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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 REPLY IN SUPPORT OF
MOTION FOR ORDER TO SHOW
CAUSE AGAINST GLENDA E.
JOHNSON**

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

District Judge David Nuffer

R. Wayne Klein, the Court-Appointed Receiver (“Receiver”) hereby files this reply in support of *Receiver’s Motion for Order to Show Cause Why Glenda Johnson, Roger Hamlin, and Preston Olsen Should not be Held in Civil Contempt (“OSC Motion”)*.¹

I. INTRODUCTION

The OSC Motion sought findings of civil contempt and imposition of remedies against

¹ [Docket no. 1056](#), filed December 29, 2020.

Glenda Johnson, Preston Olsen (“Olsen”), and Roger Hamblin (“Hamblin”). Instead of filing a response to the OSC Motion, Olsen and Hamblin have both consented to the Court: 1) entering, as the Court’s findings, the Receiver’s factual allegations in the OSC Motion relating to Olsen and Hamblin, 2) finding Olsen and Hamblin in civil contempt, and 3) entering monetary sanctions against them related to the fees expended by the Receiver in bringing the motion.² Glenda Johnson filed a response³ in which she disputed none of the factual statements against her from the OSC Motion or the *Receiver’s Report and Recommendation on Property Liens Glenda Johnson Granted to Anstram Energy and Violations of Corrected Receivership Order (“Report and Recommendation”)*, filed at the same time.⁴

Because no respondent disputed any of the factual allegations or raised a valid defense for their conduct⁵ and because Olsen and Hamblin have stipulated to findings of contempt and monetary sanctions, the only issues from the OSC Motion that remain to be decided are whether Glenda Johnson’s conduct was contemptuous and, if so, what remedy the Court should impose.

II. GLEND A JOHNSON’S VIOLATIONS WERE WILLFUL, KNOWING, AND CONTEMPTUOUS

In her Response, Glenda Johnson avers that her conduct should not be deemed contempt because her husband, Neldon Johnson, told her that a clause in the United States Constitution

² *Stipulation for Finding of Contempt, Contribution Toward Costs of Receiver’s Motion for Order to Show Cause by Roger Ham[b]lin and Preston Olsen*, [docket no. 1072](#), filed January 21, 2021.

³ *Glenda Johnson’s Response to the Receiver’s Motion for Order to Show Cause*, [docket no. 1073](#), filed January 29, 2021 (“Response”).

⁴ [Docket no. 1055](#), filed December 29, 2020.

⁵ As a defense to an order to show cause, a person “may assert a defense to civil contempt by showing by clear and convincing evidence that ‘all reasonable steps’ were taken in good faith to ensure compliance with the court order and that there was substantial compliance, or relatedly by proving ‘plainly and unmistakably’ defendants were unable to comply with the court order.” *Bad Ass Coffee Co. of Hawaii v. Bad Ass Coffee Ltd. P’ship*, 95 F. Supp. 2d 1252, 1256 n. 8 (D. Utah 2000) (citing *Donovan v. Burgett Greenhouses, Inc.*, 759 F.2d 1483, 1486 (10th Cir.1985)). No respondent has presented evidence or argued that they are entitled to such defense.

meant that orders issued by the Court were not binding on her and because co-conspirator Preston Olsen's participation in the contemptuous conduct validated her belief that the Corrected Receivership Order ("CRO")⁶ did not prohibit her conduct.⁷ The Receiver disagrees. Further, and in any event, disobedience of an order need not be willful to constitute civil contempt.⁸

A. Glenda Johnson Had Knowledge of the Receivership Order and that it Applied to Her and the Properties.

It is beyond cavil that Glenda Johnson was aware of the CRO before she filed the property liens that are the subject of the OSC Motion.⁹ And, indeed, she does not make such an argument. Further, the Court has already held that CRO specifically applied to Glenda Johnson and Federal Rule of Civil Procedure 65(d) plainly binds the CRO to non-parties who act in concert or participation with the parties or their agents.¹⁰

It should be noted that all the contemptuous conduct demonstrated in the OSC Motion occurred not only after Glenda Johnson was served with a copy of the CRO but after the Court's first contempt order which specifically found that the CRO imposed duties on non-parties such as Glenda Johnson.¹¹ That first contempt order was issued June 25, 2019. Glenda Johnson filed the first improper lien two months later, on August 15, 2019.¹² Furthermore, the liens filed by Glenda Johnson claimed that he performed work on these real properties after the date of the

⁶ [Docket no. 491](#), filed November 1, 2018.

⁷ Response at 2-4.

⁸ [Bad Ass Coffee Co. of Hawaii v. Bad Ass Coffee Ltd. P'ship](#), 95 F. Supp. 2d 1252, 1256 (D. Utah 2000) (citing [Goluba v. School District of Ripon](#), 45 F.3d 1035, 1037 (7th Cir.1995)).

⁹ Deposition of Glenda E. Johnson, May 1, 2019 at 17. See also [docket no. 947](#) ¶ 5, filed July 6, 2020; [docket no. 714](#), filed June 25, 2019.

¹⁰ See contempt orders at [docket no. 714](#), filed June 25, 2019; [docket no. 947](#) ¶ 5, filed July 6, 2020. [Fed R. Civ. P. 65\(d\)](#); see also [Reliance Ins. Co. v. Mast Const. Co.](#), 84 F.3d 372, 377 (10th Cir. 1996).

¹¹ [Docket no. 701](#), filed June 25, 2019 at 3.

¹² Report and Recommendation at 4.

CRO.¹³

In her response, Glenda Johnson states that she filed the liens because she believed the CRO could not take her “long-held rights” or invalidate the US Constitution.¹⁴ But, of course, no purported rights were taken from her by the CRO and nothing in the CRO violated the US Constitution. Instead, the CRO prohibited her “from directly or indirectly taking any action or causing any action to be taken . . . which would interfere with or prevent the Receiver from performing his duties, including . . . *creating or enforcing a lien* upon any Receivership Property.”¹⁵ The prohibition on interference with the Receiver and with the properties listed in the CRO was entered as part of the asset freeze was to “prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of assets, funds, or other properties . . . of the Receivership Defendants.”¹⁶ The CRO expressly applied to assets held for Receivership Defendants’ “direct or indirect beneficial interest wherever situated.”¹⁷

While it is true that Glenda Johnson nominally owned many properties listed in the CRO, the Court has found that at least 14 of those properties are Receivership Property, paid for by Receivership Entities for their benefit.¹⁸ It was the Court’s order relating to the turnover of these properties, *not the CRO*, that “took” whatever purported rights Glenda Johnson believed she had on the properties the liens were filed upon.¹⁹ As the Court held, Glenda Johnson’s Constitutional

¹³ *Id.* ¶¶ 4, 8.

¹⁴ Response 2-5.

¹⁵ CRO, ¶ 35.

¹⁶ *Id.* ¶ 8.

¹⁷ *Id.*

¹⁸ *Memorandum Decision and Order Granting Motion to Direct Turnover and Transfer of Real Properties*, [Docket no. 1007](#), filed September 15, 2020.

¹⁹ *Id.* at 30.

rights were satisfied by the process used related to the turnover of the properties.²⁰ It is undisputed that Glenda Johnson had notice of the Receiver's motion seeking the turnover and was heard when she filed an opposition brief to the Receiver's motion.²¹

Moreover, Glenda Johnson's claim that she "did not fully understand the legal effect" of signing and recording the liens does not comport with the undisputed facts. The liens themselves show that Glenda Johnson recorded the liens *for the purpose of interfering* with the Receiver.

The liens state:

"The receiver Wayne Klein threatens to sell these parcels. The receiver Wayne Klein was appointed by a court order and that order is on appeal. The order is likely to be reversed and the receiver's authority removed. The receiver is jumping the gun in wanting these assets before the appeal has been decided by the court of appeals."²²

This language makes clear that the legal effect Glenda Johnson wanted the liens to have was to prevent the Receiver from selling the properties under the CRO. It does not take any level of sophistication to realize that recording a lien on a property is a serious, legally significant action—especially when she declared this was her intended goal.

Additionally, the alleged work done on the properties that gave rise to Glenda Johnson's belief that she was entitled to a mechanics lien, namely the construction of solar towers for the solar scheme, was not done on the vast majority of properties on which the liens were filed. She does not explain how a mechanics lien could attach to properties when no work was completed. Any person, regardless of their level of sophistication, should know that it is improper to file a mechanics lien on unimproved real property where no work has been done.

²⁰ *Id.*

²¹ *Id.*

²² *See* OSC Motion at 10.

Finally, the lien on the one property that actually did contain towers constructed as part of the solar scheme was found to have violated of Utah’s wrongful lien statute and the CRO.²³ An \$18 million judgment was entered in favor of the buyer and against Glenda Johnson for filing the wrongful lien.²⁴

Despite all of this, Glenda Johnson’s response states that she continues to believe that the rights she asserted in the liens are preserved. Clearly, no amount of money judgment or court orders will stop Glenda Johnson from taking actions to assert her disproven and rejected beliefs related to the properties and solar scheme. Accordingly, as the OSC Motion shows, her conduct relating to the lien filings must be viewed as willful, knowing, and contemptuous.

B. Glenda Johnson is Not Excused from Compliance as a Result of Neldon Johnson’s Statements to Her or by Her “Feelings” that Preston Olsen’s Participation Validated Her Actions.

Glenda Johnson’s claim that Neldon Johnson told her the order violated the U.S. Constitution is not a justification for disobeying a valid Court order.²⁵ For similar reasons, Glenda Johnson’s contemptuous conduct is not excused by Olsen’s voluntary participation in the lien scheme she orchestrated.²⁶ The claim that Olsen’s participation “supported” her erroneous interpretation of the effect of the Court’s orders is particularly unjustified in light of Olsen’s testimony confirming that Glenda Johnson was the driving force behind the formation of

²³ Report and Recommendation, ¶ 56.

²⁴ *Id.*

²⁵ [Howard Johnson Co. v. Khimani](#), 892 F.2d 1512, 1516 (11th Cir. 1990) (“the focus of the court’s inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue”). It should be noted that Glenda Johnson’s Response implies that various statements to her were by Neldon Johnson, but the Response and her affidavit actually only identify Neldon Johnson as the source of one statement; the sources of other statements are unidentified.

²⁶ There is no evidence that Olsen was acting as Glenda’s counsel or advised her that her actions were permitted under the CRO. Moreover, even if Olsen was acting as her counsel and did advise her that her actions were permitted (which he did not), *advice of counsel is not a defense in civil-contempt proceedings*. [SEC v. McNamee](#), 481 F.3d 451, 456 (7th Cir. 2007).

Anstram Energy and the preparation and filing of the property liens.²⁷

Moreover, in Glenda Johnson's briefs related to the Lien Release Order²⁸ and the Turnover Order she had the ability to raise any legal theory related to her alleged interest in the properties. She was heard on those arguments or they were waived when she failing to raise them. Indeed, she further waived any of her arguments as to the properties and the liens when she failed to properly challenge the Court's order after it was entered. Instead, she feigned impossibility in carrying out that order while at the same time making multiple false or misleading statements regarding the actions she claimed to have taken in attempting to secure the release of the liens.²⁹ She should not now—as a defense to an order to show cause—be allowed to claim that she believed her rights could not be taken by a Court order.³⁰

III. THE SANCTIONS REQUESTED BY THE RECEIVER ARE APPROPRIATE

As noted in the OSC Motion, Glenda Johnson has previously been found to have interfered with the Receiver's efforts to take control of records and assets of Receivership Entities. This will be the third time she will be found in contempt of Court orders.³¹ Her prior contempt rulings were based on withholding records of Receivership Entities, destroying records, failing to cooperate with the Receiver's efforts to recover assets, and failing to turn over assets.³² She was found to have fabricated documents “worthy of ridicule.”³³ The Court ruled that over a dozen properties titled in her name were Receivership Assets, being hidden by Glenda

²⁷ Report and Recommendation at 6-18 and Olsen's stipulation on the accuracy of the Report and Recommendation's findings against him ([docket no. 1072](#)).

