

**IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI**

TUNG CHAN)	
)	
Plaintiff,)	
)	Cause No. 08SL-CC02081
Vs.)	
)	Division No. 31
SHI QUAN LIN)	
)	
Defendant,)	

JUDGMENT AND ORDER

This matter comes before the Court on March 18, 2009 upon the Defendant's Motion for Contempt and Order to Show Cause filed herein and Request for Attorneys Fees Filed on or about March 9, 2009. With regard to those motions the Court makes the following Findings of Fact and Conclusions of Law and enters the following Orders:

Procedural Posture of the Case

1. On or about May 20, 2008 the Petitioner, Tung Chan filed a Petition against his business partner in the Limited Liability Corporation known as New Land Trading Company. The Petition sought inter alia, damages and other money judgments, and included a request for Injunctive Relief in the nature of a Temporary Restraining Order to halt operations of New Land Trading Company LLC and to appoint a Receiver to maintain the assets of the LLC. Shi Qhan Lin is the Defendant in the cause of action.¹

¹ Both parties speak English as a second language and both speak Cantonese. At each court appearance an interpreter has been utilized. The parties shared an interpreter at their own expense during the civil portions of the prior proceedings, however upon the hearing of the motion for contempt the Court provided an interpreter for Mr. Chan, as he was the defendant in the contempt motion.

2. On or about May 27, 2008 a Judgment and Order was issued granting the Temporary Restraining Order.
3. That Judgment and Order was modified on June 5, 2008, and again on June 11, 2008. The Temporary Restraining Order was continued on July 2, 2008.
4. On or about August 28, 2008 the Temporary Restraining Order was made permanent, and the Receiver, Brian Dunlop was appointed to operate the business New Land Trading Company and to preserve the assets thereof. The remaining non-equitable portions of the Petition were set for trial.
5. Thereafter, and at the request of the Receiver, the Court authorized the receipt of funds from the parties into the registry of the Court, and further authorized the payment of expenses of New Land Trading Company LLC.
6. On or about October 21, 2008 the parties agreed by consent to a) the voluntary dissolution of the Limited Liability Corporation New Land Trading Company and b) the sale of the remaining inventory.
7. On or about October 23, 2008, the Court heard evidence on Count IV, of the original petition for Assault. The Court has reserved ruling upon that matter until the matter is fully heard on all counts.
8. On or about November 21, 2008 the court approved an agreement of the parties to sell the inventory of New Land Trading Company to Plaintiff, Motion/Defendant, Tung Chan for the agreed amount of Forty-Four Thousand Dollars (\$44,000.00) such order required that the agreed

purchase price be paid into the registry of the Court within ten (10) days of November 21, 2008.

9. On or about January 9, 2009 the Defendant, Shi Quan Lin filed a Motion for Contempt upon the failure of Tung Chan to pay the agreed Forty-four thousand dollars (\$44,000.00) into the Registry of the Court.²
10. On January 22, 2009 an Order to Show Cause was issued and hearing set on February 13, 2009.
11. On February 23, 2009 the defendant, Lin filed a Motion to Enforce Settlement which motion was heard on February 27, 2009 by consent of the parties.
12. On February 27, 2009 the Court entered a Judgment and Order finding that the parties had entered into a partial settlement of the pending case and that the Plaintiff, Chan was ordered to pay the agreed Forty-four thousand dollars (\$44,000.00) into the registry of the Court within 5 days of the February 27, 2009 Judgment.
13. On March 6, 2009 the defendant, Lin filed a Motion for Contempt, Affidavit and Order to Show Cause against plaintiff Chan alleging inter alia a continuing and contemptuous failure to pay the Forty-four thousand dollars (\$44,000.00) into the registry of the Court.
14. The Contempt motion was heard in this court on March 18, 2009.
15. Throughout these proceedings the Plaintiff Tung Chan has been represented by counsel, Justin Summary, and Defendant, Shi Quan Lin has

² The November 21, 2008 Memo is not entitled Judgment and Order.

been represented by Counsel Karen Finley. Brian Dunlop has been appointed Receiver.

Findings of Fact

16. The Plaintiff Tung Chan had complete and full knowledge of both the settlement agreement of the parties entered on or about November 21, 2008 and the Order and Judgment of the Court entered on February 27, 2009.
17. On or after November 21, 2008 the Receiver conducted an auction of the Inventory of the former New Land Trading Company LLC.³
18. Plaintiff, Tung Chan was the prevailing, or highest bidder, with a bid of (\$44,000.00) Forty-four thousand dollars. No contingencies existed upon the successful bid as set out in this paragraph 17.
19. No party was under an obligation to bid, and the bidding was voluntary, and both parties agreed to the conduct of the auction.
20. Each of the memorandum referred to above in paragraph 15 required the Plaintiff, Tung Chan to pay Forty-four thousand dollars (\$44,000.00) into the registry of the Court.
21. As of this Date the Plaintiff, Tung Chan has and continues to fail to tender such amount to the registry of the Court.
22. As of December 1, 2008 the Plaintiff Tung Chan was financially able to comply with the Court's Judgment and Order.

