

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN**

REEFCO SERVICES, INC.

Plaintiff,

v.

**GOVERNMENT OF THE VIRGIN ISLANDS and
THE VIRGIN ISLANDS BUREAU OF
INTERNAL REVENUE,**

Defendants.

Civil No. 2014-cv-110

**GOVERNMENT’S OPPOSITION TO B&B MANUFACTURING, INC.’S
MOTION TO SHOW CAUSE**

COMES NOW, the Government of the Virgin Islands and the Virgin Islands Bureau of Internal Revenue (“Government”), by and through undersigned counsel, and respectfully urges this Court to deny B&B Manufacturing, Inc.’s (“B&B”) motion to show cause because it lacks standing until such time as this Court makes it a proper party to the case, as well as the fact that the Government has not violated the Court’s November 15th Order of Injunction.

FACTS AND PROCEDURAL BACKGROUND

On September 28, 2018, the Court entered judgment, in part, against the Government and held that 33 V.I.C. § 42, “as interpreted and enforced”, by the Government violates the Commerce Clause and ordered the refund of \$5, 287.74 that Reefco paid in excise taxes. On October 12, 2018, a notice of appeal to the United States Court of Appeals for the Third Circuit was filed by Defendants. Subsequently, the Government filed a motion to stay this Court’s order pending appeal and the Plaintiff’s filed an opposition to the motion to stay on November 2, 2018. The Court held a hearing on the motion to stay on November 8, 2018 and during the hearing the Court *sua sponte* raised the issue of contempt and questioned whether the Government is not in contempt for

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continuing to collect excise taxes. Orally, at the November 8, 2018 hearing and then by written order issued on November 9, 2018, the Court ordered the parties to brief (1) whether the Court is precluded from enjoining conduct that violates the letter and spirit of an order, when that order is on appeal; and (2) whether the Court is precluded from considering whether a party is in contempt for engaging in conduct that violates the letter and spirit of the an order, when that order is on appeal.

Following the hearing, the Government filed a brief that addressed the issue of contempt and argued that because the Court's original order did not specifically state that the Bureau of Internal Revenue was precluded from continuing its collection efforts an order of contempt was not appropriate. This Court agreed, however, it then clarified in a later order that the Government may not continue to collect excise taxes until it is instructed otherwise. The Government has complied. The Government, in an effort to begin collecting excise taxes again, has been working diligently on implementing the proper steps to ensure the new tax structure will pass constitutional muster. As part of this effort, the Government on or about November 21, 2019, issued letters ("Manufacturers Letter") to local manufacturers, including the Intervenor, stating that the Government would like to begin taxing on December 1, 2018. The Manufacturers Letter also set forth the date and time for several educational workshops to explain to local manufactures how to file and pay excise tax. Except for the December 12, 2018 workshop all of the other workshops listed in the letter were conducted and are available by webinar. Given the Court's injunction, the tax has not yet been assessed and the Government has not resumed collection of excise taxes. *See* Affidavit of Director Nominee of the Virgin Islands Bureau of Internal Revenue Joel A. Lee attached hereto.

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On January 11, 2019, B&B filed a Complaint for Intervention, Motion for Leave to Intervene, as well as a Motion to Show Cause to which the Government will now respond to the latter motion.

DISCUSSION

In order to make a showing for civil contempt the court must find that:

(1) a valid court order existed, (2) the defendant had knowledge of the order, and (3) the defendant disobeyed the order. The plaintiff has a heavy burden to show a defendant guilty of civil contempt. It must be done by 'clear and convincing evidence,' and where there is ground to doubt the wrongfulness of the conduct, he should not be adjudged in contempt.

East End Taxi Services, Inc. v. Virgin Islands Taxi Association, Inc., 2008 U.S. Dist. LEXIS 9360 at *46 (2008); *see also*, *Berne Corp. v. Gov't of the V.I.*, 570 F.3d 130, 139 (3d Cir. 2009).

As a preliminary matter, and one that must be mentioned before getting to the heart of the issue, is the fact that this Court has not yet ruled that B&B is a proper party to this action. As such, the Government would argue that B&B does not even have standing to bring the instant motion. Furthermore, what makes the argument even more fruitless is that this matter has already been briefed by the legitimate parties to this case to the Court. The only difference is that when the proper parties to this case briefed the Court in November the Government had still been collecting excise taxes because the Court's original order was vague, however, after the Court's November 15th Order was issued, the Government ceased its collection efforts. As such, this topic on contempt has been exhausted and not subject to repetition given the attached Affidavit making the issue moot and the Intervenor's instant motion patently frivolous.

Nevertheless, assuming *arguendo*, that B&B was a proper party to this matter, the Government would point out that the only thing B&B believes is contemptuous is the fact that it received a letter from the V.I. Bureau of Internal Revenue stating that "[t]he collection of excise

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tax on goods manufactured in the Virgin Islands will be implemented effective December 1, 2018.” (Doc # 98-1). The Government previously expected that by that date the Government would be compliant with this Court’s order and that collection efforts would resume. (See, Emergency Motion to Lift Injunction, Doc # 98). On November 30, 2018, the Government filed an emergency motion asking the Court to lift the injunction which has yet to be ruled upon. However, in the meantime, the Government has **not** resumed collecting excise taxes.

In short, the legal analysis that is required in this matter is whether there was a valid court order. Clearly, the Court’s injunction preventing the Government from any further collection of excise taxes qualifies. Second, whether the Government was aware of the Court’s order. The Government acknowledges the Court’s injunction. And, finally, whether the Government has disobeyed said injunction. This is where B&B’s argument fails. The Government has not been collecting excise taxes, and will not resume collection until authorized by this Court. The fact that the Government sent letters stating that it had intended on collecting excise taxes beginning December 1st is not germane. The only inquiry that is relevant is whether the Government has **actually** begun collection efforts in contravention of the Court’s order—it has not.

CONCLUSION

Given that B&B has not yet been considered a proper party to this case, the Government would first argue that they lack standing to bring the instant motion; however, assuming *arguendo* that the B&B should be allowed to proceed in its civil contempt motion, it should fail because the Government is in full compliance with the Court’s order of injunction prohibiting the collection of excise taxes.

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WHEREFORE, the Government would urge this Court to deny B&B's Motion to Show Cause; their request for the Government to pay a per diem fine of \$10,000 per day; as well as their request for attorney fees.

RESPECTFULLY SUBMITTED,

CAROL THOMAS-JACOBS, ESQ.
ACTING ATTORNEY GENERAL

Dated: February 1, 2019

/s/ Carol Thomas-Jacobs
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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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