

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH LAUBER, et al.,

Plaintiffs,

Civil Action No.
09-CV-14345

vs.

HON. MARK A. GOLDSMITH

BELFORD HIGH SCHOOL, et al.,

Defendants.

**OPINION AND ORDER (1) GRANTING PLAINTIFFS' MOTION FOR DEFAULT
JUDGMENT ON DAMAGES, (2) GRANTING PLAINTIFFS' MOTION FOR
ADDITIONAL ORDER RELATING TO CONTEMPT ORDER, and (3) DENYING
SALAM KURESHI'S EMERGENCY MOTION TO STAY PENDING APPEAL**

I. INTRODUCTION

This matter is presently before the Court on (1) Plaintiffs' motion for default judgment on damages, (2) Plaintiffs' motion for additional order relating to the Court's June 19, 2012 order holding Kureshi and Belford High School in contempt, and (3) Defendant Salem Kureshi's motion to stay the contempt order pending appeal. The Court addresses each motion, in turn.¹

II. ANALYSIS

A. Plaintiffs' Motion for Default Judgment on Damages

Plaintiffs filed their motion for default judgment on damages on April 2, 2012. On June 20, 2012, the Court issued an opinion and order addressing – but not finally disposing of – the motion.² In the June 20 opinion, the Court rejected all but one of Kureshi's arguments as to why

¹ The Court notes that Kureshi has filed two notices of appeal in this matter. The Court discusses the impact of the notices of appeal on the Court's jurisdiction to decide the three motions presently pending before the Court as it addresses each of those motions below.

² The June 20 opinion adequately summarizes the pertinent facts; the Court does not repeat that

judgment should not be entered in favor of Plaintiffs in the amount sought by Plaintiffs (\$22,783,500). The one argument that the Court did not reject was Kureshi's argument that a portion of the 30,500 students for whom Plaintiffs seek a refund were already given refunds. The Court noted that Kureshi's assertion that a portion of the 30,500 students received refunds was, at that time "entirely unsubstantiated," but it afforded Kureshi "an opportunity to submit any admissible evidence he wishes" in support of his assertion. The deadline for submitting such evidence was July 5, 2012. Kureshi has not submitted any such evidence, and the deadline for doing so has long expired. Accordingly, the Court now grants Plaintiffs' motion for default judgment on damages, and awards damages to Plaintiffs in the full amount sought – \$22,783,500. A separate judgment shall issue.³

summary here.

³ As noted, Kureshi has filed two notices of appeal in this case. In one of them, Kureshi appeals the Court's order regarding Plaintiffs' motion for default judgment on damages, along with the Court's subsequent order denying reconsideration of that order. The Court is fully cognizant of the general rule that "[t]he filing of a notice of appeal is an event of jurisdictional significance" in that it generally "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982). However, an exception to the general rule is that the filing of a notice of appeal from a non-appealable order does not divest the district court of jurisdiction. See Cochran v. Birkel, 651 F.2d 1219, 1222 (6th Cir. 1981). The exception is applicable here.

Appellate courts have jurisdiction to review "all final decisions of the district courts of the United States." 28 U.S.C. § 1291. "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945). The Court's June 20 opinion regarding Plaintiffs' motion for default judgment on damages, although effectively holding that Plaintiffs will be entitled to some amount of damages arising from the claims on which Belford has been adjudged liable via the Court's April 6, 2012 order, did not "end the litigation on the merits" and "leave nothing for the court to do but execute the judgment" because the amount of damages to which Plaintiffs are entitled remained unresolved, necessitating further litigation in this Court on that issue. In other words, in issuing the June 20 opinion from which Kureshi seeks to appeal, the Court in no way "disassociate[d] itself from [the] case, see Swint v. Chambers County Commission, 514 U.S. 35, 42 (1995), as required to trigger Catlin; to the contrary, the posture of the case at the time was clearly such that further litigation remained necessary to finally resolve the issue of damages.

B. Plaintiffs' Motion for Additional Order

On February 6, 2012, the Court entered an order requiring Belford and Kureshi to pay Rule 11 sanctions to Plaintiffs by April 6, 2012. Belford and Kureshi failed to do so and, on June 19, 2012, the Court entered an order holding Belford and Kureshi in civil contempt for failing to pay the sanctions to Plaintiffs. As part of its contempt order, the Court ordered Kureshi to transfer various Belford domain names to Plaintiffs by July 16, 2012, unless Belford paid the Rule 11 sanctions prior to that time. The Court warned: "Failure to comply with this order will subject Belford and Kureshi to further sanctions including, without limitation, issuance of an arrest warrant and additional monetary sanctions." Subsequently, on July 26, 2012, the Court denied Kureshi's motion urging the Court to reconsider its decision to order the transfer of the domain names.

Because Kureshi neither paid the Rule 11 sanctions, nor effectuated the transfer of the

Nor is the June 20 opinion appealable under the collateral order doctrine. Under that doctrine, an order issued before the conclusion of the district court proceedings may be considered a final order and, therefore, immediately appealable. See generally Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). "The collateral order doctrine is best understood not as an exception to the 'final decision' rule laid down by Congress in § 1291, but as a 'practical construction' of it." Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867 (1994). Under the doctrine, appeals are permitted "not only from a final decision by which a district court disassociates itself from a case, but also from a small category of decisions that, although they do not end the litigation, must nonetheless be considered 'final.'" Swint, 514 U.S. at 42. To come within the doctrine, the order must satisfy three requirements; it must: (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action, and (3) "be effectively unreviewable on appeal from a final judgment." Will v. Hallock, 546 U.S. 345, 349 (2006) (quoting cases). The June 20 opinion fails the first element of the Will framework, as the opinion contemplated additional litigation relating to damages and did not finally resolve the issue.

For all these reasons, Kureshi's notice of appeal purporting to appeal the Court's June 20 opinion does not divest this Court of jurisdiction to issue the present order granting Plaintiffs' motion for default judgment on damages.

domain names by the Court's July 16, 2012 deadline, Plaintiffs filed a motion on July 24, 2012 "seeking an additional order directing certain domain registers and registries to transfer the six domain names to the Googasian Law Firm, P.C., for the benefit of the class, together with any additional relief or sanctions that the Court deems appropriate."⁴

Kureshi has filed a response to Plaintiffs' motion, in which he asserts three main arguments in support of his position that the motion should be denied. First, Kureshi argues that Plaintiffs' motion somehow "seeks to change [the Court's] contempt order in its entirety" because it seeks an order directed at third parties (the domain registries), ordering those parties to take action to effect the transfer of the domain names. The Court rejects this argument. The Court's contempt order orders Kureshi to transfer the specified domain names in the event the Rule 11 sanctions are not paid by a certain date. That contingency occurred here. Therefore, Plaintiffs are entitled to take steps to enforce the Court's order. That the contempt order did not discuss enforcement mechanisms is no matter.

Second, Kureshi argues that the Court should not order transfer of the domain names because Kureshi has proposed a "significant payment plan," which Kureshi asserts will benefit [the class] more than the transfer of the domains." The Court rejects this argument; the Court has already stated that it would not order Plaintiffs' to accept a payment plan in lieu of ordering

⁴ Kureshi has filed a notice of appeal appealing the Court's order holding him and Belford in contempt. Nevertheless, regardless of whether the Court's contempt order is immediately appealable under the collateral order doctrine – an issue on which this Court takes no position – this Court has the authority to adjudicate Plaintiffs' present motion under the well established rule that district courts retain jurisdiction, even after a notice of appeal is filed, to enforce an order already issued prior to the filing of the notice of appeal. See Nat'l Labor Relations Bd. v. Cincinnati Bronze, Inc., 829 F.2d 585, 588 (6th Cir. 1987) ("Although a district court may not alter or enlarge the scope of its judgment pending appeal, it does retain jurisdiction to enforce the judgment."). The Court is cognizant that courts, including the Sixth Circuit, "have drawn a crucial distinction between enforcement and expansion," *id.*, and is careful not to alter or enlarge the scope of its contempt order in adjudicating Plaintiffs' present motion for additional order in light of the intervening filing of a notice of appeal.

transfer of the domain names:

Kureshi urges the Court to permit him additional time to negotiate a payment arrangement before ordering him to transfer the domain names to Plaintiffs. Kureshi also argues that transfer of the domain names will greatly harm those Belford students who boast their Belford diplomas and interfere with their right to use the interactive services on Belford's website. This argument is too little, too late, as it comes only after Kureshi willfully violated the Court's sanctions order. The Court encourages Plaintiffs to negotiate a payment plan with Kureshi so that transfer of the domain names is unnecessary, but the Court does not order Plaintiffs to do so.

July 26, 2012 Opinion & Order at 2 n.1. The Court will not re-visit this ruling.

