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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Petitioner,
v.
WEN-BING SOONG,
Respondent.

Case No. [13-cv-04088-EMC](#)
Case No. [13-cv-04089-EMC](#)

**ORDER DENYING PETITIONER’S
MOTION TO REDUCE CIVIL
CONTEMPT FINES TO JUDGMENT,
AND DISMISSING RESPONDENT’S
MOTION FOR SANCTIONS TO BE
DETERMINED AS MOOT**

Docket Nos. 68, 70 (C-13-4088)
Docket Nos. 65, 67 (C-13-4089)

UNITED STATES OF AMERICA,
Petitioner,
v.
HSIN-JUNG SHIRLEY SOONG,
Respondent.

I. INTRODUCTION

These cases arise out of a tax dispute involving Respondents Wen-Bing Soong and Hsin-Jung Shirley Soong. During the proceedings, the Soongs were held in contempt for failing to produce documents pursuant to an earlier order of this Court. Docket No. 49.¹ The Court imposed a charge of \$500 per person per day (\$1000 per day collectively as a couple) for non-compliance. The Soongs subsequently settled with the IRS, resolving their underlying tax liability. After the settlement, the Soongs filed a motion for entry of a final sanction order, asking

¹ Most documents in this case have been filed in the dockets for both cases against the Soongs, C-13-4088 and C-13-4089. Citations to the docket in this Order refer to the docket for C-13-4088.

1 the Court to limit the amount of sanctions owed under the contempt order to “not more than
2 \$70,000.” Docket No. 68 (“Soong Motion”). In response, the government filed a motion to
3 reduce civil contempt fines to judgment, asking the Court to require payment of \$258,000 for each
4 Respondent, reflecting the total amount of sanctions the government contends accrued while the
5 contempt order was in effect. Docket No. 70 (“Gov’t Motion”). Following a hearing, the Court
6 directed the parties file supplemental briefs addressing the question whether the Court could
7 impose *any* sanctions in light of the Ninth Circuit’s decision in *Shell Offshore Inc. v. Greenpeace,*
8 *Inc.*, 815 F.3d 623, 626 (9th Cir. 2016). Having reviewed the parties’ submissions, the Court
9 concludes that *Shell Offshore* prohibits the Court from collecting sanctions against the Soongs in
10 the circumstances of this case. Accordingly, the Court **DENIES** the government’s motion and
11 **DISMISSES** the Soongs’ motions as moot.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 On September 4, 2013, the government filed petitions to enforce IRS summonses in each
14 of these cases. Docket No. 1. The summonses sought production of numerous documents from
15 the Soongs. The Court issued an order granting the petitions on March 28, 2014. Docket No. 43.
16 After the Soongs unsuccessfully appealed that order, the government moved for an order finding
17 them in contempt for failing to produce the records sought in the summonses. Docket No. 49. On
18 September 3, 2015, the Court granted the motion. Docket No. 57. Noting that there “is no dispute
19 that the Soongs . . . have not produced any documents since this Court issued its order” granting
20 the IRS petitions to enforce the summonses, the Court found the Soongs in contempt and imposed
21 a fine of \$500 per person per day (\$1000 per day collectively as a couple) for each day they
22 remained out of compliance with the Court’s order. *Id.* at 2. The fines began accruing on
23 September 11, 2015. The Court subsequently denied the Soongs’ motions to stay the contempt
24 order. Docket No. 59.

25 The parties began settlement discussions following the entry of the contempt order, and
26 finally reached an oral agreement in September 2016. That agreement was reduced to writing in
27 November 2016; the written closing agreement did not address the Soongs’ liability for sanctions
28 under the contempt order. *See* Docket No. 74-1 ¶ 11. On February 6, the Soongs tendered

1 payment of \$1,700,000 to discharge their underlying tax liability. On February 8, 2017, the IRS
2 countersigned Form 906, which had the effect of finalizing the settlement and terminating the
3 proceedings against the Soongs. *See* Gov’t Motion at 3. The parties filed the instant motions
4 seeking to resolve the sole outstanding issue of the sanctions owed under the Court’s contempt
5 order shortly thereafter.

6 **III. DISCUSSION**

7 “A court’s contempt powers are broadly divided into two categories: civil contempt and
8 criminal contempt.” *Shell Offshore*, 815 F.3d at 628. “The purpose of civil contempt is coercive
9 or compensatory, whereas the purpose of criminal contempt is punitive.” *Koninklijke Philips*
10 *Elecs. N.V. v. KXD Tech., Inc.*, 539 F.3d 1039, 1042 (9th Cir. 2008). “Further complicating
11 matters, it is possible for sanctions that were initially imposed for a civil, coercive purpose to
12 change over time; indeed, civil coercive contempt may eventually evolve into criminal
13 contempt. . . . This is because, in order to categorize the contempt properly, a court must look to
14 the purpose of the contempt at the time it is *enforced*, rather than at the time it is *imposed*.” *Shell*
15 *Offshore*, 815 F.3d at 629-30.

16 In *Shell Offshore*, the Ninth Circuit joined with a number of other courts in stating that “the
17 ‘general rule’ requires that ‘[i]f a civil contempt order is coercive in nature . . . it is mooted when
18 the proceeding out of which it arises terminates.’” *Id.* at 630 (quoting *Ohr ex rel. Nat’l Labor*
19 *Relations Bd. v. Latino Exp., Inc.*, 776 F.3d 469, 478–79 (7th Cir. 2015) (alterations in original)).
20 As the court explained, the reason for this rule is that once the underlying proceeding has
21 terminated “there is no longer anything left to coerce. Instead, enforcing the sanctions could only
22 serve to punish the contemnor. . . . Thus, once the underlying injunction has been terminated and
23 the contemnor can no longer purge its contempt through compliance, the contempt becomes
24 criminal.” *Id.* at 631. Because criminal contempt cannot be imposed without the full panoply of
25 due process protections owed to any criminal defendant, *see Int’l Union, United Mine Workers of*
26 *Am. v. Bagwell*, 512 U.S. 821, 827 (1994), “in cases where the underlying proceeding has been
27 rendered moot, the coercive contempt proceeding must be vacated in order to avoid a due-process
28 violation.” *Shell Offshore*, 815 F.3d at 631.

1 *Shell Offshore* involved a coercive contempt order that had been issued against
2 environmental activists from Greenpeace who suspended themselves from a bridge in an effort to
3 block a Shell Offshore vessel involved in Arctic oil drilling. The district court had previously
4 issued a preliminary injunction prohibiting such actions. Accordingly, after the activists violated
5 the injunction, the court found them in contempt and imposed a coercive sanctions order with “a
6 progressively increasing schedule of fines against Greenpeace: \$2,500 for each hour in contempt
7 during the first day; \$5,000 per hour during the second day; \$7,500 per hour during the third day;
8 and \$10,000 per hour thereafter.” *Id.* at 627. The activists remained out of compliance with the
9 contempt order for seven hours.

10 By the time the Ninth Circuit considered the issue, the preliminary injunction had expired
11 and would not be renewed. Accordingly, the Court held that the district court could not enforce
12 the sanctions order, because “there is no longer anything left for the district court to coerce
13 Greenpeace to do. Enforcing the fee-schedule monetary sanction would only serve to punish
14 Greenpeace for its past contumacious actions. Accordingly, the pending contempt proceedings
15 must be vacated.” *Id.* at 631.

16 The present case is precisely analogous. Neither party disputes that the Court’s contempt
17 order in this case was coercive – it was intended to coerce the Soongs into producing the
18 documents called for the IRS summonses. Similarly, neither party disputes that, when the Soongs
19 paid the amount owed under the settlement and the IRS countersigned Form 960, the underlying
20 dispute that justified the sanctions order was terminated. Under *Shell Offshore*, the Court’s
21 continued enforcement of the sanctions order by requiring payment “would only serve to punish
22 [the Soongs] for [their] past contumacious actions,” thus leading to a potential due-process
23 violation. Given this clear authority, the Court concludes that the contempt order against the
24 Soongs must be vacated.

25 The government contends that *Shell Offshore* is inapplicable in this case because this case
26 does not involve an injunction that had expired or been terminated. *See* Docket No. 80 (“Gov’t
27 Supp. Br.”) at 2. But nothing in *Shell Offshore* suggests that its reasoning is limited to the context
28 of injunctions. To the contrary, the opinion consistently uses broad language, describing its

1 holding as a “general rule” and stating that “in cases where the *underlying proceeding* has been
2 rendered moot, the coercive contempt proceeding must be vacated in order to avoid a due-process
3 violation.” *Shell Offshore*, 815 F.3d at 631 (emphasis added).

4 The Court recognizes that this is, in many ways, a counterintuitive result. First, the
5 government represents that it is the standard practice for courts to require payment of fines
6 accumulated under coercive contempt orders even after the underlying dispute has been resolved.
7 *See Gov’t Supp. Br.* at 3. This practice makes sense, because if a court cannot enforce a contempt
8 order after the underlying dispute has been resolved, then the order loses much of its coercive
9 effect. Indeed, the Government is correct that this rule likely creates a perverse incentive for
10 contemnors *not* to come into compliance with a court order, assuming that a resolution of the
11 underlying dispute through settlement or otherwise is on the horizon. The greater the fines that
12 have accumulated, the stronger this disincentive will be. Moreover, as some courts have
13 recognized, this rule creates an inconsistency between the different sanctions available to a court.
14 For instance, as an alternative to fines, a court can coerce compliance with its orders through
15 imprisonment. In such a case, if a contemnor frees himself through compliance “[i]t is clear that,
16 though the imprisoned contemnor is released from jail, he did not escape the consequences of his
17 contempt. He has already ‘paid,’ and cannot be given back his days lost in jail; compliance
18 merely ends his jail time.” *Occupational Safety & Health Admin. v. All-Feed Processing &*
19 *Packaging Inc.*, No. 11-MC-1054, 2012 WL 1029659, at *5 (C.D. Ill. Mar. 26, 2012). If, on the
20 other hand, the Court imposes a fine, and the contemnor ultimately resolves the underlying
21 dispute, then he will have escaped the consequences of his contempt altogether.

22 The Court is mindful of the force of these considerations, but the holding of *Shell Offshore*
23 is clear. Absent some further clarification from the Ninth Circuit, this Court is bound to follow its
24 directive. Because the underlying dispute in this case has terminated, the Court concludes that it
25 must vacate its prior contempt order. Accordingly, the Court **DENIES** the government’s motion
26 to reduce the civil contempt fines to judgment, and **DISMISSES** the Soongs’ motions as moot.

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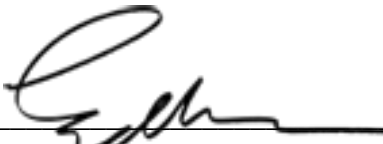
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This order disposes of Docket Nos. 68 and 70 in C-13-4088 and Docket Nos. 65 and 67 in C-13-4089.

IT IS SO ORDERED.

Dated: June 20, 2017


EDWARD M. CHEN
United States District Judge