

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 04-24862
)
MICHAEL D. O’RICK and) Chapter 13
LAURA A. O’RICK,)
Debtors.) Adversary Proceeding No. 04-1681
)
MICHAEL D. O’RICK and) Judge Arthur I. Harris
LAURA A. O’RICK,)
Plaintiffs,)
)
v.)
)
STOP N GO AUTO SALES,)
INC.,)
Defendant.)

ORDER FOR STOP N GO AUTO SALES, INC. AND JACK CARDINAL TO
APPEAR AND SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN
CIVIL CONTEMPT FOR THEIR FAILURE TO COMPLY WITH THE
AGREED ORDER OF MAY 4, 2005

On June 23, 2005, this Court heard Debtor-Plaintiffs’ Motion for Contempt.

At the hearing, movants stated that Creditor-Defendant Stop N Go Auto Sales, Inc. (Stop N Go) failed to comply with the terms of the May 4, 2005, Agreed Order, and Stop N Go’s counsel did not dispute Debtor-Plaintiff’s claims.

Accordingly, Creditor-Defendant Stop N Go and Jack Cardinal, an officer of Stop N Go, are both ordered to appear at an **evidentiary hearing at the conclusion of the 3 p.m. Chapter 13 docket on August 11, 2005, in Courtroom 1A of the Metzenbaum Courthouse, 201 Superior Avenue,**

Cleveland, Ohio 44114 and show cause why they should not be held in civil contempt of court for their failure to comply with the terms of the May 4, 2005, Agreed Order.

JURISDICTION

This Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984, by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (F), and (O).

BACKGROUND

On November 19, 2004, Debtors Michael D. and Laura A. O’Rick filed a Chapter 13 voluntary petition. Stop N Go was properly scheduled as a secured creditor in Debtors’ schedules and plan. Although Stop N Go received notice of Debtors’ filing and received calls from Debtors’ counsel, Stop N Go continued to contact Debtors and demand payments in violation of the automatic stay.

On December 22, 2004, Debtors initiated an adversary proceeding against Stop N Go seeking sanctions pursuant to 11 U.S.C. § 362(h). On May 4, 2005, the Court entered an Agreed Order resolving Debtors’ Complaint for Sanctions. In the Agreed Order, Stop N Go admitted to a violation of the automatic stay. The order provided that Stop N Go would pay \$800 – \$500 in attorney fees and \$300 in

sanctions and improper post-petition payments – and turn over clear title to Debtors’ 1991 Chrysler Imperial. The order further provided that Stop N Go would comply with the order by May 6, 2005, or accrue an additional fee of \$50 per day.

On May 27, 2005, having yet to obtain compliance from Stop N Go, Debtors filed a Motion for Order to Show Cause on Contempt. On June 23, 2005, the Court heard argument from counsel for Debtors and Stop N Go. Counsel for Stop N Go did not dispute his client’s alleged noncompliance with the Agreed Order, and this Court indicated it would take Debtors’ Motion for Order to Show Cause on Contempt under advisement.

DISCUSSION

This Court has inherent authority to impose sanctions on offending parties and counsel. *See, e.g., Mapother & Mapother, PSC v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996) (“Bankruptcy courts, like Article III courts, enjoy inherent power to sanction parties for improper conduct.”); *In re Walker*, 257 B.R. 493, 496 (Bankr. N.D. Ohio 2001); *In re French Bourekas, Inc.*, 175 B.R. 517, 525 (Bankr. S.D.N.Y. 1994) (noting that bankruptcy court possesses power to impose sanctions as inherent authority and by virtue of 11 U.S.C. § 105(a)). A Court must be careful when considering whether to impose sanctions.

“When a court metes out a sanction, it must exercise such power with restraint and discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The sanction levied must thus be commensurate with the egregiousness of the conduct.” *In re Downs*, 103 F.3d at 478. One option for imposing sanctions is through a civil contempt hearing.

[C]ivil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required.

International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 827 (1994). “Contempt proceedings enforce the message that court orders and judgments are to be complied with in a prompt manner.” *Elec. Workers Pension Trust Fund of Local Union #58, IBEW v. Gary’s Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003).