Third, Kureshi argues that the transfer of the domain names will harm certain members of the class, and other Belford students who are not members of the class, because Belford students will no longer have access to the "free verification services" available at Belford's website. The Court rejects this argument for three reasons. First, the argument is nonspecific because Kureshi does not explain precisely how Belford students would be harmed by the transfer of the domain names.⁵ Second, Kureshi's argument is unsubstantiated because Kureshi does not submit any evidence supporting his position that Belford students will suffer the kind of harm asserted. Finally, Kureshi's argument overlooks the facts that (i) Belford has been adjudged a sham, and (ii) Belford students are victims. The deprivation of purported benefits offered by a sham enterprise is not a cognizable "harm" for purposes of the present analysis.

For the reasons stated above, Plaintiffs' motion for an additional order is granted. Within five days of today's date, Plaintiffs shall submit to the Court a proposed order.

C. Kureshi's "Emergency" Motion for Stay Pending Appeal

Kureshi has filed an "emergency" motion asking the Court to stay its contempt order

⁵ Kureshi states that transfer of the domain names would result in Belford students being deprived "free verification services." Kureshi does not explain what this means, and the Court has no idea what that phrase means.

pending the Sixth Circuit's resolution of the matter on appeal.⁶ In addressing a request for a stay pending appeal, the Court balances the following four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987). These factors are not independent prerequisites, but rather are to be balanced against each other. Overstreet v Lexington-Fayette Urban County Gov't, 305 F.3d 566, 573 (6th Cir. 2002).

Regarding the first factor – likelihood of success on the merits – Kureshi argues that he has a strong chance for success before the Sixth Circuit because the Court made two mistakes in its contempt order. First, relying on United States v. Koblitz, 803 F.2d 1523, 1527 (11th Cir. 1986), Kureshi argues that the Court erroneously held him in contempt without first finding that he has the ability to comply with the underlying order. In that case, the Eleventh Circuit held:

A civil contempt order can only be upheld if it is supported by clear and convincing evidence that (1) the underlying order allegedly violated was valid and lawful, (2) the underlying order was clear, definite, and unambiguous, and (3) the contemnor had the ability to comply with the underlying order.

Id. at 1527 (citations and footnote omitted; emphasis added). Second, Kureshi argues that the Court's decision to order the transfer of the domain names was an "incorrect coercive measure."

Kureshi does not rely on any authority in support of his position; he states only:

The coercive measure added by the court in the form of the order to transfer the domain names to the plaintiffs is not appropriate and the court erred in adding this as a coercive measure. The domain names are essentially providing free verification services to thousands of international students and the total students of Belford University who are not even class members and the domain transfer

⁶ The Court has jurisdiction to decide Kureshi's motion to stay pending appeal notwithstanding his filing of a notice of appeal. See Rakovich v. Wade, 834 F.2d 673, 674 (7th Cir. 1987) (power of district court to grant stay of judgment pending appeal continues to reside in the district court until such time as the Court of Appeals issues its mandate).

would result in a suspension of a service for which they already paid. Hence this coercive measure is affecting a large number of people other than the defendant.

Kureshi Br. at 5-6 (Dkt. 231).

As to Kureshi's first argument, Plaintiffs' position is that the Court appropriately rejected Kureshi's inability-to-pay claim in two previous opinions. In those opinions, the Court relied on authority holding that it is the contemnor's burden to demonstrate inability to pay as a defense to a charge of contempt, and that Kureshi had failed to do so. See June 19, 2012 Opinion & Order at 3 n.2 (Dkt. 216); July 26, 2012 Opinion & Order at 2 n.1 (Dkt. 225). Regarding Kureshi's second argument, Plaintiffs state that transfer of the domain names was, and is, an appropriate coercive measure.

The Court agrees with Plaintiffs, and does not believe that further analysis of Kureshi's twice-rejected arguments is warranted or appropriate here. For the third time, the Court rejects those arguments. Kureshi still – to this day – has not offered any evidence in support of his inability-to-pay claim. Under Huber v. Marine Midland Bank, 51 F.3d 5, 10 (2d Cir. 1995), it was his burden to offer such evidence in defense to the Court's contempt charge. See also United States v. Bryan, 339 U.S. 323, 330 (1950) (“one charged with contempt of court for failure to comply with a court order makes a complete defense by proving that he is unable to comply”) (emphasis added); Nabkey v. Hoffius, 827 F. Supp. 450, 452 (W.D. Mich. 1993) (“The person found not to have complied with an order of the Court of which he had notice will be held in contempt unless he shows he was unable to comply after taking all reasonable steps within his power to do so”) (emphasis added).⁷ The Court believes that Kureshi was properly held in civil contempt, that the coercive measures taken by the Court were, and are, appropriate, and that

⁷ To the extent Koblitz, the case on which Kureshi relies, is in conflict with Huber, Bryan, and Nabkey, the Court declines to follow it.

