



Defendant's principal officer 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 it 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 [Dkt. No. 27] on December 7, 2006. 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. *Id.*

5. On March 8, 2007, the Court entered 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." *Id.* (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*, 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*, Exhibit "C".

7. The Receiver then filed a Motion for Show Cause Order [Dkt. No. 43] on April 11, 2007. Two days later, the Court entered an Order [Dkt. No. 44] that set the Receiver's motion for hearing.

8. At that hearing, the Court questioned whether Dean A. Steeves, as Defendant's corporate representative, could be held in civil contempt for violating a disgorgement order directed solely to the Defendant. *See Order*, May 11, 2007 [Dkt. No. 47]. Accordingly, the Court dismissed the Receiver's motion without prejudice. *Id.* The Court also noted that Steeves shall be ordered to appear for a deposition at a date and place selected by the Receiver. *Id.* That deposition is currently scheduled for June 20, 2007, in the conference room of U.S. Magistrate Judge Jeff Kaplan.

*Receiver's Declaration*, Exhibit "A" at ¶ 7.

9. In the meantime, the Receiver submits this motion and brief showing that corporate officers may be held in civil contempt for failing to comply with an order directed solely towards a company. The Receiver, therefore, requests that this Court set a second show cause hearing and impose appropriate civil contempt sanctions upon Dean A. Steeves until Defendant fully complies with the Court's disgorgement order.

### III. ARGUMENTS & ANALYSIS

#### A. For Defying the Disgorgement Order, Defendant is Subject to Civil Contempt.

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

This court has inherent authority to punish parties that refuse to surrender Receivership Assets according to a court order. For example, in *SEC v. Yun*, 208 F. Supp. 2d 1279, 1282 (N.D. Fla. 2002), the District Court entered a final judgment ordering that the defendant disgorge \$269,000.00 within ten days. When defendant failed to do so, the SEC filed a motion for civil contempt. *Id.* The District Court then entered a finding of civil contempt, noting that “imprisonment is a proper sanction for [defendant’s] contempt of this Court’s order.” *Id.* at 1288; *see also Steffen v. Gray, Harris & Robinson, P.A.*, 283 F. Supp. 2d 1272, 1276 (N.D. Fla. 2003) (noting that the SEC used a civil contempt action to enforce a disgorgement order); *SEC v. Musella*, 818 F.Supp. 600, 601 (S.D.N.Y. 1993) (finding defendant in civil contempt for failing to disgorge judgment amount within thirty days as ordered). In the context of SEC actions, disgorgement orders “operate to wrest ill-gotten gains from the hands of a wrongdoer.” *Steffen*, 283 F. Supp. 2d at 1282 (internal quotations omitted). Accordingly, a disgorgement order is more like an injunction for the public interest than a money judgment and is appropriately enforced by civil contempt. *SEC v. Huffman*, 996 F.2d 800, 802-03 (5th Cir. 1993). The Fifth Circuit has further recognized 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).

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* [Dkt. No. 41]. That deadline has passed and Defendant has failed to comply with the Receiver’s demands for payment. *Receiver’s Declaration*, Exhibit “A” at ¶ 4. As explained more fully below, this Court should order Defendant to appear in these proceedings through its Vice

President, Dean A. Steeves, and show cause why Steeves should not be held in civil contempt. The Receiver submits that Steeves 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).

**B. Defendant's Officers May Be Held in Civil Contempt for Defendant's Failure to Comply with the Disgorgement Order.**

Although not a party to this lawsuit, Dean A. Steeves may be held in civil contempt as Defendant's corporate representative who failed to take appropriate action in complying with the Court's disgorgement order.

It is well settled that any person with actual notice of a court order may be held liable for violating it. *See United States v. Hall*, 472 F.2d 261, 268 (5th Cir. 1972). Courts can even hold non-parties in civil contempt when they have actual knowledge of a court order and are "legally identified" with the violating party. *Alemite Manufacturing Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930); *see also Quinter v. Volkswagen*, 676 F.2d 969, 973 (3d Cir. 1982). In applying these principles, courts frequently hold corporate officers in contempt for their company's failure to comply with a court order.

The United States Supreme Court has long held that corporate officers are ultimately responsible for ensuring that their company complies with a court order:

A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt.

*Wilson v. United States*, 221 U.S. 361, 376 (1911) (emphasis added). Relying on that principle, numerous other courts have issued similar rulings. See, e.g., *Cent. States, Southeast & Southwest Areas Pension Fund v. Wintz Props., Inc.*, 155 F.3d 868, 876 (7th Cir. 1998) (ruling that a non-party corporate officer was subject to an injunction entered against the company and its officers); *NLRB v. Sequoia Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628, 633 (9th Cir. 1977) (labor union's officers were liable in contempt for disobeying an order directed at the union); see also *NLRB v. Maine Caterers, Inc.*, 732 F.3d 689, 691 (1st Cir. 1984); *SEC v. Coffey*, 493 F.2d 1304, 1310 (6th Cir. 1974).

