UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 00-08986-CIV-JORDAN

UNITED STATES OF AMERICA,)
Plaintiff)
vs.)
RAYMOND GRANT AND ARLINE GRANT,)
Defendants)

ORDER ON MOTION FOR ORDER TO SHOW CAUSE

The United States filed this action to collect millions of dollars in federal taxes owed by Mr. and Mrs. Grant. On March 31, 2003, I entered a final judgment against Mr. and Mrs. Grant in the amount of $36,280,939.43. After the entry of the judgment, the government moved to repatriate funds held in two offshore trusts. I granted the motion for repatriation, as recommended by Magistrate Judge Klein, and ordered Mrs. Grant[1] to appoint a trustee in the United States for the two offshore trusts or, in the alternative, to repatriate the assets held in these trusts. Pending is the government's motion for Mrs. Grant to show cause why she should not be held in contempt, arguing that Mrs. Grant has not complied with the repatriation order. For the reasons set forth below, the government's motion [D.E. 120] is DENIED.

It is well settled that courts have the inherent power to enforce compliance with their orders through civil contempt. A party seeking civil contempt "bears the initial burden of proving by clear and convincing evidence that the alleged contemnor has violated an outstanding court order." *See Commodity Futures Trading Com'n v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1529 (11th Cir. 1992). After a showing of a violation has been made, the burden "shifts to the alleged contemnor, who may defend his failure on the grounds that he was unable to comply." *Id. See also*

[1] Mr. Grant had passed away by the time I entered the repatriation order.

United States v. Rylander, 460 U.S. 752, 757 (1983) ("Where compliance with a court order is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action").

The government argues that Mrs. Grant has failed to comply with the repatriation order. I conclude, however, that Mrs. Grant has sufficiently established that she is not able to comply with this order.

Mrs. Grant has made significant efforts to repatriate the funds to the United States, either directly to her or to a U.S. trustee, to no avail. For example, on January 17, 2006 - less than a month after the repatriation order was issued, she sent a letter to the Jersey trustee, enclosing the repatriation order and seeking information about the procedure to repatriate funds. The government correctly notes that this letter was not an actual petition to repatriate funds. But the Jersey trustee's lawyers made clear that any such petition would be futile. In their response to Mrs. Grant's letter, the trustee's lawyers informed her

> that any attempted exercise by you of your right to remove our client as trustee of the Trust and to appoint US resident trustee in its place would not be a valid exercise of [Mrs. Grant's power as trust beneficiary] and would therefore be void and of no effect, which means that our client will remain the trustee of the trust, notwithstanding your attempted exercise of your power.

See February 6, 2006, Letter to Mrs. Grant [D.E. 120-2].

The Jersey trustee's lawyers based this conclusion on the trustee's purported obligation to protect the interests of "other beneficiaries who will become entitled to the Trust assets following [Mrs. Grant's] death." *See id.*

Mrs. Grant also contacted the trustee for the Bermuda trust. *See* January 17, 2006, Letter to the Bank of Bermuda [D.E. 120-2]. But her letter met with a similar response:

> The Trustees of the above trust have considered your request to transfer the entire trust fund to you. We wish to advise that at this time we cannot comply with your request.

See December 13, 2007, Letter to Mrs. Grant [D.E. 122].

Similarly, Mrs. Grant sent letters to various financial institutions, asking them to serve as transferee trustees. But all her requests have been rejected in part because of the possibility that the offshore trustees will fight any attempt to repatriate. *See e.g.*, November 26, 2007, Letter to Mrs. Grant from Tompkins Investment Services [D.E. 122] ("We believe legal fees impede us from accepting these trusts. Legal fees will run in areas of defending the IRS ruling but also we would request a full accounting from the prior trustees.").

I understand that it has been more than two years since the repatriation order was issued and that the funds had not yet been repatriated. But this failure is not for a lack of effort. I am reluctant to fault Mrs. Grant for her trustees' denial of her requests to repatriate the funds.

Accordingly, I find that Mrs. Grant has sufficiently established that she is not able to repatriate the offshore funds and deny the motion for an order to show cause.

DONE and ORDERED in chambers in Miami, Florida, this 27th day of May, 2008.

Adalberto Jordan
Adalberto Jordan
United States District Judge

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