

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Filed at 2:00 P.M.
DATE 2-23-04
Amo Carla
DEPUTY CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5:03-CV-113-1 (DF)

MORRIS JAMES, SR. AND NATIONAL
RESOURCE INFORMATION CENTER,
INC., also d/b/a NRIC, INC.,

Defendants.

Civil Order File
Volume 89
Page 9215

ORDER

The Plaintiff filed this action seeking to enjoin Defendant from continuing allegedly fraudulent business operations. After the close of discovery, Plaintiff filed a Motion for Summary Judgement and for a Permanent Injunction (tab #32). As Defendant is proceeding pro se, the Court ordered, after the Defendant failed to respond, that Defendant be given an additional twenty (20) days to respond to this motion. Such response was due by February 11, 2004, and to this date, Defendant has not responded. Therefore, the Court will now address Plaintiff's Motion for Summary Judgement and for a Permanent Injunction.

I. STANDARD OF REVIEW

A. Summary Judgement

The Supreme Court has observed, "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and

we think it should be interpreted in a way that allows it to accomplish this purpose.” **Celotex Corp. v. Catrett**, 477 U.S. 317, 323-24 (1986). Under Rule 56, summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); see also **Celotex Corp.**, 477 U.S. at 322. In reviewing a motion for summary judgment, the court must view the evidence and all justifiable inferences in the light most favorable to the non-moving party, but the court may not make credibility determinations or weigh the evidence. See **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 249 (1986).

B. Permanent Injunction

In considering the grant of a statutory injunction, the Eleventh Circuit has held that all that must be shown in order for an injunction to issue is that, “a person is engaged in or about to engage in prohibited acts or practices.” **Securities and Exchange Commission v. Caterinicchia**, 613 F.2d 102, 105 n.3 (5th Cir. 1980)¹. In so holding, the Eleventh Circuit reasoned that when an agency’s injunctive power is a “creature of statute,” then the agency “need only establish what the statute requires.” *Id.* at 105 n.3. It is well established that “in actions for a statutory injunction, the agency need not prove irreparable injury or the inadequacy of other remedies as required in private injunctive suits” and that “[a] prima facie case of illegality is sufficient” for a statutory injunction to issue.

¹ In **Bonner v. City of Prichard**, 661 F.2d 1206, 1209 (11 Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

Commodity Futures Trading Commission v. Muller, 570 F.2d 1296, 1300 (5th Cir. 1978). The court must determine that illegal conduct has occurred before a statutory injunction can issue but that is all that must be shown. *Id.* at 1300 (quoting **Commodity Futures Trading Commission v. J. S. Love & Assoc. Options, Ltd.**, 422 F. Supp. 652, 661 (S.D.N.Y.1976)).

When considering an equitable injunction, "a district court may issue a preliminary injunction where the moving party demonstrates (1) a substantial likelihood of success of the merits; (2) that irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." **Fours Seasons Hotels & Resorts, B. V. v. Consorcio Barr, S.A.**, 320 F. 3d 1205, 1210 (11th Cir. 2003). Accordingly, for a permanent, equitable injunction to issue, the standard the district court should apply is, "essentially the same as for a preliminary injunction except that the plaintiff must show actual success on the merits instead of a likelihood of success ." **Siegel v. Lepore**, 234 F.3d 1163, 1213 (11th Cir. 2000). In addition to showing actual success on the merits, the party seeking a permanent injunction must "demonstrate the presence of two elements: continuing irreparable injury if the injunction does not issue, and the lack of an adequate remedy at law." *Id.* at 1213 (quoting **Newman v. State of Ala.**, 683 F.2d 1312, 1319 (11th Cir.1982)). With regard to the elements necessary for the permanent injunction to issue, "the irreparable injury rubric is intended to describe the quality or severity of the harm necessary to trigger equitable intervention. In contrast, the inadequate remedy test looks to the possibilities of alternative

modes of relief, however serious the initial injury." *Id.* at 1213 (quoting *Lewis v. S.S. Baune*, 534 F.2d 1115, 1124 (5th Cir.1976)).

II. DISCUSSION

In this case, the Government seeks summary judgement on the legal issue that indeed there is no tax credit for "black heritage taxes," "the black tax rebellion," or "40 acres and a mule" nor a tax refund as compensation or reparation for slavery, segregation, treatment as second-class citizens, separate-but-equal laws or other similar grounds. If such a judgement were to be entered, the Government would have the result of that judgement be a permanent injunction enjoining the Defendant from filing such a credit or refund, preparing returns claiming such a credit or refund, or in any way promoting such a credit or refund. Before this injunction may issue, the Court first turns to consider the merits of Plaintiff's argument for summary judgement, that is that Defendant is in violation of the law as the Internal Revenue Code ("I.R.C.") does not provide a tax credit for "black heritage taxes," "the black tax rebellion," or "40 acres and a mule" nor does the I.R.C. provide a tax refund as compensation or reparation for slavery, segregation, treatment as second-class citizens, separate-but-equal laws or other similar grounds.

A. Legality of Defendant's Actions

It is without dispute that the I.R.C. does not provide any tax credit or refund comparable to those which Defendant claimed for himself, advertised and assisted others in claiming. There is no "black heritage" tax credit, no credit for "the black tax rebellion" nor a credit for "40 acres and a mule." Furthermore, there is no tax refund as compensation or reparation for slavery, segregation, treatment as second-class citizens, separate-but-

equal laws or other similar grounds. Accordingly, any claim Defendant submitted, prepared, filed or assisted with that claimed such a credit or refund is legally frivolous. Therefore, Plaintiff's Motion for Summary Judgement is **GRANTED**. The Court now turns to consider the issuance of a permanent injunction as Plaintiff has succeed on the merits.

B. Permanent Injunction

The Government seeks a permanent, statutory injunction under I.R.C. §§ 7407 and 7408 and a permanent, equitable injunction under § 7402(a). Thus, the applicable standard for each type of injunction will be applied as the Court considers each in turn.

1. Injunction under §§ 7407 and 7408

Pointing to Defendants conduct as a tax preparer, the Government seeks to enjoin any further tax preparation by the Defendants under § 7407, which provides for a

civil action in the name of the United States to enjoin any person who is an income tax return preparer from further engaging in any conduct described in subsection (b), if the court finds (1) that an income tax preparer has (A) engaged in conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title, (B) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as an income tax return preparer, (C) guaranteed the payment of any tax refund or the allowance of any tax credit, or (D) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws, and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct.

26 U.S.C.A. § 7407 (West 2002). In bringing such an action in this case, the Government seeks to enjoin Defendants, both Mr. James, individually, and NRIC, from preparing tax returns or claims containing an unrealistic provision, specifically those provisions for slave reparations and other similar tax credits and refunds based on African-American heritage.

As this injunction is provided for by statute, all that is required is a showing that Defendants have engaged in the illegal conduct sought to be prohibited by the statute. Clearly, in the case at hand, Defendants have prepared tax returns that contain unrealistic positions, have guaranteed the payment of a refund or the allowance of credit that does not exist and engaged in fraudulent conduct that interferes with the administration of the tax laws. Therefore, such an injunction is proper.

In seeking an injunction under § 7408, the Government points to Defendants conduct whereby Defendants aided others in under reporting their tax liability since the \$43,209 deduction Defendants advocated did not exist. This section provides for

A civil action in the name of the United States to enjoin any person from further engaging in conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability), if the court finds--(1) that the person has engaged in any conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability), and (2) that injunctive relief is appropriate to prevent recurrence of such conduct, the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under section 6700 or section 6701.

26 U.S.C.A. § 7408 (West 2002). Defendants conducted meetings, advertised in several different media outlets and actively promoted a fraudulent tax scheme by advancing the idea that African-Americans could claim a tax credit or receive a refund based on reparations for slavery or mistreatment or for other such false claims. This conduct clearly violates § 6701, as Defendants helped others underreport their tax liability with this frivolous scheme, and is the conduct prohibited by the statute authorizing the injunction. Therefore, it is proper for a statutory injunction to issue.