For example, in *United States v. Hochschild*, 977 F.2d 208 (6th Cir. 1992), the Court of Appeals addressed whether a company's president could be held in contempt when the District Court directed the underlying injunction solely towards the company. In that case, the District Court entered an injunction prohibiting a company called Crystal Window from engaging in certain anti-union behavior. *Id.* at 209-10. That injunction was addressed only to Crystal Window and not to its officers or agents. *Id.* After several months of non-compliance, however, the National Labor Relations Board filed a motion for civil contempt against both Crystal Window and its president. *Id.* at 210. Although not parties to that action, the Circuit Court held that the Court's order applied to Crystal Window's president and all other officers and employees with actual notice of the order. *Id.* at 213 (noting that "if [the company's president] knew of the injunction, it was binding upon him").

Similarly, in *Chicago Truck Drivers v. Bhd. Labor Leasing*, 207 F.3d 500 (8th Cir. 2000), the Court of Appeals addressed whether a company's officer was liable in civil contempt for failing

to fund a union pension fund as ordered by the Court. The orders at issue in that case only addressed the company and not its officer. *Id.* at 507. However, when the company failed to make any of its payments, the pension fund filed a Motion for Contempt against both the company and its officer. *Id.* at 503. On appeal, the Circuit Court noted that orders directing a company to make payments are binding on all of its officers. *Id.* at 507 (citing *Int'l Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 75-76 (1967)). If the company and its officers fail to make payments as ordered, the Court may enforce its mandate through civil contempt proceedings. *Id.* at 507 (explaining that civil contempt is appropriate to enforce orders requiring "affirmative, prospective obedience"); *see also SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993).

In the past, this Court has also ordered U.S. Marshals to hold a corporate officer in custody until his companies fully complied with a disgorgement order. In *Quilling v. Funding Res. Group*, 227 F.3d 231 (5th Cir. 2000), the court-appointed receiver obtained an agreed order for David Gilliland and his two entities, Hammersmith Trust, LLC and Hammersmith Trust, Ltd., to disgorge \$2,745,000.00 by a certain date. When those parties failed to do so, the receiver filed a Motion for Contempt. *Id.* at 233-34. The District Court held David Gilliland in civil contempt both individually and "as agent for Hammersmith Trust, LLC and Hammersmith Trust, Ltd." *Id.* at 234. Although Gilliland was also a named defendant in that case, the Contempt Order notes that contempt was warranted because "[a] limited liability company and a corporation can only act through its agents." *Order Finding B. David Gilliland in Contempt of Court*, May 24, 1999 [Dkt. No. 200] (3:98-CV-2689). Accordingly, this Court ordered the U.S. Marshals to take Gilliland into custody until he and his entities paid all amounts due under the agreed order. *Id.*; *Funding Res. Group*, 227 F.3d at 234.

Without question, Defendant's principle officer can be held in civil contempt for failing to take appropriate action in complying with the Court's disgorgement order in this case. Therefore, the Receiver submits that this Court should order Defendant to appear through Dean A. Steeves and show cause why they should not be held in contempt of court.

**C. Dean A. Steeves is the Officer Accountable for Defendant's Actions in this Case.**

This Court should order Dean A. Steeves to appear and show cause why he has not taken appropriate action to ensure that Defendant complies with the Court's disgorgement order. From the beginning of this case, Steeves has held himself out as the corporate officer with authority to control Defendant and possessing personal information about this case.

Before filing suit, the Receiver's counsel contacted Defendant's offices to inquire about the \$150,000.00 transfers from Sardaukar. *Receiver's Declaration*, Exhibit "A" at ¶ 5. The receptionist directed that call to Dean A. Steeves. *Id.* At that time, Steeves represented that he was the appropriate person to address those transfers and he continued to do so in e-mail correspondence with the Receiver. *Id.*; *see also E-mail from Dean Steeves*, Jan. 12, 2006 [Dkt. No. 25-13].

After the Receiver determined that the underlying transfers were fraudulent, it was Steeves who initially attempted to represent the company and he continues to file pleadings in this case. *Rebuttal (by Special Appearance)* [Dkt. No. 6]; *Due Presentment Under Notary Seal* [Dkt. No. 48]. Although he now claims to be an "uncompensated former manager," Steeves is still listed on the company's website as the Vice President of Sales and offers statements on behalf of the company through its press releases. *Receiver's Declaration*, Exhibit "A" at ¶ 6; *Materials from Defendant's Website*, Exhibit "D". Furthermore, the website link for "Sales and Marketing" directs users to the

e-mail address dean@3d-mktg.com—the same address that Steeves used in correspondence with the Receiver's counsel. *Materials from Defendant's Website*, Exhibit "D"; *E-mail from Dean Steeves*, Jan. 12, 2006 [Dkt. No. 25-13].

In short, Steeves is the only officer to hold himself out as Defendant's representative for purposes of this litigation. He, therefore, appears to be Defendant's principal officer and should be held accountable for its failure to comply with the Court's disgorgement 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 Dean A. Steeves and show cause why they should not be held in civil contempt for failing to disgorge \$150,000.00 according to the court's Judgment and disgorgement order; (2) that, following the show cause hearing, this Court find both Steeves and the Defendant in civil contempt; (3) that this Court order Steeves to be held in custody until Defendant disgorges \$150,000.00 to the Receiver, along with pre- and post-judgment interest and the Receiver's reasonable and necessary attorneys' fees incurred through both show cause actions; 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,  
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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF CONFERENCE**

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

On June 5, 2007, the undersigned conferred with Defendant's counsel of record by telephone and 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