

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

JOHN MONIZ and OLIVIA MONIZ : BK No. 98-12803
Debtors : Chapter 7

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**DECISION AND ORDER: (1) FINDING GEORGIANNA MONIZ IN CONTEMPT,
(2) IMPOSING ADDITIONAL SANCTIONS FOR PAST NON COMPLIANCE,
AND (3) WARNING MONIZ AS TO CONSEQUENCES OF FURTHER ABUSES**

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on the Debtors' Motion to Adjudge Georgianna Moniz in Contempt for failing to comply with the terms of an agreement arrived at by the parties and entered as an Order of this Court on December 27, 2004 ("the Order"). See Document No. 138. Also before the Court and involving the same contempt issue is the Debtors' Petition for Instructions. Document No. 142. The alleged misconduct on this occasion is Georgianna's refusal to execute and deliver a deed conveying to her sister, Olivia Moniz, real property located in Tiverton, Rhode Island. After hearing, and for the reasons discussed below, the Debtors' Motion to Adjudge Georgianna Moniz in Contempt is GRANTED.

BACKGROUND

This is not the first time Georgianna's willful and obstructionist tactics have been before the Court in this case. Over a year and a half ago we thought this long-running dispute had finally been put to rest, after hearing and the filing of an opinion that was most critical of Georgiana, wherein compensatory sanctions were assessed against her for promoting needless litigation. See Order dated March 19, 2004, Document No. 99. Undeterred, however, the litigious and relentless Georgianna continues to engage in frivolous and meritless litigation, in obvious bad faith, as appears throughout the case record. A detailed recital of Georgianna's past mischief, contained in our

March 19, 2004 Order (Document No. 99) need not be repeated here, but is useful to an understanding of the big picture which, thanks to Georgianna, keeps getting bigger.

The current chapter of this marathon litigation involves a dispute between Georgianna and Olivia over the apportionment of real estate in Tiverton, Rhode Island, which was formerly owned by their mother, now deceased. In August 2002, at a hearing on Olivia's motion to redeem her interest in property of her mother's estate, after suspending the trial for a day-long "settlement discussion" recess, Georgianna and Olivia reported that they had resolved their differences. The agreement was spelled out on the record by Georgianna's attorney, Walter Frazee, Esq., who outlined in detail to the Court the terms of the settlement, including the introduction into evidence of a map *prepared by him* which illustrated how the real property was to be divided.¹ (See Exhibit A attached hereto). In accordance with their agreement as reported

¹ Because Frazee testified at the June 16, 2005 contempt hearing that the map was lost, he was allowed to testify from recollection as to where the boundary lines were placed, according to the parties' agreement in the lost map. As it turns out, Mr. Frazee's recall of things was entirely incorrect when compared with his "lost" map which was located by our law clerk in, of all places, the Bankruptcy Court's case file. Because it is significant, and in fact dispositive, an exact copy of Frazee's original map is attached as Exhibit A. How this litigation proceeded so far with the parties unaware that the map was in evidence as a full exhibit is incomprehensible.

to the Court, the parties submitted and the Court entered their consent order. After about six months of eerie silence from Georgianna, the Debtors moved to vacate the September 5, 2003 Order, complaining that Georgianna was refusing to comply with certain of its terms. Georgianna opposed the motion to vacate, and evidence was taken. After hearing, Georgianna's objection was overruled and the September 5 Order was amended to include the agreement in its entirety, exactly as presented on the record by Mr. Frazee in August 2002. In addition, the Debtors were awarded their attorney's fees and costs for having to engage in needless litigation. The Court directed, and the Debtors submitted a proposed order. Not satisfied with the order presented by the Debtors, Georgianna objected and submitted her own form of order, and another hearing was held in August 2003. At the conclusion of that hearing the Court found that the Debtors' proposed order accurately reflected the parties' agreement as represented and articulated by Georgianna's attorney one year earlier, and on August 29, 2003, entered the Debtors' version of the order, which stated in part:

5. Georgianna Moniz, as executrix for the estate of Georgianna Arruda, shall execute a deed granting and conveying to Olivia Moniz in fee simple the home and land east of Stafford Road, Tiverton, Rhode Island within Lot 74 of Assessor's Plat No. 99, said land being bordered by a north-south line 100 feet to the west of the existing house on Lot 74 of Assessor's Plat No. 99 and more

particularly set forth as the shaded area on the attached map.² ...

