

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN WILEY & SONS, INC., :  
 :  
 Plaintiff, :

-against- : 08 Civ. 7834 (GEL)

SUPAP KIRTSANG D/B/A : ECF Case  
BLUECHRISTINE99 AND JOHN :  
DOE NOS. 1-5, :  
 :  
 Defendants. :

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REPLY MEMORANDUM OF PLAINTIFF IN SUPPORT OF  
ITS MOTION TO ADJUDGE DEFENDANT SUPAP KIRTSANG  
AND BANK OF AMERICA IN CONTEMPT OF THE APRIL  
27, 2009, TEMPORARY ATTACHMENT ORDER

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Plaintiff John Wiley & Sons, Inc. ("Wiley") respectfully submits this reply memorandum in support of its application for an order adjudging defendant Supap Kirtsang ("Kirtsang") and Bank of America in contempt of this Court's April 27, 2009 temporary attachment order.

#### Preliminary Statement

The available evidence demonstrates, clearly and convincingly, that Kirtsang knowingly violated the temporary attachment order of this Court entered April 27, 2009, by withdrawing, on April 28, 2009, \$6,400 in cash from his account at Bank of America. Kirtsang's cryptic presentation of half of the story, when he obviously knows the other half as well, only confirms that fact.

#### Argument

##### I.

KIRTSANG HAS FAILED TO CREATE A QUESTION OF FACT AS TO WHETHER HE WITHDREW THE \$6,400 IN CASH WITHOUT KNOWING OF THE COURT'S TEMPORARY ATTACHMENT ORDER

The following five facts are not in dispute.

1. On April 27, 2009, at 2:00 p.m., this Court entered an order that provided:

"ORDERED that, pursuant to Rules 64 and 65 of the Federal Rules of Civil Procedure and New York CPLR §§ 6201 and 6210, pending the hearing on Wiley's application for an order of prejudgment attachment, it is hereby ordered that the funds of Kirtsang at PayPal, Inc., Bank of America and M&T Bank be, and hereby are, attached and Kirtsang, his agents,

servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice of this order, be, and hereby are, enjoined from transferring or withdrawing any funds from those accounts pending further order of the Court.”

2. On April 27, 2009, at 4:22 p.m., Wiley’s counsel sent an e-mail to Sam P. Israel, Kirtsaeng’s counsel, attaching a copy of the order. (Dunnegan Dec. Ex. C; Israel Dec. ¶ 4)

3. Mr. Israel forwarded this order by e-mail to Kirtsaeng during the evening of April 27, 2009. (Israel Dec. ¶ 8)

4. Kirtsaeng thereafter received the order. (Kirtsaeng Dec. ¶ 8)

5. On April 28, 2009, Kirtsaeng went to Bank of America and withdrew \$6,400 in cash. (Dunnegan Dec. Ex. D; Kirtsaeng Dec. ¶ 5)

Kirtsaeng’s presentation, however, provides no corroborating documents concerning these time sensitive events. Kirtsaeng clearly has such documents, including the e-mails. Kirtsaeng’s presentation therefore raises more questions than it answers.

1. While Mr. Israel states that he tried to reach Kirtsaeng by telephone on the evening of April 27, 2009, did Mr. Israel leave a voice mail message informing Kirtsaeng of the order?

2. After Mr. Israel dispatched the e-mail, attaching the order, to Kirtsaeng on April 27, 2009, when did Kirtsaeng actually receive it?

3. Did Mr. Israel explain the order in the body of the e-mail, so that Kirtsaeng could swear in paragraph 5 of his declaration "I did not see the Order . . . prior to the time I withdrew the funds?" (Emphasis added.)

Against this background of unanswered questions is Kirtsaeng's suggestion of an extraordinary coincidence, that (i) Kirtsaeng withdrew the balance of his funds (except \$1.05) from Bank of America, in cash, for no apparent purpose, (ii) the day after his counsel had sent him, by e-mail, a copy of this Court's temporary attachment order preventing him from doing exactly what he did.

We therefore submit that it is obvious that Kirtsaeng withdrew the \$6,400 in cash from the attached account at Bank of America with knowledge of this Court's order. A contempt citation should result.

II.

IF THERE IS A QUESTION OF FACT AS TO WHETHER  
KIRRTSAENG HAD KNOWLEDGE OF THE ORDER WHEN  
HE WITHDREW \$6,400 IN CASH FROM THE BANK,  
THE COURT SHOULD HOLD AN EVIDENTIARY HEARING

Wiley submits that no reasonable person, based upon the present submissions, would conclude that Kirtsaeng withdrew the \$6,400 in cash from his account at Bank of America without knowledge of the order. However, if the Court believes that Kirtsaeng has created an issue of fact, it should conduct an evidentiary hearing.

III.

THE COURT SHOULD ADJUDGE BANK  
OF AMERICA IN CONTEMPT

Bank of America has not formally responded to Wiley's motion to adjudge it in contempt. We advise the Court that on June 18, 2009, a representative of Bank of America called Wiley's counsel, Laura Scileppi, Esq., and asked if Wiley was willing to negotiate.

Conclusion

For the reasons set forth above, Wiley respectfully requests that the Court adjudge Kirtsaeng and Bank of America in contempt of the April 27, 2009 order of this Court. Alternatively, Wiley requests that the Court schedule an evidentiary hearing on the issue of whether Kirtsaeng had

knowledge of that order at the time that he withdrew the \$6,400  
in cash on April 28, 2009.

Dated: New York, New York  
July 10, 2009

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