

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHEVRON CORPORATION,

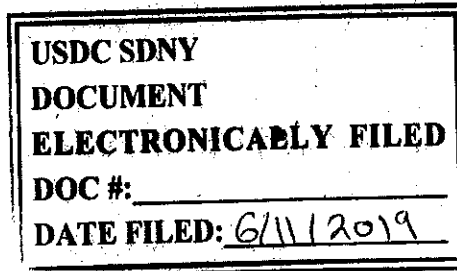
Plaintiff,

-against-

11-cv-0691 (LAK)

STEVEN DONZIGER, et al.,

Defendants.
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ORDER IMPOSING ADDITIONAL COERCIVE CIVIL CONTEMPT SANCTION

LEWIS A. KAPLAN, *District Judge.*

On May 23, 2019, the Court held Steven Donziger in civil contempt of, *inter alia*, paragraph 4 of the Forensic Inspection Protocol of March 5, 2019 [DI 2172] (the “Protocol”) and imposed a coercive fine with respect to May 28, 2019 and each subsequent day from that date until the date on which he fully purges himself of that contempt. [DI 2209]

On May 29, 2017, the Court held Donziger in civil contempt of paragraph 5 of the Protocol and imposed an additional coercive fine with respect to June 3, 2019 and each subsequent day from that date until the date on which he fully purges himself of that contempt. [DI 2222]

On June 10, 2019, the Court held a hearing with respect to whether Donziger has fully purged himself of either of these contempts. He concededly has not done so with respect to the contempt of paragraph 5 of the Protocol. He professes a desire to satisfy the plaintiff that he has done or will do so as to paragraph 4. But offered the chance to take the witness stand at yesterday’s hearing to substantiate his claims of compliance to date, the veracity and completeness of which have been questioned, he first sought an adjournment and, when that was denied, declined to testify.

Further, Donziger has not paid any part of the coercive fines referred to above which, as of June 9, 2019, totaled \$826,000 with respect to his contempt of paragraph 4 and \$126,000 with respect to his contempt of paragraph 5.¹ He maintained in substance at the June 10, 2019 hearing that all of his assets are frozen and that he lacks means to pay any of the fines.

In the circumstances, the Court finds that additional coercive remedies are necessary to obtain full compliance. Keeping in mind that it is desirable to calibrate coercive sanctions to employ as little “coercion” as is needed to produce compliance, an appropriate next step – in view

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Of course, as the Court has made clear before, any accrued coercive fines will be expunged upon full compliance with the orders.

of the ineffectiveness to date of escalating coercive fines – is to require Donziger to surrender his passport(s) pending his full compliance with the outstanding order.

This is well within the Court’s authority. As the Seventh Circuit has written:

“[A] judge does have the power to imprison a recalcitrant litigant for contempt, implying the lesser power to set conditions on freedom. Surrendering one’s passport is a common condition of release on bail, which is Bruetman’s effective status. (This perspective reinforces the jurisdictional conclusion, for orders setting terms of bail are appealable. *Stack v. Boyle*, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951).) Just as a litigant held in civil contempt has the keys in his own pocket—for he will be released as soon as he cooperates—so Bruetman can get his passport back whenever he pleases. All he need do is complete the examination, fully disclosing all of his assets. Then the proceedings will end and Bruetman will be free to travel (though his assets must stay behind).” *Herbstein v. Bruetman*, 241 F.3d 586, 589 (7th Cir. 2001).

The same is true of Donziger. All he need do to obtain release of his passport(s) is to comply fully with the Court’s orders.

Accordingly, it is hereby

ORDERED, that Donziger, on or before June 12, 2019 at 4 p.m., shall surrender to the Clerk of the Court each and every passport issued to him by each and every nation to have issued a passport to him, the Clerk to retain possession thereof unless and until this Court determines that Donziger has complied fully with paragraphs 4 and 5 of the Protocol.

SO ORDERED.

Dated: June 11, 2019



Lewis A. Kaplan
United States District Judge