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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAPOWER-3, LLC; INTERNATIONAL
AUTOMATED SYSTEMS, INC.; LTB1,
LLC; R. GREGORY SHEPARD; NELDON
JOHNSON; and ROGER FREEBORN,

Defendants.

**RECEIVER’S RESPONSE TO
DECLARATION OF GLENDA
JOHNSON ON ORDER REQUIRING
LIEN RELEASES**

Civil No. 2:15-cv-00828-DN

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of RaPower-3, LLC (“RaPower”), International Automated Systems, Inc. (“IAS”), and LTB1, LLC (“LTB1”) (collectively, the “Receivership Entities”), as well as certain of their subsidiaries and affiliates and the assets of Neldon Johnson (“Johnson”) and R. Gregory Shepard (“Shepard”) (collectively “Receivership Defendants” or “Defendants”), hereby submits this Response to the Declaration of Glenda Johnson regarding the Court’s Order Requiring Releases of Liens.

I. FACTS

On May 5, 2020, the Court ordered Glenda Johnson to release three liens she filed on properties in Utah County, Millard County, and in Howard County, Texas within three days.¹ If she failed to comply within three days, the Order stated “a bench warrant shall be issued for her arrest and her incarceration shall continue until . . . the liens are released.”² On May 13, 2020, the Receiver filed a Notice of Non-Compliance informing the Court that the three liens had not been released within the three day period as required.³ The next day, Glenda Johnson filed a declaration stating that despite not releasing the three liens, she had “complied to the best of my ability with” the Order.⁴ In the declaration, Glenda Johnson appears to claim that she cannot release the liens without the permission of Roger Hamblin.⁵ The declaration also states:

- “On May 5, I reached out to Preston Olsen one or two times, he signed the liens on behalf of Anstram Energy, LLC I was unable to speak with Preston Olsen.”⁶
- “I knew that Preston Olsen was planning to sell his interest in Anstram Energy, LLC to Roger Hamblin . . . Roger Hamblin said he would not release the liens.”⁷

¹ [Docket No. 920](#).

² *Id.*

³ [Docket No. 923](#).

⁴ [Docket No. 925](#), ¶ 2.

⁵ Hamblin is a close associate of Neldon Johnson, having signed a witness statement that the solar technology worked, submitted a demand for arbitration before the World Bank’s International Centre for Settlement of Investment Disputes, and served as a part owner and manager of several of the affiliated entities. The Receiver’s separate lawsuit against Hamblin was filed in October 2019. *See* 2:19-cv-783.

⁶ *Id.* at ¶¶ 2(e)-(f).

⁷ *Id.* at ¶¶ 2(g)-(h).

- “I am not an owner of Anstram Energy, LLC I do not have any management authority over Anstram Energy, LLC.”⁸

II. Glenda Johnson Has Not Complied with the Order and Has Not Satisfied Her Burden to Show Impossibility.

Glenda Johnson’s declaration fails to show that it is presently impossible for her to comply with the Order. “Present impossibility is a defense to a contempt proceeding and the alleged contemnor has the burden of production on this defense. However, to prevail on this inability defense, the contemnor must establish by facts (and not just assertions) that he or she has made *all reasonable and good faith efforts to comply with the order.*”⁹ Glenda Johnson’s declaration does not meet this burden.

First, Glenda Johnson has not demonstrated that Preston Olsen no longer has the authority to act on behalf of Anstram Energy. Indeed, according to the declaration, she has not even spoken with Olsen regarding removing the liens or the Order.¹⁰ There is no indication as to how she attempted to contact him or why she believes he no longer has authority to act on behalf of Anstram Energy other than that she (somehow) knew Olsen was planning to sell his interest in the company. This does not show impossibility.¹¹ It is possible, and maybe likely, that Olsen currently has the

⁸ *Id.* ¶¶ 4-5.

⁹ *In re Aramark Sports & Entm’t Servs., LLC*, 725 F. Supp. 2d 1309, 1316 (D. Utah 2010) (emphasis added) (internal citations omitted).

¹⁰ [Docket No. 925](#), ¶ (e)-(f).

¹¹ In making this argument, the Receiver is in no way indicating that the liens are valid. In fact, the Receiver believes the liens are invalid and/or wrongful for a number of reasons. First, the liens are based on an alleged verbal agreement for Anstram to supply “energy product.” *See* Jan. 23, 2020 Tr. 156:5-161:24. This is likely an illegal and unenforceable contact that violates multiple orders of this Court and the statute of frauds. Second, the lien purports to place a “mechanic’s lien” on the property, but Glenda Johnson testified that Anstram has not provided the alleged “energy products” at the time the lien was recorded and there is no indication that any service, labor, or improvements have been made to the real properties by Anstram. *See* Utah Code § 38-1a-301, *et seq.*

authority to act on behalf of Anstram Energy. Glenda Johnson has provided no evidence of a sale from Olsen to Hamblin, no declaration by Olsen, no declaration by Hamblin, and no real explanation as to why she filed the lien instead of Olsen or another representative of Anstram Energy in the first place.¹² Moreover, throughout this Receivership, the Johnsons have repeatedly attempted to deflect responsibilities to third parties, while improperly claiming to have complied with the requirements of this Court's orders.¹³ This situation is no different. Glenda Johnson should not be allowed to escape compliance with her vague and incomplete declaration.

The fact that the alleged agreement with Anstram is unwritten—and cannot be reviewed by the Court—presents an opportunity for abuse. Glenda Johnson could claim that the alleged Anstram agreement means whatever she wants it to mean to excuse her compliance with the Court's order. She could claim that the unwritten agreement provides that the liens can never be released. It may be that the alleged agreement with Anstram provides that the liens cannot be released without the permission of Neldon Johnson and Neldon Johnson has refused to authorize Roger Hamblin (or others) to release the liens. Indeed, there are persuasive reasons to believe the agreement is invalid, if it exists at all.¹⁴

Accordingly, for Glenda Johnson to show that it is presently impossible for her to comply with the Order, she should be required to show: (1) the conditions and terms under which the liens

¹² Glenda Johnson stated that she filed the liens because Anstram Energy is international and she is local. Olsen, however, is an attorney based in Salt Lake City, Utah and just as "local" as Glenda Johnson.

¹³ See e.g., [Docket No. 701](#) at 24.

¹⁴ Glenda Johnson has recently tried to use another alleged contract to justify her improper behavior and receipt of money or other benefits. [Docket No. 784-1](#), filed October 11, 2019. This Court found the alleged contract was "not believable." Tr. Feb. 25, 2020 98:21.

were originally granted and filed;¹⁵ (2) whether she has ever had authority to grant or release the liens, and if so, when and how that authority ceased; (3) why the oral agreement with Anstram and the liens granted to Anstram are valid in light of the lack of consideration and the unwritten nature of the agreements relating to real estate; (4) the basis for her claim that Olsen once had, but no longer has, authority to release the liens; (5) all the persons who have authority to release or assign the liens; (6) details of the efforts she has undertaken to seek release of the liens from persons having authority to act on behalf of Anstram; (7) why those with authority to release the liens, possibly including Hamblin, refuse to release the liens; and (8) that there is no possible way for her to release the liens absent the authorization from Hamblin.

DATED this 20th day of May, 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

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¹⁵ If the Anstram agreement is unwritten (as Glenda Johnson testified on January 23, 2020; 157:19-157:24), she must describe the relevant terms of the agreement, indicate the rights and responsibilities of the various parties to the agreement, and identify those persons who could assign or release the liens granted by Glenda Johnson on the various properties.

CERTIFICATE OF SERVICE

I hereby certify that the above **RECEIVER'S RESPONSE TO DECLARATION OF GLENDA JOHNSON ON ORDER REQUIRING LIEN RELEASES** was filed with the Court on this 20th day of May, 2020, and served via ECF on all parties who have requested notice in this case.

/s/ Michael S. Lehr
