

FILED

AUG 26 2004

**UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re

The Don Luscombe Aviation
History Foundation, Inc.,

Debtor.

Chapter 7

Case No.02-18352-PHX-SSC

MEMORANDUM DECISION ON THE
COMBS/EDER'S MOTION TO
COMPEL RETURN OF DOCUMENTS,
APPLICATION FOR ORDER TO
SHOW CAUSE FOR CONTEMPT AS
TO RENAISSANCE, AND MOTION
TO DISMISS (DENY)
RENAISSANCE'S MOTION RE
CONTEMPT AND RENAISSANCE'S
SEPARATE MOTION FOR CONTEMPT
AS TO COMBS
(Related to Docket Entries
253,236,231,and 118)

I. INTRODUCTION

This matter comes before the Court on P. Douglas
Combs and Laurie E. Eders' Motion to Compel Renaissance
Aircraft, LLC ("Renaissance") to Return Documents, Application
for Order to Show Cause why Renaissance should not be held in

1 Contempt, and Motion for Dismissal of Renaissance's Motion for
2 Sanctions and Contempt.¹ Renaissance filed a separate Motion
3 for Sanctions (Contempt) and to Impose Injunctive Relief
4 against Combs.² The respective parties each filed numerous (SFC)
5 responsive pleadings and the Court held various hearings on the
6 matters.³ At the conclusion of the hearing on April 16, 2004,
7 the matter was deemed submitted.

8 In this Memorandum Decision, the Court has now set
9 forth its findings of fact and conclusions of law pursuant to
10 Rule 7052 of the Rules of Bankruptcy Procedure. The issues
11 addressed herein constitute a core proceeding over which this
12 Court has jurisdiction. 28 U.S.C. §§ 1334(b) and 157(b) (West
13 2004).

14 II. DISCUSSION

15 The Debtor was formed in 1992. P. Douglas Combs
16 ("Combs") served as a director and the President of the Debtor
17 until January 18, 2003. Laurie A. Eder ("Eder") is the wife of
18 Combs and previously was also a director of the Debtor. On
19 November 14, 2002, the Debtor filed for relief under Chapter
20

21 1. These Motions/Applications are Docket Entries No. 253,
22 236, and 231.

23 2. See Docket Entry No. 118.

24 3. See Docket Entry Nos. 134, 147, 162, 169, 171, 183, 184,
25 187, 231, 235, 236, 252, 253, 256, 257, 263, 264, 273, 274, 279,
26 282, 287, 302, 329, and 345. The Hearings were conducted on
27 numerous dates, including January 21, 22, 27, and April 16, 2004.
28 The Renaissance Motion was carried on the Court's calendar from
date to date while confirmation of the Debtor's plan was being
conducted. This is by no means all of the pleadings and all of
the hearings that this Court conducted on such a contentious
issue as contempt between these parties.

1 11. A Trustee was appointed on February 4, 2004.⁴ The case
2 was subsequently converted to Chapter 7 on April 26, 2004.⁵

3 On May 28, 2003, Combs filed an Emergency Motion
4 to Prohibit Pre-Confirmation Implementation of Debtor's
5 Proposed Chapter 11 Plan, seeking injunctive relief and arguing
6 that Renaissance and the Debtor had improperly misrepresented
7 to members of the general public the status of proceedings in
8 this case.⁶ Renaissance filed a response on June 9, 2003, and
9 the Court held a hearing on the matter on June 10, 2003. At
10 the June 10, 2003, the Court directed the parties to draft and
11 agree to a neutral joint statement for the press that would
12 describe the status of the case. At the continued hearing on
13 June 16, 2003, the Court approved the joint statement. Combs
14 and Eder also, while still represented by counsel, agreed to a
15 confidentiality agreement regarding the disclosure of trade
16 secrets and other information related to the Debtor's
17 operations. Renaissance also agreed to provide information to
18 Combs and Eder regarding its settlement agreement with the
19 Debtor, subject to the back-up or source information provided
20 by Renaissance involving trade secrets to remain confidential.

21 On July 3, 2003, Renaissance filed a Motion for
22 Sanctions (Contempt) and to Impose Injunctive Relief Against P.
23
24

25
26 4. See Docket Entry No. 301.

27 5. See Docket Entry No. 344.

28 6. See Docket Entry No. 88.

