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JUDGE: M. A. Mahoney

PARTIES: Southeastern Fabrication, Inc., Internal Revenue Service

CHAPTER: 11

ATTORNEYS:

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

SOUTHEASTERN FABRICATION, INC.

Case No. 97-10648-MAM-11

Debtor.

**ORDER**

This case is before the Court on the Motion of Debtor to Reconsider the Court's order of September 30, 1997 denying Debtor's motion to hold the Internal Revenue Service in contempt of court. Appearances at the hearing were as noted in the record. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is denying the motion to reconsider.

The Court incorporates by reference the findings of fact and conclusions of law read into the record on September 30, 1997. The issue raised for reconsideration by the Debtor was whether the Court erred in finding that the IRS was not in contempt of the Court's order approving sale dated March 19, 1997 because it did not willfully delay discharging its lien. Debtor argues that civil contempt does not require willfulness to be actionable. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191, 69 S. Ct. 497, 499, 93 L. Ed. 599 (1949) ("The absence of willfulness does not relieve from civil contempt"). However, the *McComb* case adds further that civil contempt "is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance." *McComb* at 336 U.S.

191. The order in the *McComb* case was very clear as to the actions which would violate the order.

Civil contempt power in the bankruptcy court is derived from its inherent power to enforce its own orders and from 11 U.S.C. § 105(a) which authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Hardy v. U.S. (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996). As stated in the *Hardy* case:

While a defendant may be cited for contempt under the court's inherent powers (non § 105) only upon a showing of "bad faith" . . . IRS may be liable for contempt under § 105 if it willfully violated the permanent injunction of § 524.

*Hardy* at 97 F.3d 1390. The *Hardy* case and *Jove Engineering, Inc. v. IRS*, 92 F.3d 1539 (11th Cir. 1996) appear to make willfulness a factor in a civil contempt action at least as to violations of Sections 524 and 362. As to other matters, the cases are also not clear as to a consistent standard. For example, in *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575 (11th Cir. 1995), the Eleventh Circuit used bad faith as a factor in ruling on conduct which was alleged to be civil contempt and a violation of Fed. R. Bankr. P. 9011. As stated in *Hardy*, the Eleventh Circuit followed one consistent theme, however. The Court indicated that "the focus of the Court's inquiry in civil contempt proceedings is . . . on . . . whether in fact their conduct complied with the order at issue." *Hardy* at 97 F.3d 1390.

The conduct of the IRS in this case, was not a "willful" violation of the March 19, 1997 order. The IRS did comply with the court order of sale, albeit more slowly than other lienors. The order set no time limit on compliance. For the IRS's action to be contempt, there needed to

be a clear violation of a definite provision of an order. *Stone v. Kasuba (In re Stone)*, 166 B.R. 269, 274 (Bankr. W.D. Pa. 1994) ("In order for a person to be in civil contempt, a court must determine that . . . they violated a specific and definite court order"). There was not.

Therefore, the motion of the Debtor to reconsider the Court's order of September 30, 1997 denying Debtor's motion to hold Internal Revenue Service in contempt is DENIED.

Dated: November 12, 1997

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE