
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**NOTICE RE: COMPLIANCE AND
ADVERSE INFERENCES**

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

District Judge David Nuffer

During the hearing on April 26, 2019, R. Wayne Klein, the court-appointed receiver (“Receiver”) in this case, explained that the receivership process consists of five stages. The first stage involves finding and gathering information and records about receivership defendants and their finances. The second stage involves investigating transactions that may be related to receivership assets. The third stage involves commencing legal proceedings to recover receivership assets. The fourth stage involves converting receivership assets to cash. And the fifth stage involves distributing receivership assets to intended beneficiaries.

Currently, the receivership in this case is in the first stage of this process involving finding, gathering, and analyzing information, data, and records before investigating transactions related to receivership assets and commencing legal proceedings. The deadline for commencing legal proceedings is approaching.

The filing of the United States’ motion to show cause against Defendants R. Gregory Shepard and Neldon Johnson and Respondents Glenda Johnson, LaGrand Johnson, and Randale

Johnson¹ provoked efforts to resolve the disclosure and production issues that are impeding the receivership process. Accordingly, at this point, even after the extensive April 26 and May 3, 2019 evidentiary hearings, the receivership is still in the first stage of the receivership process, and the issue of contempt remains open.

The recent production of documents and the admission that more documents are forthcoming have resulted in orders requiring additional productions.² While there has been no adjudication, Defendants and Respondents appear to have failed to participate in the receivership process in good faith and have withheld relevant information, data, records, and property. If this continues, then Defendants and Respondents will incur unfavorable consequences, including the adoption of negative inferences and conclusions adverse to their positions.

Defendants and Respondents are reminded that Defendants' lack of financial data at trial had severe consequences. As stated in the Findings of Fact and Conclusions of Law:

. . . Defendants bear the “risk of uncertainty in calculating net profit.”
“‘Reasonable approximation’ will suffice to establish the disgorgement liability of a conscious wrongdoer, when the evidence allows no greater precision, because the conscious wrongdoer bears the risk of uncertainty arising from the wrong. The allocation of risk of uncertainty to the wrongdoer yields the rule that ‘when damages are at some unascertainable amount below an upper limit and when the uncertainty arises from the defendant’s wrong, the upper limit will be taken as the proper amount.’” In other words, if “the true measure of unjust enrichment is an indeterminable amount not less than 50 and not more than 100, liability in disgorgement will be fixed at 100.”

Defendants obstructed discovery about their gross receipts and other topics involving their finances. They did not produce relevant documents and information to the United States on these issues. . . .³

¹ United States’ Motion to Show Cause Why Neldon Johnson, R. Gregory Shepard, Glenda Johnson, LaGrand Johnson, and Randale Johnson Should Not Be Held in Civil Contempt of Court for Violating the Receivership Order, [docket no. 559](#), filed January 29, 2019.

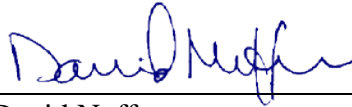
² Minute Entry, docket no. 634, filed May 3, 2019.

³ Findings of Fact and Conclusions of Law, at 125-126 (citations omitted), [docket no. 467](#), filed October 4, 2018.

Failure to produce corporate, financial, and transactional records requires inferences and conclusions adverse to Defendants and Respondents. Failure to produce the computer that held the QuickBooks datafile, or to produce the QuickBooks datafile, will also result in adverse inferences and conclusions. Further, Defendants need to recognize that *failure to protect* material information—including data, processing data, and equipment, such as the computer—is spoliation and punishable by various sanctions, including adverse inferences, striking defenses, and barring claims.

Signed May 6, 2019.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer
United States District Judge