Kureshi's likelihood of convincing the Sixth Circuit otherwise is slim. For these reasons, the Court agrees with Plaintiffs that the first Hilton factor – likelihood of success on the merits – weighs strongly in favor of denying a stay pending appeal.

Regarding the second Hilton factor – whether the party moving for the stay will suffer irreparable injury absent a stay – Kureshi argues the factor weighs strongly in favor of granting a stay:

The transfer of the domain names will result in an irreparable damage to the defendant. There is absolutely no doubt that once the order for the transfer of domain names is implemented then it will cause disruption in the business and the services the students are getting. Also with no specific order in place the plaintiffs would be free to use these domains for running defamation campaigns and tarnishing the business image. In a matter of few minutes from transfer of the domain names the whole business will be closed, the credibility would be lost and there won't be anything that could be done to bring it back. Also all the international students and the students of Belford University will suffer irreparably and would be affected without even being a part of this lawsuit. Hence, it is beyond any doubt that the defendants and a large number of students will suffer irreparably absent a stay.

Kureshi Mot. at 7 (Dkt. 231).⁸ For the reasons explained by the Court in its analysis of Plaintiffs' motion for additional order, above, the Court rejects Kureshi's argument that he will sustain irreparable harm resulting from the transfer of the domain names. Accordingly, the second element of the Hilton framework weighs in favor of denying a stay pending appeal.

As to the third element of the Hilton framework – whether issuance of the stay will substantially injure Plaintiffs – Kureshi argues that Plaintiffs cannot point to any injury they

⁸ Plaintiffs assert three arguments in response. First, they argue that Kureshi has not offered any evidence in support of his position that he and his business will sustain the harm described above if a stay is denied. Second, relying on Baker v. Adams County/Ohio Valley School Board, 310 F.3d 927, 930 (6th Cir. 2002) (noting that the “potential monetary damage does not constitute irreparable harm”), Plaintiffs argue that Kureshi will suffer, if anything, nothing more than monetary damages if a stay is denied, which Plaintiffs contend is insufficient to constitute irreparable injury. Third, Plaintiffs argue that “the harm Kureshi asserts results not from the Court's orders, but from Kureshi's flat and unjustified refusal to comply with those orders.” Pls. Resp. at 4 (Dkt. 234).

would sustain if a stay were granted. While Plaintiffs' brief does not contain any argument on this element of the framework, the Court notes that granting a stay will indirectly harm Plaintiffs by delaying the Court's effort to persuade Kureshi to come into compliance with the Court's order, which, if honored by Kureshi, would benefit Plaintiffs.

Regarding the final element of the Hilton framework – where the public interest lies – Kureshi argues as follows:

A large number of International high school students, all Belford university students and also a large number of class members will suffer greatly in the absence of a stay resulting in the transfer of domain names. Hence it can be safely established that a majority will benefit and no one will suffer.

Kureshi Mot. at 8. Plaintiffs respond:

The public interest weighs heavily in favor of denying a stay. The Court has already ruled that Kureshi, Belford and the other Defendants are liable to Plaintiffs for operating a criminal enterprise in violation of [RICO]. The public interest is not served by allowing a RICO criminal enterprise to continue operating while its conspirators seek a meritless appeal of a contempt ruling resulting from their willful violation of this Court's orders.

A stay will only delay the inevitable and permit Kureshi to continue to perpetrate fraud through the internet by deceiving others into believing they are buying, legitimate, accredited high school diplomas and college degrees that are, in reality, fake. Every day that goes by, victims are harmed by the scam.

Pls. Resp. at 5 (Dkt. 234). The Court agrees with Plaintiffs, and concludes that this factor weighs in favor of denying a stay.

Having balanced the Hilton factors, the Court concludes that they weigh strongly against granting a stay. Accordingly, Kureshi's motion for a stay of the Court's contempt order pending appeal (Dkt. 231) is denied.

III. CONCLUSION

For the reasons explained above, Plaintiffs' motion for default judgment on damages (Dkt. 205) is granted. A separate judgment will issue. Plaintiffs' motion for additional order

(Dkt. 223) is granted. Plaintiffs shall submit a proposed order within five days of today's date.

Kureshi's motion for stay pending appeal (Dkt. 231) is denied.

SO ORDERED.

Dated: August 31, 2012
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 31, 2012.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager