

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT

CASE NO.: 2D23-1977
L.T. No.: 22-CC-2697

SAMEH MOHAMED S. OSMAN A/K/A
SAMEH OSMAN
Appellant/ Petitioner,
vs.
Whitburn LLC and
Newport Properties, Inc.
Appellees/ Respondents.

MOTION FOR CONTEMPT
VIOLATION OF STAY

NOW COMES, SAMEH OSMAN (Third Party Purchaser, Quasi- Party) by and through the undersigned attorney who files this Response to both Defendant Newport Properties Inc. and their attorney Matthew Wolf, FBN. Renewed Motions to Disburse Surplus Funds and states as follows:

1. Rule 9.130 (f), Florida Rules of Appellate Procedure states:
(f) Stay of Proceedings. In the absence of a stay, during the pendency of a review of a nonfinal order, the lower tribunal may proceed with all matters, including trial or final hearing, except that 71 January 1, 2024 Florida Rules of Appellate Procedure the lower tribunal may not render a final order disposing of the cause pending such review absent leave of the court.
2. This cause has been stayed since the filing of the Notice of Appeal in this County Court cause since 09/14.2023, Number 109 on the Clerk of Court's Docket.

3. The Order relied on in the above motions is filed as item 110 on the Clerk of Court's docket and therefore not rendered until after the Notice of Appeal and is subject to the Rule 9.130 stay.

4. That stay remains in effect in this matter until the Second District Court of Appeal issues a Mandate in the cause.

5. The above have violated the Appellate Court's stay on the following occasions for a matter that would render a final order disposing of the cause for which no leave had been granted by the Second District Court of Appeal.

- a. Defendant Newport Properties Inc. during stay period filed:
 1. 2/16/2024 Item 141, Clerk's Docket
Renewed Motion to Disbursement of Surplus Funds to Owner
 2. 2/22/2024 Item 142 Clerk's Docket
Notice of Hearing on above motion for hearing date February 29th 2024
 3. Hearing on February 29th, 2024, heard by the court.
By objection the court noted that the matter was stayed so no court action was taken.
 4. 3/8/2024 Item 144 Clerk's Docket, Notice of Continued Hearing on Motion to Disburse Funds for hearing on April 2nd 2024.
 5. Hearing on April 2nd, 2024 was heard by the court. By objection the court noted that the matter was stayed so no court action was taken.
 6. 5/3/ 2024 Item 149 Clerk's Docket Notice of Hearing for May 24th, 2024
Requested to reset hearing denied by Matthew Wolf, Esq.

6. An Order to Disburse Surplus Funds would be a Final Order in this cause. The County Court does not have the ability to issue a Final Order during the time the stay as that would be the final Order of this cause is in effect through the Second District Court of Appeal. Violations of the stay may be held in contempt. See following excerpt from Florida Bar Journal Article and Citations.

From: Dorothy F. Easley, APPELLATE STAYS IN CIVIL CASES: FLORIDA AND FEDERAL COURTS OFFER MORE SECURITY FLEXIBILITY THAN BELIEVED, BUT SAY VIOLATIONS STILL HAVE TEETH, FLORIDA BAR JOURNAL, VOL. 86. No 10 December 2012.

Website citation: <https://www.floridabar.org/the-florida-bar-journal/appellate-stays-in-civil-cases-florida-and-federal-courts-offer-more-security-flexibility-than-believed-but-stay-violations-still-have-teeth/>

Violations of Appellate Stays

Beyond the financial security context, appellate stays also have “teeth” in the appellate courts. Anyone who violates a stay may be charged with civil contempt, and this includes not only the plaintiff or defendant, but also counsel and the judge of a case.⁴⁴ This disobedience is considered to be in contempt of an appellate court’s lawful authority.⁴⁵ The power to punish for contempt exists independent of any statutory grant of authority because it is deemed to be so essential to the execution and maintenance of judicial authority and the appellate process.⁴⁶

When a person violates a stay, he or she may be charged with civil contempt and punishment will follow. To be charged with contempt for violation of a stay, the stay must be clear and unambiguous.⁴⁷ An aggrieved party need not prove intent of violation as long as the stay is clear as to its effect and operation.⁴⁸ Civil contempt is used as a remedy when the person violating the stay is a party to the suit, including an attorney or the judge involved in the action.⁴⁹ When the offender is *ex parte* but has full knowledge of the stay in violating it, then the action is considered “in contempt of the power and the dignity of the court,” and contempt charges may follow.⁵⁰

If a person is involved in a lawsuit as counsel or as the judge, he or she is not immune from contempt for violating a stay. In *State ex rel. Schwartz v. Lantz*, 440 So. 2d 446 (Fla. 3d DCA 1983), the Third District Court of Appeal explained that it could find a trial court judge in contempt for *unintentionally* violating a clear and unambiguous stay order of which he

was aware.⁵¹ The appellate court decided not to charge the trial court judge in contempt because it was sure he would never act “so imprudently” again. The judicial sanctions in civil contempt proceedings may have either or both of the following purposes.⁵² First, these sanctions may be used to coerce the person who violated the order into obeying the order. When the court imposes sanctions to make a party comply, the court will use its discretion, considering the character and magnitude of the harm threatened by continued disobedience and the “probable effectiveness of any suggested sanction in bringing about the result desired.”⁵³ These sanctions may also be used to compensate the aggrieved party for the losses he or she sustained. In that case, the fine would be payable to the aggrieved party — not the court. When imposing a fine for contempt, the court considers “the amount of defendant’s financial resources and the consequent seriousness of the burden to that particular defendant.”⁵⁴

⁴⁴ See, e.g., *State ex rel. Schwartz v. Lantz*, 440 So. 2d 446, 448 (Fla. 3d DCA 1983).

⁴⁵ *United Mine Workers of Am.*, 330 U.S. at 294.

⁴⁶ See *Ducksworth v. Boyer*, 125 So. 2d 844, 845 (Fla. 1960); see also *In re Hayes*, 73 So. 362, 365 (1916) (recognizing inherent power of Supreme Court, independent of statutory authority, to punish for contempt of court).

⁴⁷ See *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16 (1st Cir. 1991) (“[C]ivil contempt will lie only if the putative contemnor has violated an order that is clear and unambiguous.”); *Lantz*, 440 So. at 448.

⁴⁸ See, e.g., *Lantz*, 440 So. 2d at 448.

⁴⁹ *Garrigan v. United States*, 163 F. 16, 19 (7th Cir. 1908) ; see also *id.* at 446.

⁵⁰ *Garrigan*, 163 F. at 19.

⁵¹ *Lantz*, 440 So. 2d at 450.

⁵² *United Mine Workers of Am.* , 330 U.S. at 303-04.

⁵³ *Id.*

⁵⁴ *Id.*

WHEREFORE, Sameh Osman, Movant prays that this Honorable Court will stay the issuance of the Mandate until this matter is heard and sanction, fine Defendant and/or its attorney, award movant attorney fees and further provide remedy to prevent the Defendant Newport Properties, Inc. and attorney Matthew Wolf, FBN 92611, for past violations of this court's stay and in the future, with further remedy as may be justiciable.

I hereby certify that this document has been printed in the Ariel 14 font and converted to a PDF/A document.

/s/ _Electronically signed_
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing have been sent by electronic mail (E-mail) to the following: (1) Erik De L' Etoile, Attorney for Plaintiff, De L' Etoile Law Firm, P.A. , 10150 Highland Manor Dr., Site 200 Tampa, FL 33610, (813) 563-5025, email at: Erik@Deletoilelaw.com and (2) Matthew D. Wolf, Esq., Ivanov & Wolf, Attorney for Defendant, 3310 Cypress Street. Suite 206, Tampa, FL 33607. (813) 870-6396, email at Matt@IWFirm.com, as has been designated in the Florida E-Filing Portal, this 23rd day of May , 2024.

/s/ _Electronically signed_
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