

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)

)

Plaintiff,)

)

vs.)

Case No. 4:96CV2225SNLJ

)

RICHARD C. NEISWONGER, ET. AL.,)

)

Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on the FTC's motion for contempt of amended contempt order (#297), filed September 19, 2008.¹ On April 20, 2009 this Court held a hearing on the instant motion, and gave all interested parties the opportunity to be heard on the motion. At that time, it was stipulated by the interested parties that the scope of the instant motion had been narrowed down to one issue; i.e. the alleged failure of defendant Neiswonger to turn over to the Receiver title to the real property located at 9509 Verlaine Court, Las Vegas, Nevada, identified in defendant Neiswonger's sworn financial statement dated August 2, 2006. Furthermore, it was revealed for the first time that a problem had arisen with regard to transferring the title to the subject real estate regarding Shannon Neiswonger's (defendant's spouse) interest in the subject real estate. After an exhaustive discussion regarding this "problem," the Court postponed its ruling on the instant motion until such time further discovery could be had regarding Mrs.

¹Although he has not filed an independent motion, the Receiver had filed a memorandum in support of the FTC's motion for contempt of amended civil contempt order (#346), filed July 13, 2009.

Neiswonger's interest in the residence, and to allow Mrs. Neiswonger the opportunity to protect her alleged interest by retaining the services of counsel and informing the Court directly as to the merits of her interest in the residence. Finally, the Court set the matter for another hearing on September 14, 2009.

On September 14, 2009 counsel for the FTC, for the Receiver appeared in court; as well as defendant Neiswonger and his counsel. Neither Mrs. Neiswonger nor any counsel on her behalf appeared in court. Furthermore, a review of the court docket indicates that neither Mrs. Neiswonger (acting *pro se*) nor any counsel on her behalf filed any memoranda (including any motion to intervene) with this Court indicating her position on the matter of transferring the residence to the Receiver.² The Court heard extensive oral argument by counsel for all interested parties on the matter as to whether defendant Neiswonger has fully complied with the Court's Amended Contempt Order (#275), filed July 30, 2008 by "attempting" to convey good and marketable title to the subject property to the Receiver.

After careful consideration of the matter, pursuant to oral argument at the hearings of April 20, 2009 and September 14, 2009, and review of the interested parties' extensive briefing of the matter, the Court finds that defendant Neiswonger in contempt of the Court's Amended Civil Contempt Order (#275) for failing to convey good and marketable title to the residence located at 9509 Verlaine Court, Las Vegas, Nevada.

It is undisputed that the Court's Amended Civil Contempt Order (#275) clearly directed

²On September 10, 2009 defendant Neiswonger filed a Motion to Vacate 9/14/09 Hearing in which he attached a copy of a complaint recently filed by Shannon Neiswonger against the FTC, the Receiver, and other unknown entities in the Nevada state court. *See*, Document #363, Exhibit B. The crux of this Nevada state court action is the transfer of title to the residence located at 9509 Verlaine Court to the Receiver by virtue of this federal action.

defendant Neiswonger to transfer the title to the Verlainé Propert

³The Court's original Order of Civil Contempt (#123), filed April 23, 2007 and Amended Order of Civil Contempt (#275) were recently affirmed by the Eighth Circuit Court of Appeals in Federal Trade Commission v. Richard C. Neiswonger, et. al., - F.3d. - (Case No. 08-3077, entered September 9, 2009).

Plaintiff's Exhibit D (SRN Trust Instrument), Article III, Section 3.2.

Once the defendant or the defendant and his wife revoke the SRN Trust (as Trustor or Trustors), the Verlaine Property becomes community property.⁴ As community property in Nevada, it can be transferred to the Receiver, even though Shannon Neiswonger is not a party to this lawsuit. "Nevada is a community property state, and under the law of Nevada, `community property is subject to a spouse's debt irrespective of whether both spouses were a party to the action.'" FTC v. Neiswonger, et. al., - F.3d. - (8th Cir. September 9, 2009), pg. 11 *quoting Jones v. Swanson*, 341 F.3d. 723, 738 n.6 (8th Cir. 2003)(*citing Randano v. Turk*, 466 P.2d. 218, 224 (Nev. 1970); *see also, Cirac v. Lander County*, 602 P.2d. 1012, 1017 (Nev. 1979)(noting "community property of spouses may be subject to liability of judgments whether or not the wife was a party to the suit."(citation omitted)).

Thus, the defendant clearly has avenues open to him to transfer this property to the Receiver as directed in the Amended Civil Contempt Order (#275).

Furthermore, the Receiver has tendered to the defendant certain documents for Shannon Neiswonger's signature to effectuate the turnover of the Verlaine Property with marketable title as directed in the Amended Civil Contempt Order. These documents consist of 1) a grant-bargain-sale deed and a declaration of value for the Verlaine Property; and 2) and a deed of full reconveyance of Rishne's lien⁵ on the property. Defendant has offered no evidence that he ever

⁴Technically, the Verlaine Property has always been considered as community property by the defendant and his wife. *See*, Plaintiff's Exhibit J - Schedule A of the SRN Trust.

⁵Evidently, shortly after acquiring the Verlaine Property and conveying it to the SRN Trust, the Neiswongers, as trustees of the SRN Trust executed a deed of trust in the amount of \$1.975 million in favor of Rishne L.P. Rishne L.P. is a limited partnership with the Neiswongers as the limited partners. Numerous documents have been filed with the Court with conflicting

descriptions as to the nature of Rishne and the respective partnership interests of defendant and his wife Shannon. Notably

estate “would result in a multiplicity of actions in different forums, and would increase litigation costs for all parties while diminishing the size of the receivership estate.” FTC v. Productive Marketing, at 1106 *quoting* SEC v. Universal Financial, 760 F.2d. 1034, 1038 (9th Cir. 1985).

Accordingly,

IT IS HEREBY ORDERED that the FTC’s motion for contempt of Amended Civil Contempt Order (#297) be and is **GRANTED**. The Court finds defendant Neiswonger to be in civil contempt for failing to deliver marketable title to the residence located at 9509 Verlaine Court, Las Vegas, Nevada as directed to in the Court’s Amended Civil Contempt Order (#275).

IT IS FURTHER ORDERED that defendant Neiswonger shall revoke, as Trustor, the SRN Trust, thereby subjecting the afore-referenced real pr

Dated this 15th day of September, 2009.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE