

CAUSE NO. 19-7298-367

ROBERT OBLON,

Plaintiff,

v.

JORDAN BROCK,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

367th JUDICIAL DISTRICT

DENTON COUNTY, TEXAS

**NON-PARTY SHARING SERVICES GLOBAL CORPORATION'S
MOTION TO VACATE AND SET ASIDE SHOW CAUSE ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

Non-Party Sharing Services Global Corporation (“Sharing Services”) files this Motion to Vacate and Set Aside Show Cause Order and would show the Court as follows:

1. On February 11, 2020, the Court entered the attached Order on Plaintiff’s Amended Motion to Show Cause (“Show Cause Order”).

2. Prior to the entry of the Show Cause Order, non-parties Keith Halls, John “JT” Thatch, and Kip A. Allison, individually, and in his capacity as trustee of the Alchemist Holdings, LLC Stock Voting Trust Agreement (collectively “the Individual Non-Parties”) filed their Objections to the proposed Show Cause Order (“Objections”), which the Court implicitly overruled when it entered the Show Cause Order. [*See Court’s Docket*, 02/07/2020].

3. Further, on January 27, 2020, the Individual Non-Parties filed their Plea to the Jurisdiction, wherein the Individual Non-Parties challenge the Court’s subject matter jurisdiction to either entertain the Motion to Show Cause or to enter any order on such motion. [*See Court’s Docket*, 02/07/2020]. The Court has yet to rule on the Plea to the Jurisdiction

4. In the interest of justice, and for all the reasons set forth in the arguments below, as well as the Individual Non-Parties Objections and Plea to the Jurisdiction (both of which are

adopted and incorporated herein by reference), Sharing Services respectfully requests that the Court reconsider the Show Cause Order and vacate and set it aside.¹

5. The entry of the Show Cause Order constitutes a clear abuse of discretion resulting in harm to Sharing Services for which there is no adequate appellate remedy. Specifically, under the express provisions of Rule 683 of the Texas Rules of Civil Procedure, the August 22, 2019 TRO (which is the basis of the Show Cause Order) had no binding effect on Sharing Services because: (1) there is no evidence or finding by the Court that Sharing Services was “in active concert or participation” with any party to this lawsuit or their attorneys in the alleged violations of the of the TRO, as required by Rule 683; and/or (2) there is no evidence or finding by the Court that Sharing Services received “actual notice of the [August 22, 2019] order by personal service or otherwise,” as required by Rule 683.² *See* TEX. R. CIV. P. 683; *see also see also Ex parte Davis*, 470 S.W.2d 647, 649 (Tex. 1971) (per curiam) (explaining that a person is “in active concert or participation” with a named party only when there is “some evidence of involvement with the named enjoined party or involvement in the original injunctive proceeding” and holding non-party could not be held in contempt for violating a temporary injunction because there was no such evidence); *State v. Cook United, Inc.*, 469 S.W.2d 709, 712 (Tex. 1971) (non-parties who did not receive notice of temporary injunction and were not agents or employees of the named party were not bound by the injunction).

¹ Sharing Services also adopts and incorporates herein by reference the Motion for Reconsideration and Alternative Motion for Stay filed by the Individual Non-Parties. *See* TEX. R. CIV. P. 58.

² *See also Mapco, Inc. v. Carter*, 817 S.W.2d 686, 688 (Tex. 1991) (per curiam) (trial court erred in entering judgment against non-party parent company over which it did not have personal jurisdiction and there had been no alter ego allegations or findings); *In re Tex. Dept. of Family & Protective Servs.*, 415 S.W.3d 522, 528 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding) (contempt order against non-party over which trial court had not acquired jurisdiction was void); *In re Suarez*, 261 S.W.3d 880, 883-85 (Tex. App.—Dallas 2008, orig. proceeding) (trial court did not have authority to sanction non-party for violating court order when trial court had not obtained personal jurisdiction over non-party).

6. Thus, as a matter of law, because the August 22, 2019 TRO has no binding effect on Sharing Services, the Court clearly abused its discretion by: (1) entering orders attempting to nullify the votes cast for and on behalf of non-party Alchemist Holdings, LLC for the election of the Individual Non-Parties to the Board of Directors for Sharing Services, and (2) without any jurisdiction to do so, ordering Sharing Services to recount the “votes that were cast by shareholders of/in Sharing Services Global Corporation in advance of and at (but not after) the August 29, 2019 Annual Meeting” Indeed, by attempting to nullify votes cast by its shareholders to seat persons on its board of directors, the Court is improperly interfering with Sharing Services’ corporate management and the right it has as a non-party to conduct its corporate affairs free from unwarranted court intervention. For these reasons, the Show Cause order should be vacated and set aside.

7. Moreover, even assuming the requirements of Rule 683 had been met as to Sharing Services (which they clearly were not)—and further assuming that there was any evidence that Sharing Services disobeyed the August 22, 2019 TRO, thus subjecting it to the contempt provisions of Rule 692 (which there is not)—the Court has no power, inherent or otherwise, to order Sharing Services to “recount” shareholder votes, or otherwise retroactively undo or unwind the practical and/or legal effect of the shareholder votes cast for and on behalf of non-party Alchemist Holdings, LLC. Under settled Texas law, “[p]roceedings for violation of an injunction are in the nature of a contempt proceeding. An injunction operates *in personam*, and an act done in violation of an injunction is not a nullity.” *Estate of Korzekwa v. Prudential Ins. Co. of Am.*, 669 S.W.2d 775, 778 (Tex. App.—San Antonio 1984, writ dism’d); *see Suntex Dairy v. Bergland*, 591 F.2d 1063, 1067-68 (5th Cir. 1979). Thus, in attempting to retroactively nullify or invalidate shareholder votes cast for and on behalf of a non-party Sharing Services shareholder, the Court has acted without the guidance of any recognized legal principle or

authority, and has clearly abused its discretion in entering the Show Cause Order. *See Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 371 (Tex. 2014) (“A trial court abuses its discretion by failing to adhere to guiding rules and principles.”); *see also Altesse Healthcare Sols., Inc. v. Wilson*, 540 S.W.3d 570, 574-76 (Tex. 2018) (per curiam) (even though party violated TRO, trial court abused its discretion in entering excessive sanctions that gave plaintiff a merits ruling and more relief than plaintiff was entitled to). For this additional reason, the Show Cause Order should be vacated and set aside.

ALTERNATIVE MOTION FOR STAY

8. The Show Cause Order is not appealable. In the event the Court does not vacate and set aside the Show Cause Order as requested herein, Sharing Services will be forced to file a petition for writ of mandamus. “[M]andamus is a proper remedy for a trial court’s action against nonparties because they have no right of appeal.” *In re Cobb*, No. 05-98-01965-CV, 1999 WL 689621, at *3 (Tex. App.—Dallas Sept. 7, 1999, orig. proceeding) (not designated for publication); *see also In re Hill*, No. 2-07-295-CV, 2007 WL 2891059, at *1 (Tex. App.—Fort Worth Oct. 3, 2007, orig. proceeding) (mem. op.) (because the relator “is not a party to that lawsuit,” he “cannot bring an appeal to complain about the imposition of sanctions,” and therefore he “has no adequate remedy by appeal [and], mandamus review is appropriate”); *In re Prince*, No. 14-06-00895-CV, 2006 WL 3589484, at *2 (Tex. App.—Houston [14th Dist.] Dec. 12, 2006, orig. proceeding) (mem. op.) (“There is no adequate appellate remedy in this case. Because Prince is not a party to the lawsuit, he has no right to appeal, and therefore no adequate appellate remedy.”); *City of Hous. v. Chambers*, 899 S.W.2d 306, 307 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding) (“mandamus may lie” because “the City[] is not a party to the lawsuit giving rise to the sanction order and therefore, cannot bring an appeal to complain about the imposition of sanction”). If this becomes necessary, Sharing Services respectfully

requests that the Court stay the Show Cause Order until such time as Sharing Services fully exhausts its mandamus remedies in the appellate courts.

WHEREFORE, PREMISES CONSIDERED, Sharing Services prays that the Court grant its Motion to Vacate and Set Aside Show Cause Order and enter an order vacating and setting aside the Show Cause Order. In the alternative, Sharing Services prays that the Court enter an order staying the effectiveness of the Show Cause Order and any proceedings predicated thereon until such time Sharing Services fully exhausts its remedies of mandamus in the appellate courts. Sharing Services requests such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ John H. Cayce

John H. Cayce

State Bar No. 04035650

john.cayce@kellyhart.com

Michael D. Anderson

State Bar No. 24031699

michael.anderson@kellyhart.com

Joe Greenhill

State Bar No. 24084523

joe.greenhill@kellyhart.com

KELLY HART & HALLMAN LLP

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Telephone: (817) 332-2500

Facsimile: (817) 878-9280

**ATTORNEYS FOR SHARING
SERVICES GLOBAL CORPORATION**

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of February, 2020, a true and correct copy of the foregoing document was served counsel of record via the Court's electronic case filing system pursuant to Tex. R. Civ. P. 21a.

/s/ John H. Cayce

John H. Cayce

FILED
DENTON COUNTY, TEXAS

ROBERT OBLON,

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

FILED | AM 9:24

Plaintiff,

DAVID TRANTHAM
DISTRICT CLERK

v.

367TH JUDICIAL DISTRICT

DEPUTY

JORDAN BROCK,

Defendant.

DENTON COUNTY, TEXAS

ORDER ON AMENDED MOTION TO SHOW CAUSE AND ALTERNATIVE MOTION TO HAVE COURT EXERCISE ITS INHERENT AUTHORITY TO ENFORCE ITS OWN (PREVIOUSLY ISSUED) ORDER

Now on the 5th day of February, 2020 came on for consideration the Amended Motion to Show Cause and Alternative Motion to Have Court Exercise Its Inherent Authority to Enforce Its Own (Previously Issued) Order which was filed by Plaintiff Robert Oblon on November 15, 2019. After considering the pleadings, the competent evidence and testimony presented, and the applicable legal authorities the Court declines to hold John “JT” Thatch, Kip Allison, and Keith Halls in contempt of court but does find that these non-parties engaged in certain actions and conduct in violation of the letter and the spirit of this Court’s Amended Temporary Restraining Order (entered on August 22, 2019).

IT IS THEREFORE ORDERED THAT:

1. Plaintiff Robert Oblon’s Alternative Motion to Have Court Exercise Its Inherent Authority to Enforce Its Own (Previously Issued) Order should be and hereby is GRANTED and that all votes that were cast for and on behalf of Alchemist Holdings, LLC on August 22, 2019 in advance of and addressing matters to be addressed at the Annual Meeting of Shareholders of Sharing Services Global Corporation on August 29, 2019 (including all votes cast for and on behalf of Alchemist Holdings, LLC for

the election of Keith R. Halls and Kip Allison to the Board of Directors) are of NO FORCE AND EFFECT;

2. All of the votes that were cast for and on behalf of Alchemist Holdings, LLC relating to matters to be decided at the August 29, 2019 Annual Meeting of Shareholders of Sharing Services Global Corporation that were counted in advance of and at the August 29, 2019 Annual Meeting of Shareholders of Sharing Services Global Corporation should be and hereby are RESCINDED AND SET ASIDE;
3. Keith Halls and Kip Allison were not properly elected to serve on the Board of Directors of Sharing Services Global Corporation at the August 29, 2019 Annual Meeting of Shareholders of Sharing Services Global Corporation and are not properly-elected members of the Board of Directors of Sharing Services Global Corporation; and
4. The votes that were cast by the shareholders of/in Sharing Services Global Corporation in advance of and at (but not after) the August 29, 2019 Annual Meeting of Shareholders SHALL, with the exception of shares owned by Alchemist Holdings, LLC in Sharing Services Global Corporation (which shall NOT be counted) BE RECOUNTED; and
5. The remainder of Plaintiff Robert Oblon's Amended Motion to Show Cause and Alternative Motion to Have Court Exercise Its Inherent Authority to Enforce Its Own (Previously Issued) Order is hereby DENIED.

SIGNED this 11 day of Feb., 2020.


Presiding Judge