Debtors' Exhibit 1. That Order was not appealed, nor did Georgianna comply with it. Instead, she filed a motion trying to undo it. After yet another hearing, Georgianna's motion was denied in a written opinion and order (Document No. 99), and compensatory sanctions were again awarded to the Debtors for having to engage in more needless and meritless litigation.

About eight months passed, and still with no compliance in sight, the Debtors moved to have Georgianna adjudged in contempt. Georgianna filed an opposition and the matter was set for hearing, but on the day of the scheduled hearing a consent order was filed wherein Georgianna agreed to pay the Debtors \$12,500 within 60 days, for previously unpaid sanctions. The parties also elaborated upon their earlier agreements as follows:

The parties hereto agree that the Exhibit A metes and bounds description of the Tiverton Property attached hereto accurately sets forth the configuration of the property identified and described in this Court's Amended order of August 29, 2003, and shall be presumed to accurately set forth the same unless Georgianna shall establish that it is manifestly in error in a substantial and material respect on or before the thirtieth (30th) day next after the Debtors cause survey markers to be put

² Because the parties believe that Frazee's original map was lost, the Debtors attached to the order a replacement map which they felt was consistent with the original Frazee map. Ironically, using the Debtors' map Georgianna ends up with more real estate than she did under her own original map. See footnote 4 at 8.

in place in accord with the metes and bounds description set forth in Exhibit A.

Consent Order, Document No. 138.

Predictably, Georgianna has balked again, and as to why she has not tendered a deed contends, disingenuously as always, that the Debtors' survey "is manifestly in error in a substantial and material respect." The Debtors submit that there is not a good faith dispute as to their survey, and that this is simply another exercise in harassment and delay and, post facto, to move Georgianna's property line further north, in order to end up with more of Olivia's real estate than what she had earlier agreed to.

DISCUSSION, FINDINGS, AND CONCLUSIONS

At the June 2005 contempt hearing the Debtors called two witnesses - their son-in-law, Michael Neves, and a surveyor, Barry R. McGee, and they introduced into evidence five exhibits. Georgianna also called two witnesses: Walter Frazee, Esq., her prior attorney, and Donald J. Medeiros, a surveyor, and she introduced Exhibits A through G.

Barry McGee testified that he prepared his survey using primarily the August 29, 2003 Court Order, including the attached map, and that the southerly boundary of Olivia's property was clearly co-located with the Assessor's lot line between Lots 74 and 75. Georgianna's surveyor, Donald Medeiros, agreed that the map shows the southerly line of Olivia's property to be the same

Assessor's lot line, and that his survey is inconsistent with McGee's map. Then, however, Medeiros tried in a partisan, unpersuasive, and illogical way to push the southerly boundary line further north based on perceived (but unexplained) inconsistencies in the settlement papers,³ as well as on conversations with Georgianna, and that he located Olivia's southerly boundary where Georgianna told him to put it!

Quite aside from her ludicrous presentation on the merits, it is far too late for Georgianna to challenge the August 29, 2003 Order, which finally and unambiguously defined the property that should have been conveyed to Olivia long ago. Mr. Medeiros's explanation that the words, "within Lot 74" create a meaningful inconsistency, clearly diminishes the weight of his testimony, but not nearly as much as the admission that his conclusions were based on information and advice from Georgianna who, coincidentally, has

³ Regarding the map, the drafter of a disputed document (Georgianna) bears the risk and the consequences of any ambiguity created by his or her draftsmanship. See *Chelsea Industries, Inc. V. AccuRay Leasing Corp.*, 699 F.2d 58, 61 (1st Cir. 1983) ("in case of doubt, an instrument is to be taken against the party that drew it"); *Geremia v. North Atlantic Fishing, Inc. (In re Repos)*, 155 B.R. 809, 813 (Bankr. D.R.I. 1991), vacated on other grounds, 153 B.R. 607 (D.R.I. 1993) ("[i]t is well settled common law that ambiguous or conflicting contract terms should be construed against the drafter"). The foregoing authorities are referenced only to emphasize where the burden lies in this dispute - not to resolve any ambiguity within the agreement - for I see none.

never testified under oath in any of the many proceedings in this case. So far she has always had others carry her tainted water.

