

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:04-cv-07403
	)	
Plaintiff,	)	Judge Samuel Der-Yeghiayan
	)	
v.	)	
	)	
WILLIAM J. BENSON,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT AND APPLICANT INTERVENORS’  
REPLY TO UNITED STATES’ BRIEF IN OPPOSITION TO  
MOTION TO QUASH IRS ADMINISTRATIVE SUMMONS  
AND DEFENDANT’S REPLY TO UNITED STATES’ BRIEF IN OPPOSITION TO  
MOTION FOR ORDER TO SHOW CAUSE RE CONTEMPT**

The United States’ Briefs in Opposition are patently frivolous and provide further proof of its contumacious disrespect of the Court’s order that:

The request by the Government for the customer list is beyond the scope of Benson’s wrong doing in the instant action, and absent a compelling reason given by the Government for its disclosure, the request cannot be granted ... Therefore, based on the above, we grant the Government’s motion for summary judgment and grant the request for injunctive relief except for the production of the customer list.

Doc. 106, p 20.

The United States frivolously argues that when Benson filed his appeal, the Court lost its jurisdiction to grant Benson’s requested relief because jurisdiction vested in the Seventh Circuit. The United States knows this argument is frivolous. Attached hereto as Exhibit A is a letter dated February 7, 2008, from Robert D. Metcalfe, attorney for the United States, the last paragraph of which states in pertinent part:

[T]he United States will be forced to move for an order requiring Benson to show

why he should not be held in civil contempt to coerce his compliance with the terms of the permanent injunction.

Clearly the United States knows that Benson's filing a Notice of Appeal does not divest this Court of jurisdiction in "aid of execution of a judgment that has not been stayed or superseded." Practitioner's Handbook for Appeals to the United States Court of Appeals for the Seventh Circuit (2003 ed.), p. 25, citing *Lorenz v. Valley Forge Insurance Co.*, 23 F.3d 1259, 1260 (7th Cir. 1994); *Chicago Downs Ass'n. v. Chase*, 944 F.2d 366, 370 (7th Cir. 1991); *Trustees of the Chicago Truck Drivers, etc., v. Central Transport, Inc.*, 935 F.2d 114, 119-20 (7th Cir. 1991); *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1240 (7th Cir. 1986); *Patzer v. Board of Regents of the University of Wisconsin*, 763 F.2d 851, 859 (7th Cir. 1985); Cir. R. 57; see also *United States v. Ienco*, 126 F.3d 1016 (7th Cir. 1997).

Equally frivolous is the United States assertion that the law regarding the illegal process utilized by the United States to circumvent the Court's ruling prohibits Benson from moving this Court to enforce its order. The question is not whether Sections 7602 through 7609 of the Internal Revenue Code prohibit Benson from moving to quash the summons, the question before the Court is whether the Court's order prohibited the issuance of the summons. The United States has nowhere contended that the information requested in the summons is not identical to the information requested in this litigation. Nor does the United States address that third parties have rights independent of Benson, and are entitled to protect their rights. Finally the United States does not contest that any action brought to enforce the summons, and any action brought by the third parties to protect their rights, would entail raising the exact same issues and arguments that were raised in this litigation.

The United States argues for the first time in this case it needs the requested information to determine Benson's tax liability. This is certainly something the United States could have argued, but did not argue, previously. The doctrine of *res judicata*, which the government did not choose to address in its brief, is clear: when a court has made a final determination on the merits of a party's claim [such as whether a compelling reason exists for compelling a party to produce certain information], all future claims embracing the same issue are precluded in a subsequent action, even if the party seeks to litigate another reason for prevailing, if that reason could have been raised in the first action but was not. *Ross ex rel. Ross v. Board of Educ. of Tp. High School Dist. 211*, 486 F.3d 279, 283 (7th Cir. 2007) ("In order to decide whether the two cases involve the same claim, we ask whether they arise out of the same transaction. If they did, whether or not they were actually raised in the earlier lawsuit, they may not be asserted in the second or subsequent proceeding."). It cannot be denied that whether a person violated penalty conduct, and the number of times the penalty conduct was violated, does not arise out of the same transaction.

Absolutely nothing prevented the Internal Revenue Service from issuing an administrative summons while it was investigating Benson prior to bringing the 6700 litigation. It chose not to do so. The United States argues that IRC § 7402(a) is not an exclusive remedy. True, but that doesn't change the fact that no additional remedies were raised in the litigation. The doctrine of *res judicata* bars the raising of other remedies when they could have been presented in a lawsuit, but were not. The United States presents no argument that it was precluded from raising additional reasons for the requested information.

Finally, the United States frivolously argues that nothing in the issuance of the actual

injunction order, Doc. 116, precludes or forbids the Commissioner of Internal Revenue from serving an administrative summons on Benson. This argument is but a tactic to divert the Court's attention from the question presented; i.e., did the Commissioner of Internal Revenue have actual knowledge of the Court's order, Docs. 105 and 106, holding the government was not entitled to the information, and did the Commissioner, by and through its agents, Joseph Conroy and Sam Anderson, intentionally, willfully and contumaciously attempt to circumvent the Court's order? The answer to both questions is yes.

The United States has not contested in its briefs any issue of actual knowledge or privity, nor has it contested the fact that the issue of entitlement to the information was fully, and finally, litigated on the merits. At best, the United States has made nothing more than frivolous arguments to escape the ramifications of its deliberate violation of the specific, easily understood, order of the Court holding the government is not entitled to the requested information.

WHEREFORE, Benson and Applicant Intervenors move this Court for an order quashing the administrative summons issued on February 14, 2008, and Benson moves for the issuance of an order to show cause re contempt..

Dated: February 23, 2008.

/s/ Jeffrey A. Dickstein  
Jeffrey A. Dickstein  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney for the Plaintiff, Robert D. Metcalfe.

/s/ Jeffrey A. Dickstein