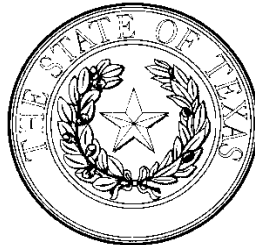


Opinion issued March 14, 2011



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-11-00170-CV

IN RE JOHN TSERTOS, Relator

Original Proceeding on Petition for Writ of Habeas Corpus

MEMORANDUM OPINION

On March 7, 2011, relator, John Tsertos, was held in civil contempt and ordered confined to the Harris County Jail until he complied with the trial court's

March 6, 2003 and May 19, 2009 orders in the underlying suit.* The underlying orders compelled relator to turn over certain documents to the appointed receiver. Relator has filed a petition for writ of habeas corpus, asserting that the underlying March 6, 2003 order is “void because it is not sufficiently clear enough to enforce by contempt.” We deny the petition for writ of habeas corpus.

The purpose of a habeas corpus proceeding is not to determine the ultimate guilt or innocence of the relator, but only to ascertain whether the relator has been unlawfully restrained. *Ex parte Gordon*, 584 S.W.2d 686, 688 (Tex. 1979). The presumption is that the order is valid. *In re Turner*, 177 S.W.3d 284, 288 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding). A writ of habeas corpus will issue if the trial court’s contempt order is beyond the court’s power or if the court did not afford the relator due process of law. *Id.* The relator bears the burden of showing that he is entitled to relief. *Id.*

To be enforceable by contempt, the underlying order must set forth the terms of compliance in clear, specific, and unambiguous terms so that the person charged with obeying the order will readily know exactly what duties and obligations are imposed upon him. *In re Houston*, 92 S.W.3d 870, 877 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding). The order may not be susceptible to more

* The underlying suit is *First Canadian Bancorp Invs., Inc. v. John Tsertos*, No. 2001-22351, in the 11th District Court of Harris County, Texas, the Honorable Mike Miller presiding.

than one interpretation. *Id.* (citing *Ex parte Glover*, 701 S.W.2d 639, 640 (Tex. 1985)).

The same specificity requirement applies to the contempt order as well. *Id.* A contempt order is insufficient if its interpretation requires inferences or conclusions about which reasonable persons might differ. *Id.* When civil contempt is imposed, the contempt order must spell out exactly what duties and obligations are imposed and what the contemnor can do to purge the contempt. *Id.*

Here, in the underlying March 6, 2003 order, the trial court ordered relator to produce to the appointed receiver, within five days, the following documents:

- (1) The *most recent* bank statements from any and all banks and Savings and Loan Associations.
- (2) Titles and bills of sale to all automobiles, airplanes, boats, motorcycles, trailers, trucks, and other such vehicles owned by [relator] *for the past two years*.
- (3) Stocks, certificates, bonds or other securities owned by [relator] in privately held or publicly traded companies or institutions *for the past two years*.
- (4) Receipts for office furniture and all other personal property owned by [relator] *for the past two years*.
- (5) All deeds for real estate in which [relator] owns or owned any interest *for the past two years*.
- (6) All residential and commercial leases to which [relator] is a party or has been a party.
- (7) Any and all certificates of deposit or money market certificates owned by [relator] *for the past two years*.
- (8) Any and all promissory notes payable in whole or in part to [relator] *for the past two years*.

- (9) Any and all minute books, ledger[s], corporate records and resolutions pertaining to [relator].
- (10) [Relator's] federal tax return[s] *for the past two years*.
- (11) Any and all assumed name certificates under which [relator] does business.
- (12) [Relator's] most recent balance sheet.
- (13) [Relator's] most recent financial statement.
- (14) All documents evidencing a transfer of [relator's] property for the past four years.
- (15) Any and all contracts to which [relator] is a party or under which [relator] has any present or future rights.

(Emphasis added.)

Specifically, relator contends that the language, “most recent” and “for the past two years,” emphasized above, is too vague, citing *Ex parte Gordon*, 584 S.W.2d 686 (Tex. 1979), and *Ex parte Acker*, 949 S.W.2d 314 (Tex. 1997). In *Gordon*, the trial court rendered a contempt judgment predicated upon an accusation different from that contained in the order to show cause. 584 S.W.2d at 689. In *Acker*, a child-support case, the divorce decree signed in November 1990 specified that insurance payments were to commence in “June.” 949 S.W.2d at 317. In holding that the obligation was too vague to enforce by contempt, the supreme court held that there was simply no way to determine with sufficient certainty which year the insurance obligation was to begin. *Id.* Relator does not offer any argument in the instant case regarding why he believes the language in the underlying order cannot be determined with sufficient certainty.

In *Ex parte Malone*, a precise year was omitted from the date of the obligation stated in the underlying decree. 788 S.W.2d 411, 411 (Tex. App.—Houston [1st Dist.] 1990, orig. proceeding). This court considered the “normal meaning” of the language used, held that the obligation was immediate, and held that the order was sufficiently clear to enforce by contempt. *See id.* at 411–12.

The underlying order in this case, which was signed March 6, 2003, ordered that relator produce various documents “within five (5) days.” The normal meaning of the “most recent” bank statements can only mean the last reporting cycle available at the time. The normal meaning of the language “for the past two years” can only mean the two years preceding the court’s order. The trial court’s order was not too vague at the time it was signed. *See, e.g., Ex parte Thomas*, No. 06-00-00147-CV, 2000 WL 1804700, at *4 (Tex. App.—Texarkana Dec. 11, 2000, orig. proceeding) (not designated for publication). That relator has allowed eight years to elapse without fully complying with the court’s 2003 order does not now create uncertainty. The underlying 2003 order specifies the documents that were to be produced. The trial court’s 2011 contempt order states which documents remain missing and what relator must do to purge the contempt. Relator has not challenged the specificity of the contempt order.

We conclude that relator has not met his burden to show that he is entitled to habeas relief. We **deny** the petition for writ of habeas corpus. All other pending motions are denied as moot.

PER CURIAM

Panel consists of Justices Keyes, Higley, and Massengale.