

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 20-CV-81205-RAR**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al.,

Defendants.

**RECEIVER’S REPLY TO DEFENDANT JOSEPH COLE BARLETTA’S
RESPONSE IN OPPOSITION TO MOTION FOR CONTEMPT**

Ryan K. Stumphauzer, Esq., Court-Appointed Receiver (the “Receiver”) of the Receivership Entities, by and through his undersigned counsel, hereby files his Reply to Defendant Joseph Cole Barleta’s (“Cole”) Response [ECF No. 1554] (the “Response”) in opposition to the Receiver’s Motion for Contempt [ECF No. 1552] (the “Motion”), and states:

INTRODUCTION

The arguments raised in the Response are baseless and further confirm Cole’s disdain for the Court’s orders. Cole obviously has not focused on the plain language of this Court’s April 29, 2022 Order (the “Order”) compelling him to produce the documents. There can be no question that the Receiver maintains the powers originally mandated to him by this Court. And the idea that the Receiver is time-barred and has not sought to enforce compliance of the Order is beyond belief. The Response is indicative of Cole’s ongoing campaign to boycott the Receiver’s efforts to gather information necessary to carry out his responsibilities. The Receiver easily satisfies all the elements for contempt under these circumstances. The Court, respectfully, should find that Cole is in contempt of Court and grant the relief the Receiver has requested in the Motion.

ARGUMENT

Pursuant to the Amended Order Appointing Receiver [ECF No. 141] (the “Amended Appointment Order”), the Receiver has the power to take custody, control and possession of all Receivership Property and records relevant thereto. (Amended Appointment Order at ¶ 7(B)). Additionally, “the Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities,” and “all persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.” (*Id.* at ¶ 15).

A. The Judgment the Court entered against Cole does not interfere with or otherwise prevent the Receiver’s ability to seek the requested relief.

Cole’s first argument is that the Receiver lost all of his authority under the Amended Appointment Order immediately following the entry of the Judgment against him. (Response at 3). This argument is absurd and lacks any factual or legal support. The provision Cole cites as authority for this argument, 28 U.S.C. § 3103, is part of Chapter 176, involving Federal Debt Collection Procedure, and is plainly inapplicable here. Chapter 176 provides:

(a) In general.--Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States—

(1) to recover a judgment on a debt; or

(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) Limitation.--To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

(c) Amounts owing other than debts.--This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

28 U.S.C. § 3001. That chapter, by its express terms, applies only to a “debt” owed to the United States, which the statute defines in two subparts:

- (A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or
- (B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States[.]

United States v. Bedi, 15 F. 4th 222, 227 (2d Cir. 2021) (citing 28 U.S.C. § 3002(3)(A), (B)). And the debt must be owed to the United States, “such that it has a direct financial stake in the debt itself.” *Id.* at 227.

Similar to *Bedi*, any purported “debt” in this case is not owed directly to the United States. Rather, the Receiver is collecting on behalf of victim-investors. (Amended Appointment Order at ¶ 24). As a result, any collection efforts against Cole will promote the interests of the victim-investors, and will not inure to the U.S. Treasury. Indeed, the United States is not a party to a business transaction. Thus, the critical determination is whether any purported debt is owed directly to the United States. *Sobranes Recovery Pool I, LLC v. Todd & Hughes Const. Corp.*, 509 F.3d 216, 221 (5th Cir. 2007). Here, because any collection from Cole would be on behalf of the victim-investors, not to the United States Treasury, 28 U.S.C. § 3103 (and the related section of that Federal Debt Collection Procedure authorizing the appointment of a receiver in federal debt collection proceedings) is irrelevant.

Rather, the Receiver’s appointment in this case was pursuant to the Court’s general equitable powers and various securities laws. *See, e.g., SEC v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981); *see also* Section 22(a) of the Securities Act of 1933, 15 U.S.C.

§ 77v(a), and Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa. The Court’s exercise of its equity power in this respect is particularly necessary in instances where, as here, a corporate defendant, through management, has defrauded members of the investing public. *See SEC v. R.J. Allen & Associates, Inc.*, 386 F. Supp 866, 878-79 (S.D. Fla. 1974). As such, the Receiver was granted his power and authority—to aid in the collection of comingled investor funds—directly from the Court and, therefore, is “subject to the court’s directions and orders in the discharge of [his] official duties.” *SEC v. Elfindopan, S.A.*, 169 F.Supp.2d 420, 424 (M.D.N.C. 2001) (quoting 66 Am.Jur.2d Receivers § 185 (1973)). And neither the entry of a judgment, nor the satisfaction of a judgment (which, of course, has not occurred), divests the Receiver of his duties and authority, absent an order of court. *See WB Music Corp. v. Royce Int’l Broad. Corp.*, 47 F.4th 944 (9th Cir. 2022); *Consol. Rail Corp. v. Fore River Ry. Co.*, 861 F.2d 322 (1st Cir. 1988). Put simply, the Judgment against Cole does not interfere with or otherwise impact the Receiver’s authority to seek the requested relief.

To the contrary, the Amended Appointment Order specifically provided that the Receiver shall serve on behalf of the estates of the Receivership Entities “until further order of this Court.” *Id.* at ¶ 2. No order limiting the Receiver’s powers or terminating the receivership has been entered. Accordingly, until this Court enters such an order, the Receiver continues to serve in this role, carrying out his court-appointed responsibilities mandated under Amended Appointment Order.

B. The Receiver is not time-barred from seeking the requested relief.

The Receiver did not fail to seek Cole’s compliance with the Order. Instead, the Receiver served Cole with several requests for the documents, culminating in this Court’s Order compelling Cole’s compliance. But Cole ignored these requests and failed to produce a single document. And

yet, even as Cole continues to flout the Court's Order, he accuses the Receiver of acting "in bad faith." (Response at 4).

The documents sought by the Receiver fall within the ambit of the Receivership Order and are vital to these receivership proceedings. *See SEC v. Stanford Intern. Bank, Ltd.*, 776 F.Supp.2d 323, 330 (N.D. Tex. 2011). Here, the Receiver's requests for documents in Cole's possession clearly fall within the scope of the Amended Appointment Order. In fact, the Amended Appointment Order gave the Receiver many powers relating to the collection of information and documents from Cole and the other Receivership Defendants. For example:

- a. to take custody, control and possession of all Receivership Property and **records relevant thereto** (*Id.* at ¶ 7(B)) (emphasis added);
- b. [all affiliates of the Receivership Entities] are hereby 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 (*Id.* at ¶ 8) (emphasis added);
- c. [all affiliates of the Receivership 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 (*Id.* at ¶ 12) (emphasis added);
- d. The Receiver is authorized to take **immediate possession** of all assets, bank accounts or other **financial accounts, books and records and all other documents** or instruments **relating to the Receivership Entities**. **All persons** and entities having control, custody or possession of any Receivership Property **are hereby directed to turn such property over** to the Receiver (*Id.* at ¶ 15) (emphasis added); and,
- e. Defendants shall cease attempts to **hinder, obstruct or otherwise interfere** with the **Receiver in the performance of his duties; such prohibited actions include** but are not limited to, **concealing**, destroying or altering **records or information** (*Id.* at ¶ 29(B)) (emphasis added).

Cole's Response also flouts the commands of this Court's Amended Appointment Order outlining the Receiver's duties and obligations relating to document requests. And, after imposing months of resistance, delay, and expense on the Receivership Estate, Cole—incredibly—now accuses *the Receiver* of acting in bad faith and taking no steps in procuring production. (Response at 4-5) (accusing the Receiver of acting in bad faith and taking no steps in procuring the documents).

Cole's Response ignores the procedural history of his ill-fated attempts to avoid compliance. Because Cole raised an argument based on alleged violations of constitutional rights, his counsel requested that the Receiver abstain from seeking an order of contempt until Cole's ability to appeal, seek a stay, or otherwise challenge the Order was exhausted. (See email chain between B. Schein and G. Alfano dated May 13 through 17, 2022, a copy of which is attached as Exhibit 1). The Receiver reluctantly agreed to that request. Following the March 23, 2023 denial of Cole's Motion to Stay by the Eleventh Circuit—putting an end to the last of Cole's many stall tactics—the Receiver renewed his document request. But Cole, through his counsel, did not produce any documents. As a result, a civil contempt order is seemingly the only remedy that might ultimately secure Cole's compliance with the Court's prior Order.

C. Finding Cole in contempt is proper under these circumstances.

Cole offers no legitimate explanation for (i) his refusal to comply with the Order, (ii) his refusal to turn over documents to the Receiver, or (iii) his efforts to hinder the Receiver's duties and obligations in seeking those documents under the Amended Appointment Order. And he fails to acknowledge that he intends to comply with the Order. Thus, he does not meet his burden "to demonstrate why [he was] unable to comply." *F.T.C. v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). Finding Cole in contempt is appropriate under these circumstances.

Proof of the defendant's contempt must be clear and convincing. *Afro-American Patrolmen's League v. City of Atlanta*, 817 F.2d 719, 723 (11th Cir. 1987). This clear and convincing proof must also 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. *United States v. Koblitz*, 803 F.2d 1523, 1527 (11th Cir. 1986). Once the moving party makes a *prima facie* showing that the court order was violated, the burden of production shifts to the alleged contemnor to show a "present inability to comply that goes 'beyond a mere assertion of inability . . .'" *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 976 (11th Cir.), *cert. denied*, 479 U.S. 853, 107 S.Ct. 187, 93 L.Ed.2d 120 (1986) (citations omitted). Therefore, the focus of a court's inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue. *Jim Walter Resources, Inc. v. Int'l Union, United Mine Workers of America*, 609 F.2d 165, 168 (5th Cir. 1980). Conduct that evidences substantial, but not complete, compliance with a court order may be excused if it was made as part of a good faith effort at compliance. *Newman*, 740 F.2d at 1524. Here, Cole has not made a good faith effort at compliance. In fact, Cole has ignored the Receiver's requests (and the Court's Order) entirely.

As a result of Cole's inability to demonstrate why he was unable to comply, the Receiver easily satisfies every element for contempt. **First**, the Order was valid and lawful. Cole even challenged the lawfulness of the Order – multiple times – but lost at every step of the process. (Motion at ¶¶ 1-13 (setting forth Cole's delay tactics through multiple unsuccessful appeals and related motions)). And once Cole had no further ability to challenge the Order, the Receiver informed the Court at the April 17 status conference of this fact, where the Court reminded Cole's counsel, again, of the lawfulness of the Order. Nevertheless, Cole has yet to turn over the records.

Second, the Order was clear, definite, and unambiguous. It was sufficiently clear as to what documents Cole was to produce. It identified 10 categories of assets in which Cole may have a personal or business interest. It provided that Cole was to turn over to the Receiver all documents from 2016 through the present about the asset categories. The Order indisputably required Cole to produce documents relating to the assets he identified in his prior disclosure.¹ Therefore, the Order was specific enough to serve as a foundation for a contempt citation.

Third, Cole at all times had the ability to comply with the Order. He voluntarily prepared the disclosure setting forth his assets. (Order at 4). Cole always had control of the documents, and therefore was perfectly capable of cooperating with the Receiver if he wished. The Receiver made several requests to Cole for these documents. But Cole never raised an *inability* to comply. *Combs*, 785 F.2d at 976. Instead, he expressed an *unwillingness* to comply, and continues to withhold the documents without explaining his contumacious conduct. Since no attempt at compliance—much less a diligent one—has been shown, proof of non-compliance is established here by clear and convincing evidence. As such, finding Cole in contempt under these circumstances is proper.

In short, Cole, through his counsel, blatantly “violated a specific and definite order of the court,” by which he was bound. *Affordable Media, LLC*, 179 F.3d at 1241. In denying one of Cole’s many baseless motions, this Court previously warned Cole that his conduct “verges into the territory of Rule 11 sanctions.” [ECF 1502]. His current Response is consistent with the Court’s earlier observation.

¹ In an attempt to limit the Receiver’s request, the Receiver directed Cole not to produce any documents for any entity that is or has been a receivership entity in which Cole has or had a financial interest.

CONCLUSION

WHEREFORE, for the foregoing reasons and those set forth in the Motion, the Receiver respectfully requests that the Court enter an Order finding Cole in contempt. Cole has cost the investors unnecessary attorneys' fees and costs, in addition to the Court's time and resources, in failing to comply with the Court's Order on Motion to Compel. *See PlayNation Play Systems, Inc. v. Velex Corporation*, 939 F.3d 1205, 1212 (11th Cir. 2019) (upholding award of attorneys' fees to prevailing party in a contempt proceeding because "this Court has long held that no willful or intentional violation of a court order is required for attorneys' fees to be granted as a contempt sanction"); *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1304 (11th Cir. 1991) (noting that the Receiver may seek "attorney's fees and expenses"); *Tom James Co. v. Morgan*, 141 F. App'x 894, 900 (11th Cir. 2005) (stating that the district court has the "inherent power" to award reimbursement for investigative expenses).

The Receiver also requests that the Court impose a coercive daily fine payable to the Receiver until Defendant Cole complies by turning over all records and documents subject to that Order on Motion to Compel. *Watkins*, 943 F.2d at 1304 (noting availability of imposing a coercive daily fine for contumacious conduct).

Dated: May 1, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 1, 2023, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Timothy A. Kolaya
TIMOTHY A. KOLAYA

Exhibit “1”

From: Bettina Schein <scheinbet@gmail.com>

Sent: Tuesday, May 17, 2022 5:45 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>

Subject: Re: Activity in Case 9:20-cv-81205-RAR Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al Order on Motion for Certificate of Appealability

Dear Gaetan,

Mr. Cole is taking an appeal of Judge Ruiz's order denying certification and denying Mr. Cole's Fifth Amendment act of production right not to produce documents in response to your motion to compel. Mr. Cole is filing a NOA tomorrow and a motion in the 11th Circuit for a stay of Judge Ruiz's Order pending appeal. The appeal is based upon 28 U.S. Code § 1292(a)(2). Local counsel will be filing the motion for a stay and the appeal.

Before your firm moves for contempt or moves for an order to show cause, I suggest that your firm waits to find out if the 11th Circuit grants the motion for a stay pending appeal.

