

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

FLORENCE SWATERS,	:	CASE NO. A1001370
	:	
Plaintiff,	:	Judge Nadel
	:	
vs.	:	PLAINTIFF'S MOTION TO
	:	APPEAR AND SHOW CAUSE
KRISTINE KLEVE LAWSON	:	WHY THEY SHOULD NOT BE
	:	HELD IN CONTEMPT OF
and	:	<u>COURT - AGAIN</u>
	:	
JOSEPH FORD,	:	<u>REQUEST FOR EXPEDITED</u>
	:	<u>HEARING</u>
Defendants.	:	

Defendant Joseph Ford has violated the Agreed Status Quo Order AGAIN. On September 5th, one day before depositions were about to begin in this case, Ford disclosed the existence of another agreement he entered into with a non-party over six months ago. That agreement again purports to transfer an interest in the car and parts, but this time to a resident of Switzerland who has previously been convicted of using false vehicle import documents. Yet Ford chose not to disclose the existence of this agreement throughout briefings and two hearing on Plaintiff's previous motion to show cause for almost the exact same issue. As such, Ford should be required to appear before this Court and show cause as to why he should not be held in contempt again for violating the Agreed Status Quo Order.

Respectfully submitted,

/s/Scott K. Jones

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MEMORANDUM IN SUPPORT

On April 23, 2010, the parties consented to, and this Court entered, an Agreed Status Quo Order that required the parties to maintain the status quo of any and all “parts and documents” related to the Ferrari at issue and that are in “said parties’ respective possession, custody, or control.”¹ The Court further ordered that the status quo be maintained as to “title documents, bill of sale documents and any other type of ownership interest or ownership transfer document.”² The Status Quo Order further provided that, “[e]xcept with prior written approval of this Court, the Parties shall **not take any action that would disturb the status quo** of the Vehicles, Parts, and/or Documents until a final determination of claims and ownerships rights is made by this Court.”³

Despite their agreement to the Status Quo Order, the Defendants continue to disobey this Court and violate its orders.

¹ Status Quo Order at 1.

² Id.

³ Id. at 2 (emphasis added).

On July 7th, the Court heard Plaintiff's first Motion to Show Cause. The Motion described Ford and Lawson's violations of the Status Quo Order by signing "Change #3" in January 2011, amending their original agreement from 2010, and obtaining yet another title to the Vehicle in March 2011. At that hearing, counsel for Ford (who also had permission to speak on behalf of Lawson) argued that Ford and Lawson's actions were not in violation of the Status Quo Order but admitted that "if our clients had gone and sold part of this to a third party that wasn't in the litigation as a party, maybe that would change the status quo."⁴ At the same time, Mr. Ford referred to himself as a "white knight" in this action.⁵ Following this hearing, the Court issued an Order declaring "null and void" that Change #3 and the title wrongfully obtained by Ford.

The day before the depositions were to proceed, Ford's counsel disclosed that yet another agreement, similar to Ford and Lawson's "Change #3," existed, and purports to have been executed on January 31st. This new agreement between Ford and a third-party not a party to the this litigation, Christopher Gardner, ("Ford/Gardner Agreement") purports to give Gardner the "access code" to the parts of the Vehicle now currently stored in Ohio and purports to give "Ford's share of the parts to Gardner in the event of a failed litigation and failed recovery effort" – whatever that may mean to Ford. It further purports to give Gardner the authority to "sell the parts on the open market" and split

⁴ Transcript of proceedings on July 7, 2011, p. 15. Copies of the relevant pages are attached as Exhibit A.

⁵ Defendants Joseph Ford and Kristi Lawson's [sic] Motion to Vacate and Amend Order of July 13, 2011; For Reconsideration; and For an Evidentiary Hearing, at p.6

the proceeds with Ford.⁶ It also purports to transfer a portion of Ford's alleged interest in the car, title, and parts at issue in this case to Gardner and purports to grant a lien to Gardner on Ford's title wrongfully obtained in March 2011.⁷

Christopher Gardner, a non-party, is the same person who lied to Ferrari headquarters' employees to gain access to the Vehicle⁸ and has been previously convicted of lying to government agencies and falsifying import documents for cars.⁹

Not only does the Ford/Gardner Agreement involve transfers to a non-party, but unlike "Change #3" where Ford and Lawson acknowledged the unlawfulness of their actions by noting that the transaction would, somehow, need to be "brought to the attention of the Court," the Ford/Gardner Agreement requires Ford and Gardner to keep it confidential and not disclose it to the Court or Plaintiff.¹⁰ Ford and Gardner even agreed that in the event their agreement violated the Status Quo Order, they would rescind their agreement, modify it, and then automatically reinstate it.¹¹ Thus, revealing they have no intention of purging their actions.

It is also important to note that just as Ford and Lawson refused to bring "Change #3" to the attention of this Court or the Plaintiff until months after it was executed and a wrongful title obtained, Ford willfully chose not to disclose

⁶ A copy of the "Ferrari 375 Plus Agreement" between Ford and Gardner is attached as Exhibit B.

⁷ Id.

⁸ Copies of the emails from Ferrari headquarters employees were attached as Exhibit 5 to the Affidavit of Tina Williams in support of Plaintiff's Motion for Temporary Restraining Order filed June 15, 2010 and are attached hereto as Exhibit C.

⁹ U.S. v. Gardner (1990), 894 F.2d 708.

¹⁰ Exhibit B.

the existence of the Ford/Gardner Agreement despite numerous opportunities to do so throughout the briefing on Plaintiff's first motion to show cause and two hearings, one of which Ford attended personally.

In fact, the Ford/Gardner Agreement was not disclosed to the Court or Plaintiff until September 5th, the day before depositions were set to begin. In light of the disclosure, depositions were cancelled. But by that time, Plaintiff had already flown to Cincinnati from Belgium and incurred substantial travel costs and expenses.

The Court has the authority to sanction Ford and Lawson pursuant to R.C. 2705.02(A) which states that a person guilty of "disobedience of, or resistance to, a lawful writ, process, rule, judgment, or command of a court or officer" may be punished for contempt.¹² The Ohio Supreme Court has long defined civil contempt as a sanction to enforce compliance with an order of the court.¹³ A court of common pleas has the inherent power to impose appropriate sanctions for a refusal to comply with its orders.¹⁴

Because Ford has again disobeyed this Court's order, he should be compelled, on an expedited basis, to appear and show cause as to why he should not be held in contempt. As a sanction for his repeated disobedience of this Court's orders and refusal to timely disclose evidence, Ford and Lawson should be required to reimburse Ms. Swaters and Mr. Pajot for their travel expenses, require that any deposition of Ms. Swaters or Mr. Pajot be taken in Belgium, and

¹¹ Id.

¹² In her first Motion to Show Cause, Ms. Swaters extensively briefed Ohio contempt law. Those same principles apply here.

¹³ *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, 58, 271 N.E.2d 815, 817.

¹⁴ *Mitchells Salon & Day Spa, Inc. v. Bustle* (2010), 187 Ohio App.3d 336, 343, 931 N.E.2d 1172, 1177.

award her attorneys' fees in having to bring a second Motion to Show Cause to the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following by e-mail and First Class U.S. Mail, postage prepaid, on this 21st day of September, 2011:

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