

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

ONEIDA TRIBE OF INDIANS)
 OF WISCONSIN,)
)
 Plaintiff,)
)
 v.)
)
 VILLAGE OF HOBART, WISCONSIN,)
)
 Defendant/Third-Party Plaintiff,)
)
 v.)
)
 UNITED STATES OF AMERICA, et al.,)
)
 Third-Party Defendants.)
 _____)

Case No. 1:10-cv-00137-WCG

Plaintiff’s Memorandum of Law in Support of Motion for Contempt Order

After months of unsuccessful efforts to obtain compliance by the Village of Hobart (“Hobart”) with the Court’s judgment, the Oneida Tribe of Indians of Wisconsin (“Tribe”) returns to this Court for that purpose. There is an unequivocal judgment and order in this matter, which enjoins Hobart “from attempting to impose and collect ‘charges’ under the [Storm Water Management Utility] Ordinance from the Tribe or from foreclosing on the Tribe’s lands.” Judgment, ECF No. 69. Nonetheless, Hobart persists in its attempts to collect those charges as to forty-two (42) parcels that are subject lands in this litigation. *See* Part I, below. These circumstances justify a contempt order to enforce compliance with the Court’s judgment, and an award of attorneys’ fees, under the standard governing civil contempt in the Seventh Circuit Court of Appeals. *See* Part II, below.

I. There is an unambiguous judgment in this matter that enjoins attempts by Hobart to impose and collect its stormwater charges as to subject trust lands and with which Hobart refuses to fully comply.

After two years of vigorously contested litigation, the Court entered Judgment in the Tribe's favor. The Judgment declares that the Tribe's trust land is immune from Hobart's Stormwater Management Utility Ordinance and that Hobart lacks authority to impose charges under the ordinance on those lands. Further, the Judgment provides that "the Village of Hobart is enjoined from attempting to impose and collect 'charges' under the Ordinance from the Tribe or from foreclosing on the Tribe's lands." ECF No. 69.

The Judgment was entered following the Tribe's Motion for Summary Judgment. As part of the preparation of the motion papers, the parties attempted to stipulate to as many facts as possible, in accordance with local rules. *See* Local Rule 56(b). Counsel for the Tribe proposed a first draft of stipulated facts to counsel for Hobart on September 14, 2011, which draft described the subject lands as 148 parcels. Webster Affidavit ¶ 5. On October 14, 2011, the Tribe proposed a second draft stipulation. This draft was accompanied by a spreadsheet of all 148 parcels, identified by reference to county tax numbers, and included an explanation of how the Tribe compiled the list of 148 parcels. *Id.* As explained there, the Tribe began with a spreadsheet showing 143 parcels, compiled by Hobart and used in support of its demand to the United States for payment of the contested charges. The Tribe made corrections to the Hobart list, deleting an individual trust parcel and adding tribal properties that had been sub-divided or erroneously omitted, resulting in the list of 148 parcels. *Id.*

This proposed stipulation of facts was the subject of substantial and detailed consideration by counsel for the Tribe and Hobart over the next four months and was redrafted

twice more to accommodate Hobart concerns. *Id.* Hobart made no objection to the trust status of any of the 148 parcels. On January 12, 2012, the parties reached a consensus on the stipulation of facts; this stipulation was filed with the Tribe's Motion for Summary Judgment on January 23, 2012. Webster Affidavit ¶ 6.¹

Paragraph 4 of the executed Stipulation of Facts defined the subject lands: "The United States holds 148 parcels of land in trust for the Tribe located within the boundaries of Hobart; these parcels are referred to collectively herein as the subject trust lands." ECF No. 50. There is no doubt regarding the 148 parcels to which the Stipulation referred. The subject lands are identified with particularity by county tax numbers on Exhibit A to a supporting affidavit, also filed in support of the Tribe's Motion for Summary Judgment. Exhibit A lists the same 148 parcels identified by the Tribe in the second draft stipulation proposed to Hobart. The Tribe relied upon both the Stipulation of Facts and Exhibit A in its Statement of Proposed Material Facts in Support of its Motion for Summary Judgment as authority for the statement that, "The United States holds 148 parcels of land in trust for the Tribe located within the boundaries of Hobart and the Oneida Reservation; these parcels are referred to collectively herein as the subject trust lands." ECF No. 51 ¶ 6.

Just as Hobart did not dispute the status of these parcels in the preparation of the Stipulation of Facts, Hobart did not dispute the status of these parcels in its papers opposing the Tribe's Motion for Summary Judgment. To the contrary, as it was obliged to do, Hobart responded specifically to each of the Tribe's material facts. With regard to the Tribe's paragraph

¹ A stipulation between the parties is a contract that is binding upon them. *Analytical Engineering v. Baldwin Filters, Inc.*, 425 F.3d 443, 453 (7th Cir. 2005). Further, a court can rely upon stipulated facts to determine full compliance with its judgment by the parties. *Id.*

6 thereof, which included a specific listing of the subject trust lands, Hobart responded simply, “Admit.” ECF No. 61 ¶ 6. There is no question, then, that the parties agreed, and the Courts found, that all 148 parcels are trust lands subject to the litigation.²

After the Supreme Court denied Hobart’s Petition for certiorari, counsel for the Tribe undertook to obtain compliance with this Court’s Judgment. This effort is reflected in emails sent from counsel for the Tribe over a two month period extending from June 4 through August 11, 2014. Webster Affidavit ¶ 15. At that point, the parties formally memorialized their positions in writing regarding compliance with the Court’s Judgment. Webster Affidavit ¶¶ 16, 20, 21. Ultimately, Hobart resolved that, as to 42 parcels of the subject trust lands, it would persist in the imposition of charges under its Storm Water Management Utility Ordinance. Webster Affidavit ¶ 17. The parcels are now delinquent, with the threat of imminent collection proceedings by foreclosure. *Id.* ¶ 22.

Now, Hobart claims some question as to the trust status of these subject lands, which comprise nearly one-third of all the subject lands in this matter. Hobart suggests that trust deeds for 22 of the parcels are somehow illegitimate or not properly transferred into trust, even though the Tribe has provided copies of trust deeds for all 22 parcels. Webster Affidavit ¶¶ 16, 20. Further, Hobart questions the Tribe’s title to 20 of the parcels, which were subject to a railroad right-of-way that has since been abandoned. *Id.* ¶ 19. All these circumstances now cited by Hobart as bases for questioning the trust status of the 42 parcels existed in 2011 when Hobart made its demand for payment to the United States and the parties negotiated the terms of the

² Because the identity of the subject lands was not disputed by the parties, both this Court and the Court of Appeals relied upon the stipulation as identifying the 148 parcels that were the subject of the litigation. *See* ECF No. 68, p. 4; No. 12-3419 (7th Cir.), p. 2.

Stipulation. Further, these circumstances were clearly known to Hobart.³ Yet, Hobart failed to raise any issue as to these parcels then and stipulated that those parcels are trust lands. Hobart cannot now avoid the Judgment by raising issues it failed to raise in the litigation.

II. This Court can and should order Hobart to comply with the Judgment herein and award the Tribe attorney fees associated with this motion.

The Supreme Court has made clear that federal courts have inherent authority to issue contempt orders to enforce their judgments. “That the power to punish for contempt is inherent in all courts, has been many times decided and may be regarded as settled law. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once became possessed of this power.” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796 (1987), quoting *Michaelson v. U.S. ex rel. Chicago, St. P., M., & O.R. Co.*, 266 U.S. 42, 65-66 (1924). This inherent authority serves the dual public purposes of facilitating courts’ ability to administer public justice and to enforce the rights of individual litigants. *Gompers v. Bucks Stove & Range Co.*, 221 418, 450 (1911); see also *Autotech Techs. v. Integral Research & Development*, 499 F.3d 747 (7th Cir. 2007) (long settled that courts possess inherent authority to initiate contempt proceedings for disobedience of their orders.)

