

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	CASE NO. 2019 CV 05444
Plaintiff,	:	JUDGE RICHARD S. SKELTON
v.	:	
DARREN POWLETTE, et al.	:	REPLY IN SUPPORT OF ITS BENCH BRIEF FOR DAMAGES EXCEEDING THE STATUTORY GUIDELINES
Defendants.	:	

MEMORANDUM

I. Introduction

Now comes Plaintiff, Miami Township Board of Trustees (“Plaintiff”), by and through counsel, and hereby submit its Reply in Support of its Bench Brief for Damages Exceeding the Statutory Guidelines (“Bench Brief”) filed on June 30, 2022. Plaintiff incorporates by reference the facts, law, and argument in its Bench Brief as if fully restated herein. The Bench Brief provides this Court with a wide spectrum of case law and more than enough legal authority to issue substantial sanctions to coerce the contemnor into compliance with its December 29, 2021, Order and Permanent Injunction (“Order”). To do otherwise, would certainly end in but one result—continued use of the barn for celebratory events in contravention of the zoning ordinance.

II. Defendant Powlette has Committed Contempt by Violating this Court’s Order, and Demonstrated his Intent to Continue to do so in the Future

Disingenuous: adjective. Not sincere, especially when you pretend to know less about something than you really do. Oxford Dictionary.

Defendants post hearing brief is replete with disingenuous arguments that Mr. Powlette should be excused from his repeated and intentional violation of this courts December 29, 2021 order because he was (1) under the “mistaken impression” he was permitted to operate while the matter was on appeal, and (2), he did not charge a fee. Nonsense.

Setting aside for the moment whether the fee was a predicate (which it was not) for the sought after and obtained injunction precluding weddings, receptions and other celebratory events, Mr. Powlette did in fact admittedly rent the venue for four celebratory events at the subject venue **for a fee** subsequent the issuance of the court order, and prior to the show cause hearing. Mr. Powlette further admitted that there are at least four more for events scheduled this year for which he has accepted a rental fee. On at least two occasions **he accepted the fee and scheduled** the events **after** the court issued its order. Exhibit 4 was admitted at the hearing. The exhibit consists of the eight Stoney Hill Farms “Rental Agreements” for 2022 that Mr. Powlette has admitted to. Each “rental” agreement provides for a “Total Rental Fee”. Based upon those agreements he has accepted a total of \$38,000 in fees to date for various celebratory events being held in violation of this Court’s Order. He charged a fee and accepted a fee. It was only after the Motion to Show Cause was filed, disclosing his contemptuous conduct, that Mr. Powlette, purportedly began returning some of the payments, one of which he admitted was issued on the morning of the hearing. This after the fact mea culpa, in no way alters the fact he unequivocally charged rental fees with the expectations to keep them on four occasions to date and has taken additional fees for future events which have not been returned.

His claimed “mistaken impression” argument is equally specious. Mr. Powlette has been represented by counsel throughout the course of this litigation. On January 25, 2022, his counsel filed a motion to stay the enforcement of the injunction. Clearly counsel knew his client could not

continue to operate while the matter was on appeal, otherwise there would be no need for the motion to stay. Presumably counsel consulted with his client to explain the reason why such a motion was necessary, and to obtain the clients permission to incur the expense. At a minimum, Mr. Powlette could and should have asked his lawyer whether he could continue to operate. If he did ask, he knew the answer, and did not care. If he did not ask, it was only because he did not want to know, as he intended to move forward with the events despite this Court's Order to the contrary. Simply stated, there was no "mistake", rather Mr. Powlette made a calculated decision to disregard the authority of this court in the hopes he would not get caught.

The Ohio Supreme Court summarized civil contempt as follows:

Contempt of court is defined as disobedience of an order of a court. It is *conduct which brings the administration of justice into disrespect*, or which tends to embarrass, impede or obstruct a court in the performance of its functions.

The *purpose of contempt proceedings is to secure the dignity of the courts* and the uninterrupted and unimpeded administration of justice.

The purpose of sanctions in a case of civil contempt is to compel the contemnor to comply with lawful orders of a court, and *the fact that the contemnor acted innocently and not in intentional disregard of a court order is not a defense to a charge of civil contempt.*

(Emphasis added.) *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 271 N.E.2d 815, paragraphs one through three of the syllabus. There is no doubt Mr. Powlette disobeyed this Court's December 29, 2021. He has conducted four events for a fee. Even if Mr. Powlette were operating under the "mistaken impression," it is no defense, and he is guilty of contempt. Moreover, based upon the evidence there was no mistake; rather Mr. Powlette has demonstrated an intentional disregard of this Court's Order to date, and has admitted he plans to violate the order in the future. As such, it is appropriate in this case that the sanctions be substantial in order compel Mr. Powlette to comply with this Court's Order.

III. Sanctions

As set forth in Plaintiff's Bench Brief, this court has the inherent authority to fashion whatever remedy it deems appropriate to compel compliance with its orders. This case does not involve an innocent mistake or misunderstanding despite the disingenuous claims to the contrary. Mr. Powlette knew on December 29, 2021, that he could no longer conduct weddings, receptions, graduation parties or other celebratory events on subject property. While the Township disputes that that order only applies to events for which a fee is charged, with respect to the four past events, and the four future events for which there are existing rental agreements, it is clear Mr. Powlette intentionally ignored the court's injunction and allowed four events to occur and intends to continue to violate the order by allowing at least four future events. On at least two occasions since the order was issued, he has agreed to rent the venue, and accepted the rental fee in direct contravention of this Court's lawful authority. For the foregoing reasons, Miami Township respectfully suggests the following as an appropriate sanction:

(1) Impose significant fines against Defendants. Keeping mind that the purpose behind the contempt proceeding is to secure the dignity of the courts, the fine should be substantial despite Mr. Powlette's claimed last minute return of funds to certain select renters. He should not be rewarded for doing something he should have done after the court issued its decision: notify the renters the events were being cancelled and return the fee. His intent all along was to ignore the Court's Order and rent the venue for a fee. His subsequent decision to refund to some renters was done in hopes of leniency which is not warranted due to his callous disregard for this Court's authority.

(2) Order Mr. Powlette to immediately notify all remaining renters that he has been found in contempt of court, and as such is required to cancel all for future events. Further order Mr.

Powlette to immediately refund all fees and other expenses paid back to the renters, and to provide the court and counsel with each renters contact information so that cancellations and reimbursements can be confirmed.

(3) Award of attorney fees and expenses incurred by the Township in pursuing the Motion To Show Cause; and

(4) Issue an order that further violations of the court order will result in incarceration in the county jail.

It is our belief that nothing Plaintiff has asked of this Court is punitive in nature. Rather, it is coercive. Simply put, Defendants Post Brief and Mr. Powlette's own testimony are all you need to reference to prove these sanctions necessary. As stated by the Ohio Supreme Court, "the fact that the contemnor acted innocently and not in intentional disregard of a court order is not a defense to a charge of civil contempt." Mr. Powlette has not acted innocently. He fully admitted that if not for the hearing and his attorney counseling him to return the money, Mr. Powlette would still be accepting deposits and hosting celebratory events. Thus, we request that this Court impose any and all sanctions it deems necessary including, but not limited to, the ones enumerated herein.

Respectfully submitted,

/s/ Edward J. Dowd

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2022, I electronically filed the foregoing with the Montgomery County Clerk of Courts, which will send notification of such filing to the following:

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