²⁸ [Docket no. 920](#), filed May 5, 2020. Report and Recommendation ¶¶ 143-148.

²⁹ [Docket no. 925](#), filed May 14, 2020.

³⁰ Response at 4-5.

³¹ See Docket no's [701](#), [947](#).

³² [Docket no. 701](#) at 8, 18-19; [docket no. 947](#) at 5-10, 15, 16, 19.

³³ [Docket no. 947](#) at 9.

Johnson.³⁴ In summary, Glenda Johnson already has been found to have disguised real properties as her own, destroyed company records, failed to deliver to the Receiver known to exist, and fabricated documents that purport to grant her rights to \$35 million in Receivership Assets.

Due to Glenda Johnson's contemptuous conduct it is difficult—if not impossible—for the Receiver to adduce evidence regarding the source of funds used to purchase the remaining four properties when: 1) Glenda Johnson has personal knowledge about those real estate purchases, but has not shared that information with the Receiver, 2) controls the records that would show the source of funds for the purchases of those properties, 3) has demonstrated a pattern of claiming Receivership Property as her own, and 4) has a strong incentive not to deliver to the Receiver the very records the Receiver would need to carry his burden in that separate lawsuit.³⁵ Put another way, but-for Glenda Johnson's contemptuous conduct the Receiver would have evidence regarding the Receivership Entities' involvement in purchasing the properties at issue in the Receiver's separate lawsuit against Glenda Johnson.³⁶

Here it has been demonstrated that Glenda Johnson had control of necessary records and refused to deliver those necessary records to the Receiver—and indeed fabricated records to justify improper retention of assets. Accordingly, equity demands that Glenda Johnson bear the burden of proving her claim that these properties, unlike the dozen other properties titled in her name and ordered turned over to the Receiver, were not purchased with Receivership funds. Equity requires that she not be rewarded for her contempt, fabrication of records, destruction of records, failure to cooperate with the Receiver, and invalid claims of ownership of properties by

³⁴ [Docket no. 1007](#), filed September 15, 2020.

³⁵ Case no. 2:19-cv-625.

³⁶ See [Acosta v. Paragon Contractors Corp.](#), 884 F.3d 1225, 1240 (10th Cir. 2018).

forcing the Receiver to carry the burden of proof when she has denied him the very records he needs to show that proof.

As to the monetary sanction, Glenda Johnson's claimed reliance on Neldon Johnson and Olsen merits no reduction in the fee award. The magnitude, persistence, and severity of her contemptuous conduct justifies a requirement that she be ordered to pay the full amount of the fees and costs of the Receiver and his counsel relating to her creation and filing of improper liens. Her claim of impecuniosity is an issue relating to the collection of a fee award, not the granting of one.

DATED this 4th day of February 2021.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Michael S. Lehr _____

Jonathan O. Hafen

Jeffery A. Balls

Michael S. Lehr

Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE AGAINST GLENDA E. JOHNSON** was electronically filed with the Clerk of the Court through the CM/ECF system on February 4, 2021, which sent notice of the electronic filing to all counsel of record. I also certify that, on the same date, by U.S. Mail, first-class, postage pre-paid, I caused to be served the same documents upon the following persons:

Neldon Johnson
PO Box 95332
South Jordan, UT 84095

Greg Shepard
858 Clover Meadow Dr.
Murray, Utah 84123

/s/ Michael S. Lehr