

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

JOSH IRVING, an individual,

Plaintiff,

vs.

Case No. 14-03615-CBB

HON. CHRISTOPHER P. YATES

NEVILLES ELECTRIC SERVICE, a
sole proprietorship; NEVILLE BLANTON,
an individual; LAURA BLANTON, an
individual; and CHASE BANK,

Defendants.

ORDER DENYING MOTION FOR CONTEMPT

“The power to hold a party, attorney, or other person in contempt is the ultimate sanction the trial court has within its arsenal, allowing it to punish past transgressions, compel future adherence to the rules of engagement, i.e., the court rules and court orders, or compensate the complainant.” *In re Contempt of Auto Club Insurance Ass’n*, 243 Mich App 697, 708 (2000). “Because the power to hold a party in contempt is so great, it ‘carries with it the equally great responsibility to apply it judiciously and only when the contempt is clearly and unequivocally shown.’” *Id.* Here, the failure of Defendant Chase Bank to implement an order of the Court prohibiting the transfer of funds cannot support a finding of contempt. Moreover, Plaintiff Josh Irving – the party requesting contempt – did not obtain service of process upon Chase Bank before the transfers occurred. Finally, the failure to implement the Court’s order resulted in no demonstrable harm. Accordingly, the Court has no basis whatsoever for holding Chase Bank in either criminal or civil contempt of court. But because Chase Bank’s inability to implement the terms of the court order resulted in transfers that contravened the order, the Court need not impose sanctions upon Irving for his actions in this litigation.

This motion traces its origin to a direct deposit of more than \$2,000,000 into a Chase Bank account by the United States Department of Labor (“DOL”) to Defendant Nevilles Electric Service (“NES”) as payment on a government contract. Although the parties asserting competing claims to the DOL funds resolved their dispute within 30 days of the commencement of this litigation, Plaintiff Josh Irving nevertheless has asked the Court to hold Chase Bank in contempt for permitting Neville Blanton – a principal of NES – to transfer funds out of the Chase account in violation of a temporary restraining order (“TRO”) entered by the Court on April 23, 2014. That TRO, which Irving obtained on an *ex parte* basis, restrained “all parties” from withdrawing or transferring funds out of the Chase account.¹

At 3:45 P.M. on April 23, 2014, Plaintiff Irving’s counsel hand-delivered a copy of the TRO to Krysta Stolzman, a branch-manager trainee who was filling in for the branch manager at the Chase Bank branch inside the Meijer grocery store on Clyde Park Avenue in Wyoming. Ms. Stolzman did not immediately freeze the Chase Bank account identified in the TRO, so Neville Blanton – who had not yet received the TRO – was able to withdraw \$2,000,618.00 from the account on April 25, 2014, and April 26, 2014. Fortunately, that situation that could have resulted in dire consequences instead yielded a settlement between Plaintiff Irving and Defendants Neville Blanton and Laura Blanton. On May 2, 2014, Neville Blanton agreed to transfer \$2,077,616.28 into a Fifth Third Bank account in the name of NES, which was under the exclusive control of Irving, see Order To Transfer Funds and Schedule Hearing (May 2, 2014), and on May 14, 2014, the parties informed the Court that they had resolved Irving’s claims against NES, Neville Blanton, and Laura Blanton.

¹ The proposed TRO presented by Plaintiff Irving enjoined only “Defendants,” but the Court chose to broaden the TRO to apply to “all parties,” thereby imposing restrictions upon Irving as well as the defendants in the case.

Despite what appears to be a truly favorable resolution of Plaintiff Irving's claims against all of the competitors for the DOL funds, Irving filed a "Motion for Contempt" on May 19, 2014, asking the Court to hold Chase Bank in contempt of court for failing to immediately freeze the account that contained the \$2,000,000 at issue in the underlying case. In Irving's view, if Chase Bank had abided by the terms of the TRO, Defendant Neville Blanton would not have been able to transfer the funds on April 25, 2014, and April 26, 2014, so Irving would not have suffered a loss of bargaining power to the tune of \$25,000 and attorney fees and costs totaling \$16,126.52. Chase Bank not only disputes Irving's right to a contempt finding, but also contends that Irving's arguments are so overblown and misplaced that Irving should be sanctioned.

Orders of the Court are not to be taken lightly. In fact, "[a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." Davis v Detroit Financial Review Team, 296 Mich App 568, 623-624 (2012). Therefore, the Court expected compliance with the TRO enjoining all parties – including Chase Bank, which was named by Plaintiff Irving as a defendant – from taking part in any transfer of funds from the Chase account identified in the TRO. But the Court has no power to adjudicate a controversy "without first having obtained jurisdiction [over the] defendant by service of process." See Lawrence M Clarke, Inc v Richco Constr, Inc, 489 Mich 265, 274 (2011). Because MCR 3.310(C)(4) empowers the Court to enjoin only "the parties to the action, their officers, agents, servants, employees, and attorneys," the Court may only hold Chase Bank in contempt of court if it received proper service of process – and therefore became a party – before Chase Bank permitted Neville Blanton to transfer the DOL funds on April 25 and 26, 2014.

