

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, NC
SEP 1 2017

U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	CASE NO. 3:17-cv-00503-RJC-DCK
)	
v.)	
)	PRELIMINARY INJUNCTION AS
LOMBARDO, DANIELS & MOSS, LLC, <i>et al.</i> ,)	TO DEFENDANT DION BARRON
)	
Defendants.)	
)	

Plaintiff, Federal Trade Commission (“FTC”), commenced this civil action on August 21, 2017, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l(a). On motion by the FTC, on August 24, 2017, this Court entered an *ex parte* temporary restraining order (“TRO”) with asset freeze, appointment of receiver, and other equitable relief against Defendants Lombardo, Daniels & Moss, LLC, Dion Barron, and Charles R. Montgomery, III. Previously, the FTC, Receiver, and Defendants Lombardo, Daniels & Moss, LLC and Charles Montgomery stipulated to the entry of a preliminary injunction. On September 1, 2017, this Court held a hearing on an order to show cause why a preliminary injunction should not issue against Defendant Dion Barron.

FINDINGS OF FACT

This Court, having considered the pleadings, declarations, exhibits, and memoranda, and the arguments presented by the parties, finds that:

1. This Court has jurisdiction over the subject matter of this case, there is good cause to believe it will have jurisdiction over Defendant Dion Barron.

DEFINITIONS

- A. “**Assets**” means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.
- B. “**Consumer**” means any person.
- C. “**Corporate Defendant**” means Lombardo, Daniels & Moss, LLC and its successors, assigns, affiliates, or subsidiaries, and each of them by whatever names each might be known.
- D. “**Debt**” means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
- E. “**Defendants**” means the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination, and each of them by whatever names each might be known.
- F. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
- G. “**Financial Institution**” means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house,

or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby restrained and enjoined from:

- A. Misrepresenting, or assisting others who are misrepresenting, expressly or by implication, orally or in writing, any of the following:
 - 1. that any consumer is delinquent on a payday loan or other debt that any Defendant or any other person has authority to collect;
 - 2. that any consumer has a legal obligation to pay any Defendant or any other person;
 - 3. that non-payment of a purported debt will result in a consumer's arrest, or in seizure, garnishment, or attachment of a consumer's property or wages;
 - 4. that any Defendant or any other person has taken, intends to take, or has authority to take formal legal action against a consumer who fails to pay any debt;
 - 5. that any Defendant or any other person is an attorney or affiliated or associated with an attorney;
 - 6. that any Defendant or any other person is a law firm; or
 - 7. the character, amount, or legal status of a debt;
- B. Communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a postjudgment judicial remedy;
- C. Placing telephone calls without meaningfully disclosing the caller's identity;

- I. Engaging in any other conduct that violates the FDCPA, 15 U.S.C. §§ 1692-1692p.

PROHIBITION ON RELEASE OF CONSUMER INFORMATION

- II. **IT IS FURTHER ORDERED** that, except as required by a law enforcement agency, law, regulation or court order, Defendant Dion Barron, and his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a consumer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with any debt collection service. *Provided, however,* that Defendant Dion Barron may disclose such identifying information to a law enforcement agency, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action in the manner required by the Federal Rules of Civil Procedure and by any protective order in the case.

ASSET FREEZE

- III. **IT IS FURTHER ORDERED** that:
 - A. Except as set forth in Section III.B of this Order, Defendant Dion Barron is hereby restrained and enjoined from directly or indirectly:
 1. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing

those assets obtained after entry of this Order that are obtained from any debt collection activities that predate the entry of this Order. This Section does not prohibit any transfers to the Receiver or repatriation of foreign Assets specifically required by this order.

