

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATIONSTAR MORTGAGE
LLC,

Plaintiff,

v.

PATRICK JOSEPH SORIA, et
al.,

Defendants.

CV 18-3041 DSF (RAOx)

Order Finding Hilton Domestic
Operating Company Inc. in
Civil Contempt of Court

On June 4, 2018, this Court issued an order to show cause to Hilton Domestic Operating Company Inc., operator of the Waldorf Astoria Beverly Hills hotel (the Waldorf) why it should not be held in civil contempt for its failure to allow access to Defendant Patrick Soria's room and possessions as previously ordered by the Court. The Court held a hearing on the matter on June 6. The Court ordered the Waldorf to provide a report of the steps taken in response to the present situation and to prevent further non-compliance with court orders. The report was filed by the Waldorf and responses were filed both by the Receiver and by Plaintiff.

“[A] contempt sanction is considered civil if it is remedial, and for the benefit of the complainant.” United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 827 (1994) (internal quotation marks omitted). A party moving for civil contempt must prove that the non-moving party has violated a court order by clear and

convincing evidence. Ahearn ex rel. N.L.R.B. v. Int'l Longshore & Warehouse Union, Locals 21 & 4, 721 F.3d 1122, 1129 (9th Cir. 2013). The Ninth Circuit has not ruled on whether the amount of damages suffered by a complainant must be shown by a preponderance of the evidence or by clear and convincing evidence, but it has noted that all circuits to consider the question have applied the preponderance of the evidence standard. Id.

A preliminary question is whether the Waldorf should be charged with notice of the Court's preliminary injunction order as of May 23, 2018 when a process server attempted to serve Patrick Soria at the hotel. The process server does not state that he told anyone at the Waldorf that he was there to serve the Waldorf nor does he testify that he attempted to serve the Waldorf. Instead, he states that he inquired about Soria's presence at the hotel in an attempt to serve Soria. Apparently, Plaintiff's counsel had instructed the process server to serve the Waldorf if Soria was staying there, see Ede Decl. ¶ 2, but there is no indication that anyone at the Waldorf was made aware of that. So while it is readily apparent that the Waldorf's employee intentionally misled the process server in an attempt to assist Soria in avoiding service, there is no indication that the Waldorf's employee was aware that the process server was serving anything to do with the Waldorf itself. In any event, there is no evidence that the Waldorf had actual notice of any of the provisions of the Court's order as of May 23.

The Waldorf did receive actual notice of the Court's order on June 3, 2018 when the Receiver attempted to enforce it to seize property from Soria's room at the Waldorf. Clear and convincing evidence shows that the Waldorf did not comply with the Court's order at that time. The Waldorf further failed to comply with the Court's even more specific order the next day, June 4, and only late in the evening of June 4 was the Receiver allowed access to

Soria's room and the property that was held elsewhere in the hotel. Clear and convincing evidence also shows that not only did the Waldorf not allow the Receiver access to Soria's room, the Waldorf's employees additionally directly assisted Soria in removing property from the room and from the hotel premises entirely. In addition, it can be strongly inferred from the evidence that the denial of access to the Receiver was for the specific purpose of assisting Soria in hiding property or absconding with it.

The Waldorf's response to the evidence and to the Court's inquiries about what the Waldorf has done to prevent future occurrences of such behavior is plainly insufficient. The Waldorf's response does not indicate that it takes compliance with Court orders seriously. While the two hotel employees most directly responsible for the contempt are no longer with the Waldorf – one was terminated and the other resigned under investigation – the Waldorf provides nothing to indicate that it has any policies or practices in place to prevent these kinds of occurrences in the future. In fact, the Waldorf endorses its employee's misleading statements to the process server and has failed to state anything at all about steps to investigate its hotel manager's role in the entire affair. The Waldorf is eager to chalk the contempt up to a few rogue employees, conducting only the most cursory investigation into the matter. In any event, the Court sees no reason not to hold the Waldorf responsible for the actions of its employees in this circumstance if for no other reason than because the Waldorf has done nothing to convince the Court that this was an out-of-character incident or that the Waldorf has any real interest in preventing such incidents from happening in the future.

Compensation for the contempt, at a minimum, requires the Waldorf to pay the Receiver's costs and fees of \$25,064 and

Plaintiff's costs and fees of \$9,954.50 associated with gaining compliance with the Court's order. The main question then is whether the Waldorf should be required to compensate the Receiver for cash that was allegedly in Soria's room as of June 3 and was never found once the Receiver finally was allowed access to the room. The Waldorf argues that because there is no evidence of the exact amount in the room on June 3 or June 4, it should not have to compensate the Receivership for any lost cash. The Court disagrees.

Testimony from one of the former Waldorf employees indicates that Soria claimed he had \$120,000 in cash in his portable safe as of approximately May 21. Ede Decl. Ex. B (Gutierrez Decl.) at 26:19-23. While Soria might have moved some of that cash during the intervening two weeks, it is highly likely that much of it remained in the room. This is a reasonable inference because (1) consistent testimony shows that Soria consistently had large amounts of cash in his direct possession, (2) testimony suggests that Soria took his portable safe with him when he left the Waldorf – the same one known to contain large amounts of cash – and (3) the commonsense proposition that Soria was unlikely to have spent \$120,000 in cash in two weeks. Further, the amount of cash taken by Soria is unknown *precisely because* of the Waldorf's contempt. The Waldorf's employees' actions in not only not allowing the Receiver access to Soria's room but then assisting Soria in leaving the hotel unseen with property is why no one (other than Soria) can be certain how much money Soria was able to abscond with. The situation is analogous to spoliation of evidence where inferences should be made against the party who allowed the necessary evidence to be lost or destroyed. In those cases, a court has broad discretion in crafting a remedy to overcome the loss or destruction of evidence, including making inferences against the party responsible for the loss. See Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d 363, 368–


69 (9th Cir. 1992); Akiona v. United States, 938 F.2d 158, 161 (9th Cir. 1991); Glover v. BIC Corp., 6 F.3d 1318, 1329 (9th Cir. 1993).

While the Court finds that it would be just under the circumstances to require the Waldorf to pay the entire \$120,000 in compensation, it will give the Waldorf a concession and assume that Soria spent or otherwise removed \$20,000 in cash from the hotel between May 21 and June 3. Soria's extravagant spending habits are part of the record in this case, so he likely spent at least some cash on his general lifestyle. It is also known that Soria was renting a Bentley at the time, which likely cost a significant amount of money that, absent evidence to the contrary, Soria probably paid for in cash according to his custom. The Court will also not separately require the Waldorf to reimburse the Receiver for Waldorf staff tips or the money spent for a room at the Beverly Hilton because those payments likely came from the \$120,000 in cash for which the Receiver is already being compensated.

In conclusion, the Court finds the Waldorf in contempt for failing to comply with the Court's orders on June 3 and June 4, 2018 by not allowing the Receiver access to hotel spaces used by Patrick Soria and by assisting Soria in hiding himself and Receivership property from the Receiver. The Waldorf is ordered to pay \$125,064 to the Receiver and \$9,954.50 to Plaintiff to reimburse them for the loss incurred due to the contempt. Payment is to be made no later than October 5, 2018 at noon.

IT IS SO ORDERED.

Date: September 18, 2018


Dale S. Fischer
United States District Judge