

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ROBERT D. PARILLO :
 :
 v. : C.A. No. 12-696ML
 :
 DAVID RANES :

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before me for a report and recommendation is Plaintiff's Fourth Motion to Adjudge Defendant David Raner in Contempt and For Issuance of a Warrant. (Document No. 75). A hearing was held on July 25, 2016. Mr. Raner did not appear for the hearing.¹

On February 18, 2014, Final Judgment entered against Mr. Raner in the amount of \$150,000.00 with post-judgment interest at the rate of 12% accruing from January 15, 2014 until payment is made. (Document No. 43). The Judgment has not been fully satisfied. Accordingly, Plaintiff has sought to conduct a judgment debtor examination. Although Mr. Raner appeared for an initial debtor examination, he did not produce the requested financial records, and a continued debtor examination is necessary. Plaintiff has been unsuccessfully attempting to compel such continued examination for several months.

On February 4, 2015, Judge Lisi held Mr. Raner in contempt for his noncompliance and ordered him to produce financial records and appear for the second phase of his debtor

¹ Plaintiff's counsel represented that Mr. Raner was aware of the hearing because he communicated with Plaintiff, through an intermediary, and reported that he was unable to appear due to a broken foot. Mr. Raner also presented a medical excuse for his failure to attend a prior contempt hearing before Judge Lisi on July 15, 2015 which was viewed with skepticism by the Court.

examination at the offices of Plaintiff's counsel. (Document No. 63). The Order also provided that an arrest warrant would issue if Mr. Ranes failed to appear as ordered. Id.

On November 6, 2015, the Court ordered Mr. Ranes to appear for a continued debtor examination on November 17, 2015. (Document No. 74). The Order was accompanied by and incorporated an Amended Notice of Debtor Examination Deposition for November 17, 2015. Id. The Order also provided that “[a]ny subsequent effort by Plaintiff to enforce this ORDER via contempt or other means is subject to adequate proof of timely service of both this ORDER and attached Notice on Defendant David Ranes.” Id.

Plaintiff now seeks to enforce the November 6, 2015 Order via contempt but has not produced proof of timely service upon Mr. Ranes as required. In addition, the Order was effectively mooted because it was for a date certain, and Plaintiff apparently agreed to reschedule the deposition to December 21, 2015. Plaintiff's Motion contains no information as to the circumstances of the rescheduling or the notice provided to Mr. Ranes. “To prove civil contempt, the moving party...must show by clear and convincing evidence that (1) the alleged contemnor had notice of the order, (2) the order was clear and unambiguous, (3) the alleged contemnor had the ability to comply with the order, and (4) the alleged contemnor violated the order.” Rodriguez-Miranda v. Benin, ____ F.3d ____, 2016 WL 3745523 at *13 (1st Cir. July 13, 2016) (quoting Hawkins v. Dep't of HHS for N.H., 665 F.3d 25, 31 (1st Cir. 2012)). Plaintiff has not and cannot make the requisite showing since he unilaterally excused Mr. Ranes from the Court's November 6, 2015 Order.²

² This was also the reason why Judge Lisi denied Plaintiff's Third Motion to Adjudge in Contempt (Document No. 68) at a hearing held on July 15, 2015.

With that said, it is apparent that Mr. Raney is and has been ducking and weaving to avoid satisfying this Court's Judgment. He appears to be highly effective at manipulating others into making accommodations for him that arise from insincere requests and excuses. It is frustrating and has been a waste of this Court's time and Plaintiff's resources. While Plaintiff has failed to establish civil contempt as to the November 6, 2015 Order, I recommend that the Court treat this Motion as one to compel a continued debtor examination for a date certain. In addition, as part of this Court's contempt order of February 4, 2015, an arrest warrant was authorized if Mr. Raney failed to appear for the second phase of his debtor exam on March 2, 2015. (Document No. 63). Since Mr. Raney has never submitted to a continuation of his debtor exam or produced financial records as ordered, he has never purged himself of the original 2015 contempt finding. Thus, I further recommend that the Court Order that another warrant for Mr. Raney's arrest will issue if he fails to appear as Ordered.

Conclusion

For the foregoing reasons, I recommend that the Court GRANT Plaintiff's Motion (Document No. 75) in part solely to compel Mr. David Raney to appear for a continued debtor examination and produce the requested financial records on a date certain within thirty days of the Court's Order, and also that the Court exercise its inherent power pursuant to the prior 2015 contempt finding to ORDER that a body attachment arrest warrant will issue for Mr. David Raney if he receives timely notice of and fails to appear for the continued debtor examination as Ordered.³

³ Plaintiff's counsel shall submit a proposed form of ORDER to Judge Lisi for her consideration prior to expiration of the period to object to this Report and Recommendation.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 5, 2016