

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

NELDON PAUL JOHNSON,

Plaintiff,

v.

Case No. 4:18-cv-00062-MJT
Judge J. Thomas Marten

INTERNAL REVENUE SERVICE,
et al.,

Defendants.

ORDER

This matter is before the court on multiple motions: plaintiff Johnson’s Motion for Preliminary Injunction (Dkt. 2); certain defendants’ Motion to Stay a decision on Johnson’s Motion for Preliminary Injunction pending disposition of their motion to dismiss (Dkt. 10); and certain defendants’ Motion to Dismiss for lack of jurisdiction (Dkt. 15). Also before the Court is a Notice of Stay filed by Wayne Klein (Dkt. 13). For the reasons set forth below, the court finds that this matter should be stayed pending the final disposition of Case No. 2:15-cv-00828-DN, *United States of America v. RaPower-3 LLC, et al.*,¹ or pending further order of the court in that matter.

Johnson filed his complaint in this matter on September 20, 2018. (Dkt. 1). The complaint broadly alleges that defendants, in concert, unlawfully deprived him of certain constitutional and property rights in conjunction with a suit filed by the IRS against Johnson for tax violations related to the sale of certain solar technology. (Dkt. 1, 1-2). The suit to which Johnson refers is Case No. 2:15-cv-00828-DN, *United States of America v. RaPower-3 LLC, et al.* (“*RaPower-3*”). In *RaPower-3*, the IRS filed a Complaint for Permanent Injunction and Other Equitable Relief

¹ Currently on appeal to the Tenth Circuit Court of Appeals, Appellate Case Nos. 18-4119 and 18-4150.

alleging that Johnson and other defendants committed tax fraud by selling what they declared was revolutionary solar technology while representing that purchasers of the solar technology could receive some tax benefit from their purchase. (*See generally* 2:15-cv-00828-DN Dkt. 2). A bench trial was held before Judge Nuffer beginning on April 2, 2018 (2:15-cv-00828-DN Dkt. 372) and concluding on June 22, 2018 (2:15-cv-00828-DN Dkt. 415), after which the court entered an Interim Order for Partial Injunctive Relief in favor of the United States. (2:15-cv-00828-DN Dkt. 413). The Interim Order for Partial Injunctive Relief found that defendant Neldon Johnson, along with others, was “involved in the organization of, and participated in sales of interests in, the plan or arrangement, and the plan or arrangement that constitutes this fraudulent tax scheme.” (*Id.* at 1).

On August 22, 2018, Judge Nuffer signed a Memorandum and Order granting the United States’ motion to freeze defendants’ assets and appointing a receiver. (2:15-cv-00828-DN Dkt. 444). The court found, in part, that “Neldon Johnson is and has been the manager, and a direct and indirect owner of, RaPower-3, LLC, International Automated Systems, Inc. and LTB1, LLC (among other entities). He is the sole decision-maker for each entity.” (*Id.* at 3). The court further found that “[d]efendants have caused serious harm to the United States Treasury as a result of their solar energy scheme,” and that defendants, including Johnson, continued to organize sales of their solar technology and had not been deterred from promoting their lenses, “not by the IRS’ disallowance of their audited customers’ depreciation deductions and solar energy tax credits or by the complaint filed in this case or by the announced result in the case.” (*Id.* at 13).

On October 31, 2018, Judge Nuffer entered a Receivership Order in which the court took “exclusive jurisdiction and possession of all assets, of whatever kind and wherever situated, of Defendants RaPower-3 LLC, Neldon Johnson, International Automated Systems Inc., LTB1 LLC,

and R. Gregory Shepard,” which the court deemed the “Receivership Defendants.” 2:15-cv-00828-DN Dkt. 490, at 2). The Receivership Order continued the court’s previously existing asset freeze directing that “all assets of the Receivership Defendants are frozen until further order of this Court (‘Receivership Property’).” (*Id.* at 3). The asset freeze restrained and enjoined any individual other than the appointed Receiver “from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating, or otherwise disposing of or withdrawing such Receivership Property.” (*Id.*). The Receivership Order was followed by a Corrected Receivership Order (“CRO”) entered on November 1, 2018, which corrected formatting errors in the original Receivership Order. (2:15-cv-00828-DN Dkt. 491). Wayne Klein was appointed as the Receiver for the Receivership Property as well as any proceeds of the Receivership Defendants or any affiliated or subsidiary entities of the Receivership Defendants. (*Id.* at 3).

In addition to appointment of the Receiver and a freeze of all defendants’ assets, the CRO also issued a stay of litigation as to any “Ancillary Proceedings.” Ancillary Proceedings” were defined by the CRO to be all civil legal proceedings of any nature involving any Receivership Property or “[a]ny of the Receivership Defendants, including their subsidiaries, partnerships, or joint ventures.” (2:15-cv-00828-DN Dkt. 491, at 30). Paragraphs 45 through 48 of the CRO are particularly relevant to Johnson’s current complaint. Those paragraphs provide:

45. The Receiver shall file a notice of stay in any and all currently pending litigation (excluding this action) and in any and all actions that may be filed against Receivership Defendants while the receivership is ongoing.
46. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.
47. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further order of this Court. Further, as to a cause of action accrued or

accruing in favor of one or more of the Receivership Defendants against a third person or party, any applicable statute of limitation is tolled during the period in which the injunction against commencement of legal proceedings is in effect as to that cause of action.

48. Upon a determination by the Receiver that action should be taken in any of the Ancillary Proceedings, the Receiver shall seek a lift of stay of litigation from this Court prior to taking any action in the Ancillary Proceeding.

(*Id.* at 30-31). In compliance with paragraph 45 of the CRO, a Notice of Stay was filed in this case by Wayne Klein in his capacity as Receiver on November 13, 2018. (Dkt. 13). The Notice of Stay indicated that Neldon Johnson, plaintiff in the instant case, is a Receivership Defendant under the CRO in *RaPower-3*, and that the Receiver considered the instant matter to be an “Ancillary Proceeding” as defined by the CRO. (*Id.*, 1-2).

This court agrees, and finds that Johnson’s current suit against defendants IRS, Department of Justice, David Nuffer, and other agencies of the United States is a civil legal proceeding involving Johnson, a Receivership Defendant in *RaPower-3* both in his individual capacity and potentially in his capacity as a past or present principal of RaPower-3, LLC and one or more of its subsidiaries or affiliated entities. (*See* Dkt. 1, Dkt. 13). Consequently, the current suit is an “Ancillary Proceeding” as defined by the CRO.

Because the instant suit is an Ancillary Proceeding, defendant Johnson is prohibited by paragraph 46 of the CRO “from commencing or continuing [the proceeding], or from taking any action ... in connection with [the proceeding].” (2:15-cv-00828-DN Dkt. 491 at 31). Further, this court is enjoined by paragraph 47 of the CRO from taking or permitting any action in this Ancillary Proceeding until further order of the court in *RaPower-3*. (*Id.*).

IT IS THEREFORE ORDERED THAT:

- a. Defendant’s Motion to Stay regarding Motion for Preliminary Injunction (Dkt. 10) is DENIED as moot;

- b. All other pending deadlines in this matter shall be STAYED and all pending motions (including Johnson's Motion for Preliminary Injunction, Dkt. 2, and defendants' Motion to Dismiss, Dkt. 15) held under advisement until further order of the court. The parties are prohibited from engaging in any discovery, motion, briefing, or other practice in this matter except as specifically provided by order of the court;
- c. The parties are directed to file a status report in this matter within seven days of any order of the court in *RaPower-3* pertaining to the CRO or the stay of litigation.

IT IS SO ORDERED.

Dated this 1st day of February, 2019.

/s/J. Thomas Marten
THE HONORABLE J. THOMAS MARTEN
UNITED STATES DISTRICT COURT