2. *Injunction under § 7402(a)*

In addition to enjoining Defendants from preparing tax returns, aiding others with the preparation of tax returns and other such conduct, the Government also seeks equitable injunctions requiring Defendants to take certain affirmative actions. As this Court has the jurisdiction under this section "to make and issue in civil actions, writs and orders of injunction, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws," the Government seeks the Court to impose a list of required actions upon Defendants. 26 U.S.C.A. §7402(a) (West 2002). While the Government has proven successful on the merits, as is required for an equitable injunction to issue, it would appear the statutory injunctions provided for by law are an adequate remedy to prevent future illegal conduct by Defendants. Furthermore, the decision to impose such requirements upon Defendants is within the discretion of this Court, as "framing an injunction appropriate to the facts of a particular case is a matter peculiarly within the discretion of district judge." *Gore v. Turner*, 563 F.2d 159, 165 (5th Cir. 1977). At this time, it does not appear that the injunctions sought under § 7402 are practical or feasible solutions and enforcement of such injunctions would prove burdensome to the Court.

III. **CONCLUSION**

According to the foregoing, Defendants have engaged in illegal conduct and, therefore, Plaintiff's Motion for Summary Judgment is **GRANTED**. Following the grant of summary judgment, the following **PERMANENT INJUNCTION** shall be entered:

A. Pursuant to I.R.C. § 7407, Defendants and their representatives, agents, servants, employees, attorneys and any persons in active concert or participation with them, are prohibited from directly or indirectly:

- (1) Engaging in any conduct subject to penalty under I.R.C. §6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;
- (2) Engaging in any conduct subject to penalty under I.R.C. §6695, *i.e.*, failing to sign and furnish an identifying number on tax returns, and failing to turn over to the Internal Revenue Service ("IRS") upon request a complete and accurate list of clients, with taxpayer identification numbers, or a copy of all tax returns prepared, and;
- (3) Engaging in any other activity subject to injunction or penalty under I.R.C. §§7407, 6694 or 6695, including any fraudulent or deceptive conduct which substantially interferes with the proper administration of the internal revenue laws.

B. Pursuant to I.R.C. § 7408, Defendants and their representatives, agents, servants, employees, attorneys and any person in active concert or participation with them are prohibited from directly or indirectly:

- (1) Engaging in any conduct subject to penalty under I.R.C. § 6700, *i.e.*, selling tax or membership packages that promote false claims for refund; conducting meetings that promote false claims for refund; or providing false information on the internet about the availability of a slavery reparations tax credit;

- (2) Engaging in any conduct subject to penalty under I.R.C. §6701, *i.e.*, preparing or assisting others in the preparation of any documents which are to be used in connection with any material matter arising under the internal revenue laws and which defendants know will (if so used) result in understanding the income tax liability of other persons;
- (3) Acting as an income-tax preparer; and
- (4) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, including preparing or assisting in preparing any return, amended return, or other document to be filed with the IRS claiming a credit titled "black heritage tax," "40 acres and a mule," or a credit or refund for reparations for slavery, segregation, treatment as second-class citizens, separate-but-equal laws, or any other comparable grounds, or any other fabricated tax credit or refund, and disseminating, in any way, information that such a fabricated credit exists and is available.

SO ORDERED, this 23 day of February, 2004.

ENTERED ON DOCKET
2-23, 2004
Gregory J. Leonard, Clerk
Gregory J. Leonard
Deputy Clerk



DUROSS FITZPATRICK, JUDGE
UNITED STATES DISTRICT COURT

DF/has

Filed at 200 PM
DATE 2-23-04
H. McCarra
DEPUTY CLERK, U.S. DISTRICT COURT
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UNITED STATE OF AMERICA, :
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v. : C. A. NO. 5:03-CV-113-1(DF)
MORRIS JAMES, SR., and NATIONAL :
RESOURCE INFORMATION CENTER <
INC., d/b/a NRIC, INC., :
Defendants : Civil Order File
Volume 89, Page 9215

J U D G M E N T

The Court by Order dated and filed February 23, 2004, having granted Plaintiff's Motion for Summary Judgment and Permanent Injunction, JUDGMENT is hereby entered in favor of Plaintiff and against Defendants. Defendants shall recover nothing from Plaintiff. Plaintiff is also entitled to recover their costs of this action.

This 23rd day of February, 2004.

Gregory J. Leonard, Clerk

H. McCarra

H. McCarra, U.S. Deputy Clerk

ENTERED ON DOCKET
2-23-04, 2004
Gregory J. Leonard, Clerk
H. McCarra
Deputy Clerk