³ Mr. Chan testified at the Motion for Contempt hearing that the parties Lin and Chan agreed to go into business together in 2007 and began the New Land Trading Company LLC. The LLC purchased a building which was mortgaged, and to which the parties may be personally liable. No evidence was presented to this court concerning the personal liability of the parties on the mortgage, beyond that of the LLC, and the court makes no finding concerning that matter. That matter is not before the court.

23. As of January 1, 2009 Plaintiff Tung Chan was financially able to comply with the Court's Judgment and Order.
24. As of February 27, 2009 Plaintiff Tung Chan was financially able to comply with the Court's Judgment and Order.
25. Plaintiff Tung Chan owns his residence which carries a Mortgage thereon in the approximate amount of Two hundred thousand Dollars, (\$200,000.00).
26. Plaintiff Tung Chan is currently unemployed, having resigned from his former place of employment in the fall of 2008.
27. Plaintiff Tung Chan is married, and his spouse works outside of the home six hours per day, five days per week. There are two children born of the marriage, both are in school. Plaintiff Chan owns two automobiles, a Honda, a Lexus, and a pick up truck.
28. On March 18, 2009, Plaintiff Tung Chan held Twenty to Thirty thousand Dollars in cash on hand at the time of the Hearing on the Motion for Contempt.
29. The Plaintiff advances no facts of justification on his behalf to explain the failure to abide by the Courts Judgment and Order of February 27, 2009 nor the agreement of the parties of November 21, 2008.
30. More than Five (5) days have elapsed since the entry of the Court's Judgment and Order of February 27, 2009.

Conclusions of Law

31. The Court's Judgment and Order of February 27, 2009 was after that date, and remains in full force and effect, and has not been challenged by any party.
32. The Court had jurisdiction and authority to enter the Order on February 27, 2009 following hearing upon proper notice to all parties, and the same order was and remains a valid order of the Court.
33. The Plaintiff, Tung Chan has had adequate and full notice of the Court's Judgment and Order of February 27, 2009 through his counsel and by his appearance in this Court upon Motions including the instant Motion for Contempt concerning the same Order.
34. At the March 18, 2009 Hearing upon the Motion for Contempt, the Plaintiff Tung Chan exercised his right to counsel as guaranteed by the United States and Missouri Constitutions.
35. That subsequent to the issuance of said judgment, Tung Chan with full and complete knowledge of said Judgment, has willfully failed and refused to comply with its terms by not paying into the Registry of the Court Forty-four thousand dollars (\$44,000.00)
36. The Plaintiff Tung Chan's failure to pay the Judgment and Order of February 27, 2009 is without cause or justification.
37. The Plaintiff Tung Chan has consciously, and purposely placed himself in a position where he could not pay the Judgment and Order, with readily

available liquid assets, and he divested himself of assets, voluntarily left employment, refused to seek employment, and he did so intentionally with the purpose of frustrating enforcement of the court's order placed himself in a position of dissipating assets for the purpose of evading and Judgment and Order of February 27, 2009. *Hunt v. Moreland*, 697 S.W.2d 326, 328 (Mo. App. 1985).

38. The Plaintiff Tung Chan's failure to comply with the Judgment and Order of February 27, 2009 is indirect or constructive Civil contempt as it is a challenge to the Court's authority and process but also fails to accord Defendant Lin the benefit of the previous agreement of the parties, and the February 27, 2009 Order and Judgment of the Court.⁴ *State ex rel Tyrone Burrell-El Relator, v. Autrey*, 752 S.W.2d 895 (Mo.App.1988), *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 578 (Mo.banc 1994) *Teefey v. Teefey*, 533 S.W.2d 563, 565 (Mo.banc 1976). *See In re Marriage of Hunt*, 933 S.W.2d 437, 448 (Mo.App. 1996). "We must rather look to the substance of the order to determine its true nature." *Id.* at 448. "The distinction between criminal contempt and civil contempt is not always clear and '[t]here can be contempts in which both civil and criminal elements appear.'" *Ex parte Ryan*, 607 S.W.2d 888, 890 (Mo.App. 1980) (quoting *State ex rel. Jarboe v. Holt*, 444 S.W.2d 857, 860 (Mo.banc 1969)). "Although at times the line is hard to draw, the essential difference lies in who is sought to be protected by the contempt proceeding." *Teefey*, 533 S.W.2d at 565-66 (quoting *Mechanic v. Gruensfelder*, 461 S.W.2d 298, 304 (Mo.App. 1970)). *See Mummert*, 887

⁴ It is the Plaintiff Tung Chan's disregard for the authority of the court which is most substantially at issue herein; however, the satisfaction of the Judgment and Order is important, if not central to, the protection of the integrity of the court's authority herein.

