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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, and NELDON JOHNSON,</p> <p>Defendants.</p>	<p><b>GLENDA JOHNSON’S RESPONSE TO THE RECEIVER’S MOTION FOR ORDER TO SHOW CAUSE</b></p> <p>Civil No. 2:15-cv-00828-DN-EJF</p> <p>Judge David Nuffer</p>
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Glenda Johnson responds to the Receiver Wayne Klein’s Motion for Order to Show Cause (the “OSC Motion”) as follows. Glenda Johnson does not believe that she should be held in contempt of court for the actions taken as described in the Receiver’s report and recommendation on property liens Glenda Johnson granted to Anstram Energy and violations of the Corrected Receivership Order (“Report and Recommendation”).

Instead, Mrs. Johnson represents that she was taking action based on an understanding of her rights and the rights of others to perfect claims they (and she) believed were valid and enforceable

against later findings and orders of the court. As such, the court should not conclude that Mrs. Johnson willfully violated a court order.

**1. Mrs. Johnson was Convinced that Agreements that Existed Before the Government's Lawsuit Against RaPower Survived the Court's Findings and Conclusions and the Receivership Order.**

Mrs. Johnson is not a sophisticated person. She was convinced by her husband that agreements that benefitted her survived the Court's rulings and orders following trial because she was not a party to the lawsuit. She was shown the United States Constitution, Article 1 Section 10 regarding obligations of existing contracts, which states "*No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.*" This provision was explained to Mrs. Johnson as a reason why her contractually granted rights could not be "impaired" by the Court's ruling, when she was not a party to the lawsuit.

She understands that the work that was done by her as a basis for the claims that were included as a mechanics' lien claim arose prior to 2010 and continued through the present date. For example, over 18 towers were built before 2010; the receivers where built; the turbine and associated components where built; additional towers were built. Many more lens were purchased and produced. This was built for IAS one-site. It was a precursor for a solar project to be owned and operated by IAS. This work formed the basis for the claim for a lien.

The work performed was done for and with IAS, and later for Solstice LLC. They contracted the work and Glenda Johnson performed the work and provided the equipment as required by Utah Code Ann §38-1a-308.

Prior to August 1, 2011, U.C.A. § 38–1-5 outlined mechanics’ lien priority was as follows:

The liens herein provided for shall relate back to, and take effect as of, the time of the commencement to do work or furnish material on the ground or the structure or improvement, and shall have priority over any lien, mortgage, or other encumbrances which may have attached sequentially to the time when the building, improvements or structure was commenced, [or] work began . . .

See, *Pentalon Const. v. Rymark Props.*, 2015 UT App 29, ¶9.

She was told that for the lien covering work that justifies Glenda’s filing, the project in question did not require a preliminary notice because the work involved in the lien was prior to August 1, 2011. The later filing of the liens related back, by operation of the mechanics’ lien law, to the date prior to the court proceedings, when the work was performed.

Based on this explanation, and more, Mrs. Johnson was persuaded that the Receivership Order did not contain any statement that would invalidate the US Constitution, Article 1 Section 10, regarding impairment of existing contracts. She was convinced from the information presented to her that those obligations still exist. She did not intend to cross the Receiver or the Court. She thought she was preserving an existing right she had under contract law.

Not only was she persuaded by her husband, but the conversation and actions relating to her contractual rights and preservation of her property rights was supported by Preston Olsen, an

attorney. With his involvement, she felt her understanding of the overall transactions was reinforced by his participation; because if Preston Olsen said it was okay, she could go along with it. It was not her idea, nor was she driving the narrative. She did not fully understand the legal effect of sitting in the meetings, signing the documents and recording the documents with the county relative to the Receivership Order. She believed then, and continues to believe, her contractual rights are preserved.

The Receivership Order expressly limited the Receiver's power as subject to applicable state and federal law:

The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the owners, members, shareholders, officers, directors, managers, and general and limited partners of the Entity Receivership Defendants under applicable state and federal law, by the governing charters, bylaws, articles, or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of [28 U.S.C. §§ 754, 959, 1692](#), and [Fed. R. Civ. P. 66](#), and this Court. The Receiver is authorized to sue and be sued as provided in [28 U.S.C. §§ 754, 959, 1692](#), and [Fed. R. Civ. P. 66](#), and by this Court.

(See Receivership Order [Doc. 491, ¶11]).

Mrs. Johnson understands and believes that Mr. Klein, in his capacity of receiver has no greater rights or powers than the defendant entities would have. *McCandless v. Furlanud*, 296 U.S., 140, 148, 56 S.Ct. 41, 80 L. Ed. 121 (1935). *McCandless*, and decisions following it, have recognized the general rule that a receiver acquires no greater rights and powers to sue than the person or entity whose property is in the receivership. See *Javitch v. First Union Sec. Inc.*, 315 F. 3d 619, 625(6 Cir. 2003) (“Because they stand in the shoes of the entity in receivership, receivers have been found to lack standing to bring suit unless the receivership entity could have brought the same action.”). This further bolsters Mrs. Johnson's belief that her long-held rights cannot be

taken by a court order. Specifically, that the real property liens are subject to the State's laws and can be invalidated only as provided by state law.

Mrs. Johnson did not willfully violate the Receivership Order. She does not believe she should be held in contempt of court.

**2. The Receiver's Introduction of Unrelated Issues into the OSC Motion should not be Allowed.**

The Receiver has asked for relief as part of the OSC Motion that "in the Receiver's separate lawsuit against Glenda Johnson seeking turnover of four properties still titled in the name of Glenda Johnson (Case No. 2:19-cv-625), Glenda Johnson bear the burden of demonstrating that funds used for her acquisition of each of those properties came from sources other than Receivership Entities and Affiliated Entities."<sup>1</sup> There is no valid reason why such relief should be granted as part of a finding of contempt or a sanction for contempt related to the lien filings and Anstram Energy. The only reason to include such a request in the OSC Motion is to short-circuit the suit filed by the Receiver against Mrs. Johnson and because the Receiver believes that if he asks for something, no matter what it is, this court will grant it. This is not appropriate. This is not the time or the forum to demand unrelated relief, simply because Mrs. Johnson is accused of contemptuous behavior relating to something else.

The requested relief is not consistent with contempt sanctions.

**3. A Punitive Sanction Should Not Enter Against Mrs. Johnson.**

Mrs. Johnson believed at the time, and still believes that she has contractual rights that have been taken by the court in the action against RaPower and the receivership entities.

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<sup>1</sup> OSC Motion [ECF 1056] at page 17 "Conclusion".

In the event of a finding of contempt, Mr. Johnson asks the court to be lenient on a remedy. As the court well knows, Mrs. Johnson has no assets, has no significant income, has no means to satisfy a money award for contempt. There is no allegation of ongoing contempt relating to the liens' issue and Anstram Energy. Mrs. Johnson has cooperated, to the extent she was able, with the Receiver in his efforts to overcome the liens' issues.

Submitted this 29<sup>th</sup> day of January, 2021.

NELSON SNUFFER DAHLE & POULSEN, PC

/s/ Steven R. Paul

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed using the court's CM/ECF filing system and that system sent notice of filing to all counsel and parties of record. In addition, the foregoing was mailed or emailed as indicated to the following who are not registered with CM/ECF.

/s/ Steven R. Paul

Steven R. Paul

*Attorneys for Glenda Johnson*