

<b>McArthur Inc. v Fields</b>
2019 NY Slip Op 33565(U)
December 4, 2019
Supreme Court, New York County
Docket Number: 655087/2018
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

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McArthur Inc.,  
Plaintiff,

Index No.: 655087/2018

-against-

Mot. Seq. No. 006

Richard Fields  
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**MELISSA A. CRANE, J.S.C.:**

The advent of electronic banking has perhaps provided the unscrupulous judgment debtor with a new path to avoid payment. It is now possible to hire a third party to handle deposits and pay bills from afar, by simply providing that third party with electronic access. As a result, a judgment debtor can remove him or herself from the jurisdiction of the court, yet still siphon money off to family members or debts the judgment debtor would prefer to pay.

As a preliminary matter, the court grants that part of the motion to seal as it is uncontested. Moreover, the documents contain confidential personal financial information and therefore there is good cause to seal. In addition, that part of the motion against the non party law firm has been resolved.

The issue the court confronts is whether a third party bill paying facilitator can be held in contempt under CPLR 5222(b). The following facts are not in dispute: FFO LLC (FFO) is a family office and business management company. On January 2, 2019, this court entered a judgment against defendant Richard Fields. On January 8, 2019, plaintiff served non-party FFO with a restraining notice that restricted FFO pursuant to CPLR 5222(b) from transferring property of Fields that was in FFOs possession or custody. There is no dispute that FFO received the restraining notices. At the time of the service of the restraining notice, the only

service FFO performed for Mr. Fields was to deposit funds into and make withdrawals from Mr. Fields' CNB account. FFO calls this service "bill pay." FFO did not have discretion to manage or make any decisions about Mr. Fields' CNB account. Nor did it have the responsibility to monitor where funds came from or to whom they were paid. Upon receiving authorization from Mr. Fields, FFO's role was limited to processing the transaction Mr. Fields requested. FFO admits that, despite receiving the restraining notices, it continued to pay personal bills of Mr. Fields, at Mr. Fields' direction, through its bill pay service (see EDOC 997)

FFO argues that, as a result of its limited role, it never had custody or possession of Fields' CNB account. Rather, FFO argues, the only entity plaintiff could restrain was CNB as CNB had custody of the account, being defendant's bank.

"A restraining notice may be employed against contingent property interests, including trusts that are managed by independent trustees with full control over disbursements to the judgment debtor" (*In re Wimbledon Financing Master Fund Ltd, v Bergstein*, 173 AD3d 401, 402 [1<sup>st</sup> Dep't 2019]). "One may not circumvent the mandates of a restraining notice by claiming that the judgment debtor has no interest in the money *merely because he will not acquire physical possession of such money*. The fact that a judgment debtor *will directly benefit from the payment of this sum* is sufficient to require the party served with the restraining notice to comply with the provisions or be subject to the appropriate legal sanctions" *Ray v Jama Prods., Inc.*, 74 AD2d 845, 845-46 (2d Dept 1980) (emphasis added). In *Wimbeldon*, a non party attorney admitted that he was aware of the restraining notices yet nonetheless paid other creditors with the restrained funds, rather than the plaintiff. The Appellate Division, First Department upheld the trial court that had held the non party attorney in contempt. *See also, SSX Transportation, Inc. v Island Rail Terminal, Inc.*, 879 F3d 462, 472 [2d Cir 2018]).

FFO argues it never had custody or possession of the bank account so it cannot be held in contempt. It argues it only had “limited control” to pay bills out of the CNB account. Despite FFO’s protestations to the contrary, the circumstances fit squarely into *Wimbeldon* and similar cases. First, FFO does not deny that it was aware of the restraining notices. It also does not deny that it processed wires to Mr. Fields’ family members, or paid his American Express bill that had been used to fund travel expenses for himself and his family. All told, FFO allegedly transferred out \$469,998.48 in bill payments, virtually cleaning out the account. Under *Ray* and *Wimbeldon*, it can be held in contempt because “[t]he fact that a judgment debtor *will directly benefit from the payment of this sum* is sufficient to require the party served with the restraining notice to comply with the provisions or be subject to the appropriate legal sanctions” (*Ray*, *supra*).

*Commonwealth of the Northern Mariana Islands, v. Canadian Imperial Bank of Commerce*, 21 NY3d 55 (2013) is not applicable. In that case, it was a banking entity’s subsidiary that had possession or custody of the debtor’s assets, not the parent company itself. Without piercing the corporate veil, parent companies are presumptively separate entities from their subsidiaries. Therefore, only the subsidiary had custody or possession of the bank account. Here, by contrast, and by clear and convincing evidence, FFO knew and made it possible for Mr. Fields to benefit from the payment of his and his family’s personal expenses.

However, there is evidence in the record that FFO too is a victim of Mr. Fields. He has failed to pay FFO for more than \$500,000 worth of services. Moreover, FFO’s liability would be secondary to that of CNB, had CNB received a restraining notice as well. Therefore, awarding \$469,998.48 against FFO would be too harsh a result. Instead, the court awards \$33,090.40, the

amount the CNB bank account contained on the day FFO received the restraining notices and plaintiff's attorney's fees in making this motion.

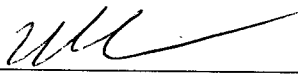
Accordingly, it is

ORDERED THAT the court grants plaintiff's motion and holds FFO, LLC in civil contempt for its willful neglect of the restraining notice in the amount of \$33,090.40 plus reasonable attorney's fees on this motion only, and it is further

ORDERED THAT the parties shall appear for an inquest on plaintiff's attorney's fees incurred on this motion only on 1/22/2020 at 2:15 PM.

Dated: 12-4-2019

ENTER:



HON. MELISSA A. CRANE, J.S.C.

**HON. MELISSA A. CRANE**  
**J.S.C.**