Best regards,
Bettina Schein
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(212) 880-9417
Bschein@bettinascheinlaw.com

From: Gaetan J. Alfano <GJA@Pietragallo.com>

Date: Monday, May 16, 2022 at 4:03 PM

To: Bettina Schein <scheinbet@gmail.com>

Subject: Re: Activity in Case 9:20-cv-81205-RAR Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al Order on Motion for Certificate of Appealability

Thank you

Sent from my iPhone

Gaetan J. Alfano, Esquire

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On May 16, 2022, at 3:55 PM, Bettina Schein <scheinbet@gmail.com> wrote:

Good afternoon,

Before you and your firm make a motion for contempt or move for an order to show cause, I request you wait until tomorrow afternoon. Mr. Cole is looking into a motion to the 11th Circuit for a stay and an interlocutory appeal. If not, then production will be on Wednesday morning.

Regards,
Bettina

Best regards,
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From: Gaetan J. Alfano <GJA@Pietragallo.com>
Date: Monday, May 16, 2022 at 3:07 PM
To: Bettina Schein <scheinbet@gmail.com>
Cc: Timothy Kolaya <tkolaya@sfsllaw.com>
Subject: RE: Activity in Case 9:20-cv-81205-RAR Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al Order on Motion for Certificate of Appealability

Good afternoon Bettina,

There is no jurisdictional basis for Mr. Cole to appeal, as the Court has denied his request for an interlocutory review. There also is no stay in place and Mr. Cole is violation of the Court's Order requiring production 10 days ago.

Please provide us with any authority that you believe supports Mr. Cole's position, as we otherwise will be moving for a rule to show cause/contempt proceeding.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

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From: Bettina Schein <scheinbet@gmail.com>

Sent: Friday, May 13, 2022 5:48 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>

Cc: Timothy Kolaya <tkolaya@sflaw.com>

Subject: Re: Activity in Case 9:20-cv-81205-RAR Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al Order on Motion for Certificate of Appealability

Dear Gaetan,

I have been advised that he is filing a Notice of Appeal and motion for a stay.

Best regards,

Bettina Schein

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On May 13, 2022, at 5:15 PM, Gaetan J. Alfano <GJA@pietragallo.com> wrote:

Good evening Bettina,

The Court has denied Mr. Cole's Motion. He is beyond the deadline to produce the documents required under the Court's Order.

Please advise when Mr. Cole will provide the required documents to the Receiver.

Thank you.

Gaetan Alfano

Gaetan J. Alfano, Esquire

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From: cmecfautosender@flsd.uscourts.gov <cmecfautosender@flsd.uscourts.gov>

Sent: Friday, May 13, 2022 4:26 PM

To: flsd_cmecf_notice@flsd.uscourts.gov

Subject: Activity in Case 9:20-cv-81205-RAR Securities & Exchange Commission v. Complete Business Solutions Group, Inc. et al Order on Motion for Certificate of Appealability

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Docket Text:

ORDER DENYING MOTION FOR CERTIFICATION FOR INTERLOCUTORY APPEAL AND TO STAY PROCEEDINGS. Signed by Judge Rodolfo A. Ruiz, II on 5/13/2022. See attached document for full details. (ob)

9:20-cv-81205-RAR Notice has been electronically mailed to:

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jessica@millenniallaw.com, millenniallawforms@gmail.com

9:20-cv-81205-RAR Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:

Basavaraj A. Hooli
2987 Wentworth Way
Tarpn Springs, FL 34688

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1105629215 [Date=5/13/2022] [FileNumber=22201691-0] [8a71f2d39a23122e2f29293a4fc9a43a598d777ff9c2be0169495d3a4c295950c695af41384d1364386e7b9445fdeb517ea345a5953494c69eb2d65e9b0343ed]]

From: Timothy Kolaya <tkolaya@sknlaw.com>
Sent: Thursday, September 8, 2022 9:52 AM
To: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Cc: Gaetan J. Alfano <GJA@Pietragallo.com>
Subject: RE: Cole Production

Andre:

Regarding whether the mandate is currently stayed, the language in 11th Cir. R. 41-4 is directly on point and makes clear that there is no stay of the mandate. It has already issued. But we will agree to disagree on this point, as it doesn't impact the overall result. There was never a stay of the trial court's order requiring Mr. Cole to produce documents. He is currently in violation of this order.

We reiterate our position that a motion for rehearing would be frivolous. Additionally, 11th Cir. R 40-3 provides that, with respect to a petition for rehearing, "counsel should not request extensions of time except for the most compelling reasons." In light of this, the Receiver does not take a position on your request for an extension of time on seeking rehearing.

Again, please confirm that we can request a hearing before Judge Reinhart any afternoon during the week of September 19. I will be sending an email to chambers at the end of the day today to request the hearing.

Regards,

Tim

Timothy A. Kolaya
Stumphauzer Kolaya Nadler & Sloman, PLLC
One Biscayne Tower
2 South Biscayne Boulevard, Suite 1600
Miami, FL 33131
E-mail: tkolaya@sknlaw.com
Direct: 305-614-1405
Mobile: 305-321-3055
Bio | VCard | sknlaw.com



From: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Sent: Friday, September 2, 2022 11:46 AM
To: Timothy Kolaya <tkolaya@sknlaw.com>
Cc: Bettina Schein <bschein@bettinascheinlaw.com>; Gaetan J. Alfano <gja@pietragallo.com>
Subject: Re: Cole Production

Tim,

I'm flying in on the 15th. I don't know exactly when I'll fly in, but regardless when, I'll be landing after a 12 hour flight. I'm not doing this the second I land.

