

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

PLAINTIFF'S TRIAL BRIEF CONCERNING ENFORCEMENT OF INJUNCTION BY CONTEMPT PROCEEDINGS

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Trial Brief Concerning Enforcement of Injunctions by contempt Proceedings and would respectfully show the following:

I. Introduction

Texas law holds that, as a general matter, all courts have an inherent power to enforce their orders and judgments, including injunctions, through contempt orders. Furthermore, Texas law in this area does not distinguish between mandatory and prohibitory injunctions. Accordingly, the mandatory injunction requested by DSC is readily enforceable by this Court through contempt proceedings.

II. Discussion

At the hearing on DSC's Application for a Temporary Restraining Order, the Court asked the parties to submit briefing on the issue of whether the Court may enforce the mandatory injunction sought by DSC through contempt proceedings. Texas law has long held that a court possesses an

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inherent power to compel compliance with its orders. *Ex Parte Barnett*, 600 S.W.2d 252, 254 (Tex. 1980)(holding that power to punish a party via contempt is an inherent power of the court and is essential to judicial independence and authority); *Ex Parte Browne*, 543 S.W.2d 82, 85 (Tex. 1976)(holding that power to punish for contempt is inherent power of court); see *Burlington-Rock Island R. Co. v. Newsom*, 239 S.W.2d 734, 738 (Tex. Civ. App.--Waco 1951, no writ)(discussing contempt proceedings as sufficient remedy for violation of mandatory injunction). Indeed, almost forty years ago, the Houston Court of Appeals held:

The power of a court to punish for a violation of its injunctions is so well established that it warrants no discussion. Such violations are in contempt of the court's orders and the power to punish is inherent.

General Southwestern Corp. v. State, 333 S.W.2d 164, 174 (Tex. Civ. App.--Houston 1960, writ ref'd n.r.e.). Relying on the *General Southwestern* decision, the Dallas Court of Appeals has likewise held that "[t]he violation of an injunction is punishable as contempt of court and the power to punish is inherent in the court and incident to its power to grant injunctions." *Ex Parte Jackman*, 663 S.W.2d 520, 524 (Tex. App.--Dallas 1983, no writ).

Although there are no Texas cases that are factually analogous to the instant case, the *Myrick* decision is instructive on the availability of contempt proceedings for enforcement of mandatory injunctions. In *Ex Parte Myrick*, the court had granted a wife an injunction ordering her husband to execute certain documents transferring property to the wife. *Ex Parte Myrick*, 474 S.W.2d 767, 768-69 (Tex. App.--Houston [1st Dist.] 1971, no writ). The husband subsequently refused or otherwise failed to sign the documents, was held in contempt and ultimately incarcerated. *Id.* Although ultimately finding the mandatory injunction void for lack of definiteness, the court stated that a court

has the power to punish anyone who violates a prohibitory injunction and that “[r]eason compels the conclusion that the same rule should apply to any mandatory order and judgment” *Id.* at 769.¹

By way of analogy, decisions in the criminal courts also support this court’s ability to enforce the preliminary injunction through contempt proceedings. In the criminal context, a witness who refuses to testify on the basis of her Fifth Amendment privilege can be held in contempt if she maintains her refusal after being given immunity. *Ex Parte Wilkinson*, 641 S.W.2d 927, 929-31 (Tex. Crim. App. 1982); *Ex Parte Shorthouse*, 640 S.W.2d 924, 926 (Tex. Crim. App. 1982)(discussing court’s holding witnesses in contempt for failure to testify before grand jury after grant of immunity); *Ex Parte Joseph*, 356 S.W.2d 789, 791-92 (Tex. Crim. App. 1962)(denying habeas relief to a witness held in contempt for failure to testify after grant of immunity); *Ex Parte Jackson*, 253 S.W. 287 (Tex. Crim. App. 1923). Should this Court enter DSC’s proposed injunction, Brown will have no legally cognizable reason for refusing to comply with the injunction and make the required disclosure. Accordingly, should he refuse, Brown can be held in contempt of the Court’s order.

Based on the forgoing cases, Texas law authorizes the Court to enforce its orders, including a mandatory injunction such as that requested by DSC, via contempt proceedings. Accordingly, if the Court enters the injunction requested by DSC, there are no legal impediments to the Court’s ability to enforce the preliminary injunction via contempt proceedings.²

¹ The Texas Supreme Court’s decision in *Allen v. Woodward*, 111 Tex. 457, 239 S.W. 602 (Tex. 1922) (original proceeding) also supports the principle that a court is authorized to enforce a mandatory injunction through contempt proceedings. In *Allen*, the Court granted a writ of mandamus directing a trial court to hold contempt proceedings for a party’s violation of a mandatory injunction issued pursuant to a final judgment.

²The Texas Supreme Court’s decision in *Gorena* requires that in order to be enforceable by contempt, an injunction must be specific in the details of what performance it requires so that

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served, via telecopy and hand delivery, on all counsel of record, as identified below, on this the 30th day of June, 1997:

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the party subject to the injunction can know what is expected of him. *Ex Parte Gorena*, 595 S.W.2d 841 (Tex. 1979). The level of specificity in the proposed injunction clearly instructs Brown and DSC on what is expected in relation to disclosure and confidentiality of the "Solution," and thus satisfies the *Gorena* standard.

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