
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ACE INVESTORS, LLC,

Plaintiff,

vs.

MARGERY RUBIN, AS TRUSTEE OF THE
RUBIN FAMILY IRREVOCABLE STOCK
TRUST,

Defendant.

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART ACE'S SECOND
MOTION FOR ORDER TO SHOW
CAUSE AS TO WHY MARGERY
RUBIN SHOULD NOT BE HELD IN
CONTEMPT**

Case No. 2:08-cv-289 TS

District Judge Ted Stewart
Magistrate Judge David Nuffer

Plaintiff ACE Investors, LLC (“ACE”) filed its Second Motion for Order to Show Cause as to Why Margery Rubin Should Not be Held in Contempt¹ and Memorandum in Support² thereof on January 9, 2012. Margery Rubin filed her Memorandum in Opposition.³ ACE filed its Reply.⁴

A hearing was held on February 2, 2011 at 9:00 a.m. before Magistrate Judge David Nuffer. Gary E. Doctorman, J. Michael Bailey and Matthew D. Cook of Parsons Behle & Latimer appeared as attorneys for ACE. Richard E. Fish of Duncan, Fish & Vogel, and James E.

¹ Second Motion for Order to Show Cause as to Why Margery Rubin Should Not be Held in Contempt (Second Motion for Order), docket no. 251, filed January 9, 2012.

² Memorandum in Support of Second Motion for Order to Show Cause as to Why Margery Rubin Should Not be Held in Contempt (Memorandum in Support), docket no. 252, filed January 9, 2012.

³ Memorandum in Opposition to Second Motion for Order to Show Cause as to Why Margery Rubin Should Not be Held in Contempt (Opposition), docket no. 258, filed January 25, 2012.

⁴ Reply Memorandum in Support of Second Motion for Order to Show Cause as to Why Margery Rubin Should Not be Held in Contempt (Reply), docket no. 261, filed January 30, 2012.

Magleby and Christopher M. Von Maack of Magleby & Greenwood, appeared for defendant Margery Rubin as trustee of the Stock Trust. Karthik Nadesan of Nadesan Beck and James M. Wicks and Ethan A. Kobre of Farrell Fritz appeared as attorneys for Margery Rubin as trustee of the Marital and Real Estate Trusts.

The Court reviewed ACE's Second Motion for Order, ACE's Memorandum in Support thereof, Margery Rubin's Opposition and ACE's Reply and all exhibits to these filings and heard oral arguments from counsel. The Court reviewed ACE's Exhibits 54 through 56 and a hearing demonstrative from counsel for Margery Rubin, as trustee of the Stock Trust.

After a careful review of the parties' memoranda and other documents and the oral arguments of the parties:

ORDER

IT IS HEREBY ORDERED:

1. ACE's Second Motion for Order is GRANTED IN PART to the extent that ACE sought that "Margery Rubin be ordered to comply with the Order for Production of Documents (Dkt. 192)."⁵ The motion is also DENIED IN PART AS to relief requested regarding "an order of contempt"⁶ because the facts are not appropriate to support such an order.
2. The oral motion to strike portions of Margery Rubin's declaration (Dkt. 248) is denied.
3. To the extent requested, attorney fees to either party are denied.

⁵ Second Motion for Order at 3.

⁶ *Id.* at 1.

4. ACE's Exhibits 54 through 56 and Margery Rubin's February 2, 2012 Hearing Handout are received as illustrative for purposes of the hearing.

5. Margery Rubin is hereby ordered to produce the following documents within fourteen days of the entry of this Order:

a. All schedule Ks related to or otherwise pertaining to the 2010 Federal and State tax returns of Stock Trust, Marital Trust and/or Realty Trust a.k.a. the Real Estate Trust;

b. All documents and/or information that support or were used to prepare the 2010 Federal and State tax returns for the Stock Trust, Marital Trust and/or Realty Trust a.k.a. the Real Estate Trust;

c. All documents and/or information related to or otherwise pertaining to the April 2011 transfer of funds to an escrow account at Mintz & Fraade P.C. and/or all documents and other information related to or otherwise pertaining to each transaction evidenced by the six Promissory Notes payable to the Rubin Family Realty Trust and related documents produced by Margery Rubin as Bates numbers MR000222 through MR000255, which Notes are attached to ACE's Memorandum (Dkt. 252);

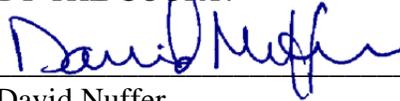
d. To the extent not already produced, All monthly brokerage statements, year-end brokerage statements, and investment account statements issued by Merrill Lynch Pierce Fenner & Smith ("Merrill Lynch") to Margery Rubin as Trustee of the Stock Trust, Marital Trust and Real Estate Trust showing all assets held and transactions related thereto. All monthly loan statements showing loans to and from Merrill Lynch that relate to the Stock Trust, the Marital Trust and the Real Estate Trust. All should include the initial opening statement for the opening of accounts in either 2007 or 2008 and any final closing statements, if any, of the

accounts that were closed, and if not closed, all statements created by Merrill Lynch to the current date, including, without limitation:

- i. Brokerage statements for July and August of 2011 from the Meyers Associates, L.P. or if a quarterly statement, for the third quarter of 2011;
- ii. Any and all missing pages to the Merrill Lynch statements for account number ***-29398;
- iii. To extent account was in existence prior to December of 2008, statements for periods prior to December 2008 for Merrill Lynch Account ***-29473;
- iv. Any and all missing pages to the Merrill Lynch statements for account number ***-36J33; and
- v. Page 3 of the operating agreement for McLain Rubin Realty Company, LLC.
- vi. Any and all information, including documents, concerning or otherwise pertaining to the assets that McLain Rubin Realty II, LLC currently owns, including, but not limited to, the office in Vancouver, Washington.

Dated March 20, 2012.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge