

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

FEDERAL TRADE COMMISSION, and  
UTAH DIVISION OF CONSUMER  
PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC, et als.

Defendants.

CASE NUMBER 2:19-CV-00713

JUDGE DALE A. KIMBALL

**OPPOSITION TO MOTION FOR CONTEMPT AND REQUEST FOR  
SANCTIONS AGAINST RECEIVER'S ATTORNEYS**

**TO THE HONORABLE JUDGE DALE A. KIMBALL:**

David Efron and Efron Dorado, S.E., appear herein without submitting themselves to the jurisdiction of this court and respectfully request and pray as follows:

1. The herein appearing party operates a shopping center in Dorado, Puerto Rico and had leased office space to Zurixx, LLC, defendant in this case. Approximately in early November of 2019, tenant advised landlord that they were being evicted from their office by the Federal Trade Commission, plaintiff herein, in a clear abuse of power based on totally fabricated facts.

2. To this day, the undersigned have not been properly served or notified, other than an e-mail received today sent by one of the receiver's lawyers in Utah, a copy of which had been mailed to us only earlier this month, although it was filed on March 11<sup>th</sup>, three months earlier, and which clearly shows these attorneys' bad faith in their now getting an ex-parte order from the court to serve, by e-mail yet, within three days. These attorneys

further misrepresent to this Court the urgency of granting an ex-parte order to serve by e-mail. All this, without their ever having attempted to serve the undersigned properly.

3. The undersigned, back in November of 2019, received a call from attorney Chelsea Davis promising that since the receiver was taking over the space, they would be forwarding to us the past due rental payment pursuant to the contract. I subsequently spoke to her boss Cory Talbot, the attorney that in bad faith files the ex-parte "emergency motion", and he also misrepresented that the rent would be paid and was forthcoming. **They both lied.** In the subsequent conversation with Chelsea Davis, which I called when some time went by and no rent payments were received, she forwarded the call to Cory Talbot, which confirmed that they had been lying and that no payments were coming.

4. Based on that history of misrepresentations and trickery by these attorneys, landlord began summary eviction proceedings against the tenant in a case we filed on February 3, 2020, Case Number 2020-CV-1121 in the Puerto Rican courts, Bayamón courthouse. The tenant, defendant Zurixx was immediately properly served by us, unlike this present action, where these attorneys game-playing by obtaining ex-parte orders unnecessarily, instead of sending a process server out to visit us to properly serve.

**THE PROPERTY IN QUESTION BELONGS TO LANDLORD, NOT TO THE RECEIVER.**

5. Section 12.9 of our lease with the tenant specifically indicates that the landlord has a lien for rent, etc. upon tenants' default or breach of the lease. It gives the landlord the right to take possession of tenants' property (previously pledged by tenant), and dispose of it in order to cover past due rents, and mitigate somewhat landlord's damages, which the receiver through their lawyers committed to pay but never did.

6. Pursuant to the clause in Section 12.9, all furniture, equipment and improvements to the leased property belongs to the landlord and not to the receiver. This is particular so in view of the eviction of tenant where the leased property furniture and equipment reverts to the landlord and owner. To request an injunction to be served or adjudicated ex-parte without due process intending that the property be shipped to Utah is a further invalid action because it would constitute a taking of private property by a representative of a governmental dependency.

**THE LANDLORD GAVE THE RECEIVER MORE ACCESS THAN IT WAS PROBABLY ENTITLED TO**

7. Mr. Reichard, a local attorney purportedly representing the absent receiver which has apparently yet to come to Puerto Rico, had previously contacted the undersigned and asked for permission to access Zurixx's office. Knowing that Zurixx had the present dispute ongoing with the Federal Trade Commission, and trusting Mr. Reichard's representations, he was granted access to the office so that their technician could remove all of the hard drives from all of the computers, catalog them and box them to send them out. We in fact gave receiver unfettered and unlimited access as they removed the hard drives and all of the physical files of defendant. Although we did not feel compelled to do it because of any legal obligation, as we have not been properly served, we felt that based on lawyers' misrepresentations that they were going to be taking over that office anyway and paying the rent, in effect substituting our tenant as such, it was the proper thing to do.

8. This space is now being leased through commercial brokers to other potential tenants, which landlord has every right to do, in order to further mitigate the damages

caused by the receiver. It will be rented with Zurixx's old furniture, fixtures and improvements, which now belong to landlord.

**THE RECEIVER SHOULD FILE THIS *IN REM* ACTION FOR PROPERTY IN PUERTO RICO, NOT UTAH.**

9. With all due respect, we do not see how an *in rem* proceeding for furniture and equipment located in Puerto Rico can be or should be litigated in Utah. The receiver has capable local counsel in order to file any such action in Puerto Rico. Utah counsel should be sanctioned or at minimum, admonished.

10. Receiver's Utah counsel lied to the undersigned in order to drag along a situation in which they very well knew from the beginning they had no authority or budget to pay for the rent of tenant sued. They further lied to this court when they went behind the undersigned's back to obtain an ex-parte order for service, although ever since they filed the motion on March 11<sup>th</sup>, they had yet to attempt to properly serve the undersigned. The only purpose was to improperly utilize the resources of this Honorable Court in order to try to intimidate or get an unfair vantage.

11. Regardless of any disciplinary action that we may be considering taking against these lawyers before the Utah bar, this court has an obligation to set them straight, and deny the injunction issued against the undersigned for lack of jurisdiction, as well as the other motions and matters raised pending herein regarding the undersigned.

**WHEREFORE**, the herein appearing parties, *pro se*, respectfully request of the Honorable Court that it deny the injunction requested against the undersigned and severely sanction or admonish the receiver's attorneys for the reasons set forth herein.

I **HEREBY CERTIFY** that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all attorneys of record.

In San Juan, Puerto Rico for Salt Lake City, Utah, this 25<sup>th</sup> day of June, 2020.

Respectfully submitted,



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**DAVID EFRON,**  
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