Also, the mandate is stayed as a matter of law until determination of a rehearing. Do you agree to an extension that I am asking for?

Sent from my iPhone

On Sep 2, 2022, at 6:26 PM, Timothy Kolaya <tkolaya@sknlaw.com> wrote:

Andre:

Neither the trial court nor the appellate court stayed the order compelling Mr. Cole to produce the responsive documents. He is in violation of a court order. The discovery dispute involves Mr. Cole's refusal to comply with a discovery order compelling him to produce these documents. Unless you have any specific conflicts that week, I will advise Judge Reinhart that the parties are available any afternoon the week of September 15 for a hearing on this matter.

Regards,

Tim

Timothy A. Kolaya
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E-mail: tkolaya@sknlaw.com
Direct: 305-614-1405
Mobile: 305-321-3055
Bio | VCard | sknlaw.com



From: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Sent: Friday, September 2, 2022 11:22 AM

To: Timothy Kolaya <tkolaya@sknlaw.com>

Cc: Bettina Schein <bschein@bettinascheinlaw.com>; Gaetan J. Alfano <gja@pietragallo.com>

Subject: Re: Cole Production

I come back on the 15th from my vacation, please provide me some dates and I'll check my calendar. Also, what discovery dispute are you saying you need court intervention on. As I stated in a prior email, I will be filing a motion for rehearing on the appeal.

Sent from my iPhone

On Sep 2, 2022, at 6:20 PM, Andre Raikhelson <arlaw@raikhelsonlaw.com> wrote:

Tim,

I think you are mistaken. 11th Cir. R. 41(d) holds that the timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

In this case, petitioner has the ability to contest the mandate. Filing a motion for rehearing would stay any mandate that was issued until such a motion is resolved, unless the court holds otherwise.

Moreover, I'm going to need to ask for a 15 day extension for the same reason as me asking for an extension regarding the initial brief. I am out of the country. As for the substance of my motion for rehearing, it is my position that the court did not address our alternative arguments, and sua sponte dismissed the appeal under the same analysis as it dismissed a prior filed appeal. The issues are different, but the court failed to distinguish those issues. As such, rehearing is warranted.

On Aug 30, 2022, at 9:37 PM, Timothy Kolaya <tkolaya@sknlaw.com> wrote:

Andre / Bettina:

We'd like to schedule a discovery hearing with Judge Reinhart to discuss this discovery dispute. Please provide us with two afternoons in the following seven business days when you are available to attend the hearing. Also, we anticipate that no more than 15 to 30 minutes should be required for this hearing.

Regards,

Tim

Timothy A. Kolaya

Stumphauzer Kolaya Nadler & Sloman, PLLC

One Biscayne Tower

2 South Biscayne Boulevard, Suite 1600

Miami, FL 33131

E-mail: tkolaya@sknlaw.com

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**STUMPHAUZER KOLAYA
NADLER & SLOMAN PLLC**

From: Timothy Kolaya <tkolaya@sknlaw.com>

Sent: Monday, August 29, 2022 9:42 PM

To: Andre Raikhelson <arlaw@raikhelsonlaw.com>; Gaetan J. Alfano <gja@pietragallo.com>

Cc: Bettina Schein <bschein@bettinascheinlaw.com>

Subject: RE: Cole Production

Andre:

The trial court's order was never stayed, pending appellate review. Moreover, this was a non-published order dismissing an appeal. As a result, pursuant to 11th Circuit R. 41-4, the clerk's transmittal of that order to the trial court clerk constitutes the mandate, which has already issued. While you are permitted under the rules to seek reconsideration of the dismissal order, a motion for reconsideration does not delay the issuance of the mandate, and does not result in any sort of stay of Mr. Cole's obligation to comply with the trial court's order. As a result, we request that Mr. Cole immediately comply with the trial court's order.

Do you simply intend to re-assert the same arguments that the Court rejected in its order dismissing the appeal? If not, please let us know what your purported grounds would be for seeking reconsideration.

As I have discussed with you on a few occasions, the Receiver has always been of the view that Mr. Cole's appeal was frivolous, given that there was no interlocutory appellate jurisdiction for the 11th Circuit to consider the appeal. The 11th Circuit dismissed the appeal on those exact grounds. If you do not have a different argument for why the court has jurisdiction of Mr. Cole's appeal, a motion for reconsideration would similarly be frivolous. As a result, should Mr. Cole proceed with filing a motion for reconsideration on these grounds, the Receiver would consider filing a motion pursuant to 11th Cir. R. 27-4 to recover the attorneys' fees the Receiver expends in responding to such a motion.