1 Douglas Combs.⁷ Renaissance alleged in its Motion that Combs
2 had sent packages of documents to magazines, newspapers, and
3 others falsely representing the Court's actions, accusing
4 Renaissance of lying, and misrepresenting the purpose of the
5 joint statement that had been drafted by the parties pursuant
6 to the Court's directives, and subsequently approved by the
7 Court. Renaissance sought an order from the Court to preclude
8 Combs from disseminating his alleged defamatory pleadings and
9 statements about rulings/actions of this Court without prior
10 approval of the Court.

11 Subsequently, on July 30, 2003, Renaissance filed
12 an Emergency Motion for Sanctions and Injunctive Relief Against
13 Combs and Eder For Violations of 11 U.S.C. § 1125.⁸

14 Renaissance alleged that Combs and Eder had violated § 1125(b)
15 by soliciting votes against the plan, by sending creditors a
16 ballot to be sent to the Court, by misrepresenting facts, and
17 suggesting the existence of an alternate plan.

18 Combs and Eder filed respective responses to both
19 Motions, and the Court set a hearing on the July 30, 2003
20 Emergency Motion for Sanctions and Injunctive Relief for August
21 7, 2003. The Court continued the hearing on the matter⁹, and
22 then entered an order on September 2, 2003 enjoining Combs and
23 Eder from disseminating information regarding the proceedings
24

25 7. See Docket Entry No. 118.

26 8. See Docket Entry No. 148.

27 9. See Docket Entry No. 184; September 2, 2003 Minute
28 Entry.

1 unless such information was approved by the Court or the Debtor
2 and Renaissance.

3 Thereafter, on November 26, 2003, Combs and Eder
4 filed a Motion for Dismissal of Renaissance's July 3, 2003
5 Motion for Sanctions and Contempt. Combs and Eder argued that
6 the contempt matter was disposed of by litigation in Georgia,
7 to which both Combs and Renaissance were parties, and hence,
8 Renaissance was barred from proceeding as a result of the
9 doctrine of res judicata.¹⁰ According to Combs and Eder, both
10 the Contempt Motion filed by Renaissance in the bankruptcy
11 Court and its Contempt Motion filed in the Georgia litigation
12 addressed the same issues and facts. Thus, since the Georgia
13 Court denied the Contempt Motion, this Court must do the same
14 under the doctrine of res judicata. The Court disagrees.

15 Under the doctrine of res judicata, a party is
16 not permitted to re-litigate a particular claim if there is
17 "(1) an identity of claims, (2) a final judgement on the merits
18 and (3) identity or privity between parties." Owens v. Kaiser
19 Foundation Health Plan, 244 F.3d 708, 713 (9th Cir. 2001)
20 (quoting Western Radio Servs. Co. v. Glickman, 123 F.3d 1189,
21 1192 (9th Cir. 1997)). The doctrine of res judicata not only
22 bars litigation in a subsequent action for claims previously
23 litigated, but also bars those which should have been raised in
24 the prior action. Id. There is not an "identity of claims"
25 between the Georgia Contempt Motion and the Renaissance
26 Contempt Motion filed in this Court. The Georgia Motion refers

27
28 **10.** See Docket Entry No. 231.

1 to specific parties, actions, and orders in the Georgia
2 litigation. The Georgia Motion involved Combs' alleged
3 violations of the orders of the Georgia court. Conversely, the
4 pending Motion in this Court involves Comb's violations of the
5 orders and directives of this Court. There is, thus, no merit
6 to Combs and Eder's res judicata argument and their Motion for
7 Contempt is denied.

8 Renaissance's Motion for Sanctions (Contempt) and
9 to Impose Injunctive Relief Against P. Douglas Combs is also
10 denied. The Bankruptcy Court has the power to proceed with
11 civil contempt. In re Rainbow Magazine, Inc., 77 F.3d 278 (9th
12 Cir. 1996). This is within the inherent authority of the
13 Bankruptcy Court and separate from Bankruptcy Rule 9011, or any
14 other statutory authority. Id at 282. However, the power should
15 be used for bad faith conduct. Id. The use of this inherent
16 authority to sanction such bad faith conduct through civil
17 contempt, or a similar power, has recently been upheld in In re
18 DeVille, 361 F.3d 539 (9th Cir. 2004).

19 In this case, however, Renaissance never provided
20 any evidence that Combs and/or Eder were the parties behind the
21 articles that appeared in the Cape Girardeau newspaper or
22 information that appeared on the internet regarding Renaissance
23 and the Debtor. Combs and Eder denied involvement, and
24 Renaissance never requested an evidentiary hearing to prove the
25 matter. Since Renaissance never made the necessary evidentiary
26 showing, their Motion for Contempt is denied.

