

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 16-24275-CIV-MORENO

INVERSIONES Y PROCESADORA
TROPICAL INPROTSA, S.A., a Costa Rican
Corporation,

Petitioner,

vs.

DEL MONTE INTERNATIONAL GMBH, a
Swiss Corporation,

Respondent.

**ORDER ADOPTING REMAINING PORTIONS OF MAGISTRATE JUDGE LOUIS'S
JULY 16, 2020 REPORT AND RECOMMENDATION AND ORDER FINDING
PETITIONER IN CONTEMPT**

THE MATTER was referred to the Honorable Lauren F. Louis, United States Magistrate Judge, for a Report and Recommendation on Respondent's Renewed Motion for Contempt (D.E. 229). The Magistrate Judge filed a Report and Recommendation (D.E. 75) on **July 16, 2020**. On October 30, 2020, the Court adopted the Report and Recommendation in part, deferring ruling on the Magistrate Judge's recommendations as to sanctions. The Court adopted her recommendation to issue a separate Order to Show Cause as to petitioner, Inversiones y Procesadora Tropical, INPROTSA, S.A. as to why it should not be held in contempt for its noncompliance with the Court's Final Judgment. INPROTSA, S.A. filed a response to the Order to Show Cause on November 16, 2020. The Court now reviews INPROTSA's response to the Order to Show Cause and the remaining recommendations in the July 16, 2020 Report and Recommendation regarding sanctions. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation

present, and being otherwise fully advised in the premises, it is

ADJUDGED that the remaining portions of United States Magistrate Judge Lauren F. Louis's Report and Recommendation are **AFFIRMED** and **ADOPTED** as set forth in this Order.

I. **Background**

On October 30, 2020, this Court issued an Order to Show Cause to Petitioner, INPROTSA, S.A. to show cause why it should not be held in contempt for its failure to comply with this Court's Order Confirming the Arbitral Award and Final Judgment. The Court's Order confirmed an arbitral award, which contained a monetary award and two injunctions. The Court also entered final judgment for the reasons stated in the confirmation order in favor of the Respondent Del Monte.

INPROTSA's noncompliance with the injunctions is at issue in these contempt proceedings. The first injunction ordered INPROTSA to "return or destroy 93% of the MD-2 [pineapple] vegetative materials in [INPROTSA's] farm" (the "destruction injunction") and the second enjoined INPROTSA "from selling MD-2 pineapples to third parties for as long as [INPROTSA] shall not have fully complied with its obligation to destroy or return the MD-2 vegetative materials,' with the exception of sales in amounts not exceeding 7% of each MD-2 harvest" (the "sales injunction"). It is undisputed that INPROTSA did not comply from May 2017 to April 2018. INPROTSA did not destroy or return the seeds and once the pineapples were grown, it elected to sell them to a third-party until at least April 2018.

The Order to Show Cause finds that Respondent Del Monte International, GmbH met its burden to show by clear and convincing evidence that the alleged contemnor, INPROTSA, S.A., violated the Court's prior confirmation order and final judgment. It required INPROTSA to show

cause why it should not be held in contempt for its noncompliance and directed INPROTSA to advise the Court if it requested an additional evidentiary hearing. In response to the order, INPROTSA consented to Del Monte's Motion for Contempt being determined by the Court on the existing evidentiary record, without a further evidentiary hearing.

INPROTSA's response to the show cause order incorporates by reference the transcript of INPROTSA's closing argument at the evidentiary hearing conducted by Magistrate Judge Louis, INPROTSA's final brief concerning Respondent's Renewed Request for Finding of Contempt (D.E. 261), INPROTSA's Objections to the Magistrate Judge's Report and Recommendation (D.E. 292), and INPROTSA's Notice of Filing Supplemental Authority, *Liu v. S.E.C.*, 140 S. Ct. 1936 (June 22, 2020). Del Monte seeks a final judgment of civil contempt based on INPROTSA's failure to destroy the plants immediately and based on its decision to sell the pineapples to a third-party, in violation of the sales injunction.

In addition to issuing the Order to Show Cause on October 30, 2020, the Court also issued an Order Adopting in part the Magistrate Judge's Report and Recommendation (ECF 297 & 287). The Court stopped short of adopting Judge Louis's recommendations regarding the proper award of sanctions until after INPROTSA had an opportunity to show cause as to its noncompliance. Specifically, the Court deferred ruling on whether disgorgement of revenues is a proper measure of damages for contempt and on whether an award of attorney's fees to Del Monte is appropriate. The Court must now decide whether INPROTSA shows cause to excuse its noncompliance, and if it fails to show cause, what are the appropriate sanctions.

I. Legal Standard and Analysis

Once a party meets its burden to show by "clear and convincing evidence that the alleged contemnor violated a court's earlier order," the burden shifts "to the alleged contemnor to

produce evidence explaining [its] noncompliance at a show cause hearing.” *Peery v. City of Miami*, 977 F.3d 1061 (11th Cir. 2020) (quoting *Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998)). “The clear and convincing evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order.” *Id.* (quoting *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002)). The Court must construe ambiguities in favor of the party charged with contempt. *Id.* (citing *F.T.C. v. Leshin*, 618 F.3d 1221, 1231 (11th Cir. 2010)).

Del Monte seeks contempt sanctions for INPROTSA’s violation of this Court’s May 17, 2017 final judgment, which was issued after the Court confirmed an arbitral award in this matter. There is no dispute in this case that INPROTSA did not comply with either the destruction or sales injunctions. INPROTSA, however, raises arguments that the order was unlawful because the Court lacks the power to enforce an extraterritorial mandatory injunction. Second, INPROTSA argues the order was not clear and unambiguous such that its failure to comply should result in contempt of Court. Finally, INPROTSA argues that it could not comply with the Court’s order because doing so would violate Costa Rican law. If INPROTSA’s arguments do not excuse its noncompliance, the Court must determine whether the appropriate remedy is disgorgement of revenues and an award of attorney’s fees.

A. *Civil Contempt*

1. *Was the Court’s order lawful and valid?*

INPROTSA argues the Court cannot find it in contempt because the Court lacked authority to enter an order containing an extraterritorial mandatory injunction. Put another way, INPROTSA argues it cannot be found in contempt for violating an unlawful injunction. In this case, the Court confirmed an arbitral award, which included two injunctions – a sales injunction

and a destruction injunction. This Court adopted the Magistrate Judge's Report and Recommendation on this issue prior to ordering INPROTSA to show cause. The Court, nevertheless, revisits the argument to determine if it excuses INPROTSA's noncompliance.

Responding to the show cause order, INPROTSA first asserts that confirmation of the award is a separate issue from a court's power to enforce all or part of the award. Relying on *Four Seasons Hotels & Resorts B.V. v. Consorcio Barr, S.A.*, 613 F. Supp. 2d 1362, 1365-66 (S.D. Fla. May 12, 2009), INPROTSA argues that a court's duty to confirm an arbitral award does not always match its power to enforce the same award. In a confirmation proceeding, the Court has a narrow scope of review allowing it to either accept or reject confirmation of an award, and INPROTSA suggests that this Court's power ends there. *Four Seasons* does not support INPROTSA's position. Rather, it confirms an arbitral award even if the specific performance mandate might be contrary to Venezuelan law or even if the court could not enforce a judgment pertaining to activities in a foreign country. The posture of this case is different, where the Court converted its order confirming an arbitral award into a judgment, which is provided for in the statute. It states that upon confirmation of an arbitral award, the "judgment shall be docketed as if it was rendered in an action. The judgment so entered shall have the same force and effect, in all respects, as and be subject to all the provisions of the law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered." 9 U.S.C. § 13.

In her Report and Recommendation, which this Court adopted, Magistrate Judge Louis examined this argument. Because the Court confirmed the award and converted it into a judgment, the Court could "enforce the judgment by punishing the parties who violated the judgment through contempt or enforcement proceedings." Report and Recommendation (ECF

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