

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 6:21-cv-694-CEM-DCI

HARBOR CITY CAPITAL CORP.,
HARBOR CITY VENTURES, LLC,
HCCF-1, LLC,
HCCF-2, LLC,
HCCF-3, LLC,
HCCF-4, LLC,
HCCF-5, LLC,
HARBOR CITY DIGITAL VENTURES, INC.,
HCC MEDIA FUNDING, LLC,
JONATHAN P. MARONEY,

Defendants,

and

CELTIC ENTERPRISES, LLC and
TONYA L. MARONEY

Relief Defendants.

_____ /

**RECEIVER'S MOTION FOR ORDER TO SHOW
CAUSE AS TO DEFENDANT JONATHAN P. MARONEY**

Katherine C. Donlon, the Court-appointed Receiver, by and through undersigned counsel, hereby files this Motion for Order to Show Cause as to

Defendant Jonathan P. Maroney. In support of the motion, the Receiver states as follows:

BACKGROUND

The Securities and Exchange Commission brought this enforcement action on April 20, 2021 (Doc. 1). The Court issued a Temporary Restraining Order on April 21, 2021 (Doc. 6). That Order also froze the assets of the Defendants and Relief Defendants. Certain of the assets included in that asset freeze were a 2020 Mercedes-Benz S class convertible, VIN: WDDXK8DB8LA041094 (the “Mercedes”) owned by defendant Jonathan Maroney and relief defendant Tonya Maroney. Additionally, there are four (4) jet skis owned by the defendant Jonathan Maroney and relief defendant Tonya Maroney that were also frozen by virtue of the Court’s Order.

On November 8, 2021, this Court entered an Order Granting Plaintiff Securities and Exchange Commission’s Unopposed Motion for Appointment of Receiver (“Order”) which appointed Katherine C. Donlon as Receiver over the corporate defendants in this case as well as relief defendant Celtic Enterprises (“Receivership Entities”) (Doc. 75).

In March 2022, the Maroneys vacated their home at 143 Lansing Island Drive, which was held in the name of Celtic Enterprises, a Receivership Entity. At that time, the Receiver took possession of that property. Leading up to the handoff of this property, the SEC, counsel for Mr. Maroney, and the Receiver

negotiated the possession of the Maroneys' vehicles and the jet skis. Mr. Maroney agreed to turn over the Mercedes and four jet skis for the benefit of the Receivership Estate, leaving them at 143 Lansing Island Drive. Unfortunately, the titles were never transferred on the vehicles.

The Receiver contacted Melbourne Mercedes who offered to purchase the Mercedes for \$93,000. Further, as to the jet skis, the Receiver received an offer from Route 1 Motorsports for \$15,000.00 for all four (4) jet skis. The Receiver offered the four (4) jet skis to the buyers of the 143 Lansing Island Drive property for this same price, and the buyers agreed to purchase the four (4) jet skis for \$15,000.00.

On May 2, 2023, this Court entered an Order lifting the asset freeze so that the Receiver could sell the 2020 Mercedes-Benz and the four (4) jet skis, directing that the net proceeds from the sale would be held for the benefit of the Receivership Estate (Doc. 153). Earlier in the proceedings, Mr. Maroney agreed that he would cooperate with all efforts to sell these assets for the benefit of the Receivership Estate. However, the Receiver has attempted to communicate with Mr. Maroney on multiple occasions to obtain all of the necessary documents, information, and the keys so that the vehicle and watercraft can be sold and the title transferred. Although Mr. Maroney has stated that he would deliver the title to the watercraft and the keys, he has, to date, not done so. Further, Mr. Maroney represented that he would provide,

but has thus far refused to do so, as to the Mercedes (a) a copy of Mr. Maroney's drivers license; and (b) the payoff information from SunTrust as to the Mercedes (which the Receiver is unable to obtain despite repeated efforts as the bank will only speak with Mr. Maroney).

To that end, the Receiver respectfully requests that the Court issue an order to show cause why Mr. Maroney should not be held in contempt for refusing to provide the keys and title to the watercraft, a copy of Mr. Maroney's drivers license, and the payoff information from SunTrust so that the Receiver can facilitate the sale of these assets for the benefit of the Receivership Estate.

ARGUMENT

A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See Official Comm. of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006); *see also Atl. Trust Co. v. Chapman*, 208 U.S. 360, 371 (1908) ("It is the court itself which has the care of the property in dispute. The receiver is but the creature of the court; he has no powers except such as are

conferred upon him by the order of his appointment and the course and practice of the court.”).

Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969); *see also Bendall v. Lancer Mgmt. Grp., LLC*, 523 Fed.Appx. 554, 557 (11th Cir. 2013) (“[A]ny action by a trial court in supervising an equity receivership is committed to his sound discretion and will not be disturbed unless there is a clear showing of abuse.”) (internal citation and quotation omitted); *S.E.C. v. Pension Fund of Am. L.C.*, 377 Fed.Appx. 957, 961 (11th Cir. 2010) (same); *MOBE Ltd.*, 2021 WL 50335, at *1; *E.M. Sys. & Servs., LLC*, 2016 WL 11110381, at *2 (same). Such discretion is especially important considering that one of the ultimate purposes of a receiver’s appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982) (court overseeing equity receivership enjoys “wide discretionary power” related to its “concern for orderly administration”) (citations omitted).

