



**SO ORDERED,**

**Judge Neil P. Olack**  
**United States Bankruptcy Judge**  
**Date Signed: January 19, 2021**

**The Order of the Court is set forth below. The docket reflects the date entered.**

---

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**WILLIAM BYRD MCHENRY, JR.,**

**CASE NO. 20-00268-NPO**

**DEBTOR.**

**CHAPTER 7**

**ORDER ON RE-URGED MOTION FOR  
SANCTIONS FOR CONTEMPT OF COURT ORDER**

This matter came before the Court for a telephonic hearing on January 14, 2021 (the “Hearing”), on the Re-urged Motion for Sanctions for Contempt of Court Order (the “Re-urged Sanctions Motion”) (Dkt. 112) filed by Alysson Mills in her capacity as the receiver for the estates of Arthur Lamar Adams and Madison Timber, LLC (the “Receiver”) and the Debtor’s Response to Receiver’s Re-urged Motion for Sanctions for Contempt of Court Order (the “Sanctions Response”) (Dkt. 123) filed by the debtor, William Byrd McHenry, Jr. (“McHenry”), in the above-referenced bankruptcy case. At the Hearing, Kristen D. Amond represented the Receiver and James G. McGee represented McHenry. After considering the pleadings, the arguments of counsel, and the testimony of McHenry, the Court granted the Re-urged Sanctions Motion, in part, by setting forth a clear path for resolution of the parties’ dispute by a date certain. The Court

reserved the issue of sanctions for determination at a later date. This Order memorializes and supplements the Court’s ruling from the bench.<sup>1</sup>

### **Jurisdiction**

The Court finds that it has jurisdiction over the parties to and subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Re-urged Sanctions Motion was proper under the circumstances.

### **Facts**

1. On January 24, 2020, McHenry filed a petition for relief under chapter 7 of the U.S. Bankruptcy Code. (Dkt. 1). In his bankruptcy schedules, McHenry identified the Receiver as a judgment creditor holding an unsecured claim of \$3,472,320.00. (Dkt. 4 at 10).

### **Rule 2004 Notice**

2. The Receiver requested, and McHenry agreed, to undergo an examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”). As a result, the Receiver filed the Notice of Intent to Take Rule 2004 Examination (the “Rule 2004 Notice”) (Dkt. 48), which included requests for the production of documents by March 6, 2020. On March 5, 2020, McHenry produced twenty-eight (28) pages of documents, including bank statements from four (4) bank accounts “which Mr. McHenry utilizes” dated ninety (90) days before the bankruptcy filing. (Dkt. 68-4). This production was accompanied by a letter from McHenry’s counsel objecting in general to the production of any documents prior to ninety (90) days before the bankruptcy filing. (Dkt. 68-2). McHenry’s objection was in response to the time period “since

---

<sup>1</sup> The Court makes the following findings of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

April 19, 2018” set forth in the Rule 2004 Notice for certain financial documents. McHenry’s counsel also objected to producing any documents related to his wholly-owned company, First South Investments, LLC (“First South”), and any income tax returns. On March 10, 2020, the Receiver’s counsel wrote a letter to McHenry’s counsel challenging McHenry’s objections and requesting that McHenry produce the documents identified in the Rule 2004 Notice. (Dkt. 68-3). In a letter dated March 13, 2020, McHenry’s counsel agreed to extend the applicable time period from ninety (90) days before the bankruptcy filing to twelve (12) months, from January 2019 to January 2020, for bank statements from the four (4) bank accounts “which Mr. McHenry utilizes,” but he maintained all other objections, including his objection to producing any documents “since April 19, 2018.” (Dkt. 68-4).

#### **Agreed Order**

3. On April 3, 2020, the Receiver filed the Motion to Compel Debtor to Comply with Rule 2004 Requests (the “Motion to Compel”) (Dkt. 68), asserting that McHenry failed to produce all of the documents described in the Rule 2004 Notice. (Dkt. 68 at 4). The Court held a hearing on the Motion to Compel on May 4, 2020. During discussions at that hearing, the parties resolved their dispute, and on May 8, 2020, the Court entered the Agreed Order on Motion to Compel (the “Agreed Order”) (Dkt. 83), ordering McHenry to produce his 2017, 2018, and 2019 tax returns to the Receiver by May 18, 2020, and all other documents described in the Rule 2004 Notice by June 3, 2020.

