

United States Court of Appeals 6 PM 2: 10

For the Seventh Circuit
Chicago, Illinois 60604

OFFICE OF GENERAL COUNSEL

October 15, 2007

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By the Court:

COMMODITY FUTURES TRADING COMMISSION, Plaintiff-Appellee,]	Appeal from the United
]	States District Court for
]	the Northern District of
]	Illinois, Eastern Division.
No. 07-3408	v.]
]
LAKE SHORE ASSET MANAGEMENT LIMITED, Defendant-Appellant.] No. 07 C 3598
] Blanche M. Manning,
] Judge.

The following are before the court:

1. **DEFENDANT APPELLANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL**, filed on October 5, 2007, by counsel for the appellant.
2. **OPPOSITION OF APPELLEE CFTC TO MOTION FOR STAY PENDING APPEAL**, filed on October 9, 2007, by counsel for the appellee.

The district court entered an injunction that froze the assets of Lake Shore Asset Management and affiliated firms and directed them to make books and records available to the CFTC. We declined to stay that injunction pending appeal, but Lake Shore Asset Management nonetheless failed to comply. The district court found that books and records have not been made available; indeed, Lake Shore refuses to tell the court where they are. The status of customers' assets likewise is unclear, as the court and the CFTC need access to the books to determine whether customers' accounts are in jeopardy. What is more, Lake Shore has filed actions in other nations collaterally attacking the district court's judgment and asking those nations' judges to give Lake Shore permission to disobey the injunction.

The district judge concluded that this contumacious behavior is intolerable

and appointed a receiver to take over Lake Shore's operations and bring it into compliance with the injunction. Injunctions must be obeyed; there is no other alternative. Lake Shore is in contempt of court, and no district judge is obliged to look the other way.

Fed. R. Civ. P. 65(d) provides that an injunction binds "the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." This includes Lake Shore's offshore affiliates. If, as Lake Shore maintains, laws of other nations set limits on its disclosures of books and records, that would have been a reason to write a different injunction (or an argument in support of a stay); it is *not* a reason to disobey an injunction actually issued, once this court denied the motion for a stay. Moreover, because the injunction is binding *in personam* on foreign affiliates under common management, the initiation of litigation in other nations' courts in an effort to evade compliance with the injunction is itself a form of contempt, and the district judge is entitled to halt the defiance by empowering the receiver to withdraw all litigation initiated by Lake Shore and its affiliates in other judicial systems.

The district court's order could be read to limit Lake Shore's ability to pursue this appeal (and the others already on file, and scheduled for oral argument on October 23). The CFTC agrees with Lake Shore that a district court cannot prevent appeals of its own orders. We therefore treat the order as not interfering with Lake Shore's efforts, through current management, to obtain appellate review. So understood, the district court's order is unlikely to be reversed on appeal, and a stay is unwarranted. The motion for a stay is denied.