

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 3598	DATE	November 9, 2007
CASE TITLE	<i>CFTC v. Lake Shore Limited</i>		

DOCKET ENTRY TEXT:

The court finds that Lake Shore Limited and foreign affiliates under common control are in civil contempt of court based on their failure to comply with the preliminary injunction. The receiver and CFTC shall file memoranda by 11/15/07 addressing the question of appropriate sanctions. Lake Shore Limited shall respond by 11/21/07. Mr. Baker is ordered to show cause why he should not be held in civil contempt for his refusal to comply with the court's preliminary injunction order. His response is due 11/15/07. The receiver's motion to compel [#287-1] is denied as unnecessary, and its motion for issuance of a rule to show cause against Lake Shore Limited and Mr. Baker based on their failure to comply with the receivership order [#287-2] is granted. Lake Shore Limited and Mr. Baker's responses are due 11/15/07 and should also address the receiver's request for costs and fees. The CFTC may file a response to Mr. Nissen's response to the rule to show cause directed at him by 11/21/07. If it does so, Mr. Nissen may reply by 11/30/07.

■ [For further details see text below.]

STATEMENT
A. Failure to Comply with the August 28, 2007, Preliminary Injunction Order
1. Lake Shore Limited

The court issued a rule to show cause against Lake Shore Limited based on its failure to comply with the document production portions of the preliminary injunction order. The court has reconsidered its decision to refer the rule to show cause against Lake Shore Limited to Magistrate Judge Mason as upon further reflection, the rule to show cause deals with Lake Shore Limited's failure to comply with this court's orders as opposed to a discovery issue. Lake Shore Limited's response to the rule to show cause does not dispute that it is in civil contempt of court based on its refusal to conform to the court's specific directives. Indeed, the Seventh Circuit has already held that Lake Shore Limited and foreign affiliates under common control are in contempt of court based on their failure to comply with the preliminary injunction. *CFTC v. Lake Shore Asset Management Limited*, No. 07-3408 (7th Cir. Oct. 15, 2007).

The fact that Lake Shore Limited's appeal from the preliminary injunction is still pending does not absolve Lake Shore Limited from the need to comply with the preliminary injunction order, as the Seventh Circuit denied Lake Shore Limited's motion for a stay of the preliminary injunction order pending the

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Courtroom Deputy
Initials:

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STATEMENT

disposition of its appeal. To state the obvious, this means that the order was not stayed and immediate compliance is mandatory because, as the Seventh Circuit has held, “[i]njunctive orders must be obeyed; there is no other alternative.” *Id.* Moreover, Lake Shore Limited’s arguments about foreign law, presented to this court after the issuance of the preliminary injunction, do not excuse its non-compliance. *See id.* (Lake Shore’s argument that “laws of other nations set limits on its disclosures of books and records . . . is *not* a reason to disobey an injunction actually issued, once this court denied a stay”) (emphasis in original); *CFTC v. Lake Shore Asset Management Limited*, No. 07 C 3598, docket no. 192 (rejecting Lake Shore Limited’s foreign law arguments on the merits).

The question thus is what happens now? The receiver and CFTC are directed to file memoranda by November 15, 2007, addressing the question of appropriate sanctions. The court regrets the need to yet again set an expedited briefing schedule that includes a holiday weekend.

2. Philip Baker

The court did not include Mr. Baker in its October 4th rule to show cause based on the failure to comply with the preliminary injunction, but the reasoning underlying the October 4th rule to show cause directed at Lake Shore Limited applies with equal force to Mr. Baker personally. *See* Fed. R. Civ. P. 65(d) (a preliminary injunction is binding on “the parties to the action, their officers, agents, servants, employees, and attorney, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise”). The court hereby orders Mr. Baker to show cause why he should not be held in civil contempt for his refusal to comply with the court’s preliminary injunction order. The response to this rule to show cause is due November 15, 2007.

B. Failure to Comply with the October 4, 2007, Receivership Order – Lake Shore Limited and Philip Baker

The receiver has requested: (1) an order compelling the turnover of documents and the transfer of funds; (2) the issuance of a rule to show cause why Lake Shore Limited and Philip Baker should not be held in civil contempt for their willful violation of the court’s October 4, 2007, receivership order; and (3) an award of fees and costs from Lake Shore Limited and Mr. Baker associated with the filing of its motion.

The court believes that the receiver’s request for an order directing Lake Shore Limited/ Mr. Baker to execute consent directives allowing the immediate turnover of books and records to the receiver and the transfer of investors’ funds to the receiver is unnecessary as the October 4, 2007, order contained, among other things, specific provisions about the obligations of Lake Shore Limited and affiliated companies and persons served with a copy of the order. *CFTC v. Lake Shore Asset Management Limited*, No. 07 C 3598, docket no. 194, at §§ III & IV. In other words, the October 4th order already requires Lake Shore Limited and Mr. Baker to do as the receiver requests, so a second order would be duplicative. The court also notes that Mr. Nissen has advised the court that he sent a copy of the October 4th order to Mr. Baker. The court, therefore, denies the receiver’s request for an additional order and, instead, reiterates that Lake Shore Limited and all affiliated companies and persons must take all actions necessary to ensure immediate turnover to the receiver of all books, records, and property subject to the order. This includes records and monies held by the London FCMs.

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STATEMENT

The receiver also asks the court to issue a rule to show cause why Lake Shore Limited and Mr. Baker should not be held in civil contempt for their willful violation of the court's receivership order. The record contains ample and uncontroverted evidence that Lake Shore Limited and Mr. Baker are aware of the receivership order and have decided to ignore it. Hence, a rule to show cause is hereby issued against Lake Shore Limited and Mr. Baker. By November 15, 2007, they shall show cause why they should not be held in civil contempt for their failure to comply with the receivership order and their refusal to take actions necessary to ensure immediate turnover to the receiver of all books, records, and property subject to that order.

With respect to the receiver's fees and costs incurred with the filing of its motion, all evidence indicates that Mr. Baker is the sole reason why Lake Shore Limited has not complied with the court's receivership order. The court believes that the interests of justice would be served by either requiring Mr. Baker to pay the receiver's costs and fees flowing from his refusal to comply with court orders, as opposed to depleting investor funds or, alternatively, requiring Lake Shore Limited to pay these costs and fees with non-customer funds. Mr. Baker and Lake Shore Limited's responses to the rules to show cause relating to the receivership order shall thus address the receiver's request for costs and fees. If Mr. Baker or Lake Shore Limited fail to respond to the rule to show cause, the court will rule without the benefit of their views.

C. Lake Shore Limited's Efforts to Obtain Substitute Counsel/Sidley Austin's Motion to Withdraw

James McGurk has filed an emergency motion for leave to file an appearance on behalf of Lake Shore Limited, and Sidley Austin has sought leave to withdraw from its representation of Lake Shore Limited. Because Magistrate Judge Mason is still unavailable, the court will hear this motion during the already scheduled November 13, 2007, status hearing. If new counsel is permitted to appear, the court will grant Sidley Austin's motion for leave to withdraw from its representation of Lake Shore Limited (with the proviso that Sidley Austin cannot withdraw entirely from this case until the rule to show cause against Mr. Nissen has been resolved).

D. Rule to Show Cause Issued Against William Nissen

As with the rule to show cause directed at Lake Shore Limited, the court has reconsidered its decision to refer the rule to show cause directed at Mr. Nissen to Magistrate Judge Mason as it deals with filings before this court as opposed to a discrete discovery matter. Mr. Nissen's response to the rule to show cause contains representations about his interactions with the CFTC. The CFTC thus may file a response by November 21, 2007. If the CFTC elects to do so, Mr. Nissen may reply by November 30, 2007.