Which brings us to other bad faith questions - i.e., if, prior to instigating this most recent legal skirmish, Georgianna had merely checked the Court file, the answer to the alleged boundary issue (her own map)⁴ would have been obvious and this litigation unnecessary - but that did not happen. Instead, consistent with all of her prior moves in this case, Georgianna's most recent "objection" is neither well founded nor is it made in good faith. The present dispute does not involve reasonable differences of opinion among surveyors, as contemplated by the December 27, 2004 consent order, but rather is another willful distortion and blatant example of Georgianna using the legal system as a tool to avoid her legal obligations.

Another point is noteworthy. At the contempt hearing, Georgianna *for the first time* used the words "approximately 10

⁴ A cursory examination of the Frazee map reveals that Olivia would have been better off had she held Georgianna to their original deal, which gave significant additional real estate to Olivia beyond the present easterly boundary 100 feet from her house. However, in the August 29, 2003 Order, the easterly boundary line was set at the (measured) 100 foot mark, thereby excluding considerable land to the east. Because this was the order submitted by Olivia, and the order she sought successfully to enforce, we will resist the temptation to alter said boundary in her favor. But Georgianna should understand that notwithstanding all of her shenanigans, she is probably receiving a windfall here, to which Olivia is being held.

acres" in attempting to quantify the property intended to be transferred. Here again, it is absurd to suggest that an informal reference to "approximately 10 acres," with no survey or surveyor's input, would trump boundary lines and monuments, all on a map drawn by Georgianna's own attorney. Second, if the intent was to convey precisely 10 acres to Olivia, Mr. Frazee should and would have made that clear in August 2002, when he drafted and put the agreement on the record.⁵ On this same point, Mr. Neves testified, credibly in my opinion, that the parties could not know with accuracy the acreage they were plotting during the negotiations, because no surveyor was involved and they did not have a scale drawing or measurements of the property. Mr. Neves' recollection of events appears reasonable, and is accepted as an accurate and truthful representation of the negotiations conducted in August 2002, while Georgianna's evidence totally lacks credibility. In any event, the August 2003 Order is final and unambiguous, it is no longer reviewable, and Georgianna is bound by its terms.

No matter how favorably her story is viewed, the present litigation remains transparently frivolous, vexatious, and can only be intended by Georgianna Moniz to harass and unreasonably multiply

⁵ The map drawn by Frazee in August 2002 does contain an isolated reference to "10 acres". That note, however, appears in an area of the site outside of Olivia's property, and it is unclear to what the "10 acre" label refers.

these proceedings. Her arguments continue to lack merit and she has failed to even make a prima facie showing that the McGee survey differs in any respect from the August 29, 2003 Order, let alone that "it is manifestly in error in a substantial and material respect." Based on the entire record in these proceedings, the litigation caused by Georgianna's refusal to convey the Tiverton property in accordance with the August 29, 2003 Order has been a waste of everyone's time, and her conduct clearly amounts to contempt. Accordingly, Georgianna Moniz is **ORDERED** within five days to execute and hand deliver a deed conveying the Tiverton property in fee simple to Olivia Moniz, consistent with the description in Debtor's Exhibit 3, and with the survey prepared by Barry McGee, Debtor's Exhibit 2.

Also, because Georgianna continues to be hyperactive and persistent in causing frivolous litigation, the Debtors are awarded their reasonable costs and counsel fees incurred in this proceeding. *Eck v. Dodge Chemical Co. (In re Power Recovery Sys., Inc.)*, 950 F.2d 798, 802 (1st Cir. 1991). Said fees and costs shall be paid within five days of receipt of an itemized bill from Olivia's lawyer. Finally, Georgianna's failure to timely comply with any of the terms of this Order will trigger the issuance of an Order to Show Cause why she should not be held in still further contempt, and why she should not be ordered to pay \$500 per day,

for each day she fails to comply with the orders of this Court. This last warning is given to Georgianna based on her over the top and predictable conduct throughout the seven year pendency of this case.

Dated at Providence, Rhode Island, this 12th day of September, 2005.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 9/12/2005