Regards,

Tim

Timothy A. Kolaya

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Mobile: [305-321-3055](tel:305-321-3055)

Bio | VCard | sknlaw.com



From: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Sent: Monday, August 29, 2022 3:59 PM

To: Gaetan J. Alfano <gja@pietragallo.com>

Cc: Timothy Kolaya <tkolaya@sknlaw.com>; Bettina Schein <bschein@bettinascheinlaw.com>

Subject: Cole Production

Gentlemen:

First of all, I'd appreciate being included in e-mails regarding my client. Most importantly, the Order gives me 21 days to file a Motion for Reconsideration. At this point, the Court has not issued a final order or mandate until the deadline to file a motion for rehearing or reconsideration.

We intend to request a rehearing. Please hold off on asking for documents until the court decides the the issue of rehearing. Thank you

- Andre G. Raikhelson, Esq.

Law Offices of Andre G. Raikhelson, LLC

7000 W. Palmetto Park Rd | Suite 210 | Boca Raton | FL | 33433

| www.raikhelsonlaw.com |
T: 954.895.5566 | F: 954.951.0620 | arlaw@raikhelsonlaw.com

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From: Gaetan J. Alfano <GJA@Pietragallo.com>
Sent: Saturday, March 25, 2023 11:21 AM
To: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>
Subject: RE: Order on Motion to Compel

Andre,

Here is the operative portion of the April 29, 2022 Order:

“For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that the Receiver’s Motion [ECF No. 1188] is **GRANTED**. Within **seven (7) days** of the date of this Order, Cole shall respond to the Receiver’s requests—producing copies of all documents within Cole’s possession, custody, or control containing information from 2016 through the present about the following 10 categories of assets in which Cole may have a personal or business interest:

- Real Estate
- Stocks, Bonds, and Securities
- Bank Accounts
- Safe Deposit Boxes
- Automobiles
- Indebtedness Owed to Cole
- Partnerships and Other Business Interests
- Trusts
- Other Property
- Disposed of Property”

The Order is straightforward and I am certain that Mr. Barleta can gather these documents easily. His failure either to have produced the documents yesterday or – at a minimum - to commit to a deadline to produce them is further, unreasonable delay. His involvement in your emails concerning the transition of CS2000 over the last week belies any inability to communicate with him.

I would urge you to use whatever means is at your disposal – email, cell phone, etc. – to urge Mr. Barleta to comply immediately with the Court’s Order. Otherwise, for the Receiver’s purposes, we will note that Mr. Barleta is declining compliance with the Court’s longstanding Order and will take appropriate action.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

Pietragallo Gordon Alfano Bosick & Raspanti, LLP
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From: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Sent: Friday, March 24, 2023 2:14 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>

Cc: Timothy Kolaya <tkolaya@sknlaw.com>

Subject: Re: Order on Motion to Compel

Gaetan,

Thanks for appreciating my vacation. My issue is that there is no way for me to contact Mr. Barleta while I am in Dubai by way of phone. I can contact him by email or perhaps text, but I don't think that would be helpful in explaining to my client his rights and obligations.

That is why I ask you to wait until I get back to the US.

-Andre G. Raikhelson, Esq.

Sent from my iPhone

On Mar 24, 2023, at 8:38 PM, Gaetan J. Alfano <gja@pietragallo.com> wrote:

Andre,

I appreciate that you are on vacation. Nevertheless, we have discussed far more complex matters, for example, on the CS2000 transition, including while you were away and with your client, whom you routinely copy on your emails.

The production of these documents, ordered almost a year ago, is fairly ministerial at this point. If Mr. Barleta will confirm that he will abide by the Court's Order and produce the documents on April 3, then that is one response. If he is refusing to do so, then there is no need to delay this any further.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

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From: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Sent: Friday, March 24, 2023 12:26 PM
To: Gaetan J. Alfano <GJA@Pietragallo.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>
Subject: Re: Order on Motion to Compel

Gaetan,

I'm saying I'm on vacation and it's difficult for me to call from here. Let me talk to my client about the production request when I get back because it's not a conversation I think is fair to have by email.

-Andre G. Raikhelson, Esq.

Sent from my iPhone

On Mar 24, 2023, at 8:06 PM, Gaetan J. Alfano <gja@pietragallo.com> wrote:

Andre,

I'm not clear on the April 3 date. Is Mr. Cole agreeing to produce the documents ordered by the Court on that date or are you proposing something else?

Please let me know.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

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From: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Sent: Friday, March 24, 2023 12:28 AM

To: Gaetan J. Alfano <GJA@Pietragallo.com>

Cc: Timothy Kolaya <tkolaya@sknlaw.com>

Subject: Re: Order on Motion to Compel

Gaetan,

I am on vacation in Dubai. Calling is difficult. Please give time for when I get back. I fly back to Miami on April 3. Thank you for the courtesy.