Under federal law, the court has inherent power to coerce compliance with its orders, sanction behavior constituting fraud on the court, and vindicate its authority in the face of contumacious behavior. *See, e.g., Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–44, 111 S.Ct. 2123, 115 L.Ed.2d 27

(1991) (“It is firmly established that the power to punish for contempt is inherent in all courts. This power reaches both conduct before the court and that beyond the court's confines, for the underlying concern that gave rise to the contempt power was not merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.”) (internal citations, omissions, and quotation marks omitted). “[C]ontempt is considered civil if the sanction imposed is designed primarily to coerce the contemnor into complying with the court's demands and criminal if its purpose is to punish the contemnor, vindicate the court's authority, or deter future misconduct.” *Hicks v. Feiock*, 485 U.S. 624, 631–32, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988)). See also *United States v. Buck*, 281 F.3d 1336, 1342 (10th Cir.2002) (noting that fraud on the court “requires a showing that one has acted with an intent to deceive or defraud the court” through a “deliberate scheme”).

A party seeking civil contempt bears the initial burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding court order. Once a prima facie showing of violation has been made, the burden of production shifts to the alleged contemnor, who may defend his failure to comply on the grounds that he was unable to comply. The burden shifts back to the initiating party only upon a showing by the alleged contemnor.” *Comm. Futures Trading Comm. v. Wellington Precious Metals*,

Inc., 950 F.2d 1525, 1529 (11th Cir.1992) (internal citations omitted); *see also* *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000) (“[A] civil contempt order may be upheld only if the proof of the defendant's contempt is clear and convincing.”).

“This clear and convincing proof must ... demonstrate that (1) the allegedly violated order was valid and lawful; (2) the order was clear, definite and unambiguous; and (3) the alleged violator had the ability to comply with the order.” *McGregor*, 206 F.3d at 1383 (quoting *Jordan v. Wilson*, 851 F.2d 1290, 1292 (11th Cir.1988) (per curiam)). “In order to succeed on the inability defense, the alleged contemnor must go beyond a mere assertion of inability and establish that he has made in good faith all reasonable efforts to meet the terms of the court order he is seeking to avoid.” *Wellington*, 950 F.2d at 1529 (internal quotations and citations omitted).

The Order at issue is the Order Appointing Receiver (Doc. 75) and the Court’s Order lifting the asset freeze and directing that the net proceeds from the sales should be held for the benefit for the Receivership Estate (Doc. 153).

In the Order Appointing Receiver, this Court stated, in relevant part:

The Receivership Entities and the past and/or present officers, directors, agents, members, managers, general and limited partners, trustees, attorneys, accountants and employees of the Receivership Entities, as well as those acting in their place, are ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property;

such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

Doc. 72-1, ¶8.

The Order further provides:

The Receivership Entities and the Receivership Entities' past and/or present officers, directors, agents, attorneys, members, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. In the event the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

Id. at ¶9.

In the Order granting the Receiver's Unopposed Motion to Modify the Asset Freeze, the Court directed that the proceeds from the sale should be held for the benefit of the Receivership Estate. Reading these two Orders together, it is clear that Mr. Maroney is in possession of documents and other items, including the keys to the jet skis, that are relevant to the collection of funds due to the Receivership Entities.

To date, the Receivership Entities, including Mr. Maroney, have failed to turn over to the Receiver, despite her repeated demands, the necessary documentation to sell the assets this Court previously authorized the Receiver to sell, including the Mercedes and the jet skis, and to provide the Receiver the keys to the watercraft. The Court's Order is a valid and lawful Order, the Order is clear, definite and unambiguous, and Mr. Maroney has the ability to comply with the Order. Accordingly, the Receiver requests that the Court issue an order to show cause why Mr. Maroney should not be held in contempt of the Court's Order.

Wherefore, the Receiver respectfully requests that the Court issue an order to show cause why Mr. Maroney should not be held in contempt for failing to produce to the Receiver the keys and title to the jet skis, a copy of his driver's license, and the payoff information from SunTrust.

LOCAL RULE 3.01(G) CERTIFICATION

The Receiver has conferred with counsel for the Securities and Exchange Commission who has no objection to the relief sought herein. The Receiver contacted Mr. Maroney prior to filing this Motion and provided a copy of the Motion to Mr. Maroney but to date, the requested items have not been provided.

Dated: May 25, 2023

Respectfully submitted,

/s/ Nicole Deese Newlon

NICOLE DEESE NEWLON

Florida Bar No. 832391

nnewlon@jclaw.com

JOHNSON, NEWLON & DECORT, P.A.

3242 Henderson Blvd., Ste 210

Tampa, Florida 33609

Telephone: (813) 699-4859

Facsimile: (813) 235-0462

Secondary: kdonlon@jclaw.com;

bwalker@jclaw.com

Counsel for Receiver

Katherine Donlon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 25, 2023, a true and correct copy of the foregoing was electronically filed with the United States District Court, Middle District of Florida, by using the CM/ECF System, which will serve a copy on all counsel of record.

/s/ Nicole Deese Newlon
Attorney