

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 6, 2007
CASE TITLE	<i>CFTC v. Lake Shore Limited</i>		

DOCKET ENTRY TEXT:

As discussed in more detail below, document production continues to be at a standstill and Lake Shore Limited has not taken actions necessary to transfer money held by the London FCMs to the receiver as ordered by the court. As the Seventh Circuit observed, this is both contumacious and intolerable. Based on all of Lake Shore Limited's actions to date, Lake Shore Limited is advised that if matters do not swiftly and dramatically change, the court will be receptive to the filing of a motion seeking the initiation of criminal contempt proceedings against Lake Shore Limited and Philip Baker based on their failure to comply with the court's August 28, 2007, preliminary injunction order and October 4, 2007, receivership order.

■ [For further details see text below.]

STATEMENT

The court held a status on November 6, 2007, to address the progress of Lake Shore Limited's efforts to secure new counsel and obtain an update on Lake Shore Limited's production of documents. Lake Shore Limited has apparently secured new counsel (James McGurk, who represented that he will be moving for leave to file an appearance shortly).

The court begins by noting that Lake Shore Limited's continued refusal to comply with the document production requirements of the preliminary injunction order is completely unacceptable. Rules to show cause are currently pending against both Lake Shore Limited and its current counsel, Mr. Nissen, and the CFTC has sought sanctions against Lake Shore Limited based on its failure to comply with the discovery rules. Moreover, the Seventh Circuit has expressly held that Lake Shore Limited is in civil contempt of court based on its failure to comply with the preliminary injunction. *CFTC v. Lake Shore Asset Management Limited*, Nos. 07-2057 & 07-2070 (7th Cir. Oct. 15, 2007). Despite the passage of additional time after the Seventh Circuit's denial of Lake Shore Limited's motions for a stay of this court's preliminary injunction and receivership orders pending appeal and its finding that Lake Shore Limited is in civil contempt, Lake Shore Limited has still not complied with this court's orders relating to document production and the transfer of assets.

(continued)

Courtroom Deputy
Initials:

RTS/c

STATEMENT

The position of current counsel (Sidley Austin, as Mr. McGurk has not yet filed an appearance) is that Lake Shore Limited is acting against advice of counsel in refusing to comply with the court's orders. According to counsel for the receiver, another attorney who later declined to continue representing Lake Shore Limited (after Winston & Strawn declined to represent Lake Shore Limited, but before Mr. McGurk's arrival on the scene) told him that Lake Shore Limited had no intention of turning over documents or assets, and was considering asserting a Fifth Amendment privilege in connection with the order to produce documents. The receiver also stated that Lake Shore Limited's English attorneys were maintaining the position – which has been unequivocally rejected by this court and the Seventh Circuit – that Lake Shore Limited could wait until the conclusion of its appeal from this court's preliminary injunction order before taking any action in response to this court's orders. In addition, the receiver advised the court that it learned that Lake Shore Limited's records were managed by a fund administrator in Canada, and that approximately one week after the court's initial asset freeze order back in July, Lake Shore Limited moved twenty boxes of documents to Bermuda, and is contending – once again in contravention of this court's orders and the Seventh Circuit's order denying a stay pending appeal – that production of these records is governed solely by Bermuda law.

The only positive note is that Lake Shore Limited appears to have agreed to a protective order shielding investor information, although a proposed order has not yet been presented to the court. Entry of a protective order, however, is not a guarantee that Lake Shore Limited will immediately and fully comply with the court's orders. In fact, all indications are to the contrary.

In sum, document production continues to be at a standstill and Lake Shore Limited has not taken actions necessary to transfer money held by the London FCMs to the receiver as ordered by the court. As the Seventh Circuit observed, this is both contumacious and intolerable. Based on all of Lake Shore Limited's actions to date, Lake Shore Limited is advised that if matters do not swiftly and dramatically change, the court will be receptive to the filing of a motion seeking the initiation of criminal contempt proceedings against Lake Shore Limited and Philip Baker based on their failure to comply with the court's August 28, 2007, preliminary injunction order and October 4, 2007, receivership order.

The court concludes by commenting on Mr. Nissen's desire to renew his motion for leave to withdraw and his counsel's contention that Lake Shore Limited is acting against advice of counsel so Sidley Austin is absolved of any responsibility for Lake Shore Limited's decisions. First, as the court has previously stated, Mr. Nissen may not withdraw his appearance until the sanctions proceedings against him are terminated. It thus would be pointless for him to renew his motion for leave to withdraw at the next status, as suggested by his counsel. Second, Sidley Austin's position today that it consistently instructed its client to produce documents but Lake Shore Limited refused to do so against its advice is diametrically opposed to Mr. Nissen's arguments and filings prior to the issuance of the rule to show cause. For a detailed discussion of Mr. Nissen's prior positions, the reader is directed to the court's October 4, 2007, memorandum explaining the basis for the rule to show cause directed at Mr. Nissen. The court trusts that Mr. Nissen's response to the rule to show cause against him, which is due November 8th, will address his 180 degree change of position pre- and post-issuance of the rule to show cause.