B. Defendant Dion Barron may retain and spend income received from employment unrelated to debt collection performed after the date of entry of this Order. Further, Defendant Dion Barron may retain and spend assets acquired by loan or gift after the date of entry of this Order only after identifying such assets to FTC counsel. This section does not apply to loans or gifts valued at less than \$500

**RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS AND
OTHER THIRD PARTIES**

IV. IT IS FURTHER ORDERED that any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, trust, entity, or person that holds, controls, or maintains custody of any account or asset owned or controlled, directly or indirectly, by Defendant Dion Barron, or has held, controlled, or maintained any account or asset of, or on behalf of, Defendant Dion Barron, upon service with a copy of this Order, shall:

A. Hold and retain within its control and prohibit Defendant Dion Barron from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any accounts, assets, funds, or other property that are owned by, held in the name of, for the benefit of, or otherwise controlled by, directly or indirectly, any Defendant(s), in whole or in part, except for those identified in Section III.B of this Order or except as directed by further order of the Court or as directed in

4. if an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the manner in which such account or asset was closed or removed.
- D. Provide counsel for the FTC and the Receiver, within three (3) business days after being served with a request, copies of all documents pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; provided that such institution or custodian may charge a reasonable fee.
 - E. *Provided*, that a financial institution does not have to provide the information required in sub-sections C and D if (1) the financial institution has complied with the similar provision set forth in the TRO; and (2) the information provided has not changed.

FINANCIAL REPORTS AND ACCOUNTING

- V. **IT IS FURTHER ORDERED** that Defendant Dion Barron, within three (3) business days of service of this Order, shall prepare and deliver to counsel for the FTC:
 - A. A completed financial statement accurate as of the date of service of this Order upon Defendant Dion Barron (unless otherwise agreed upon with FTC counsel) on the form of **Attachment A** to the TRO captioned, "Form Re: Financial Statement for Individual Defendant."
 - B. A completed statement, verified under oath, of all payments, transfers or assignments of funds, assets, or property worth \$1,000 or more since January 1,

- B. Transfer to the territory of the United States all assets, accounts, funds, and documents in foreign countries held either: (1) by him; (2) for his benefit; (3) in trust by or for him, individually or jointly; or (4) under his direct or indirect control, individually or jointly;
- C. Hold and retain all repatriated assets, accounts, funds, and documents, and prevent any transfer, disposition, or dissipation whatsoever of any such assets, accounts, funds, or documents; and
- D. Provide the FTC access to all records of accounts or assets of the Corporate Defendant and Individual Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to the TRO as **Attachment C**.

NON-INTERFERENCE WITH REPATRIATION

VIII. IT IS FURTHER ORDERED that Defendant Dion Barron, and each of his successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section VII of this Order, including but not limited to:

- A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms

control of, the Receivership Entities, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Entities and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Entities. *Provided, however,* that the Receiver shall not attempt to collect or receive any amount from a consumer if the Receiver believes the consumer was a victim of the unlawful conduct alleged in the complaint in this matter;

- C. Take all steps necessary to secure the business premises of the Receivership Entities. Such steps may include, but are not limited to, the following, as the Receiver deems necessary or advisable:
1. serving and filing this Order;
 2. completing a written inventory of all Receivership assets;
 3. obtaining pertinent information from all employees and other agents of the Receivership Entities, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent, and all computer hardware and software passwords;
 4. videotaping all portions of the location;
 5. securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location;

advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

- I. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- J. Make payments and disbursements from the Receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Entities prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Entities, such as rental payments;
- K. Determine and implement the manner in which the Receivership Entities will comply with, and prevent violations of, this Order and all other applicable laws, including, but not limited to, revising sales materials and implementing monitoring procedures;
- L. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Entities, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

- P. Open one or more bank accounts in the Western District of North Carolina as designated depositories for funds of the Receivership Entities. The Receiver shall deposit all funds of the Receivership Entities in such a designated account and shall make all payments and disbursements from the receivership estate from such account(s);
- Q. Maintain accurate records of all receipts and expenditures that the Receiver makes as Receiver;
- R. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency; and
- S. Be responsible for maintaining the chain of custody of all of Defendants' records in his possession, pursuant to procedures to be established in writing with the approval of the FTC.

