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**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

**RECEIVER'S EX-PARTE AFFIDAVIT
OF NON-COMPLIANCE AGAINST
GLENDA E. JOHNSON**

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

District Judge David Nuffer

Pursuant to paragraph 43 of the Corrected Receivership Order, R. Wayne Klein, the Court-Appointed Receiver ("Receiver") hereby files this Affidavit of Non-Compliance requesting the Court to enter, without additional process or demand, an order directing Glenda E. Johnson to dismiss the lawsuit she filed claiming that the entity that purchased Receivership Estate real property owes her \$9 million and for other equitable relief.

I, R. Wayne Klein, declare as follows:

1. I make this declaration based upon my personal knowledge, the contents of records I maintain in the ordinary course of business, which I believe to be true, and official public records of various government entities in Utah and Texas. I have personal knowledge of the statements and matters set forth herein and, if called to testify, would testify as follows:

2. On October 31, 2018, the Court took exclusive possession “of all assets, of whatever kind and wherever situated, of Defendant[] . . . International Automated Systems Inc. (“IAS”) . . .” and appointed Receiver over the Receivership Estate.¹

3. The Corrected Receivership Order authorized the Receiver “to take immediate possession of all real property of the Receivership Defendants”² Real property in Millard County, Utah with assessor parcel number HD-4658-1 was specifically identified as property that was under the immediate and exclusive control of the Receiver.³ The Receiver refers to this property as the tower site, as it is the location of the original solar towers that were constructed by IAS (“Tower Property”).

4. The Corrected Receivership Order mandates that “all persons receiving notice of this Order . . . are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken without the express written agreement of the Receiver, which would interfere with or prevent the Receiver from performing his duties”⁴

5. The Order specifically prohibits:

Interfere[nce] with the Receiver’s efforts to take control, possession, or management of any Receivership Property. Such prohibited actions include . . . executing or issuing . . . any court attachment, subpoena, replevin, execution, or

¹ Receivership Order, [Docket No. 490](#), filed on October 31, 2018, ¶¶ 2, 3. The Corrected Receivership Order, [Docket No. 491](#), filed on November 1, 2018, corrected formatting errors of the Receivership Order.

² *Id.* at ¶ 20.

³ *Id.* at ¶ 20(w).

⁴ *Id.* at ¶ 25.

other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property.⁵

6. The Corrected Receivership Order also prohibits those with notice of the Order from any actions that would “diminish the value of any Receivership Property,”⁶ “[i]nterfere with or harass the Receiver,”⁷ or “[h]inder, obstruct, or otherwise interfere with the Receiver in the performance of his duties.”⁸

7. On November 29, 2018, Glenda Johnson signed an acknowledgement that she received a copy of the Corrected Receivership Order.⁹

8. Pursuant to Court authority, the Receiver sold the Tower Site to Wings West L.C. at a public auction on July 18, 2019 (“Sale Order”).¹⁰ The sale closed on August 5, 2019.¹¹ The Sale Order expressly provided: “The sale of the Property [is] free and clear of interests”¹²

9. On August 15, 2019, Glenda Johnson filed a Notice of Lien with the Millard County Recorder, claiming a \$9,000,000.00 lien against the Tower Property. This lien, which is an official record of the Millard County Recorder’s Office, bears the recording number 0027237.¹³

Glenda Johnson Lawsuit Against Property Purchaser

10. On February 10, 2020, Glenda Johnson filed a lawsuit against Wings West L.C. The complaint (“Complaint”), filed in the Fourth District Court of Utah for Millard County, has

⁵ *Id.* at ¶ 35(a).

⁶ *Id.* at ¶ 35(c).

⁷ *Id.* at ¶ 35(d).

⁸ *Id.* at ¶ 35(b).

⁹ Receiver Exhibit 2163. This exhibit was received by the Court at the contempt hearing on February 25, 2020 (Tr. 17:9 – 17:13).

¹⁰ [Docket No. 689](#), filed June 6, 2019.

¹¹ *See* Receiver’s Notice of Sale Results, Docket No. 743, filed August 5, 2019.

¹² [Docket No. 689](#), filed June 6, 2019.

¹³ A copy of this August 15, 2019 lien is attached as [Exhibit A](#). The Receiver asks the Court to take judicial notice of this official state government record. The lien document is self-authenticating under Federal Rules of Evidence 902(2), (4), and (8) and admissible under Rules 803(14)-(15).

docket number 200700008.¹⁴ The Complaint seeks \$9,000,000.00 from Wings West for “labor and/or materials [Glenda E. Johnson] provided[.]”¹⁵ A copy of the Complaint is attached hereto as Exhibit B.