A plaintiff may employ any of several permissible methods prescribed by MCR 2.105(D) to secure service of process upon a corporation. Here, Plaintiff Irving chose to effectuate service upon Chase Bank by personally serving a person in charge of an office and sending a copy of the summons and complaint to the principal office by registered mail, as contemplated by MCR 2.105(D)(2). That two-stage method ensures that the corporation receives adequate notice, and service of process is not complete under that approach until the corporation acknowledges receipt of the registered mail. See MCR 2.105(K)(1). Although Irving’s counsel personally served the summons, complaint, and TRO upon Ms. Stolzman of Chase Bank on April 23, 2014, Irving did not send the summons, complaint, and TRO to Chase Bank’s corporate headquarters until April 28, 2014, so those documents were not received until April 30, 2014. Accordingly, the Court lacked personal jurisdiction over Chase Bank on April 25 and 26, 2014, when Neville Blanton transferred the DOL funds from the Chase account. Because the Court did not have personal jurisdiction over Chase Bank on April 25 and 26, 2014, the Court almost certainly cannot hold Chase Bank in contempt for failing to prevent those transfers.

Assuming, *arguendo*, that the Court possessed personal jurisdiction over Defendant Chase Bank on April 25 and 26, 2014, the Court nonetheless lacks any factual basis to justify a finding of contempt. Michigan law recognizes contempt in three separate forms: criminal contempt; coercive contempt; and compensatory civil contempt. See *In re Contempt of Dougherty*, 429 Mich 81, 98 (1987). The most serious of these three, criminal contempt, requires proof of “willful disregard or disobedience of the order of the court,” which “must be clearly and unequivocally shown,” and the “defendant must have acted culpably.” *In re Contempt of Dorsey*, No 309269, slip op at 11 (Mich App Sept 9, 2014) (for publication). The record contains nothing remotely approaching that level. The second form, known as coercive contempt, aims “to force compliance with a court order[.]” See

In re Contempt of United Stationers Supply Co, 239 Mich App 496, 499 (2000). Here, the TRO no longer exists and the underlying case has been resolved, so no order remains to be enforced through the use of coercive contempt. The third form, called compensatory contempt, creates a civil remedy for harm done in violation of a court order. See id. at 499-500. That is, the Court may impose civil liability as “compensation for actual loss or injury caused by a contemnor’s misconduct.” See id. at 500. Irving seems to seek this type of remedy.

Any sanction for civil contempt must “be based upon evidence of complainant’s actual loss, and his right, as a civil litigant, to the compensatory fine is dependant upon the outcome of the basic controversy.” See Contempt of Dougherty, 429 Mich at 98. In this case, Irving contends that he lost bargaining power as a result of Chase Bank’s failure to freeze the account. To be sure, Chase Bank’s inaction enabled Neville Blanton to transfer \$2,000,618.00 out of the account on April 25 and 26, 2014, but Neville Blanton subsequently agreed to transfer \$2,077,616.28 into the Fifth Third Bank account under the sole control of Irving on May 2, 2014. Because Neville Blanton returned more funds to Irving than he transferred in the first instance, the Court finds no merit in Irving’s argument that Chase Bank’s failure to freeze the account resulted in a loss of bargaining power to the tune of \$25,000. Further, Irving cannot bootstrap a request for attorney fees of \$16,126.52 to his motion for contempt. The actual loss suffered as a result of contemptuous conduct may include attorney fees, see Taylor v Currie, 277 Mich App 85, 100 (2007), but Irving’s request incorporates the entire legal bill incurred in connection with this litigation. Virtually all of those fees would have been incurred regardless of the transfer of funds from the Chase Bank account, especially because the transferred funds almost immediately came to rest in an account under Irving’s exclusive control. Therefore, the damages claimed by Irving are at best speculative, and at worst non-existent.

Finally, the Court must offer a few words concerning both the procedural defects in Plaintiff Irving's motion for contempt and Chase Bank's demand for sanctions. According to MCR 3.606(A), proceedings for contempt "committed outside the immediate view and presence of the court" must be commenced "on a proper showing on ex parte motion supported by affidavits[.]" Here, Irving chose instead to file a "Motion for Contempt" supported by three affidavits and several exhibits. His submission did not strictly comply with the requirements of MCR 3.606(A), but it afforded the Court a clear understanding of the alleged basis for a contempt finding. The motion documented a transfer of more than \$2,000,000, which should have remained in the Chase account under the terms of the TRO. Thus, while the Court can find fault with the manner in which Irving proceeded, his motion for contempt rested upon actions – or, more accurately, inaction – that violated the central purpose of the TRO. Therefore, this case does not warrant sanctions against Irving, just as it does not require a contempt finding against Chase Bank.² Accordingly, the Court shall not only deny Irving's motion for contempt, but also reject the request for sanctions submitted by Chase Bank.

IT IS SO ORDERED.

Dated: September 12, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

² To be fair, Defendant Chase Bank's request for sanctions rests primarily upon Plaintiff Irving's conduct in naming Chase Bank as a defendant and obtaining a TRO on an *ex parte* basis. Irving designed his claim against Chase Bank for injunctive relief in Count Three in a manner similar to a demand for declaratory relief, but he carelessly demanded money damages from "all defendants" in his claims for breach of contract and conversion. Nevertheless, Irving promptly fell on his sword on those claims against Chase Bank, acceding to summary disposition in favor of Chase Bank on all claims. Consequently, although the request for sanctions presents a close question, the Court finds sanctions inappropriate under all of the circumstances of this case.