

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-24275-CV-MORENO/LOUIS

INVERSIONES Y PROCESADORA
TROPICAL INPROTSA, S.A.,

Petitioner,

vs.

DEL MONTE INTERNATIONAL GMBH,

Respondent.

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REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Respondent's Renewed Motion for Judgment of Contempt (ECF No. 229). These matters are fully briefed and were referred to the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(A) and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, by the Honorable Federico A. Moreno, United States District Judge (ECF No. 232). An evidentiary hearing was conducted before the undersigned beginning on June 2, 2020 and continuing on June 30, 2020. Having carefully considered the motions, the record as a whole, and being otherwise fully advised in the premises, the undersigned issues the following recommendations.

I. BACKGROUND

The facts of these proceedings span the course of four years and are otherwise known to the parties. As relevant here, Inversiones Y Procesadora Tropical Inprotsa, S.A. ("Inprotsa") is a commercial pineapple grower in Costa Rica. Del Monte International GMBH ("Del Monte") is an international pineapple seller. The parties had a dispute regarding certain pineapple seeds that,

pursuant to their agreement, they submitted to arbitration in Miami, Florida. The Arbitral Panel found in favor of Del Monte and issued an Arbitral Award (“Award”). In addition to a monetary award, the arbitration Award included two injunctions: the first was to immediately destroy and or return all MD-2 seeds in excess of 7% of its vegetative material (“Destruction Injunction”), the second required Inprotsa, if it elected not to return or destroy the seeds, to only sell those pineapples derived from those seeds to Del Monte (“Sales Injunction”).

Del Monte moved to confirm the award in Costa Rica; Inprotsa moved to vacate the award in state court in Miami-Dade Florida, the seat of the arbitration. Del Monte removed the action to this Court and cross moved to confirm the petition. The Honorable Federico A. Moreno confirmed the award and entered judgment on May 17, 2017.

Inprotsa did not immediately destroy or return the seeds and continued cultivating and harvesting pineapples as enjoined. Once the pineapples were grown, it elected to sell them to a third party until at least April of 2018. Del Monte discovered the sales and moved for an Order to Show Cause why Inprotsa should not be held in contempt for violating the Court’s Final Judgment which subsumed the Arbitral Award.

i. Procedural History

Del Monte first moved for Entry of an Order to Show Cause Why Inprotsa Should Not Be In Contempt in March 2018. Del Monte contended that Inprotsa violated this Court’s order by continuing to sell MD-2 pineapples against the injunction contained in the Award that this Court had confirmed under the New York Convention (ECF No. 123). Inprotsa responded in opposition and Del Monte replied (ECF Nos. 129, 130). Judge Moreno referred the Motion to the undersigned (ECF No. 131). The undersigned then held an evidentiary hearing on the Motion for Contempt (ECF No. 181). After that hearing, the undersigned issued a Report and Recommendation to Judge

Moreno (ECF No. 191). As it pertains to contempt, the Report and Recommendation memorialized twelve paragraphs of certified facts. The Report recounted that the arbitration panel ordered Inprotsa to return or destroy 93% of the MD-2 vegetative materials; that Inprotsa was permanently enjoined from selling MD-2 pineapples, with the exception of sales in amounts not exceeding 7% of each MD-2 harvest, unless those sales were to Del Monte; and that Inprotsa was ordered pay Del Monte damages in the amount of \$26,133,000.00, arbitral costs of \$650,000.00, and legal representation costs and fees of \$2,507,440.54, for a total amount of \$29,290,440.54, plus pre-award and post-award interest. The award gave Inprotsa the option to sell to Del Monte all pineapples harvested from Del Monte Plant Stock on Inprotsa's plantation in lieu of immediate destruction of the MD-2 vegetation material.

The undersigned found that the award applied to 1,150 hectares of Inprotsa's farmland in Costa Rica. The undersigned further found that Inprotsa did not elect to sell the MD-2 vegetative materials to Del Monte, nor did it destroy the MD-2 vegetative material immediately, but rather at the same pace that occurs at the pineapple's normal growth and harvesting cycle. I further found that Inprotsa continued to make sales of pineapples to someone other than Del Monte. Specifically, I found that Inprotsa executed contracts with third-party Fruver, which is owned by a close family friend of Inprotsa's officers. Finally, I found that according to Inprotsa's sales figures, between May 2, 2017 and September 30, 2018, Inprotsa's sales revenue was \$16,373,684, which exceeded the 7% cap in violation of the injunction against sales.

The Report recommended that Judge Moreno grant Del Monte's Motion for an Order To Show Cause, in part (ECF No. 191 at 26). Specifically, I recommended that Judge Moreno order Inprotsa, and its officers, Jorge Luis Gurria Hernandez and Manuel Gurria Ordonez, to show cause why the Court should not hold them in contempt for failing to comply with the Court's Final

Judgment by making sales of MD-2 pineapples in violation of the permanent injunction of the Award as subsumed by this Court's Final Judgment, and that Judge Moreno should order sanctions, including monies Inprotsa improperly received as a result of its sales made after entry of this Court's Final Judgment (*id.*). Judge Moreno adopted the Report and Recommendations (ECF No. 200). However, before the Order to Show Cause was issued on the issue of contempt, Del Monte moved for Entry of Final Judgment of Contempt and Ordering Assignment of Contract Rights (ECF No. 201). Judge Moreno denied that Motion as premature (ECF No. 207).

Del Monte filed the present Renewed Motion for Entry of Final Judgment of Contempt, seeking entry of judgment in excess of \$16,000,000.00 plus attorney's fees (ECF No. 229). Judge Moreno referred that Motion to the undersigned for a report and recommendation (ECF No. 232).

At a hearing on another motion in this case on March 12, 2020 (ECF No. 246), a status conference was conducted on Judge Moreno's referral of Del Monte's Renewed Motion for Entry of Final Judgment of Contempt. The undersigned asked Inprotsa what steps it viewed as necessary in order to afford it due process as it related to the issue of contempt. *See* Transcript, March 12, 2020 hearing (ECF No. 249 at 65-67). Inprotsa requested an opportunity for a hearing and an additional memorandum. The Court granted both requests. That briefing was filed on April 24, 2020 (ECF No. 261) and the hearing was conducted over two days on June 2, 2020 and June 30, 2020 (ECF Nos. 270, 280).

II. INPROTSA'S SUPPLEMENTAL MEMORANDUM

Inprotsa's supplemental memorandum raises three main defenses to an issuance of final judgment of contempt: one procedural defense, a legal defense, and a factual defense. The undersigned addresses each in turn below.

a. Procedural Defense

Inprotsa avers that the undersigned lacks the authority to conduct any further proceedings on the issue of contempt because I have already certified facts to the district court judge, and thus, the only remaining procedural hurdle is for the district court judge to issue a show cause order and hold an evidentiary hearing. Inprotsa avers that the ongoing proceedings exceed the magistrate judge's limited contempt powers pursuant to 28 U.S.C. § 636(e). Inprotsa also argues that in light of the complex, intersecting issues, I should not recommend that Inprotsa make any further appearance before Judge Moreno on the issue of contempt because the issues are complicated and nuanced.

While it is true that only a district judge is authorized to adjudicate contempt, the motion at issue is a Renewed Motion for Judgment of Contempt and has been referred to the undersigned pursuant to 28 U.S.C. § 636(b)(3), also known as the "additional duties" provision of 28 U.S.C. § 636(b)(3). This provision authorizes a district court to refer to a magistrate judge "such additional duties as are not inconsistent with the Constitution and laws of the United States." *Id.* Other courts have held that post judgment motions may be referred to a magistrate judge through this provision, so long as the district judge retains the ultimate responsibility for decision making. *See Arrowood Indem. Co. v. Trustmark Ins. Co.*, 3:03CV1000 JBA TPS, 2012 WL 1596980, at *3 (D. Conn. May 7, 2012) (citing *Colo. Bldg. & Constr. Trades Council v. B.B. Andersen Constr. Co.*, 879 F.2d 809, 811 (10th Cir.1989)).

The motion referred to the undersigned is Del Monte's renewed motion for entry of judgment in its favor. If Judge Moreno determines, on the facts certified, to hold Inprotsa in contempt and order sanctions paid to Del Monte, the previously issued Report and Recommendation makes no finding or recommendation as to the amount that may be awarded.

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