. STARK,

Plaintiff,

v.

3D MARKETING LLC,

Defendant.

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CIVIL ACTION NO. 3:06-CV-0293-L (BD)

ECF

Referred to U.S. Magistrate Judge

**MOTION FOR SHOW CAUSE ORDER
AND BRIEF IN SUPPORT**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling, as Receiver in this action (“Plaintiff” or “Receiver”), and files this his Motion for an order requiring 3-D Marketing, LLC (“Defendant”) to appear through its principal agent, Dean A. Steeves and show cause why it should not be held in civil contempt for violating this Court’s order of judgment [Dkt. No. 41]. In support of this motion, the Receiver would respectfully show the Court as follows:

**I.
INTRODUCTION**

On March 8, 2007, this Court entered its judgment [Dkt. No. 41] that required Defendant to disgorge \$150,000.00 and tender it to the Receiver “within thirty (30) days of the entry of this judgment.” More than thirty days have passed since that time and Defendant has not yet tendered that amount to the Receiver. Accordingly, the Receiver now seeks to have the Defendant’s principal agent held in civil contempt until it returns that amount to the Receivership Estate.

II.
BACKGROUND FACTS

1. By Order of July 5, 2005, this Court appointed Michael J. Quilling as Receiver for the Defendants and Relief Defendants in *SEC v. Megafund Corporation, et al.* Cause No. 3:05-CV-1328 (N.D. Tex.) (the "SEC Proceedings"). In that capacity, the Receiver filed a Complaint [Dkt. No. 1] against Defendant to recover \$150,000.00 of investor funds that Defendant received from Sardaukar Holdings, IBC. The Receiver's Complaint stated claims for fraudulent transfer and constructive trust and disgorgement. Defendant's Answer [Dkt. No. 18] denied those claims and stated six affirmative defenses.

2. On November 17, 2006, the Receiver filed his Motion for Summary Judgment [Dkt. No. 23]. The Defendant countered by filing a take-nothing Motion for Summary Judgment on December 7, 2006 [Dkt. No. 27]. After both parties submitted their response and reply briefs, the United States Magistrate Judge issued his Findings and Recommendation [Dkt. No. 37] that the Court should enter summary judgment for the Receiver and against the Defendant for \$150,000.00 along with pre-judgment and post-judgment interest, costs, and reasonable attorneys' fees.

3. On February 14, 2007, Defendant filed objections [Dkt. No. 38] to those findings. The Receiver submitted a reply [Dkt. No. 39] on February 20, 2007.

4. On February 28, 2007, this Court entered its Memorandum Opinion and Order [Dkt. No. 40] that (1) overruled the Defendant's objections, (2) accepted the Magistrate Judge's findings as those of the Court, (3) denied the Defendant's take-nothing Motion for Summary Judgment, and (4) granted the Receiver's Motion for Summary Judgment on his claims for fraudulent transfer and constructive trust and disgorgement. That Order awarded \$150,000.00 to the Receiver and imposed a constructive trust on all funds that Sardaukar transferred to the Defendant.

5. On March 8, 2007, the Court issued its final judgment [Dkt. No. 41] that confirmed its earlier rulings. In it, the Court expressly directed that “3-D Marketing, LLC is to disgorge these funds to the Receiver within thirty (30) days of the entry of this Judgment.” *Judgment* Mar. 8, 2007 [Dkt. No. 41] (emphasis added).

6. More than thirty days have passed since the Court’s order to disgorge those assets and Defendant has not yet tendered that amount for payment. *Receiver’s Declaration*, Exhibit “A” at ¶ 4. On April 2, 2007, in an effort to avoid Court intervention, the Receiver’s counsel sent a letter reminding Defendant of his obligation under the disgorgement order. *See Letter to Defendant*, April 2, 2007, Exhibit “B”. Defendant’s counsel responded with a letter stating that Defendant was without assets to comply with the Court’s order. *Letter from Defendant*, April 3, 2007, Exhibit “C”.

7. Accordingly, the Receiver respectfully requests that this Court impose appropriate civil contempt sanctions until Defendant fully complies with the Court’s disgorgement order.

III. ARGUMENTS AND AUTHORITIES

8. Defiance of a Court order is appropriately redressed by finding the responsible party in contempt of Court. Federal Courts have the inherent power to achieve orderly and expeditious disposition of their dockets by imposing reasonable sanctions for disobedience. *Natural Gas Pipeline Co. v. Energy Gathering, Inc.*, 86 F.3d 464, 465 (5th Cir. 1996). Accordingly, a person who fails to obey a lawful Court Order may be punished for contempt. *Travelhost, Inc. v. Blandford*, 68 F.3D 958, 961 (5th Cir. 1995). In a civil contempt proceeding, the party seeking relief must simply establish that: (1) a Court order was in effect; (2) the order required certain conduct by the respondent; and (3) the respondent failed to comply with the order. *See Am. Airlines, Inc. v. Allied Pilots Ass’n*, 228 F.3d 574, 581 (5th Cir. 2000), *cert. denied*, 121 S.Ct. 1190 (2001), *citing Martin*

v. Trinity Indus., Inc., 959 F.2d 45, 47 (5th Cir. 1992); *Lelsz v. Kavanagh*, 673 F.Supp. 828, 839 (N.D. Tex. 1987). The standard of proof is clear and convincing evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987). However, the conduct need not be willful so long as the respondent actually violated the Court's order. *Allied Pilots Ass'n*, 228 F.3d at 581.

9. This Court has inherent authority to punish parties who refuse to surrender Receivership Estate assets according to a Court Order. For example, in *SEC v. AMX Int'l, Inc.*, 7 F.3d 71, 72-73 (5th Cir. 1993), the Fifth Circuit agreed that contempt was an appropriate remedy to enforce disgorgement orders in an SEC proceeding. It reasoned that an order to surrender property is simply an injunction in the public interest (as opposed to a money judgment) and is, therefore, properly enforced by the Court's contempt powers. *Id.* at 76 (noting that incarceration would be appropriate to bring about compliance). The Fifth Circuit also recognizes the use of contempt proceedings to enforce the rights of a court-appointed Receiver in performing his duties. *See, e.g., Santibanez v. Wier, McMahon & Co.*, 105 F.3d 234, 242 (5th Cir. 1997).

10. The undisputed facts in this case support a finding for civil contempt. The final judgment directed Defendant to disgorge \$150,000.00 and tender it to the Receiver within thirty days. *Judgment*, Mar. 8, 2007 [Dkt. No. 41]. That deadline has passed and Defendant has ignored the Receiver's demands for payment. *Receiver's Declaration*, Exhibit "A" at ¶ 4. Accordingly, the Receiver respectfully requests that this Court order Defendant to appear in these proceedings through its principal agent, Dean A. Steeves, and show cause why it should not be held in civil contempt. Should this Court enter a finding of civil contempt, Defendant's principal agent ought to remain in custody until he ensures that Defendant fully complies with the Court's disgorgement order. *See*,

e.g., Hicks v. Fiock, 485 U.S. 624, 632 (1988). (imprisonment is an appropriate remedy for civil contempt if it stands until the contemnor performs all affirmative acts required by the order).

**IV.
PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Receiver prays as follows: (1) that this Court set a hearing for Defendant to appear through its principal agent, Dean A. Steeves, and show cause why it should not be held in civil contempt for failing to disgorge \$150,000.00 according to the Court's judgment; (2) that, following the show cause hearing, this Court find Defendant and its principal agent in civil contempt; (3) that this Court order Defendant's principal agent to be held in custody until Defendant disgorges \$150,000.00 to the Receiver, along with the reasonable and necessary attorneys' fees incurred through this action; and (4) for such other and further relief, general or special, at law or in equity, to which the Receiver may justly show himself entitled.

Respectfully submitted,
QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ Brent J. Rodine
Michael J. Quilling
State Bar No. 16432300
E-mail: mquilling@qsclpc.com
Brent J. Rodine
State Bar No. 24048770
E-mail: brodine@qsclpc.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

According to Local Civil Rule 7.1, the Receiver would show unto the Court as follows:

On April 11, 2007, the undersigned spoke with Defendant's counsel by telephone. It was determined that Defendant opposes the relief requested.

/s/ Brent J. Rodine

CERTIFICATE OF SERVICE

A copy of this motion will be sent to all interested parties through the Court's electronic filing system.

/s/ Brent J. Rodine