

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**)

Plaintiff,)

v.)

**INTERNATIONAL FIDUCIARY CORP., S.A.,)
DANIEL ERIC BYER,)
MALCOLM CAMERON BOYD STEVENSON,)
PRESTON DAVID PINKETT, II,**)

Defendants.)

CASE NO. 1:06cv01354-GBL

**Hon. Gerald Bruce Lee
United States District Judge**

**RECEIVER’S MOTION FOR SHOW CAUSE ORDER AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

COMES NOW Roy M. Terry, Jr. as duly appointed receiver (“Receiver”) for International Fiduciary Corp., S.A., and files this motion for Preston David Pinkett, II to show cause why he should not be punished for contempt of court for failure to obey the order of this Court, and in support thereof, respectfully states as follows:

1. On December 4, 2006, the United States Securities and Exchange Commission (“SEC”) filed its Complaint against the defendants in this action (Docket No. 1).

2. On December 12, 2006, this Court entered its Preliminary Injunction order which required, *inter alia*, that International Fiduciary Corp., S.A., Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, and Preston David Pinkett, II (collectively, the “Defendants”), file sworn

accountings (hereinafter the "Accountings") by December 21, 2006 (seven business days from the date of the order).¹ Preliminary Injunction § V, at 6.

3. Preston David Pinkett, II was the CEO of International Fiduciary Corp., S.A.

4. On January 19, 2007, the Court entered the Order Directing Appointment of Receiver Over Defendant International Fiduciary Corp., S.A. (Docket No. 25).

5. On March 5, 2007, the Receiver filed its Preliminary Report which reported that it's ability to carry out its receivership duties has been hampered because the Defendants have failed to comply with the provisions of the Preliminary Injunction order requiring each Defendant to file a sworn accounting. Receiver's Preliminary Report ¶ 7 (Docket No. 44).

6. The Receiver has contacted Daniel R. Kirshbaum and/or Amy L. Tenney, counsel for International Fiduciary Corp., S.A. and Preston David Pinkett, II, multiple times attempting to obtain the ordered Accountings without the necessity of further Court intervention, to wit:

¹ The Preliminary Injunction Order, entered December 12, 2006 (docket # 14), states as follows:

IT IS FURTHER ORDERED that defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A., and each of their subsidiaries and affiliates, shall within seven business days of the service of this order, file with this Court, and serve on the Commission, at the address of its counsel of record, a sworn accounting of:

A. All securities, funds, real estate, and other assets held in their names or the names of any subsidiary or affiliate, or under their direct or indirect control or in which they have or have had since July 1, 2003, a direct or indirect beneficial interest, stating a description and location of such assets;

B. Each account, including safe deposit boxes, with any financial institution or brokerage firm or otherwise maintained in the names of defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A., or in which they have direct or indirect control or beneficial interest or have had any direct or indirect beneficial interest since July 1, 2003; and

C. Every transaction in which any funds or other assets of any kind whereby ownership, direction and control, whether, indirect or direct, have since July 1, 2003, been transferred to or from defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A.

a) at the pre-trial conference counsel held February 7, 2007, the Receiver noted that Accountings had not yet been filed;

b) by email and follow-up telephone call between Roy Terry and Daniel Kirshbaum on March 23, 2007, noting tardiness, requesting Accountings and agreement to produce by March 27, 2007;

c) by telephone call from Daniel Kirshbaum to voice mail of Roy Terry, dated March 27, 2007, Mr. Kirshbaum represented that a balance sheet for the Defendants would be available for delivery on March 28, 2007 and other Accounting documents, including those related to a Bank of America account, would be delivered on March 29, 2007;

d) by telephone conversation between Roy Terry and Daniel Kirshbaum on April 13, 2007, Mr. Kirshbaum stated that the Accountings would be released following completion of final revisions; and

e) following the pre-trial conference held April 19, 2007, the Receiver requested a definite delivery date of the Accountings, again expressing the hindrance of the Receiver's duties because of the failure of the Defendants and Affiliates to comply with the Preliminary Injunction order.

7. As of the date of this Motion, no Accountings nor a date certain for delivery of the Accountings have been produced by any of the Defendants and Affiliates.²

² The Receiver does not suggest that fault lies with counsel in the failure to file the required Accountings; only that repeated requests and communications have occurred.. The Receiver also recognizes that Mr. Kirshbaum has recently been diagnosed with serious illness, and wishes him the best. However, Preston David Pinkett, II and IFC are not without other counsel.

MEMORANDUM OF POINTS AND AUTHORITIES

A federal court has the power under 18 U.S.C. § 401 to “punish by fine . . . such contempt of its authority . . . as disobedience or resistance to its lawful writ, process, order, rule, decree, or command.”

Findings of contempt are of two sorts: either a finding of “criminal” contempt or one of “civil” contempt. Any act of contempt contains behavior that offends the rights of other parties, as well as behavior that offends the authority of the court. *Shakman v. Democratic Organization of Cook Co.*, 533 F.2d 344, 348 (7th Cir. 1976)(citing *Gompers v. Bucks Stove and Range Co.*, 221 U.S. 418, 31 S. Ct. 492, 55 L. Ed. 797 (1911)). The distinction between the two findings of contempt lies not in the character of the action, which is contumacious, but in the character of the penalty assessed. *United States v. Powers*, 629 F.2d 619, 626-27 (9th Cir. 1980). If the thrust of the penalty assessed is primarily to recompense the other party and/or to coerce compliance, it is civil contempt; if the penalty seeks primarily to vindicate the power and authority of the Court, then it is criminal contempt. *Id.* at 349; *Commodity Futures Trading Comm. v. Premex, Inc.*, 655 F.2d 779, 784 (7th Cir. 1981).

In order to obtain civil contempt, the Receiver must establish the following:

- (1) the existence of a valid decree of which the alleged contemnor had actual or construction knowledge;
- (2) that the decree was in the movant’s favor;
- (3) that the alleged contemnor by his or her conduct violated the terms of the decree, and had at least constructive knowledge of such violations; and
- (4) that the movant suffered harm as a result.

Ashcroft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir. 2000). The burden is on the complainant to prove civil contempt by clear and convincing evidence. *In re GMC*, 61 F.3d 256, 258 (4th Cir. 1995).

Section V of Preliminary Injunction Order, entered December 12, 2006 (docket # 14) was a valid order. Preston David Pinkett, II had actual or constructive knowledge of that order and did not appeal. The Accountings in the order are in the Receiver's favor because they will allow the Receiver to locate, conserve and administer receivership property for the benefit of IFC investors. It has been over four months since the Court first ordered the Defendants to file and serve a sworn accounting, and notwithstanding repeated requests from the Receiver, Preston David Pinkett, II still has not complied with the Court's order. Finally, the Receiver's ability to fulfill its receivership duties is hampered because of the Defendants' failure to comply with this Court's order and the closely-held international nature of the known activities of IFC and Mr. Pinkett.. The Receiver is also concerned that defendant Preston David Pinkett, II, directly or indirectly, might continue to exert control over assets traceable to International Fiduciary Corp., S.A. in violation of this Court's asset freeze order(s).³

WHEREFORE, the Receiver prays that the Court enter an order for Preston David Pinkett, II to show cause why he should not be held in contempt of court for failure to obey the order of this Court to produce Accountings for Preston David Pinkett, II and International Fiduciary Corp., S.A., and each of their subsidiaries and affiliates (including, but not limited to Preston Pinkett, II, LLC; National Food Processing Company, Ltd.;⁴ Lighthouse Publishers;⁵

³ By filing this motion, the Receiver does not waive its rights with respect to recovery of such assets, nor does it authorize Pinkett or others to take any action with respect to these assets without prior written approval of the Receiver.

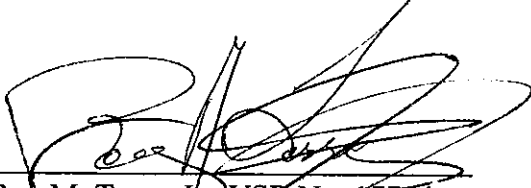
⁴ A company seeking to establish ten state-of-the-art fruit processing facilities in African tropics to process fruit (mangos, pineapples, citrus, passion fruit & tomatoes) into concentrated juices and purees, packaged in aseptic drums for export to western markets.

⁵ A company with a fully integrated printing facility in Liberia equipped with high speed digitalized printing technology uniquely positioned to serve print media and other specialized printing needs.

Orion Energy, Inc.;⁶ Ducor Waste Management;⁷ Ghana Asphalt Group;⁸ and NEBA Air;⁹ and a possible hedge fund).

Respectfully submitted this 24th day of April, 2007.

Roy M. Terry, Jr.
Receiver



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⁶ A company seeking to develop medium sized thermal power plants in Africa to meet emergency power needs as well as base loads.

⁷ A company seeking to provide solid waste management systems for cities in West Africa.

⁸ A company seeking to establish small and medium size refineries processing petroleum, diesel, kerosene, bitumen and vacuum gas oil for domestic demand and export throughout West Africa

⁹ An air carrier service company operating in Central and South America providing regional and international air travel and cargo services.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2007, a true copy of the foregoing Motion was served by e-mail to:

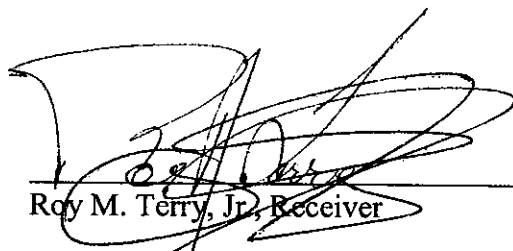
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