Legal Standard for Imposing Civil Contempt Sanctions

Rules 9020 and 9014 of the Federal Rules of Bankruptcy Procedure govern contempt proceedings in bankruptcy courts. When a party fails to abide by a court order, another party in the proceeding may move the court to hold the non-compliant party in contempt. “[T]he movant must produce clear and convincing evidence that shows that ‘[the non-compliant party] violated a definite and specific

order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order.' ” *Gary's Elec. Serv. Co.*, 340 F.3d at 379 (quoting *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir. 1987)). *Accord Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 720 (6th Cir. 1996); *In re Walker*, 257 B.R. at 497. “Once the movant establishes his prima facie case, the burden shifts to the contemnor who may defend by coming forward with evidence showing that he is *presently* unable to comply with the court's order.” *Gary's Elec. Serv. Co.*, 340 F.3d at 379 (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)). When evaluating whether the non-compliant party was unable to comply, the court considers whether the party “ ‘took all reasonable steps within [his] power to comply with the court's order.’ ” *Gary's Elec. Serv. Co.*, 340 F.3d at 379 (quoting *Peppers v. Barry*, 873 F.2d 967, 968 (6th Cir. 1989)).

Power of the Court to Hold Nonparty Corporate Officer in Contempt

In addition to ordering the Defendant Stop N Go to appear and show cause, the Court orders Stop N Go's corporate officer, Jack Cardinal, a nonparty, to appear and show cause. The Sixth Circuit Court of Appeals recently affirmed this Court's power to hold nonparty corporate officers in contempt for their corporation's actions or inactions.

“A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt.”

Gary’s Elec. Serv. Co., 340 F.3d at 380 (quoting *Wilson v. United States*, 221 U.S. 361, 376 (1911)). Corporate officers can be held in contempt for the actions and inactions of their corporation because of their relationship to the corporation. See *Gary’s Elec. Serv. Co.*, 340 F.3d at 380; *United States v. Hochschild*, 977 F.2d 208 (6th Cir. 1992). Whether the corporate officer is a named party in the action is not controlling on the court’s contempt powers. See *Gary’s Elec. Serv. Co.*, 340 F.3d at 382 (relying on *Wilson* and *Hochschild*).

Specific Conduct that Merits Contempt

The specific conduct that appears to merit a finding of contempt is the failure of Defendant Stop N Go and its officer Jack Cardinal to comply with the terms of the May 4, 2005, Agreed Order, despite receiving numerous notices from the Court and opposing counsel. On May 4, 2005, the Agreed Order was executed by Stop N Go’s counsel, and then the Agreed Order, signed by the Court, was served electronically on Stop N Go’s counsel. On May 7, 2005, notice of the Agreed Order was mailed to Stop N Go, care of Jack Cardinal. On May 27, 2005,

Plaintiffs' Motion for Order to Show Cause on Contempt and Notice of Motion were served on Stop N Go's counsel by regular mail and e-mail, and they were served on Stop N Go, care of Jack Cardinal, by regular mail. Despite these numerous notices and opportunities, Stop N Go and Jack Cardinal have both failed to comply with the Agreed Order.

Range of Potential Contempt Sanctions

"The primary purpose of a civil contempt order is to 'compel obedience to a court order and compensate for injuries caused by non-compliance.'" *McMahan & Co. v. Po Folks, Inc.*, 206 F.3d 627, 634 (6th Cir. 2000) (quoting *TWM Mfg. Co. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983)). Courts have a range of potential sanctions to use in enforcing compliance to court orders through civil contempt. *See Gary's Elec. Serv. Co.*, 340 F.3d at 385 (discussing court's discretion to frame civil contempt sanctions to fit the violation). For example, imprisonment and daily fines are proper sanctions for civil contempt when the contemnor is able to purge the contempt by committing an affirmative act.

The paradigmatic coercive, civil contempt sanction . . . involves confining a contemnor indefinitely until he complies with an affirmative command such as an order "to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance." . . . In these circumstances, the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus " 'carries the keys of his prison in his own pocket.' "

See International Union, United Mine Workers of America, 512 U.S. at 828 (1994) (quoting *Crompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 442 (1911)) (citations omitted). Accordingly, after a finding of contempt it may be appropriate for this Court to impose higher daily fines upon both Stop N Go and Jack Cardinal and order them to pay additional attorney's fees. It may also be appropriate for this Court to incarcerate Jack Cardinal until Stop N Go has complied with the order of May 4, 2005.

CONCLUSION

For the foregoing reasons, Defendant Stop N Go and Jack Cardinal, an officer of Stop N Go, are both ordered to appear at an **evidentiary hearing at the conclusion of the 3 p.m. Chapter 13 docket on August 11, 2005, in Courtroom 1A of the Metzenbaum Courthouse, 201 Superior Avenue, Cleveland, Ohio 44114** and show cause why they should not be held in civil contempt of court for their failure to abide by the terms of the May 4, 2005, Agreed Order.

IT IS SO ORDERED.

/s/ Arthur I. Harris 7/15/2005
Arthur I. Harris
United States Bankruptcy Judge