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.	)	
	)	

WILLIAM J. BENSON'S OPPOSITION TO UNITED STATES' MOTION FOR ORDER TO SHOW CAUSE

Comes now Defendant, William J. Benson, who submits the following opposition to the United States' Motion for Order to Show Cause:

The United States now seeks an order to show cause why Benson should not be held in contempt for his alleged failure to comply with this Court's Order of Immunity and Protective Order (Doc. 185), entered July 22, 2009, ordering Benson to:

> produce to counsel for the United States the names and addresses of all persons or entities to whom Benson has sold or transferred his "Reliance Defense Package" or "16th Amendment Reliance Defense Package."
>
> United States' Motion for Order to Show Cause, Doc. 193.

The original injunction issued by the Court on January 10, 2008 (Doc. 116), enjoins the promotion, organizing or selling of two items: the "Reliance Defense Package" or "16th Amendment Reliance Package." Quotation marks are contained in the injunction just as quotation marks are contained in the Court's order now under review. While the "Reliance Defense Package" is the same in both the Injunction (Doc. 116) and the Court's order (Doc 185), the injunction makes no mention of a "16th Amendment Reliance Defense Package." The

injunction references a "16th Amendment Reliance Package."

Even assuming such an item as the "16th Amendment Reliance Defense Package" ever existed, its inclusion in the Court's order of July 22, 2009 was erroneous, as no such item was a part of the underlying litigation. The violation of an erroneous order cannot be punished by contempt. See *Matter of Betts*, 927 F.2d 983 (7th Cir. 1991)(If court order is ambiguous, it precludes essential finding in criminal contempt proceeding of willful and contumacious resistance to court's authority).

> But a party can only be held in contempt for behavior clearly prohibited by a court order "**'within its four corners.'**" *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 237, 95 S.Ct. 926, 935, 43 L.Ed.2d 148 (1975) *(quoting United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 1758, 29 L.Ed.2d 256 (1971)); *see also Stotler and Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir.1989) ("To hold a party in contempt, **the district court must be able to point to a decree from the court which set[s] forth in specific detail** an unequivocal command which the party in contempt violated."). [Emphasis added.]
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> *D. Patrick, Inc. v. Ford Motor Co.*, 8 F.3d 455, 460 (7th Cir. 1993).
>
> In civil contempt proceedings for violations of a consent decree, plaintiffs must prove the violations by clear and convincing evidence in the trial court. *Squillacote v. Local 248, Meat & Allied Food Wkrs.*, 534 F.2d 735, 747 (7th Cir.1976).
>
> *United States. v. Huebner*, 752 F.2d 1235, 1241 (7th Cir. 1985).

The United States has not met its burden; it has presented no evidence that Benson either sold or transferred a "16th Amendment Reliance Defense Package." Until such time as it produces before the court clear and convincing evidence that such named items exist, and that such item was the subject of the litigation, the United States has not shown Benson violated the "four corners" of the Court's order, and has not established it is entitled to an Order to Show Cause re Contempt.

Notwithstanding the impossibility of complying with a portion of the Court's erroneous order, Benson attempted to comply with what he believed the Court intended to order. Benson filed a Declaration with this Court on July 29, 2009 (Doc. 186). In his declaration, Benson stated, under penalty of perjury, that:

> 3. Prior to December, 2004, **the information** sought by the United States, and the subject of the Court's order, my customer list, **was kept solely on a computer**. The motherboard on that computer crashed approximately two to three years ago and I threw the computer, including the hard drive, away, and replaced the computer. I made no effort to retrieve the contents of the hard drive. [Emphasis added.]
>
> 4. I do not now possess, nor have I possessed since before this court issued its order on summary judgment, the information I have been ordered to produce. That information no longer exists.

The United States, rather than proving by clear and convincing evidence that Benson has committed perjury, substitutes instead its convoluted opinion that Benson's explanation as to the non-existence of the names and addresses of the persons to whom he sold or transferred the items mentioned in the injunction "is simply not credible" and "smacks of fantasy."

The United States' first argues that because Benson had never before admitted he does not have the information, it can't possibly be true. The undisputed facts are, however, that never before July 22, 2009 was Benson given an act of production privilege. Benson has always asserted in this litigation his right to remain silent as guaranteed by the Fifth Amendment.

The United States next complains that Benson provided no details or dates regarding the demise of his computer. Testimony under penalty of perjury that the motherboard on his computer crashed rendering the computer unusable, and it was discarded, and that the event happened two or three years ago, is a detail. If the allegation is that the statement is perjurious,

then the United States has the burden of so proving by something other than the naked contention the statement is not credible, or smacks of fantasy, merely because it does not like the fact that the information it wants does not, in fact, exist.

The United States next opines that his declaration is contradicted by other declarations. The United States says that: "On January 22, 2008, Benson 'signed' a 'declaration' in which he attested to mailing or emailing the injunction order to the seven customers listed in the United States' motion for summary judgment. (Dkt. No. 138)." (Doc. 194, pp. 5-6). From this erroneous reciting of the contents of Benson's declaration, the United States infers Benson must have had at least one customer's email addresses.

A review of Benson's declaration of January 22, 2008 states that copies of the permanent injunction were mailed to the individuals identified by the United States (Doc. 138, p. 1-2, ¶ 3); it does not state that Benson mailed them. The declaration goes on to say that a copy of the permanent injunction was e-mailed to Ronald K. Doyle, and that Benson does not have e-mail addresses for the other individuals that were identified by the United States as having received material from Benson. (Doc. 138, p. 2, ¶ 4). The declaration does not say that Benson sent the e-mail. The declaration goes on to say that a copy of the permanent injunction was mailed and delivered by e-mail to the Applicant Intervenors, John Doe 1 and John Doe II. (Doc. 138, p. 2, ¶ 5). The declaration does not state that Benson mailed or e-mailed the documents.

The United States infers the following facts, none of which are supported by Benson's declaration: 1) that Benson did the mailing; 2) that Benson did the e-mailing; 3) that Benson knows the identity of the Applicant Intervenors; 4) that Benson has, or had, the addresses and e-mails of one person other than Ronald K. Doyle. None of these inferences can reasonably be

deduced from the declaration.

The United States next incorrectly states facts pertaining to Benson's declaration of March 5, 2008. Benson states in his March 5, 2008 declaration that he "never sold the '16th Amendment Reliance Package' to anyone" so he did not mail or e-mail a copy of the permanent injunction to any such person, and that on January 22, 2008, "I caused to be mailed or e-mailed a copy of the permanent injunction to each person to whom I sold or provided the 'Reliance Defense Package,' and to each person to whom I provided the "16th Amendment Reliance Package,' **for whom I had either an address or e-mail address**. *See* Declaration of William J. Benson, Doc. 162, p.2, ¶¶ 7-8 [emphasis added.]

Several critical points: 1) the date of the mailing, January 22, 2008, is the same date as the original mailing mentioned in his January 22, 2008 declaration; and 2) the declaration does not say he mailed or e-mailed anything, but that he caused the mailing and e-mailing to be made. Despite the clear wording of this declaration, the United States argues that Benson's July 29, 2009 declaration is "flatly at odds" with the March 5, 2008, declaration. The United States argues that if Benson's computer crashed, he would not have had a mailing list in March 2008 when he attested to mailing a copy of the injunction, incorrectly inferring a mailing occurred in March, when the declaration clearly says the mailing occurred in January. The United States also incorrectly infers that other people than the seven who were originally sent a copy of the permanent injunction were sent a copy of the permanent injunction in March. Only by completely misreading the contents of the declarations and itself engaging in "stark fantasy" could the United States conclude that the declarations prove "that Benson must have had some records of customers' mailing or e-mail addresses as recently as March of last year, which was three months

after the Court granted the United States summary judgment."

The United States' assertion that "If Benson's most recent statement is true, then his March 2008 declaration worked a fraud on the Court because Benson lacked the names, mailing addresses, or email addresses to comply with the injunction order's mailing requirement" and "Benson either lied in March 2008, or he is lying now" is nothing but unsupported slander and character assassination. No reasonable reading of the declarations could lead to the conclusion that a separate mailing, to other than the original seven and two intervenors, occurred in March.

The slander and character assassination does not stop with Benson. Asserting because the July 29, 2009 declaration used the "/s/" convention, the Court has no assurance that Benson even read the declaration his attorney has submitted is nothing short of an accusation that Benson's counsel engaged in unethical conduct in submitting a declaration, declared to be under penalty of perjury, that Benson had not even read.[1]

Attached hereto as Exhibit A is a copy of the record from Dickstein's e-mail program proving that Dickstein sent Benson's declaration to him on July 29, 2009, asking him to review it and let Dickstein know if it was satisfactory. A copy of the signed declaration, that was sent to Dickstein by next day delivery, is attached hereto as Exhibit B.

The United States next argues that even if Benson did not have a customer list, he was required to attempt to recreate one by consulting his bank records and cancelled checks, documents in his home, records provided to his attorney, e-mails sent and received after the alleged computer crash, and his own memory. The United States fails to allege, however, much

1. Benson's two prior declarations were filed the same way, without any previous objection by the United States nor this Court.

less prove, that Benson has any bank records or cancelled checks, has any documents in his home containing the names and addresses of people who obtained his material, has e-mails from any of these individuals, or has provided such information to Dickstein.

As to bank records, the United States cannot deny that the Internal Revenue Service has subpoenaed or otherwise obtained all of Benson's bank records from the banks, as they have repeatedly used them to come up with notices of deficiency. Thus the IRS already has the same information in its possession that Benson would provide by going through bank records. If the Court so wants, Benson can file another declaration stating he does not keep bank records or cancelled checks.

As to information given to his attorney, Benson never gave Dickstein any records containing the information Benson has been ordered to produce, and the United States cannot prove otherwise.

Benson could state in another declaration that he does not have any other documents in his home with the requested information, although his prior declaration is pretty clear that any such information was kept only on the computer.

As to Benson's memory, the Court is well aware from prior pleadings that Benson's memory is of little use due to his medical condition and the numerous narcotic drugs he has taken over the years and continues to take. Attached hereto as Exhibit C is a list of the medication he is currently taking, several of which affect memory and the ability to think clearly.

The United States cites to several cases, the facts of which indicate the requested records were in existence, but the party charged did not make reasonable efforts to obtain and produce them. In this case, the records do not exist, and the United States in unable to show they do. The

cases cited thus provide no support to the United States position that Benson should be held in contempt for not producing information that does not exist.

Exercise of discretion and common sense argues against issuing a contempt citation. No one disputes that Benson stopped selling anything except his book no later than Benson became aware of the filing of the underlying complaint in this matter, in November, 2004. The people who obtained Benson's material and sent it to the IRS are already known. Assuming people may have read Benson's material and stopped filing returns, that would have occurred more than four years ago; the IRS has had from November 2004 through August 2009 to identify those who failed to file. It is nowhere alleged that the use of Benson's material resulted in the filing of false income tax returns, so the names and addresses are not necessary for the IRS to address tax evasion.

Putting Benson in jail for not turning over documents he does not have will no doubt result in a death sentence because of Benson's age (82) and documented poor health.[2] Imprisonment for failing to produce what does not exist, at this stage, appears to be more form over substance. While the Internal Revenue Service has little regard for what Benson believes regarding the Sixteenth Amendment, and its counsel falsely accuses Benson of lying and committing fraud upon this Court, it is hoped this Court has some regard for Benson as a human being.

WHEREFORE, for all the reasons stated herein, Benson asks the Court to deny the

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2. The last time Benson was imprisoned, the prison refused to give Benson his prescribed meds and almost killed him. Benson came out of prison virtually a vegetable and confined to a wheel chair. That was many years ago. Today Benson suffers from a number of ailments, including diabetes, a heart problem, seizures and neuropathy. Improper medical care will result in his death.

United States motion for the issuance of an order to show cause.

Dated: August 21, 2009

/s/ Jeffrey A. Dickstein
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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2009, 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.

/s/ Jeffrey A. Dickstein
Jeffrey A. Dickstein