11. The Complaint claims that the labor and materials giving rise to the \$9 million claim were performed between January 2004 and August 14, 2019.¹⁶

12. For the period from August 22, 2018 to October 31, 2018, the Tower Property was subject to an asset freeze (“Asset Freeze”) imposed by the Court.¹⁷ The Asset Freeze prohibited any persons with control over any Receivership Property from pledging or making changes to any Receivership Property.¹⁸ To the extent Glenda Johnson provided labor or materials between August 22, 2018 and October 31, 2018, that labor and materials were in violation of the Asset Freeze.

13. From October 31, 2018 through August 14, 2019 (when she claims work was last provided), the Tower Property was subject to the expanded asset freeze recited in the Receivership Order. To the extent Glenda Johnson provided labor or materials between October 31, 2018 and August 14, 2019, she was violating the Corrected Receivership Order.¹⁹

14. For labor or materials provided to the Tower Property before August 5, 2019, the sale Order provides that any lien she would have for labor or materials could not attach to the

¹⁴ The Receiver asks the Court to take judicial notice of this official state government record, which was downloaded from the official website of the Utah courts system.

¹⁵ *Id.* at ¶ 3.

¹⁶ *Id.* at ¶ 5.

¹⁷ *Memorandum Decision and Order Freezing Assets and to Appoint a Receiver*, [Docket No. 444](#), filed August 22, 2018.

¹⁸ *Id.* at ¶ 3.

¹⁹ For materials and labor provided after August 5, 2019 (when the Tower Property sale closed) and August 14, 2019 (when Glenda Johnson last claims work was performed), Glenda Johnson would have been trespassing on property owned by Wings West LC.

Tower Property and instead would attach only to the proceeds from the sale of the Tower Property.²⁰ Thus, Glenda Johnson's attempts to assert a lien against Wing's West for materials or labor provided before August 5, 2019 is a violation of the Sale Order.

15. Glenda Johnson's verified statement in the Complaint that she provided labor and materials for the Tower Property after August 22, 2018 is an admission that she has been violating the Asset Freeze and the Receivership Order subsequent to August 22, 2018.

16. The Receiver has not given Glenda Johnson written or oral permission to take any action relating to the Tower Property, as would be required under paragraph 35 of the Receivership Order.

17. In the Complaint, Glenda Johnson claims that the labor and materials she provided were "provided to or at the request of INTERNATIONAL AUTOMATED SYSTEMS, INC."²¹

18. Since the Receiver has had exclusive control and authority over IAS since October 31, 2018, Glenda Johnson had no authority to provide labor or materials relating to the Tower Property after October 31, 2018.

19. Since the Receiver has had exclusive control and authority over IAS since October 31, 2018, Glenda Johnson had no authority to file the Complaint that seeks \$9 million on behalf of IAS. Any claims to be filed on behalf of IAS are exclusively controlled by the Receiver.

Payson Lien

20. On December 19, 2019, Glenda Johnson filed a notice of lien with the Utah County Recorder against property in Payson, Utah with serial number 55:718:0006 ("Payson Lien").²² The

²⁰ See *Order Granting Motion Regarding Public Sale of Millard County Property*, [Docket No. 689](#), filed June 6, 2019 at ¶ 1.

²¹ Complaint at ¶ 4.

²² This lien has recording number 134949:2019 from the Utah County Recorder.

lien was filed on behalf of Anstram Energy, a Nevis company.²³ The Payson Lien relates to the current residence of Glenda Johnson and Neldon Johnson and was identified in the Corrected Receivership Order at paragraph 20(y).²⁴ A copy of the Payson Lien is attached as Exhibit C.²⁵

21. This lien is similar in nature to the lien Glenda Johnson recorded against multiple properties in Millard County (“Millard County Lien”) that was discussed at the February 25, 2020 contempt hearing.²⁶ The Receiver did not authorize Glenda Johnson to file the Millard County Lien.

22. The Payson Lien was recorded in violation of paragraph 35 of the Corrected Receivership Order and constitutes interference with the work of the Receiver, diminishing the value of Receivership Property, and harassment of the Receiver and the “exclusive jurisdiction of this Court over the receivership estate.”²⁷

23. The Receiver did not authorize Glenda Johnson to file the Payson Lien.

Texas Lien

24. On January 14, 2020, Glenda Johnson filed a notice of lien with the County Clerk of Howard County Texas relating to real property titled in the name of the N.P. Johnson Family

²³ Glenda Johnson testified regarding the lien granted to Anstram Energy during the evidentiary hearing on January 23, 2020. Tr. 155:21 – 165:1.

²⁴ This Payson property is the subject of the Receiver’s pending turnover motion. [Docket No. 757](#), filed August 30, 2019.

²⁵ The Payson Lien is marked as Receiver Exhibit 2170. The exhibit was prepared to be introduced at the contempt hearing on February 25, 2020, but was not introduced. The Receiver asks the Court to take judicial notice of the lien filing. The lien document is self-authenticating under Federal Rules of Evidence 902(2), (4), and (8) and admissible under Rules 803(14)-(15). The Receiver obtained this copy from the official website of the Utah County Recorder.

²⁶ That lien is Receiver’s Exhibit 2160. The exhibit was received by the Court at the contempt hearing (Tr. 16:11 - 16:15). At the contempt hearing, the Court indicated it intended to address the Millard County Lien in connection with the Receiver’s pending turnover motion relating to properties held in the name of Glenda Johnson. Tr. 127:15 – 127:20.

²⁷ See *Corrected Receivership Order*, ¶¶ 35(a) - (d).

Limited Partnership (“Texas Lien”).²⁸ The Texas Lien was filed on behalf of Anstram Energy, a Nevis company. The property in Texas is identified in the Corrected Receivership Order at paragraphs 20(cc) and (dd). A copy of the Texas Lien is attached hereto as Exhibit D.

25. Glenda Johnson is not the title owner of the property in Texas. She is not now and never has been an owner or partner of the N.P. Johnson Family Limited Partnership. Accordingly, she has no actual or apparent authority to allow Anstram Energy to assert a lien against the property in Texas.

26. The Texas Lien was recorded in violation of paragraph 35 of the Corrected Receivership Order and constitutes interference with the work of the Receiver and harassment of the Receiver and the “exclusive jurisdiction of this Court over the receivership estate.”²⁹

27. The Receiver did not authorize Glenda Johnson to file the Texas Lien.

Relief Sought

28. This Court has found Glenda Johnson in civil contempt of its orders on two separate occasions.³⁰

29. Given the above conduct, the Court’s previous contempt orders have not deterred Glenda Johnson from disobeying this Court’s orders.

²⁸ This was marked as Receiver’s Exhibit 2171. The exhibit was prepared to be introduced at the contempt hearing on February 25, 2020, but was not introduced. The Receiver asks the Court to take judicial notice of the lien filing. The lien document is self-authenticating under Federal Rules of Evidence 902(2), (4), and (8) and admissible under Rules 803(14)-(15). The Receiver has verified that this Exhibit is identical to that found on the records of the County Clerk of Howard County Texas.

²⁹ See *Corrected Receivership Order*, ¶¶ 35(a) - (d).

³⁰ Docket No. 685, filed May 28, 2019; *Order of Contempt*, [Docket No. 701](#), filed June 25, 2019; Docket No. 863, filed February 25, 2020.

30. This Court has “inherent power to enforce compliance with [its] lawful orders through civil contempt.”³¹ The Court’s “interest in ensuring a party’s compliance with its orders is a great one.”³²

31. “The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command such as an order to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance. Imprisonment for a fixed term similarly is coercive when the contemnor is given the option of earlier release if he complies.”³³

32. Accordingly, the Receiver hereby requests the Court issue, pursuant to paragraph 43 of the Corrected Receivership Order: a) a writ requiring Glenda Johnson to dismiss the Complaint with prejudice, b) a writ directing the United States Marshal to detain and incarcerate Glenda Johnson if the Complaint is not dismissed within one business day after issuance of the writ requiring dismissal of the Complaint, which incarceration shall continue until the Complaint is dismissed, c) a writ requiring Glenda Johnson to release the Payson Lien and the Texas Lien within three days of the date of the writ,³⁴ and d) an injunction prohibiting Glenda Johnson from asserting any lien against or initiating any litigation in any form relating to any real property

³¹ *Acosta v. Paragon Contractors Corp.*, 884 F.3d 1225, 1238 (10th Cir. 2018) (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)).

³² *Ohlander v. Larson*, 114 F.3d 1531, 1541 (10th Cir. 1997); *see also United States v. Bibbins*, 113 F. Supp. 2d 1194, 1202 (E.D. Tenn. 2000) (“In large measure, the American legal system is fundamentally dependent upon voluntary compliance with its judgments and procedures by all participants in the system The Court does not have a standing army to enforce its rules and orders.”).

³³ *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994).

³⁴ The Receiver requests that the Court require Glenda Johnson to release the Millard County Lien in connection with this Affidavit of Non-Compliance, in lieu of tying resolution of the Millard County Lien to the Receiver’s separate turnover motion against Glenda Johnson.

identified in the Corrected Receivership Order without prior approval of the Court or express written permission by the Receiver.

33. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 20th day of March, 2020, at Salt Lake City, Utah.


R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **RECEIVER'S EX-PARTE AFFIDAVIT OF NON-COMPLIANCE AGAINST GLENDA E. JOHNSON** was electronically filed with the Clerk of the Court through the CM/ECF system on March 20, 2020, which sent notice of the electronic filing to all counsel of record, including counsel of record for Glenda Johnson:

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