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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, a Utah limited liability
company; *et al.*,

Defendants.

**REPLY IN SUPPORT OF RECEIVER'S
MOTION FOR ORDER HOLDING
EFRON DORADO, S.E. AND DAVID
EFRON IN CONTEMPT OF COURT**

Case No. 2:19-cv-00713-DAK-DAO

Judge Dale A. Kimball

Magistrate Judge Daphne A. Oberg

The Receiver¹ submits this Reply in Support of Receiver's Motion for Order Holding Efron Dorado, S.E. and David Efrón in Contempt of Court:

INTRODUCTION

Despite having actual notice of the Injunction, David Efrón and Efron Dorado affirmatively prevented the Receiver from exercising control over receivership assets. Mr. Efrón

¹ Unless otherwise noted, defined terms are taken from the Receiver's Motion for Order Holding Efron Dorado, S.E. and David Efron in Contempt of Court [ECF 115] (the "Motion").

and Efron Dorado admit this, stating that they took possession of these assets pursuant to the terms of the lease between Efron Dorado and Zurixx and that Efron Dorado filed “summary eviction proceedings” against Zurixx. (*See* Opp. to Mot. for Contempt & Request for Sanctions against Receiver’s Attorneys [ECF 156] (the “Opposition”) at 2-3 ¶¶ 4-6.) Given these admissions, Mr. Efrón and Efron Dorado’s Opposition is nothing more than a mishmash of baseless *non sequiturs*.² The Court should reject their immaterial arguments, focus on their violations of the Injunction, and hold them in contempt as requested in the Motion.

MEMORANDUM

I. The Court has jurisdiction to address the Receiver’s Motion.

The Injunction provides that the Court has exclusive jurisdiction over receivership assets. (*See* Stipulated Prelim. Inj. [ECF 54] (the “Injunction”) at 24 (recognizing “the exclusive jurisdiction of this Court over the Assets or Documents of Receivership Entities”).) The Receiver provided Mr. Efrón and Efron Dorado with actual notice of the Injunction at the outset of the receivership. (*See* Mot. Ex. 1.) By statute, the Receiver likewise has jurisdiction over Zurixx’s assets in Puerto Rico: “A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall . . . be vested with complete jurisdiction and control of all such property with the right to take possession thereof.” 28 U.S.C. § 754.³

² The Court should not consider the Opposition insofar as it purports to have been submitted *pro se* by Efron Dorado: “No corporation, association, partnership or other artificial entity may appear *pro se* but must be represented by an attorney who is admitted to practice in this court.” DUCivR 83-1.3(c). While Mr. Efrón appears to be a licensed attorney practicing in Puerto Rico, he has not sought to appear as counsel for Efron Dorado.

³ To retain “complete jurisdiction and control” over receivership assets, the Receiver must, “within ten days after the entry of his order of appointment, file copies of the complaint and such

Mr. Efrón and Efron Dorado say that “we do not see how an *in rem* proceeding for furniture and equipment in Puerto Rico can or should be litigated in Utah.” (Opp. at 4 ¶ 9.) They offer no argument in support of this statement, which is not surprising since it conflicts with the Injunction, 28 U.S.C. § 754, and federal case law. The Court has broad equitable jurisdiction over equity receiverships like this one. *See Liberte Capital Gr., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006). “Once assets are placed in receivership, a district court’s equitable purpose demands that the court be able to exercise control over claims brought against those assets.” *Id.* “The receiver’s role, and the district court’s purpose in the appointment, is to safeguard the disputed assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets, if necessary.” *Id.* Because the Court exerts power over the assets in a receivership, non-parties with notice of the Injunction are subject to that order. *See id.*

The Supreme Court found “manifestly frivolous” the contention—the same contention Mr. Efrón and Efron Dorado make—that a court exercising equitable jurisdiction over receivership assets “was without power, by summary process, after due notice and opportunity to be heard, to compel repayment by one who, with knowledge of the order of injunction, and in violation of its terms, took in satisfaction of an indebtedness from a debtor to the corporation, property forming part of the assets of such corporation.” *Bien v. Robinson*, 208 U.S. 423, 428 (1908). Accordingly, the Court should reject Mr. Efrón and Efron Dorado’s suggestion that the Court lacks jurisdiction and grant the Receiver’s Motion.

order of appointment in the district court for each district in which property is located.” 28 U.S.C. § 754. The Receiver did so here. (Mot. at 2 n.1.)

II. Mr. Efrón and Efron Dorado improperly took control over receivership assets.

Despite actual notice, Mr. Efrón and Efron Dorado violated Sections XIX and XX of the Injunction by preventing the Receiver from accessing receivership property and by filing an eviction action against Zurixx. (*See* Opp. at 2 ¶ 4.) The Zurixx assets belong to the receivership under the Injunction. (Mot. at 4; Inj. at 17.) Further, the Injunction specifically prohibits any person with notice of the order from “[t]ransferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any Assets belonging to the receivership entities.” (Inj. at 23.)

Mr. Efrón and Efron Dorado have no legal authority to take property from the receivership in self-satisfaction of their supposed claims against Zurixx. Any existing contractual obligations between a creditor and a receivership entity are “drastically changed” upon the intervention of an equity receivership. *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 166 (1946). “Once the district court appointed an equity receiver, there [can] be no breach of the contract by the debtor” because any contingency created by the contract is “prohibited from occurring by order of the court.” *SEC v. Champion-Cain*, 2019 WL 6834661, at *7 (S.D. Cal. Dec. 13, 2019). Indeed, it is of “paramount concern that equitable distribution of the receivership assets be made according to the creditor’s interests ‘as of the date the receivership began.’” *Id.* (quoting *Vanston*, 329 U.S. at 166).

Here, Mr. Efrón and Efron Dorado claim that the Zurixx property located in the Puerto Rico Office belongs to the landlord pursuant to Section 12.9 of the lease agreement, which provides remedies to the landlord upon breach or default of the lease agreement, including the right to take possession of the tenant’s property for the non-payment of rent. (Opp. at 2-3 ¶¶ 5-6.)

Mr. Efrón and Efron Dorado's arguments are invalid for at least three reasons. First, the Receiver has not discovered, nor has Mr. Efrón proffered, any evidence showing Zurixx was in breach or default of the lease agreement prior to the Receiver's appointment. Mr. Efrón and Efron Dorado's interests against Zurixx are determined as of the date the receivership began, and the Receiver is not required to satisfy any liens recorded after his appointment. *See Champion-Cain*, 2019 WL 6834661, at *7 (“[I]t would be inequitable to require the Receiver to satisfy a lien that [the creditor] recorded *after* [the Receiver's] appointment for the very purpose of transforming its inchoate right into an enforceable one.”).

Second, once the Receiver was appointed, the Court took exclusive jurisdiction over the Zurixx assets, and any contingencies created by Section 12.9 of the lease agreement were prohibited from occurring under the Injunction. *See Vanston*, 329 U.S. at 166. Mr. Efrón and Efron Dorado would never have had a right to take possession of the Zurixx property unless and until Zurixx had failed to pay its rent due under the lease agreement. However, once the receivership began, Zurixx's obligation to make rental payments under the lease agreement was suspended. Indeed, the Injunction prohibited the Receiver from making any such payments. The Injunction was issued for good cause in order “to preserve and protect the debtor's estate pending a ratable distribution among all the creditors according to their interests as of the date the receivership began.” *Id.* Mr. Efrón and Efron Dorado are not entitled to self-help remedies against Zurixx for its alleged breach of the lease agreement, particularly where any claimed breach occurred after the receivership began.

Finally, the Injunction directs the Receiver to “[t]ake exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of,

a Receivership Entity, wherever situated.” (Mot. at 4; Inj. at 17.) Because the Zurixx property belongs to the receivership as of the date the receivership began, the Zurixx property in the Puerto Rico Office never passed ownership to Mr. Efrón and Efron Dorado, and they have no basis for a takings claim against the Receiver. (*See Opp.* at 3 ¶ 6.)

Because Mr. Efrón and Efron Dorado had no legal right to take possession of Zurixx property in Puerto Rico, they violated the Injunction by preventing the Receiver from accessing and recovering the receivership property and should be held in contempt of court.

III. Mr. Efrón and Efron Dorado’s request for sanctions is baseless.

Mr. Efrón and Efron Dorado’s request for sanctions entirely lacks merit.⁴ First, as set out above, the Court has “exclusive jurisdiction” over the receivership assets, (Inj. at 24), which entirely undermines Mr. Efrón and Efron Dorado’s assertion that “Utah counsel should be sanctioned or at minimum, admonished” for filing the Motion in this Court rather than “in Puerto Rico,” (*Opp.* at 4 ¶ 9).

Second, Mr. Efrón and Efron Dorado’s claim that counsel “lied to this court when they went behind the undersigned’s back to obtain an ex-parte order for service,” (*Opp.* at 4 ¶ 10), is false and contradicted by the evidence before the Court. Mr. Efrón and Efron Dorado claim that counsel failed “to attempt to serve the undersigned.” (*Id.*) However, two declarations from separate process servers in Puerto Rico, Michael Rodríguez Ocasio and Héctor Emilio Piovanetti Tirado—attached to the Receiver’s *Ex Parte* Motion for Alternative Service and

⁴ Apart from the lack of merit, Mr. Efrón and Efron Dorado’s request for sanctions is procedurally improper: “No motion . . . may be included in a response or reply memorandum. Such motions must be made in a separate document.” DUCivR 7-1(b)(1)(A). The request should be denied on that basis alone.

considered by this Court—confirm that counsel attempted personal service on multiple occasions before moving for alternative service. (*See Ex Parte* Mot. for Alt. Serv. [ECF 152] Exs. 1 & 2.)

Third, Mr. Efrón and Efron Dorado’s assertion that the delay in service was a result of “these attorneys’ bad faith” is baseless and illogical. (Opp. at 1 ¶ 2.) The Receiver gained no advantage by the delay, which was largely occasioned by the COVID-19 pandemic. Indeed, the delay only served to drag out the resolution of the Motion. Setting that aside, Mr. Efrón and Efron Dorado were properly served under the Court’s order. (*See Order Granting Alternative Service* [ECF 155].) Moreover, the purpose of service is to provide a person with notice of legal matters pending, *see generally* Fed. R. Civ. P. 5, notice Mr. Efrón admittedly had by email and by mail “earlier this month,” (Opp. at 1 ¶ 2). Mr. Efrón and Efron Dorado also complain that the Receiver’s counsel “in bad faith file[d] the ex-parte ‘emergency motion,’” (Opp. at 2 ¶ 3), but that never happened. The Receiver filed his *Ex Parte* Motion for Alternative Service to expediate resolution of the Motion against parties who (1) already had notice of the Motion; and (2) appeared to be dodging service. This is hardly bad faith.

Finally, Mr. Efrón and Efron Dorado claim that counsel for the Receiver promised to make rental payments for the Puerto Rico Office. That is false. The Receiver was, and continues to be, prohibited from promising payment to any creditors under the Injunction, which prohibits the Receiver from distributing receivership assets until the Court has ordered equitable distribution amongst the creditors. In reality, counsel sought on multiple occasions to reach a settlement with Mr. Efrón for the return of Zurixx’s security deposit minus an amount to resolve outstanding rental payments. Zurixx documents show that the security deposit was more than

adequate to cover any rental payments due, and the remainder should have been returned to the Receiver. To date, Mr. Efrón has not returned the security deposit to the Receiver.

Mr. Efrón and Efron Dorado have proffered no evidence to substantiate their accusations against counsel, and their baseless contentions and misrepresentations are contradicted by evidence already before this Court. Accordingly, Mr. Efrón and Efron Dorado's request for sanctions should be rejected.

CONCLUSION

For the reasons stated above and in the Motion, the Receiver requests that the Court enter an order holding Mr. Efrón and Efron Dorado in contempt of Court for violating the Injunction and ordering Mr. Efrón and Efron Dorado to (1) allow the Receiver and his representatives to access the Puerto Rico Office for the purpose of recovering and removing Zurixx's assets, (2) compensate the Receiver for the value of those assets owned by Zurixx located at the Puerto Rico Office that Mr. Efrón and Efron Dorado have taken, prevented the Receiver from taking, removed, or otherwise disposed of in violation of the Injunction, and (3) compensate the Receiver for reasonable attorney fees and costs incurred in enforcing the Injunction. Further, the Court should deny Mr. Efrón and Efron Dorado's request for sanctions against the Receiver's counsel.

RESPECTFULLY SUBMITTED this 10th day of July, 2020.

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/s/ Cory A. Talbot

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