

CAUSE NO. DC-14-13421

FRIEDMAN & FEIGER, L.L.P.,

Plaintiff,

v.

DAVID JOACHIM, et al.,

Defendants.

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IN THE 160th JUDICIAL  
DISTRICT COURT

DALLAS COUNTY, TEXS

**AMENDED JUDGMENT OF CONTEMPT AGAINST DAVID JOACHIM AND  
ORDER GRANTING SANCTIONS AGAINST DAVID JOACHIM**

On April 4, 2019, the Court called for hearing Receiver's First Amended Verified Motion for Contempt, Sanctions & Additional Expenses Against Judgment Debtor David Joachim (the "Motion"), filed by Andrew R. Korn, Receiver ("Receiver") on February 5, 2019, to hold Judgment Debtor David Joachim ("Joachim") in contempt of court for refusing to obey the Order Appointing Receiver and to Compel Discovery signed on February 23, 2018 (the "Receivership Order").

**Appearances:** Receiver appeared in person and by his attorneys of record. Plaintiff/Judgment Creditor Friedman & Feiger, LLP appeared by its attorney of record. Joachim appeared in person and by his attorneys of record.

**FINDINGS:** Based on the Record, taking judicial notice of its file,<sup>1</sup> and all other matters the subject of which the Court can properly take judicial notice,<sup>2</sup> the evidence presented and the arguments of counsel, the Court finds the following:

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<sup>1</sup> See *Smith v. Smith*, 757 S.W.2d 422, 426 (Tex. App.—Dallas 1988, writ denied) (“[A] trial court may take judicial notice of the contents of its file with or without the request of a party.”); *Asplundh Tree Expert Co. v. Abshire*, 517 S.W.3d 320, 344 n.13 (Tex. App.—Austin 2017, no pet.) (“A trial court is presumed to have taken notice of its own records in a case because “[a] trial judge judicially knows what has previously taken place in the case on trial.”).

- Joachim received fair notice of the requirements of the Receivership Order. For example, Joachim received a copy of the Receivership Order by the following methods:
  - the court’s electronic filing system a/k/a e-service, to Joachim’s attorney of record on February 23, 2018;
  - U.S. Mail sent directly to Joachim by Judgment Creditor on April 13, 2018;
  - E-mail sent directly to Joachim by Judgment Creditor on April 13, 2018;
  - E-mail sent to Joachim’s attorney of Record by Receiver on April 27, 2018; and
  - E-mail sent directly to Joachim by Judgment Creditor on May 14, 2018.

Joachim admits that he received actual notice of the Receivership Order no later than May 2018.<sup>3</sup> Joachim admits he read the Receivership Order and Exhibit A attached thereto. Exhibit A is a list of documents to be turned over to the Receiver. Joachim admits he understood Exhibit A.

- The Receivership Order required Joachim to do the following:
  - (1) Turnover of Documents and Receivership Assets. Joachim was ordered to turnover to the Receiver within 5 days of his receipt of a copy of the Receivership Order (a) the documents contained on Exhibit “A” to the Receivership Order together with all documents and financial records requested by the Receiver, and (b) all checks, cash, securities (stocks and bonds), promissory notes, documents of title and contracts owned by or in the name of Joachim;<sup>4</sup>

<sup>2</sup> See *Bland v. State*, 59 S.W. 1119; 1120 (Tex. Crim. App. 1900) (“We are aware that a judge... Is authorized to take judicial cognizance of a great many things...”).

<sup>3</sup> See also, David Joachim’s *Statements for the Court*, filed February 28, 2019 (Wherein Joachim contends that he “was not made aware of the Receiver until April or May in 2018.”).

<sup>4</sup> Exhibit “A” of the Order states as follows:

**DOCUMENTS TO BE TURNED OVER TO RECEIVER**

Any and all records, as hereinafter described, concerning affairs of Joachim; unless otherwise noted, for the preceding 36 months:

1. bank statements; pass books and other bank or financial institution records;
2. federal income and state franchise tax returns;
3. all motor vehicle Certificates of Title;
4. real property deeds and deeds of trust;
5. business journals, ledgers, accounts payable and receivable files;

- (2) Turnover of Business Documents. Joachim was ordered to identify and turnover to the Receiver all interests of Joachim in any business or venture and all agreements, stock certificates and other documents pertaining to Joachim and International Realty Concepts, Inc.'s ownership in the business or venture within 5 days from Joachim's receipt of a copy of the Receivership Order; and
- (3) Continuing Duty. Joachim was ordered to continue, until the Judgment is paid in full, to turnover to the Receiver at the Receiver's address, all checks, cash, securities, promissory notes, documents of title, and contracts within 3 days from his receipt and possession of any such property.

- Joachim did not turnover to the Receiver all the documents contained on Exhibit A to the Receivership Order. Joachim had some of these documents to turnover to Receiver but chose not to turn them over. Joachim could have delivered these items to Receiver but failed and refused to do so. Examples of documents Joachim withheld from Receiver were account Statements and other records from banks and financial institutions such as Bank of America, USAA FSB, Chase Bank, Amegy Bank, Discover, Merrill Lynch, MassMutual, and Faye Sarofim & Co. Joachim also withheld the *Texas Certificate of Title* to his 2014 Mercedes Benz Sedan. Joachim also withheld at least one credit application, a request for credit to Discover, made around August 2018. Joachim claims he had reasons not to turnover documents that came into existence after the date of the Receivership Order and the Receiver disagrees.

Joachim had a *Self-Service Storage Rental Agreement* for three storage units at Community Self Storage but did not turn that Contract (or any contract extensions) over to Receiver. Moreover, Joachim was storing personal property in the storage units and did not disclose to Receiver the existence of these units, or the personal property contained in the units. To the contrary, Joachim told Receiver that he no longer had any storage units. Joachim has a Storage Unit (Unit 475) at Eldridge Self Storage, but has not turned over any document relating to that storage unit to Receiver.

Joachim had an *Agreement and Consent to Sale Hilton Garden Inn – Houston Northwest* that he did not identify or turnover to Receiver.

Joachim had receipts evidencing repair agreements for jewelry that Joachim delivered to Dubin's Fine Jewelry, but Joachim intentionally withheld those documents from Receiver. These repair receipts are receipts the Receiver claims should have been produced and turned over to him. Again Joachim claimed such documents were outside the scope of the Receivership Order and the Receiver

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6. state sales tax reports;
  7. credit applications and other documents stating debtor's financial condition (preceding 72 months).

disagrees. Joachim has contended that some of the property that the Receiver has collected is either exempt under applicable state law or belongs to someone else. The Receiver disagrees with both these contentions.

Joachim failed to account for the jewelry traced to him, including at least four Rolex watches and other jewelry given to his daughters. Joachim has contended that some of the property that the Receiver has collected is either exempt under applicable state law or belongs to someone else. The Receiver disagrees with both these contentions.

- Joachim admits he failed to comply with the Receivership Order.
- Joachim willfully and intentionally disobeyed the Receivership Order.
- Joachim's refusal to comply with the Receivership Order was without substantial justification and was inexcusable. Joachim offered excuses for his non-compliance which the Court is overruling.
- Joachim's refusal to comply with the Receivership Order was willfully disobedient and is a contempt of court.
- Joachim interfered with the enforcement of orders and judgments.
- Joachim accepts responsibility for his misconduct and did show remorse.
- The Court finds that Joachim is guilty of acts of contempt identified in this Order, which supports the penalties imposed herein.

#### **CONCLUSIONS OF LAW:**

#### **CRIMINAL AND CIVIL CONTEMPT:**

A court may punish for contempt.<sup>5</sup>

Joachim is GUILTY of contempt.<sup>6</sup>

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<sup>5</sup> See *In re O'Keeffe*, 2018 Tex. App. LEXIS 3595, at \*2 (Tex. App.—Dallas May 21, 2018, orig. proceeding) (Citing Tex. Gov't Code Ann. § 21.002).

<sup>6</sup> See generally *Ex parte Hall*, 854 S.W.2d 656, 658 (Tex. 1993) (“As a general rule, a person who willfully disobeys a valid court order is guilty of contempt...”).

This proceeding constitutes a civil and criminal proceeding. Joachim's violation of the Receivership Order is both criminal and civil contempt.<sup>7</sup>

Joachim's willful refusal to deliver to the Receiver, the documents required by the Receivership Order, is a contempt.<sup>8</sup>

**INTERFERENCE WITH THE CORE FUNCTIONS OF THE COURT WAS BOTH CRIMINAL AND CIVIL CONTEMPT:**

- Joachim's refusal to comply with the Receivership Order, resulted in making the Receiver's duties more difficult, and interfered with traditional core functions of the Court, including enforcing its judgment.<sup>9</sup> Joachim's misconduct also caused

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<sup>7</sup> See *In re Daugherty*, 2018 Tex. App. LEXIS 4449, at \*1 (Tex. App.—Dallas June 19, 2018, orig. proceeding) (Citations omitted):

There are two forms of contempt: civil and criminal. A criminal contempt order is punitive in nature and is an exertion of the court's inherent power to punish a party for "some completed act which affronted the dignity and authority of the court." ... In criminal contempt proceedings, the contemnor is being punished for his improper actions "and no subsequent voluntary compliance on the part of the defendant can enable him to avoid punishment for his past acts." ...The distinguishing feature of criminal contempt is that the penalty is unconditional... A criminal contempt conviction for violation of a court order requires proof beyond a reasonable doubt of: (1) a reasonably specific order; (2) a violation of the order; and (3) the willful intent to violate the order.

*Am. Honda Fin. Corp. v. Route 57 Dev., LLC*, 2018 U.S. Dist. LEXIS 19481, at \*16 (N.D.N.Y. Nov. 15, 2018) (Citations omitted):

To show that civil contempt relief is merited, "a movant must establish that (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner."

<sup>8</sup> See *Okada v. Whitehead*, 2017 U.S. Dist. LEXIS 178836, at \*12 (C.D. Cal. July 28, 2017) (Failing to hand over bank records to Receiver is a contempt); *Mitchell v. Turbine Res. Unlimited, Inc.*, 523 S.W.3d 189 (Tex. App.—Houston [14th Dist.] 2017, pet denied) (Finding respondent in contempt for, inter alia, failing to notify the receiver of the existence of property); cf. *In re Fitzgerald*, 429 S.W.3d 886, 890 (Tex. App.—Tyler 2014, Orig. proceeding) (Refusing to vacate an Order of contempt for violating the court's order compelling production of documents).

<sup>9</sup> See *In re Hecker*, 264 Fed. Appx. 786, 791 (11th Cir. 2008) (internal quotations omitted) ("A party demonstrates bad faith by delaying or interrupting the litigation or by hampering enforcement of a court order."); See also *White v. Zhou Pei*, 452 S.W.3d 527, 546 (Tex. App.—

Judgment Creditor to incur additional fees participating in and reviewing matters related to Joachim's contempt.

Receiver's Motion for Contempt is granted, as specified below.

- Imposition of Community Service. In lieu of confinement in the Dallas County Jail, Joachim will perform 200 hours of community service, to be completed within 120 days from the date the Court signs this Order. Nothing shall prevent Joachim from seeking an extension of time to provide this service upon motion filed with the Court and hearing. The community service will be coordinated through Harris County Public Health ("HCPH"), for service to be performed within the Harris County Animal Shelter. Joachim will agree to, and abide by all HCPH statements, policies, codes, agreements, and requirements<sup>10</sup> required to make Joachim eligible to provide community service hours through the Harris County Animal Shelter. ~~Joachim may also select another form of approved community service and shall provide notice to the Court of same.~~ 

By May 20, 2019, Joachim will report in person to the Harris County Animal Shelter, located at 612 Canino Road, Houston, Texas 77076 to be assigned to the Community Service Duties identified on page 5 of Exhibit A attached to this Order. Harris County Animal Shelter has complete discretion to determine the schedule of the community service to be performed, as long as the Shelter provides Joachim a reasonable opportunity to complete 200 service hours inside the Shelter within the 120-day period.

Harris County Animal Shelter will: 1) require that Joachim adequately perform the tasks assigned to Joachim before giving Joachim credit for time spent on the tasks; 2) keep track of the community service hours Joachim completes; and 3) provide Receiver with copies of Joachim's Monthly Timesheets (accounting for time by each day of service) whenever requested by Receiver.<sup>11</sup>

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Hous. [14th Dist.] 2014, no pet.) ("A party who makes misrepresentations to the court interferes with these core functions.").

<sup>10</sup> Including:

- Confidentiality Statement
- Volunteer/Intern Expectations
- Photography Consent Form/Model Release
- Release & Indemnification Agreement
- Volunteer/Intern Participation Agreement
- Vaccination Requirements
- Volunteer Liability Release
- Social Media Policy

<sup>11</sup> Tamara A. Cook, BSBA, Harris County Animal Shelter's *Community Service Coordinator*, or any other person succeeding to this role or responsible for the duties of community service coordination, will cooperate with the Court.

Harris County Animal Shelter will not comp or waive hour requirements for any reason. Harris County Animal Shelter will not credit Joachim any time towards his 200-hour requirement unless that time was actually spent working in the Shelter, and in the sole discretion of the Harris County Animal Shelter, Joachim adequately completed the tasks assigned during the time to be credited. Harris County Animal Shelter may not round up time – or permit Joachim to round up time. Time recorded as earned must be for time Joachim actually spent working in the Shelter.

**Duty to Report.** Joachim will immediately inform the Court – by filing and serving a written notice – of any occurrence or circumstance that prohibits or inhibits Joachim’s ability to complete Joachim’s 200 hours of community service within the 120-day period. Reporting does not relieve Joachim of his obligation to complete Joachim’s 200 hours of community service within the 120-day period.

✓ **Attorney’s fees:** As contempt sanctions to punish or vindicate an affront to the court – and not to compensate a party – Receiver and his counsel are awarded **\$30,000.00** in attorney’s fees<sup>12</sup> relating solely to the presentation and prosecution of the Motion, which will be paid no later than ~~sixty (60)~~ *forty-five (45)* days from the signing of this order. *8*

**Duty to Comply with Post Judgment Discovery:** Joachim shall produce any and all documents required by the Order Appointing Receiver within 37 days from the rendering of the original order of contempt.

SO ADJUDGED AND ORDERED.

RENDERED ON APRIL 4, 2019.

SIGNED ON MAY 14, 2019.

  
ASSOCIATE JUDGE PRESIDING