

U.S. v. Mathewson, Not Reported in F.Supp. (1993)

71 A.F.T.R.2d 93-1453, 93-1 USTC P 50,152

1993 WL 113434

United States District Court, S.D. Florida.

UNITED STATES of America, Plaintiff,

v.

John MATHEWSON, Defendant.

No. 92-1054-CIV. DAVIS. | Feb. 25, 1993.

Opinion

MEMORANDUM AND ORDER

EDWARD B. DAVIS, District Judge:

*1 Before the Court are Defendant John Mathewson's Motions to Quash Writ of Ne Exeat Republica. Based upon an evidentiary hearing, a limited stipulation of facts, and argument of counsel, the Court has prepared this Memorandum and Order, which shall constitute findings of fact and conclusions of law to the extent required. [Fed.R.Civ.P. 52\(a\)](#), [65\(d\)](#).

I. Facts

The Defendant, John Mathewson, is a citizen of the United States, and has been since his birth. Mr. Mathewson filed tax returns for the years 1972 and 1974 through 1983, but he has not filed a return since then.

Between January, 1981, and June, 1983, Mr. Mathewson's counsel filed five petitions in the U.S. Tax Court for the years 1972 and 1974 through 1980. In 1985 and 1986, his counsel filed three petitions for the years 1981 through 1983. On September 9, 1988, Mr. Mathewson's counsel executed Decisions and Stipulations of Settled Issues for the years 1972 and 1974 through 1983. On September 21, 1988, the Tax Court entered the decisions. Mr. Mathewson's signature does not appear on the Decisions.

Based on the Tax Court Decisions alone, Mr. Mathewson's outstanding tax liability is over \$5,000,000. Using records gathered from Mr. Mathewson's former accountant, the Internal Revenue Service estimates Mr. Mathewson owes additional tax for 1984 and 1985, years that he did not file

returns, for a total liability of \$7,619,421.08, plus interest and statutory additions.

By certified mail, the I.R.S. mailed Mr. Mathewson a final notice letter alleging a tax deficiency debt of \$7,179,033.61. Included within that notice was a request that Mr. Mathewson pay as much of the deficiency as he was presently able to pay, make an offer of compromise, or set forth a settlement structure for the payment of the tax deficiency. Mr. Mathewson received this letter, but he did not contact the Government in any form.

Some time prior to December, 1984, Mr. Mathewson left the United States and began to reside continuously in the Cayman Islands. He is the Chairman of Guardian Bank and Trust (Cayman) Limited, of which he owns 600,000 shares of one million outstanding shares. Presently Mr. Mathewson has no property in the United States. In the years 1984 and 1985, Mr. Mathewson liquidated the last of his assets remaining in this country and transferred the funds overseas. The substantial property he owns, either individually, jointly with his spouse or others, or derivatively through business entities, is in the Cayman Islands.

II. Discussion

A Writ of Ne Exeat Republica is a form of injunctive relief that restrains the defendant from leaving the jurisdiction in order to compel feissance to the sovereign. *United States v. Shaheen* [71-1 USTC ¶ 9477], [445 F.2d 6](#), 9-10 (7th Cir.1971) (Stevens, J.); see also *D. Ginsberg & Sons, Inc. v. Poplin*, [285 U.S. 204](#), 208-09, [52 S.Ct. 322](#), 323-24 (1932). The Court has the power to issue the Writ "as may be necessary or appropriate for the enforcement of the internal revenue laws." [26 U.S.C. § 7402\(a\)](#) (1988). In appropriate circumstances, the Writ may issue to detain a citizen for a limited time "to enable the Government to have effective discovery, both on issues of liability and with respect to the location, value, and legal status of [the taxpayer's] property." *Shaheen* [71-1 USTC ¶ 9477], [445 F.2d at 12](#).

*2 To receive issuance of the Writ, at a minimum, the Government must meet the burden of proof associated with a preliminary injunction. *Shaheen* [71-1 USTC ¶ 9477], [445 F.2d at 10](#); see also *United States v. Ernst & Whinney* [84-2

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71 A.F.T.R.2d 93-1453, 93-1 USTC P 50,152 USTC ¶ 9618], 735 F.2d 1296, 1301 (11th Cir.1984) (noting that issuance of the writ is bound by principles of equity), *cert. denied*, 470 U.S. 1050 (1985). In turn, preliminary injunctive relief stems from four factors: (1) a substantial likelihood the movant will succeed on the merits; (2) the movant will suffer an irreparable injury if the injunction is not issued; (3) the potential injury to the movant outweighs the potential harm to the opposing party; and (4) the injunction would not disserve the public interest. *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561–62 (11th Cir.1989), *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 111 S.Ct. 888 (1991). The movant bears the burden on each of these issues. *Tally–Ho, Inc. v. Coast Community College Dist.*, 889 F.2d 1018, 1022 (11th Cir.1989). Because the collection of taxes certainly serves the public interest, only the first three elements are at issue here.

1. Likelihood of Success on the Merits

The Government has met its burden of showing that it is likely to succeed in proving that Mathewson owes back taxes. A stipulated settlement of tax liability, executed by the counsel for the taxpayer, is prima facie valid and binding on the taxpayer. See *Sorrentino v. Ross* [70–1 USTC ¶ 9334], 425 F.2d 213, 215 (5th Cir.1970). It is undisputed that for the years 1972 and 1974 through 1983, counsel for Mr. Mathewson entered petitions on his behalf. The Tax Court entered its decisions based on the stipulation in 1988, and no timely appeal was taken.

2. Irreparable Injury

The Government has shown that it will suffer irreparable injury if Mr. Mathewson is not restrained. Here, to show injury sufficient for maintenance of the Writ, the Government must prove that the taxpayer's departure will substantially prejudice the collection of taxes. See *United States v. Robbins* [64–2 USTC ¶ 9775], 235 F.Supp. 353, 357 (E.D.Ark.1964). Without Mr. Mathewson's assistance, the Government cannot discover his property in the Cayman Islands to collect for a tax liability. Moreover, there is a substantial likelihood that, if he is not restrained, Mr. Mathewson will leave for the Cayman Islands without assisting the Government. He has no assets in the United States, he has not filed an income tax return since 1983, and he did not reply to the Government's notices sent to him in the Caymans. Thus, he has exhibited a propensity toward frustrating the Government's collection efforts.

3. Balancing of Equities

With adjustment to the terms of the Writ, the equities between the parties are balanced. For a civil action, the restraint on the freedom to travel is an extreme measure. To minimize the punitive aspects of this civil remedy, the Court will modify the Writ to keep Mr. Mathewson in house arrest, so long as he posts a proper bond. This will allow Mr. Mathewson to enjoy at least some of the comfort his homeland offers, while preserving the ability of the United States to litigate this action.

*3 Based upon the foregoing, it is

ORDERED AND ADJUDGED that Defendant's Motions to Quash Writ of Ne Exeat Republica are DENIED, and that the Writ of Ne Exeat Republica is MODIFIED, as follows:

The Defendant shall execute a consent for the Government to have access to his records to discover the location, value, and legal status of his property, and the Government shall complete its discovery within twenty (20) days of the date upon which Mr. Mathewson executes the consent. If the Government completes its discovery prior to that time, it shall notify the Court, and the Court shall thereupon dissolve the Writ. If the Government fails to complete its discovery by that time, it shall show good cause why the Writ should not be dissolved, or the Court shall dissolve the Writ.

The Marshal shall release Mr. Mathewson on personal surety bond according to the terms prescribed in the Order Setting Bond entered contemporaneously with this Order.

DONE AND ORDERED.

ORDER SETTING BOND

THIS CAUSE having come before the Court pursuant to a hearing on the Writ of *Ne Exeat Republica* and the Court having conducted a hearing, carefully reviewed the record and being otherwise advised in the premises, it is ORDERED

1. The bond is set at One Million Dollars (\$1,000,000) with ten (10) percent of that sum to be deposited in the Registry

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of the Court, the balance to be secured by the signature of the Defendant.

2. The following special conditions of bond are imposed:

(a) The defendant shall reside at 19355 Turnberry Way, Apartment 5L, North Miami, Florida;

(b) At no time shall the Defendant leave Dade County, Florida;

(c) The Defendant shall submit to electronic monitoring and will be confined to that residence twenty-four (24) hours a day, with the following exceptions:

(i) Visits to his attorneys, after advance notification to Pretrial Services;

(ii) Visits to physicians, after advance notification to Pretrial Services;

(iii) Legitimate errands, such as grocery shopping, after advance notification to Pretrial Services;

(iv) He may be visited by Pretrial Services' officers or agents of the IRS at any time of the day or night to verify his presence and adherence to the conditions of his bond;

(v) Payment of seven (\$7.00) dollars per day monitoring charge;

(vi) Such other conditions as Pretrial Services' Intensive Monitoring Unit may deem necessary.

3. The Defendant shall not be released from the custody of the United States Marshal prior to the electronic monitoring ankle bracelet being installed at the U.S. Marshal's cellblock in the United States Courthouse at 301 North Miami Avenue, Miami, Florida.

4. Defendant shall forthwith surrender any pilot's license and current log to Pretrial Services.

5. Pretrial Services shall take custody of Defendant's passport which is presently in the possession of the United States Marshal.

DONE AND ORDERED.

Parallel Citations

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