#### **Sanctions Order**

4. On June 26, 2020, the Receiver filed the Motion for Sanctions for Contempt of Court Order (the “Motion for Sanctions”) (Dkt. 88), asserting that McHenry failed to comply with the Agreed Order. The Receiver alleged that McHenry produced some documents pursuant to the

Agreed Order but not all. On August 11, 2020, a hearing was held on the Motion for Sanctions at which time McHenry's objection to each of the documents requests in the Agreed Order was discussed. With respect to the request for documents regarding retirement accounts, McHenry testified that the Merrill Lynch IRA Account (the "IRA Account") listed in his bankruptcy schedules had been closed for many years. (Dkt. 26 at 5).

On August 14, 2020, the Court entered the Order on Motion for Sanctions for Contempt of Court Order (the "Sanctions Order") (Dkt. 103), finding McHenry in contempt of the Agreed Order but allowing McHenry to purge his contempt by producing to the Receiver, within fourteen (14) days and without objection, complete responses to each of the Receiver's requests through the date of the Agreed Order. To clarify the documents McHenry was required to produce, a chart was included in the Sanctions Order that separately listed each category of documents requested by the Receiver, McHenry's objection, and the Court's ruling on his objection. Given McHenry's testimony regarding the IRA Account, the Court also ordered McHenry to amend his bankruptcy schedules to accurately reflect its status at the time of the bankruptcy filing. The Court further ordered that if McHenry failed to fully comply, then the Court would require McHenry to pay the Receiver \$2,000.00 in attorney's fees and \$250.00 per day for each day until all documents requested were produced.

### **McHenry's Deposition**

5. On October 7, 2020, the Receiver deposed McHenry in a separate but related adversary proceeding.<sup>2</sup> At the deposition, McHenry testified that he is the sole manager and

---

<sup>2</sup> *Mills v. McHenry (In re McHenry)*, Adv. Proc. 20-00022-NPO (S.D. Miss.). In the Re-Urged Sanctions Motion, the Receiver incorporated by reference excerpts from McHenry's deposition testimony which are attached as an exhibit to the Receiver's pending Motion for Summary Judgment. (*Id.*, Dkt. 27-14).

member of First South, that he has deposited funds into First South's bank account (the "First South Account") from the proceeds of cash-only sales of farm equipment, and that he pays his personal household expenses from the First South Account. McHenry described those deposited funds as "commissions" from his "buy and sell transaction business." McHenry, however, was unable to answer specific questions about any transaction. For example, when asked about deposits in the First South Account totaling \$23,100.00 in September 2019, McHenry testified that he could not recall the source of those funds without referring either to a notebook or the deposit slips on which he sometimes wrote notes. After the deposition, the Receiver sent a letter to McHenry's counsel requesting copies of the notebook and the deposit slips.

### **Re-Urged Sanctions Motion**

6. On December 7, 2020, the Receiver filed the Re-urged Sanctions Motion, stating that McHenry failed to comply with the Sanctions Order. The Receiver alleges that McHenry failed to "amend his bankruptcy schedules to accurately reflect the current status of his retirement or pension accounts" as required by the Sanctions Order. She also alleges that McHenry failed to produce the following items described in the Sanctions Order: "evidence of the closure of any retirement or pension account that he has listed on his bankruptcy schedules"; "deposit and debit slips from April 19, 2018 until May 8, 2020 for each checking account used by him or in which he has any interest; "all documents evidencing the source of deposits into his companies, including First South Investments, LLC"; "evidence of any transaction in which he bought or sold property or equipment, including any evidence of any income received from the transactions"; "all information regarding his insurance premiums and policies"; "[d]ocumentary evidence of all assets owned by corporations, partnerships, or businesses in which McHenry has any interest"; and "[a]ll records identifying all other assets owned by McHenry." (Dkt. 103 at 3-10). The Receiver

requests that the Court renew its finding of McHenry in civil contempt and require McHenry to pay the sanctions provided in the Sanctions Order.

### **Sanctions Response**

7. On January 4, 2021, McHenry filed the Sanctions Response, stating that in response to the Sanctions Order, he has already produced 496 pages of documents, copies of which were attached as an exhibit, and that he would forward to the Receiver his 2019 federal income tax return that same day. He alleges that he “cannot possibly produce what he does not have in his possession.” (Dkt. 123). Accordingly, McHenry requests that the Court deny all relief requested by the Receiver in the Re-urged Sanctions Motion.

### **Hearing**

8. At the Hearing, counsel for the Receiver acknowledged McHenry’s additional production of documents but argued that most of those documents consisted of bank statements from accounts held by companies owned by McHenry. There were also statements from the bank accounts “utilized by Mr. McHenry” for the time period “since April 19, 2018.” According to the Receiver, none of these documents related to the IRA Account or revealed the source of funds deposited in the First South Account.

From this argument, the Court discerned two broad areas of dispute: (1) McHenry’s failure to amend his bankruptcy schedules to show the status of his retirement accounts and (2) his failure to produce documents identifying his source of income. McHenry testified at the Hearing that he did not believe it was necessary to amend his bankruptcy schedules because the amount of funds in the closed IRA Account was insignificant. As to the missing documents identified in the Re-urged Sanctions Motion, McHenry testified at the Hearing that IRA Account had been closed many years ago and that he no longer had access to that retirement account. He also testified that he had

in his office the notebook and the deposit slips indicating his source of income. His office was also where he kept copies of all insurance policies. He expressed some confusion about whether he had already produced these documents to the Receiver.

### Discussion

It is well settled that bankruptcy courts within the Fifth Circuit possess civil contempt powers. *Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 612-13 (5th Cir. 1997). The source of such powers is 11 U.S.C. § 105(a), which provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a); *In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d at 613. “[F]ederal courts have inherent power to police themselves by civil contempt, imposition of fines, the awarding of costs and the shifting of fees.” *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 702 (5th Cir. 1990). The Fifth Circuit has held that the contempt power “is broad and pragmatic, reaching where it must—consistent with prudent court management and due process—to prevent insults, oppression, and experimentation with disobedience of the law.” *Ingalls v. Thompson (In re Bradley)*, 588 F.3d 254, 265-66 (5th Cir. 2009) (finding that the bankruptcy court was within its discretion to hold the trustee in civil contempt for violating an oral injunction). “A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court’s order.” *Sec. & Exch. Comm’n v. First Fin. Grp. of Tex., Inc.*, 659 F.2d 660, 669 (5th Cir. 1981).

The sanctions available to a bankruptcy court in response to civil contempt are many and varied. As noted previously, this Court has civil but not criminal contempt powers. A contempt sanction is classified as either civil or criminal, depending on its “character and purpose.” *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). The classification of a contempt sanction as either civil or criminal is important for two reasons. First, as noted previously, bankruptcy courts lack criminal contempt powers, at least as to conduct committed outside their presence. Second, the imposition of criminal contempt sanctions generally requires greater procedural protections. *Bagwell*, 512 U.S. at 831-32.

A contempt sanction is considered civil if its purpose is to coerce a recalcitrant party into compliance with the court’s order or to compensate an injured party for losses resulting from the noncompliance. *Lamar Fin. Corp. v. Adams*, 918 F.2d 564, 566 (5th Cir. 1990). In contrast, a contempt sanction is criminal if its purpose is to punish and to vindicate the authority of the court. *Id.* “[C]riminal contempt is a crime in the ordinary sense.” *Bloom v. Illinois*, 391 U.S. 194, 201 (1968). A criminal contempt prosecution for violation of a court order is separate from the case in which the violated order was entered and is punishable under 18 U.S.C. § 401 by fine or imprisonment, or both.

When imposing civil contempt sanctions, the Fifth Circuit advises that courts first apply the least onerous sanction necessary to coerce compliance with its order. *Krim v. First City Bancorporation of Tex. Inc. (In re First City Bancorporation)*, 282 F.3d 864, 867 (5th Cir. 2002). If compliance is not forthcoming, a court may increase the initial penalty or may impose a new penalty appropriate under the circumstances.

The Court finds that McHenry has failed to comply with the Sanctions Order by failing to amend his bankruptcy schedules to accurately reflect his interest in the IRA Account and by failing

to produce all of the documents identified in the Sanctions Order. McHenry's reason for failing to amend his bankruptcy schedules is without merit. A chapter 7 debtor has a duty under 11 U.S.C. § 521 to accurately disclose all assets and interests in property in his schedules and to amend his schedules whenever necessary to ensure the accuracy and reliability of those disclosures without regard to the de minimis value of those assets or interests. *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 179 (5th Cir. 1992) (noting that schedules "serve the important purpose of insuring that adequate information is available for the Trustee and creditors without need for investigation to determine whether the information provided is true.") (internal quotation & citation omitted). Once again, the Court will order the amendment of the bankruptcy schedules by a date certain.

As to the parties' ongoing dispute about the production of certain documents, the Court concluded at the Hearing that the best way to ensure McHenry's compliance was to provide a step-by-step procedure for the production of the documents that limits McHenry's involvement. To that end, the Court ordered counsel for the Receiver to provide counsel for McHenry a list of those documents identified in the Sanctions Orders but not yet produced by January 15, 2021. Although that date has already passed, the Court informed the parties at the Hearing that an order memorializing the Court's bench ruling likely would be entered after that date. The Court also set a specific date and time for counsel for the Receiver to meet with counsel for McHenry in McHenry's office to identify those documents that are responsive to the document requests. Based on McHenry's testimony at the Hearing, all such documents should be found in his office. Finally, the Court reserved the issue of sanctions until a date after the production of documents in McHenry's office.

IT IS, THEREFORE, ORDERED that McHenry shall amend his schedules to accurately disclose the status of the IRA Account as of the date of the bankruptcy filing by January 22, 2021.

IT IS FURTHER ORDERED that on January 15, 2021, as announced at the Hearing, the Receiver shall provide to counsel for McHenry an itemized list identifying those documents described in the Sanctions Order that have not yet been produced (the “Receiver’s Itemization”).

IT IS FURTHER ORDERED that the parties shall comply with the following procedures with respect to the production of documents:

(1) Counsel for the Receiver, counsel for McHenry, and McHenry shall meet on January 29, 2021 at 11:00 a.m. at McHenry’s office at 742A Magnolia Street in Madison, Mississippi.

(2) Counsel for the Receiver shall review the documents in McHenry’s office and shall hand those documents to counsel for McHenry that are responsive to the Receiver’s Itemization. Counsel for McHenry shall transfer those documents to his law office where he will arrange for them to be copied and the copies sent to counsel for the Receiver by February 1, 2021. Along with copies of the documents, counsel for McHenry shall provide counsel for the Receiver with a list describing the documents produced.

(3) If a dispute arises during the document production on January 29, 2021, counsel shall contact the Court’s chambers and request an emergency telephonic hearing with the above-signed bankruptcy judge. It is the Court’s intention that any dispute arising out of any lack of cooperation during the document production be resolved on January 29, 2021, if possible, rather than later through another motion.

IT IS FURTHER ORDERED that the issue of sanctions shall be reserved for decision after the production of documents on January 29, 2021. As to the sanctions issue, the Court will consider the degree of cooperation exhibited by McHenry on January 29, 2021. The sanctions the Court may impose against McHenry include those mentioned in the Sanctions Order and and/or the following:

- (1) Imposing coercive monetary sanctions, including monetary sanctions that continue each day until McHenry complies with this Order;
- (2) Requiring payment of any attorney's fees and expenses incurred by the Receiver during the course of this matter, including those associated with any appeal; and/or
- (3) Recommending that the U.S. District Court for the Southern District of Mississippi withdraw the reference in the Bankruptcy Case pursuant to 28 U.S.C. § 157(d) for the limited purpose of considering criminal contempt proceedings or additional civil contempt proceedings against McHenry.

##END OF ORDER##