

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

CIVIL DIVISION

MIAMI TOWNSHIP	*	CASE NO. 2019 CV 05444
BOARD OF TRUSTEES,	*	
	*	JUDGE SKELTON
Plaintiff,	*	
	*	
-VS-	*	DEFENDANTS' POST HEARING
	*	BRIEF
DARREN POWLETTE, et al.,	*	
	*	
Defendants.	*	

Now come Defendants, by and through Counsel, and hereby submit the following Post-Hearing Brief in response to Plaintiff's Motion to Show Cause.

Respectfully Submitted,

/s/ Gregory S. Page
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Attorney for Defendants

MEMORANDUM

Defendants should not be held in contempt of Court because their actions were not a knowing violation of the Court's Order. First, Defendants were under the mistaken impression that they were permitted to operate while the matter was on appeal to the Second District Court of Appeals. This was admittedly an error on the Defendants part, but, nonetheless, offers explanation for the action. Second, Defendants did not lease, rent or operate the barn "for a fee." The injunction Order plainly states that the barn cannot be "leased, rented, or otherwise operated for a fee." If the barn was not leased, rented or operated for a fee, then there is no violation of this Honorable Court's Order.

At the hearing Powlette testified that he had reimbursed all deposits placed with him for any event that occurred after the Court's Order went into effect in late December 2021. There was no evidence submitted by the Plaintiff that disputed or refuted Powlette's testimony. Attached hereto as Exhibit A are copies of the four checks written to the persons who had deposited funds with Powlette and had an event since the Court's order went into effect. Attached hereto as Exhibit B is a bank statement showing that at least two of those checks have already been cashed. The remaining two checks were sent to the parties when Powlette secured the appropriate addresses. Powlette is waiting for those checks to clear. Once those checks clear, Powlette shall supplement the record with those cancelled checks if the Court desires such proof.

At this point in time, Powlette testified that he has obtained no monetary gain from hosting any event at the barn since the Court's Order went into effect. This testimony was also undisputed. Combining Powlette's testimony with the documents being presented herein, it is

clear that Defendants have not leased, rented, or operated the barn for a fee in violation of this Court's order.

Nonetheless, if the Honorable Court makes the determination that a violation of the injunction order did occur. Defendants assert that this Court should be guided by the provisions of R.C. 2727.12.

R.C. 2727.12 provides: "Upon being satisfied, by affidavit, of the breach of an injunction or restraining order, the court or judge who issued such injunction or order may issue an attachment against the guilty party who shall pay a fine of not more than two hundred dollars, for the use of the county, make immediate restitution to the party injured, and give further security to obey the injunction or restraining order. In default thereof, said party may be committed to close custody until he complies with such requirement, or is otherwise discharged."

If the actions of the Defendants constitute a breach of the injunction issued by the Court, then R.C. 2727.12 ought to guide the Court in its deliberations. In this case, a fine of not more than \$200.00 may be issued by the Court. Plaintiff did not present any evidence regarding restitution. As such, that portion of the statute relating to "restitution to the party injured" does not appear to apply in this case. Finally, the Court could order the Defendants to give "further security" to obey the injunction. Counsel would submit that Powlette subjecting himself to the further ire of this Court would be a sufficient deterrent. However, if the Court determines "further security" is appropriate, then the Defendants shall comply.

Plaintiff has argued that the Defendants should be held in contempt of Court pursuant to R.C. 2705.01, et seq. The Supreme Court, in Windham Bank v. Tomaszczyk (1971), 27 Ohio St.2d 55, 56 O.O.2d 31, 271 N.E.2d 815, paragraph one of the syllabus, wrote:

"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."

Defendants submit that they did not knowingly disobey the Court's Order and certainly did not intend to embarrass, impede or obstruct the Court in the performance of its functions. To be sure, there is more than ample clarity now that using the barn for a fee while the case is under appeal is simply not permitted. In light of this, Defendants have completely and totally disgorged themselves of any monies deposited with them for any events that have occurred in 2022. They will not risk the prospect of angering this Court by using the barn for a fee while the injunction order is in place. R.C 2705.05 provides more than sufficient deterrent for any future violation, e.g., up to 60 days in jail for a second violation.

Defendants have received no economic benefit from the events hosted in 2022. This was the result Plaintiff sought, to make absolutely certain that Powlette cannot financially benefit from using the barn. In this regard, Plaintiff has accomplished its mission. To further punish the Defendants would serve no useful purpose other than vengeance. Plaintiff's request for "substantial fines" in addition to the already disgorged deposits is an act of vengeance, not the rule of law.

Defendants respectfully request that this Court determine that no knowing violation of its order occurred. Defendants further respectfully request that if this Court concludes a violation of the injunction did occur, that it be guided by the provisions set forth in R.C 2727.12.

Respectfully Submitted,

/s/ Gregory S. Page

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Certificate of Service

I hereby certify that the foregoing was served upon all Counsel of Record via the Montgomery County Clerk of Courts E-Filing system on this 8th day of July 2022.

/s/ Gregory S. Page

Gregory S. Page (0065264)

Greg Page

From: Greg Page <gregpage1010@icloud.com>
Sent: Friday, July 8, 2022 8:01 AM
To: Greg Page



Sent from my iPhone

Greg Page

From: Greg Page <gregpage1010@icloud.com>
Sent: Friday, July 8, 2022 8:00 AM
To: Greg Page



Sent from my iPhone

Greg Page

From: Greg Page <gregpage1010@icloud.com>
Sent: Friday, July 8, 2022 8:01 AM
To: Greg Page
Subject: IMG_1667-preview.pvt



Sent from my iPhone

Greg Page

From: Greg Page <gregpage1010@icloud.com>
Sent: Friday, July 8, 2022 8:01 AM
To: Greg Page



Sent from my iPhone

9:45

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Details

JULY 7

THURSDAY

Electronic Image #101
x3425

5,600.00

STONEY HILL FARM
7767 UPPER MIAMISBURG RD
MIAMISBURG, OH 45342

CST 6145520

101
50-210/422

June 29, 2022
Date

Pay to the
Order of *Jonny Lane* \$ *5600.00*
Fifth Third Bank Dollars


FIFTH THIRD BANK

For *Wanna 6-4-22* *Don Pettit*

⑆042202196⑆ 790 25 00101

Photo
Safe
Deposit
Box on back

Electronic Image #101

x3425

5,600.00

20220707 8684433095 E988954 2
MCNB070 00517 248123538 1434
5/3 Bank >042000314<

MC
[Signature]

Electronic Image #107

x3425

7,000.00

STONE HILL FARM
7757 UPPER MIAMISBURG RD
MIAMISBURG, OH 45342

CSI E969806 MD

107

56-219/422

June 30, 2022
Date

Pay to the
Order of

Caitlin Ryan
Sara Thomas' acct

\$ 7,000.-

Dollars

Photo
Safe
Deposit
Date on back



FIFTH THIRD BANK

For

MAY 14, 2022

Dan R. H. H.

⑆042202196⑆ 790

510 00107

Electronic Image #107

x3425

7,000.00

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FTCI001 00619 248152712 1609
5/3 Bank >042000314<

Supra