S.W.2d at 578.

38. This Court has the authority to punish as for criminal contempt persons guilty of inter alia, the willful disobedience of any process or order lawfully issued or made by it. *§ 476.110.4 RSMo(2008)*
39. The Plaintiff Tung Chan has the present ability to pay the judgment amount of Forty-four thousand Dollars (\$44,000.00) as he did on February 27, 2009 and for the five days following that date. *In re Brown*, 12 S.W.3d 398, 400 (Mo. App. E.D. 2000);
40. On October 21, 2008 New Land Trading Company LLC, was dissolved by consent of the parties, the members of the LLC. Plaintiff Chan, and Defendant, Lin.

Order and Judgment

It is therefore ORDERED, ADJUDGED AND DECREED, that Tung Chan is guilty of contempt of this Court because of said refusal to comply with the court's Order and Judgment of February 27, 2009 by his failure to pay Forty-four Thousand dollars into the registry of the Court, and that he be committed to the custody of the Saint Louis County Jail until such time as he has purged himself of this contempt by depositing Forty-four thousand dollars (\$44,000.00) into the Registry of this Court, or is otherwise released according to law.

This Order shall be STAYED until June 15, 2009, to allow sufficient opportunity for the translation of this Order by the Court appointed interpreter for Plaintiff, Tung Chan.

SO ORDERED:

Mary Elizabeth Ott, 35302
Judge, Div. 31 Date:

CC: All Parties of Record:

Karen Finley, Attorney for Mr. Lin

Justin Summary, Attorney for Mr. Chan

Brian Dunlop, Receiver.

Certificate of Service

A copy of the foregoing mailed the _____ day of _____ 2009 to: Karen Finley, Attorney for the Respondant, Shi Quan Lin at 3801 Connecticut Avenue, Suite 400 Saint Louis Missouri 63116, Justin Summary, Attorney for the Plaintiff Tung Chan at 4931 Lindell Boulevard, Saint Louis, Missouri 63108, Brian Dunlop, Receiver, at 7905 Forsyth Avenue, Clayton, Missouri 63105 by United States mail postage prepaid.

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WARRANT AND ORDER FOR COMMITMENT

NOW, on the 24th day of April 2009 having come on for hearing on March 18, 2009 the Motion for Contempt and Order to Show Cause filed on March 6, 2009 and personally served on Respondent thereafter to compel Respondent to pay Forty four thousand dollars (\$44,000.00) as heretofore ordered by the Court, Petitioner Tung Chan appearing in person and Respondent Shin Quan Lin appearing in person, and with their attorneys and the Receiver herein, Brian Dunlop,

Whereupon the cause having been submitted to the Court for hearing and upon hearing the evidence adduced, the Court did find that the Petitioner has failed to pay (\$44,000.00) Forty-four thousand dollars to the Registry of the Court on or before March 4, 2009 as heretofore ordered by the Court in its Judgment of February 27, 2009, and that by reason therefore, is in contempt of court, the Court further finding that the Petitioner Tung Chan has the present financial ability to comply therewith,

It is therefore ORDERED, ADJUDGED and DECREED that the person of the Petitioner Tung Chan be attached and that he be committed to the custody of the Sheriff of Saint Louis County, Saint Louis County Department of Justice Services, State of

Missouri, for contempt for his failure to pay (\$44,000.00) Forty-four Thousand dollars to the Registry of the Court on or before March 4, 2009, and that he remain in custody until he complies with the aforesaid order of the Court by paying the (\$44,000.00) Forty-four Thousand dollars to the Registry of the Court or is otherwise released according to law.

This Order shall be STAYED until June 15, 2009, to allow sufficient opportunity for the translation of this Order by the Court appointed interpreter for Plaintiff, Tung Chan.

SO ORDERED:

Mary Elizabeth Ott, 35302
Judge, Div. 31 Date:

CC: All Parties of Record:

Karen Finley, Attorney for Mr. Lin

Justin Summary, Attorney for Mr. Chan

Brian Dunlop, Receiver.

Certificate of Service

A copy of the foregoing mailed the _____ day of _____ 2009 to: Karen Finley, Attorney for the Respondant, Shi Quan Lin at 3801 Connecticut Avenue, Suite 400 Saint Louis Missouri 63116, Justin Summary, Attorney for the Plaintiff Tung Chan at 4931 Lindell Boulevard, Saint Louis, Missouri 63108, Brian Dunlop, Receiver, at 7905 Forsyth Avenue, Clayton, Missouri 63105 by United States mail postage prepaid.