Federal Civil Procedure Rule 70 also authorizes courts to deal with parties who thwart final judgments by refusing to comply with orders to perform specific acts. *Analytical Engineering*, 425 F.3d at 449. Where a final judgment orders a specific act and a party fall shorts

³ Regarding the 22 parcels that Hobart suggests are not properly transferred trust lands, Hobart examined these same county records in May 2011 when it prepared a list of trust lands and made a demand to the United States for payment of the stormwater charges. ECF No. 50-1. Regarding the railroad right-of-way parcels, Hobart had sued the Tribe in state court in 2006 to assert its claim that those parcels were not trust lands. Webster Affidavit ¶ 19. For whatever reason, Hobart chose not to raise those issues in this litigation.

of full compliance an order under Rule 70 is appropriate. *Id.* at 450.⁴ In the Seventh Circuit, the moving party on a contempt motion must establish by clear and convincing evidence that: 1) the court judgment sets forth an unambiguous command; 2) the alleged contemnor violated that command; 3) the violation was significant, meaning the alleged contemnor did not substantially comply with the order; and 4) the alleged contemnor failed to make a reasonable and diligent effort to comply with the order. *U.S. SEC v. Hyatt*, 621 F.3d 687, 687, 692 (7th Cir. 2010)⁵; *see also Stotler and Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989). When the moving party carries the burden of proving a substantial violation of an unambiguous order, the moving party is entitled to an order enforcing compliance with the judgment and compensation for losses caused by the contemptuous actions, such as attorneys' fees incurred in obtaining compliance. *Commodity Futures Trading Comm'n v. Premex, Inc.*, 655 F.2d 779, 785 (7th Cir. 1981) (fees and expenses incurred in bringing violation to court's attention may be awarded in court's discretion); *Tranzact Technologies, Inc. v. Isource Worldsite*, 406 F.3d 851, 856 (7th Cir. 2005); *E.E.O.C. v. Management Hospitality of Racine, Inc.*, 794 F.Supp.2d 921, 924 (E.D. Wis. 2011).

It is self-evident that an order of contempt against Hobart should issue under the circumstances here. First, the Court's Judgment unambiguously enjoins Hobart from imposing charges under its Storm Water Management Utility Ordinance on the Tribe's subject trust lands.

⁴ Thus, where a court enters a declaratory judgment only, which declares the parties' respective rights but does not order a specific act, a contempt order is not appropriate. However, a judgment with an injunction against or requiring specific acts, such as in the present case, can be enforced by contempt proceedings. *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 782 (7th Cir. 2010).

⁵ The Seventh Circuit also indicated in *Hyatt* that a motion for a contempt order is an appropriate mechanism to initiate civil contempt process. 621 F.3d at 695.

The language could not be plainer. Second, Hobart has indisputably violated the Judgment by its affirmative decision to persist in imposing those charges on 42 parcels of subject trust lands. Webster Affidavit ¶ 22. Hobart conceded that the 42 parcels are trust lands, a concession made after detailed and lengthy consideration of the parcels at issue in this suit. It is also indisputable, then, that these parcels are trust lands and subject to the Court's Judgment. Third, Hobart's violation of the Judgment is substantial. The violation applies to nearly one-third of the 148 parcels that are the subject of the Judgment. Fourth, Hobart has not merely failed to make a reasonable effort to comply with the Judgment; it has affirmatively indicated that it does not intend to do so. Webster Affidavit ¶ 17. A court order of contempt is not only proper but necessary to protect the Court's administration of justice and the Tribe's trust lands from delinquency and foreclosure proceedings.

Hobart may believe that it has a good faith basis for disputing the trust status of the 42 parcels. For whatever reason, though, Hobart chose not to do so in this litigation and it is bound by the Judgment in this matter as to those parcels. Indeed, Hobart itself represented to the United States that the 42 parcels are trust lands, including all in its demand for payment to the United States in 2011. Webster Affidavit ¶¶ 3, 18. Hobart is now bound by its concession and the Judgment herein regarding the 42 parcels.

Conclusion

For the reasons stated above and based upon the attached Affidavit of Rebecca M. Webster, the Tribe respectfully requests that the Court enter an Order holding Hobart in civil contempt for violation of the Judgment herein and award fees and expenses incurred by the Tribe in obtaining compliance with the Judgment.

Respectfully submitted this 4th day of May, 2015.

s/ Arlinda F. Locklear

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