DEFENDANTS' ACCESS TO PREMISES AND RECORDS

XI. IT IS FURTHER ORDERED that the Receiver shall allow Defendant Dion Barron and their officers, agents, employees, and attorneys reasonable access to the premises of the Receivership Entities. The purpose of this access shall be to inspect, inventory, and copy any and all documents and other property owned by or in the possession of the Receivership Entities, provided that those documents and property are not removed from the premises. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from directly or indirectly:

1. Transacting any of the business of the Receivership Entities;
2. Destroying, secreting, erasing, mutilating, defacing, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents, electronically stored information, or equipment of the Receivership Entities, including but not limited to contracts, agreements, consumer files, consumer lists, consumer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, sales presentations, documents evidencing or referring to Defendants' services, debt collection training materials, debt collection scripts, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, photographs, mobile devices, electronic storage media, accessories, and any other documents, records or equipment of any kind that relate to the business practices or business or personal finances of the Receivership Entities or any other entity directly or indirectly under the control of the Receivership Entities;

8. Filing, or causing to be filed, any petition on behalf of the Receivership Entities for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

DELIVERY OF RECEIVERSHIP PROPERTY

XIII. IT IS FURTHER ORDERED that:

- A. Immediately upon service of this Order upon them or upon their otherwise obtaining actual knowledge of this Order, or within a period permitted by the Receiver, Defendant Dion Barron or any other person or entity, including but not limited to financial institutions and electronic data hosts, shall transfer or deliver access to, possession, custody, and control of the following to the Receiver:
 1. All assets of the Receivership Entities;
 2. All documents and electronically stored information of the Receivership Entities, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, records of ACH transactions, and check registers), client or customer lists, title documents and other papers;
 3. All assets belonging to members of the public now held by the Receivership Entities;
 4. All keys, computer and other passwords, entry codes, combinations to locks required to open or gain or secure access to any assets or documents of the Receivership Entities, wherever located, including, but not limited

RECEIVER'S REPORTS

XV. IT IS FURTHER ORDERED that the Receiver shall periodically report to this Court regarding: (1) the steps taken by the Receiver to implement the terms of this Order; (2) the value of all liquidated and unliquidated assets of the Receivership Entities; (3) the sum of all liabilities of the Receivership Entities; (4) the steps the Receiver intends to take in the future to: (a) prevent any diminution in the value of assets of the Receivership Entities, (b) pursue receivership assets from third parties, and (c) adjust the liabilities of the Receivership Entities, if appropriate; (5) whether the business of the Receivership Entities can be operated lawfully and profitably; and (6) any other matters which the Receiver believes should be brought to the Court's attention. *Provided, however,* if any of the required information would hinder the Receiver's ability to pursue receivership assets, the portions of the Receiver's report containing such information may be filed under seal and not served on the parties.

RECEIVER'S BOND

XVI. IT IS FURTHER ORDERED having appointed a Receiver who is an experienced officer of this Court and subject to the Court's direction, that no bond shall be required.

STAY OF ACTIONS

XVII. IT IS FURTHER ORDERED that:

- A. Except by leave of this Court, during pendency of the Receivership ordered herein, Defendant Dion Barron and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Entities, any of their subsidiaries, affiliates, partnerships, assets, documents, or the

- B. This Section XVII does not stay:
1. The commencement or continuation of a criminal action or proceeding;
 2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
 3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or
 4. The issuance to a Receivership Entity of a notice of tax deficiency; and
- C. Except as otherwise provided in this Order, all persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the Receiver, and, if such request has not been responded to within thirty (30) days of receipt by the Receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

PRESERVATION OF RECORDS

XVIII. IT IS FURTHER ORDERED that Defendant Dion Barron, his officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, writing over, or otherwise disposing of, in any manner, directly or indirectly, any documents or records of any kind that relate to the business practices, business, or personal finances of any Defendant, including but not

shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons that Defendant Dion Barron has served with a copy of this Order in compliance with this provision.


CORRESPONDENCE WITH THE FTC

XXI. IT IS FURTHER ORDERED that, for the purposes of this Order, because mail addressed to the FTC is subject to delay due to heightened security screening, all correspondence and service of pleadings on the FTC shall be sent either via electronic transmission or via Federal Express to: Gregory A. Ashe, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room NJ-3158, Washington, DC 20580. Email: gashe@ftc.gov; Telephone: (202) 326-3719; Facsimile: (202) 326-3768.

JURISDICTION

XXII. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this 1st day of September, 2017, at 2:26 o'clock p.m.


ROBERT J. CONRAD, JR.
UNITED STATES DISTRICT JUDGE