Sent from my iPhone

On Mar 24, 2023, at 3:24 AM, Gaetan J. Alfano <gja@pietragallo.com> wrote:

Andre,

It appears that the 11th Circuit has denied Mr. Barleta's motion to stay. Accordingly, please direct Mr. Barleta to comply with Judge Ruiz's Order.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

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From: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Sent: Wednesday, March 22, 2023 2:31 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>

Cc: Timothy Kolaya <tkolaya@sknlaw.com>

Subject: Re: Order on Motion to Compel

Gaetan,

First of all, I am on vacation and I get back April 3. I'm in Dubai so I can't work as I normally would. Would you kindly give me until I get back to review everything?

-Andre

Sent from my iPhone

On Mar 22, 2023, at 10:27 PM, Gaetan J. Alfano
<gja@pietragallo.com> wrote:

Good afternoon Andre,

I attach the Court's April 29, 2022 Order compelling Mr. Barleta to produce documents relating to 10 categories of assets.

This Order is not the subject of any Stay.

Please direct your client to produce these documents to the Receiver by COB, Friday, March 24, 2023.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

Pietragallo Gordon Alfano Bosick & Raspanti, LLP

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<051124618073.pdf>

<2023.03.23 - Order on Supplemental Appendix and Denying Motion to Stay.pdf>

From: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Sent: Thursday, April 6, 2023 8:59 AM
To: Gaetan J. Alfano <GJA@Pietragallo.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>
Subject: Re:

I did and I re-sent my original e-mail. Perhaps you can call me today so we can discuss it. My position is that any request for production of documents made during the course of the litigation before the disgorgement order is now moot, along with any order as we are in a totally different phase of the litigation, and the SEC is the holder of the judgment and may collect as it sees fit.

- Andre G. Raikhelson, Esq.

Trayber Raikhelson Law Group, PLLC.
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--

From: Gaetan J. Alfano <GJA@Pietragallo.com>
Date: Thursday, April 6, 2023 at 8:46 AM
To: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>
Subject: RE:

Good Morning Andre,

I reviewed your emails from yesterday. I see no response to my April 1 invitation to speak at your convenience through April 4, 2023.

Did you respond to that email?

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

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From: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Sent: Wednesday, April 5, 2023 1:17 PM

To: Gaetan J. Alfano <GJA@Pietragallo.com>

Subject: Fwd:

Sent from my iPhone

Begin forwarded message:

From: "Gaetan J. Alfano" <gja@pietragallo.com>

Date: April 5, 2023 at 1:06:13 PM EDT

To: "Andre G. Raikhelson Esquire (arlaw@raikhelsonlaw.com)" <arlaw@raikhelsonlaw.com>

Cc: "Amie Riggle Berlin Esquire (berlina@sec.gov)" <berlina@sec.gov>, Timothy Kolaya <tkolaya@sknlaw.com>, "Alan S. Futerfas (asfuterfas@futerfaslaw.com)" <asfuterfas@futerfaslaw.com>

<asfuterfas@futerfaslaw.com>, Alexis Fields <fields@kolawyers.com>, "Bettina Schein (bschein@bettinascheinlaw.com)" <bschein@bettinascheinlaw.com>

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Furman <MikeCFurman@gmail.com>, "Noah E. Snyder" <noah.snyder@kaplanzeena.com>, Seth David

Haimovitch <haimovitch@kolawyers.com>, Zachary Hyman <Zach@millenniallaw.com>

Subject: FW:

Andre,

I did not hear back from you in response to my email below, in which I offered you full availability over the course of 4 days for a call. We will note that Mr. Barleta declined the opportunity to meet and confer concerning the Receiver's Contempt Motion.

Thank you.

Gaetan

Gaetan J. Alfano, Esquire

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From: Gaetan J. Alfano <GJA@Pietragallo.com>

Sent: Saturday, April 1, 2023 9:22 AM

To: Andre Raikhelson <arlaw@raikhelsonlaw.com>

Cc: Alan S. Futerfas (<asfuterfas@futerfaslaw.com> <asfuterfas@futerfaslaw.com>); Alexis Fields (<fields@kolawyers.com> <fields@kolawyers.com>); Bettina Schein (<bschein@bettinascheinlaw.com> <bschein@bettinascheinlaw.com>); Brandon Floch (<bfloch@mnrlawfirm.com> <bfloch@mnrlawfirm.com>); Brian Paul Miller (<bmiller@kslaw.com> <bmiller@kslaw.com>); Daniel Lawrence Rashbaum (<drashbaum@mnrlawfirm.com> <drashbaum@mnrlawfirm.com>); David Lawrence Ferguson (<ferguson@kolawyers.com> <ferguson@kolawyers.com>); ebresnick@futerfaslaw.com; Elroy M. John Esquire (<Elroy@KnightLawFL.com> <Elroy@knightlawfl.com>); George Bochetto (<gbochetto@bochettoandlantz.com> <gbochetto@bochettoandlantz.com>); James M. Kaplan (<james.kaplan@kaplanzeena.com> <james.kaplan@kaplanzeena.com>); Jeffrey David Marcus (<jmarcus@mnrlawfirm.com> <jmarcus@mnrlawfirm.com>); Jeremy I. Knight (<Yirmi@KnightLawFL.com> <Yirmi@knightlawfl.com>); Joel Hirschhorn (<jhirschhorn@gray-robinson.com> <jhirschhorn@gray-robinson.com>); Joshua R. Levine (<levine@kolawyers.com> <levine@kolawyers.com>); Mike Furman (<mikecfurman@gmail.com> <mikecfurman@gmail.com>); Noah E. Snyder (<noah.snyder@kaplanzeena.com> <noah.snyder@kaplanzeena.com>); Seth David Haimovitch (<haimovitch@kolawyers.com> <haimovitch@kolawyers.com>); Zachary Hyman (<Zach@millenniallaw.com> <Zach@millenniallaw.com>); Amie Riggle Berlin Esquire (<berlina@sec.gov> <berlina@sec.gov>); Timothy Kolaya (<tkolaya@sknlaw.com> <tkolaya@sknlaw.com>); Gregory Frost (<gfrost@frostmillerllp.com> <gfrost@frostmillerllp.com>); <gfrost@frostmillerllp.com>

Subject: Re:

Andre,

There is nothing to discuss. The Order is straightforward and Mr. Barleta has avoided compliance for almost a year. Is he committing to produce the required documents this week or is the requested phone call simply another delay tactic? Throughout your vacation, you communicated with me and with Mr. Barleta, whom you routinely copy on your emails to me, about matters concerning the transition of CS2000 that are important to Mr. Barleta. But Mr. Barleta paradoxically cannot commit to complying

with the Court's Order and you cannot commit to even discussing his compliance, until you return from vacation.

I will defer filing the Receiver's contempt motion to COB Tuesday, April 4, 2023. I can be generally available for a call any time this weekend or any time on Monday the 3rd or Tuesday the 4th. You choose the date and time.

Thank you.

Sent from my iPhone

Gaetan J. Alfano, Esquire

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On Mar 31, 2023, at 11:16 PM, Andre Raikhelson <arlaw@raikhelsonlaw.com> wrote:

Gaetan,

We have not met and conferred. I told you I get back from vacation on April 3. Please let's schedule a phone call to discuss this when I get back.

Where is the professional courtesy? Please note what goes around comes around. There may be a time you ask me for professional courtesy, I'll remember this.

Please hold off a couple of days for me to get back.

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On Apr 1, 2023, at 2:45 AM, Gaetan J. Alfano <gja@pietragallo.com> wrote:

Good Evening Counsel,

The Receiver intends to file a Motion to Lift Litigation Stay to allow him to confess judgment in the Philadelphia Court of Common Pleas against Anthony Zingarelli, Millennium Holdings, Colorado Sky Industrial Supply,

and CNP Operating for their respective breaches of settlement/ forbearance agreements with the Receiver.

The Receiver also intends to move the Court to hold Joseph Cole Barleta in contempt for his failure to comply with the Court's Order (ECF No, 1222) granting the Receiver's Motion to Compel Production of Documents.

Please let us know your client's position by COB Monday, April 3, 2023.

Thank you.

Gaetan Alfano

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From: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Sent: Thursday, April 20, 2023 4:28 PM
To: Gaetan J. Alfano <GJA@Pietragallo.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>; Joe Cole <joecole@knewlogic.com>
Subject: Re: Cole Contempt

Ok. Duly noted. Go ahead and file your motion.

- Andre

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From: Gaetan J. Alfano <GJA@Pietragallo.com>
Date: Thursday, April 20, 2023 at 4:24 PM
To: Andre Raikhelson <arlaw@raikhelsonlaw.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>, Joe Cole <joecole@knewlogic.com>
Subject: Re: Cole Contempt

No. We are not willing to do so given your client's lack of compliance.

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On Apr 20, 2023, at 4:05 PM, Andre Raikhelson <arlaw@raikhelsonlaw.com> wrote:

Gaetan,

Would you be willing to further limit the scope of your requests. My client is prepared to litigate under the premise that I put before Judge Ruiz in the status conference. I believe that our position is sound. However, we are willing to work together to resolve this matter without Court intervention. Let's try to work together. If you find that unacceptable, then please do as you feel you must.

1. Andre G. Raikhelson, Esq

Law Offices of Andre G. Raikhelson, LLC

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From: Gaetan J. Alfano <GJA@Pietragallo.com>
Date: Wednesday, April 19, 2023 at 11:32 AM
To: Andre G. Raikhelson Esquire (arlaw@raikhelsonlaw.com) <arlaw@raikhelsonlaw.com>
Cc: Timothy Kolaya <tkolaya@sknlaw.com>
Subject: Cole Contempt

Please advise if your client will comply with the Court's Order by COB tomorrow.

Thank you.

Gaetan J. Alfano, Esquire

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