FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

~~Motion for Emergency Stop2~~

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 11 2009

PATRICIA PRESLEY, COURT CLERK

by_____ DEPUTY

CJ

Oklahoma Department of Securities ex rel. Irving L. Faught Administrator, Plaintiff, v. Brian McKye, an individual Defendant,	))))))))	Case No.-2009-2773

DEFENDANTS ANSWER TO APPLICATION FOR CITATION, &
ANSWER TO SPECIAL MASTERS' MOTION FOR ORDER RETURNING PROPERTY

COMES NOW the Defendant, Brian McKye; pro se, and answers the Plaintiffs' Application for Citation, answers Special Masters' Motion for Order Returning Property

Defendants Answer to Application for Citation

BACKGROUND

1. On March 24, 2009, The Oklahoma Department of Securities filed a Petition for Permanent Injunction and Other Equitable Relief against the Defendant, Brian McKye and other "relief" Defendants nearly three years to the day after beginning their investigation of Mr. McKye and other 'relief' defendants. During those three years Mr. McKye cooperated fully with the Director, Irv Faught, as well as Ms. Patricia Labarthe of the ODS state agency.

2. On March 24, 2009, the Oklahoma County District Court issued the Temporary Order against Mr. McKye without hearing.

3. It is alleged by Plaintiff that Mr. McKye "willfully" and "contemptuously" withdrew funds from banking institutions within his control over the next seven days or had employees within his direction to do so accordingly. Defendant denies this claim on the grounds that this was neither "willful" nor in contempt.

4. On March 25th, 2009, Mr. McKye filed a motion through counset at that time, to dissolve the TRO on his behalf and that motion was precluded by an Agreed Order by all parties. Mr. McKye assumes this was set asside. Defendant respectfully requests clarification on this Motion from the Court. Defendant respectfully wishes the Court to allow Defendant the future opportunity to revisit this original Motion at some future date, at the Courts' allowance.

5. On April 1st 2009, an Agreed Order was issued by the Court providing in part:
"...any banks or financial institutions, wherever chartered or located, who receive actual notice of this order, by personal service, facsimile transmission or otherwise, to fully cooperate". Mr. McKye asserts that he was unaware that this "asset" was uneffected or effected by the TRO filed just days before. Clell Cunningham, Defendants' counsel had not told Defendant to close out this particular account and to return the money to Mr. Moriarty, since Mr. Moriarty had not as of yet been approved and Ordered by the Court. Defendant contends that Mr. Moriarty's Motion to Return Property is without jurisdiction on this action.

6. However, after giving exclusive authority over the "assets" to said Special Master under Section 1-603 of the Uniform Securities Act of 2004, Okla. Stat. tit. 71, 1-101 through 1-107 (Supp. 2003) it also went on to necessitate by Order to Special Master" to PRESERVE THE STATUS QUO and to protect ODS' rights in enforcing the Act. Mr. Moriarty is doing a very poor job at maintaining the Status Quo. Most bills are remain unpaid, damaging Defendants credit with his Vendors as well as his credit rating causing "default" status on contracts of all stores. Vendors and landlords are filing evictions. Standard services which Defendants' companies provide, such as Trans Union credit bureau, are left unpaid while money sits within the Special Masters' control to maintain the Status Quol. Defense contends that activity of Special Master is not preserving the status quo and thus in violation of the ORDER.

7. On April 30th 2009, twenty nine days after being appointed Special Master, Stephen J Moriarty, Special Master filed an application for the SALE of Defendants assets.

8. Plaintiff, Irving L Faught of the ODS, alleges that Defendant Mr. McKye withdrew or caused to be withdrawn a total of $23,300 on March 25,26,27,30, and 31, supposedly in violation of said order. Defendant claims that the actual amount spent to be $21,224. Defendant claims that $2,076 was present within the cash drawers contained in the three stores of OKC, Yukon (Rockwell), and Midwest City on the day in question or was scheduled to be moved to that set of drawers on the day in question which is the subject of this action. Defendant denies plaintiffs' claim on amount and violation.

9. Plaintiff, Irving L Faught of the ODS, alleges Mr. McKye sent correspondence to Lenders/Investors that directly or indirectly "hinder" the Special Master in the conduct of his duties, including March 27, April 15, and May 8, 2009. This allegation is patently false. You need only read the letters contained in Plaintiffs' exhibits and "penned" by Defendant to be convinced that there was never an efffort to hinder the Special Master in any way. In todays' uncertain economic times, Defendant felt it was his duty to keep all company clients aware of day to day operations since the inception of this action. There is nothing nefarious in these letters to clients in any way. Defendant denies Plaintiffs' claim of hindrence.

10. On May 1, 2009 the Special Master terminated Mr. McKye's role as owner and CEO and issued notices to all stores to not speak to or communicate with Mr. McKye. see exhibits "B" and "C". Mr. Moriarty justified his reason for "firing" the owner of these companies was because the Defendant had supposedly violated a Court Order. Defendant denies Plaintiffs' claim because the Special Master has no jurisdiction to bring such action. The Special Master cannot "clawback" monies that were not transferred during his watch, he was not appointed until April 1st 2009.

11. On May 21st 2009, Mr. McKye, through his counsel Clell Cunningham, (who previously had requested the Court to withdraw from representing Mr. McKye on May 11,2009), submitted to this Court a document entitled "Funds withdrawn from All American Bank". This exhibit was submitted after Mr. McKye had issued an entry of appearance on his own behalf. Mr. Cunningham gave oral arguments. Mr. McKye was not addressed by the Court until the end of the preceedings, by then all rulings had been issued. Mr. Cunningham had not spoken to Mr. McKye regarding his continued representation after he originally filed to withdraw from this Court preceeding May 11, 2009. Mr. McKye had effectively NO representation by counsel for several weeks prior to the May 21st hearing, Clell Cunningham had not been authorized by Defendant to provide any oral arguments at the hearing on the Motion by Special Master to Sell Certain Assets. Mr. Cunningham was only authorized by Defendant to request a Continuance so that Defendant may seek other counsel on his behalf and be given the right as all Americans have of being represented by counsel who actually want to defend them. Defendant believes that such counsel he could soon retain if allowed to do so. Defendant respectfully prays the Court to allow him a Continuance of 30 days to retain Counsel, before the sale of his assets by Moriarty.

AFFIRMATIVE DEFENSES TO APPLICATION FOR CITATION AND SPECIAL MASTERS MOTION TO RETURN PROPERTY.

1. In order to be adjudged guilty of indirect contempt, proof of disobedience of order, lawfully issued by court, must be CLEAR AND CONVINCING. Davis v. Davis, Okla. App. Div 3, 739 P. 2d 1029 (1987)

In Indirect contempt proceedings , the complaint must allege WILLFUL disobedience of a court order. Webber v. Webber Okla. 178 Okla 174, 62 P. 2d 490 (1936)

Plaintiff has the burden of proof to clearly and convincingly demonstrate that Defendant willfully disobeyed the courts' order. Defendants' role as CEO and the only authorized individual signer and electronic signature processor on all ELEVEN bank accounts, as well as Defendants' willingness to NOT object when Mr. Cunningham provided both the Court and opposing counsel with the exact whereabouts of said withdrawn funds, proves that Defendant Mr. McKye's role in this action was not WILLFUL. Defendant was doing his job of paying bills just as he does every 1st of the month. The All American Bank was NOT served notice, was NOT facsimiled, and was NOT frozen on the dates in question. All disbursements from said account, except for approximately $2100, were to pay company debts as a normal course of business operations. Defendant was sincerely attempting to maintain the STATUS QUO in the midst of this action. Defendant paid approximately $2100 to his personal credit card since he had not been paid by the companies for over 30 days.

2. Defendant was fired from his position as owner and CEO WITHOUT a judicial finding of fault of any kind. "The finding of indirect contempt as willful disobedience of any process or order lawfully issued or made by court is determined by whether the court (or in this case the Special Master) has jurisdiction to so act. Whitlock v. Whitlock Okla. 550 P.2d 558 (1976). Mr. Moriarty has no jurisdiction to seek a finding of contempt.

"Contempt, being offense against authority of particular court, such court, if having jurisdiction of parties has jurisdiction to try and punish contemnors, regardless of where or in what state contempt was committed. Farmers' State

Bank of Texhoma v. State Okla. Crim.App., 13 Okla.Crim. 283, 164 P.132 (1917)

however...

3. Only that court in which a contempt is committed or whose order or authority is defied can punish the contempt, Smith v. State, Okla.Crim.App., 12 Okla. Crim. 513, 159 P.941 (1916) Defense contends that Mr. Moriarty has no authority to seek to "punish" Defendant.

4. Special Master Moriarty had no authority to fire Mr. McKye presumptuously, prior to this Courts' approval.

5. Defendant was summarily dismissed or terminated by the Court appointed Special Master as punishment for a so-called contempt of court offense which it is alleged to be committed PRIOR to his appointment by this court. He cannot seek punishment retro-actively to his own appointment.

6. Due process and the Sixth Amendment guarantee a defendant summarily charged in state court with contempt of court an opportunity to be heard in his defense, and to be represented by counsel. Sullivan v. State, Okla.Crim.App 419P.2d 559 (1966). Plaintiffs' motion to DENY PAYMENT TO DEFENDANTS' COUNSEL demonstrated that Plaintiffs' INTENT was to, at least in some small way, withhold both Relief and legal counsel from being accessed by Defendant.

7. The conduct alleged by Plaintiff constituting Contempt of Court has already been adjudged guilty and punished, ex parte, by the Special Master upon firing the Defendant and thereby seizing his assets without Court approval and without the adjudication of the original action which initiated the TRO.

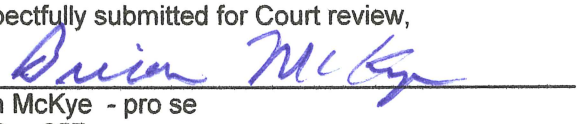
8. Finally, Defendant contends that Plaintiffs' action for Citation was not allowing Defendant enough time to issue a response. Defendant received this last filing yesterday the 9th of June 2009, only 3 days before said hearing on this matter. Defendant requests the Court to deny Plaintiffs' claim on the grounds that a "reasonable period of time" is NOT three days.

Therefore, Defendant respectfully prays the Court to deny Plaintiffs' Application and deny Special Masters' Motion and allow

Defendant 30 days to retain competent legal counsel, precluding the scheduled SALE ORDER of Defendants' assets on July

10, 2009.

Respectfully submitted for Court review,



Brian McKye - pro se
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Certification

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11 June, 2009, a true and correct copy of the foregoing was mailed by certified mail, return receipt requested, with postage paid there on addressed to:

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Brian McKye - Defendant

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