27 As previously noted, Combs and Eder also asserted
28 other claims in their various Motions, alleging, among other

1 things, that Renaissance had failed to deliver certain
2 documents and had failed to provide an affidavit as directed by
3 the Court at a November 11, 2003 hearing. First, as noted by
4 Renaissance, the documents were made available by Renaissance,
5 but the production was delayed because of photocopying costs
6 and by the refusal of Combs/Eder to sign a confidentiality
7 agreement. John Dearden, as principal for Renaissance, also
8 submitted a Declaration, under penalty of perjury, which
9 focused on Renaissance not improperly implementing the
10 settlement agreement or improperly implementing the plan. The
11 Declaration was sufficient to meet this Court's directives on
12 November 11, 2003. Combs/Eder are simply wrong in asserting
13 that an "affidavit" is the only appropriate document.

14 Combs/Eder provided documents which reflected that
15 the Debtor, in its business judgment, had authorized
16 Renaissance, in April 2003, to take over the sale of parts to
17 current Luscombe owners which the Debtor was unable to supply.
18 However, the reality of the involvement of Renaissance in the
19 parts operation was far different. At the confirmation hearing
20 in November 2003, the Debtor presented evidence that it had
21 continued in the parts business, having supplied most parts to
22 Luscombe owners, but that it was getting to the point where it
23 would need to turn to a third party to assist it with its
24 operations. The evidence at the confirmation hearing also
25 reflected that the Debtor was unable to operate at a profit,
26 that its monthly operating reports were inaccurate, that the
27 Debtor's losses were even greater than shown on the monthly
28 reports, that the Debtor did not have the ability to confirm a

1 feasible plan of reorganization, and that the operations were
2 in such a disarray that the Court relied on In re Bibo 76 F.3d
3 256 (9th Cir. 1995) to appoint a Chapter 11 Trustee.¹¹
4 Subsequently, the Trustee, on notice, and after a hearing,
5 requested that the case be converted to Chapter 7, which motion
6 was granted by the Court.¹²

7 Thus, based upon the evidence presented to the
8 Court at the confirmation hearing, and the lack of evidence
9 presented by Combs/Eder as to any improper involvement of
10 Renaissance in the Debtor's parts business, the Court concludes
11 that Combs/Eder have failed to show that Renaissance acted in
12 contempt of this Court's Orders.

13 As to the newspaper article presented by
14 Combs/Eder regarding Renaissance and its alleged business
15 difficulties in Cape Girardeau, MO, such documentation would
16 not normally be admissible at an evidentiary hearing. Even if
17 admissible, such documentation would not be relevant at a
18 hearing as to whether Renaissance was in contempt of this
19 Court's Orders.

20 As to Combs/Eder seeking to hold Renaissance in
21 contempt as to the information placed on the internet, this
22 Court concludes that it has insufficient information to hold
23 Renaissance in contempt. Combs/Eder could only show the Court
24 that an entity by the name of "Team Luscombe," located in
25 Orange, CA, was placing information as to Combs/Eder and their
26

27 **11.** See Docket Entry No. 301.

28 **12.** See Docket Entry No. 344.

1 new entity on the internet. Nothing in the record connected
2 Renaissance to this Team Luscombe group. Just as the Court
3 will not speculate on the internet information provided by
4 Renaissance to pursue its Contempt Motion as to Combs/Eder, it
5 is not in a position to allow Combs/Eder to seek contempt
6 against Renaissance with the same type of inadmissible
7 evidence.

8 Just as the Renaissance motion must fail for a
9 lack of evidence to support a finding by the Court that
10 Combs/Eder acted in bad faith, this Court must reach the same
11 conclusion as to the Combs/Eder allegations as to Renaissance.
12 There has been no showing of bad faith conduct by Renaissance;
13 therefore, the Comb/s Eder's Motions must be denied.

14 15 III. CONCLUSION

16 Based upon the foregoing, the Combs/Eder Motion to
17 Compel Renaissance to Return Documents, Application for Order
18 to Show Cause Why Renaissance Should Not be Held in Contempt,
19 and Motion for Dismissal of Renaissance's Motion for Sanctions
20 and Contempt, to the extent the Dismissal Motion seeks
21 affirmative relief, and Renaissance's separate Motion for
22 Sanctions and Contempt are DENIED.

23 The Court will execute a separate order
24 incorporating this Memorandum Decision.

25
26 DATED this 26th day of August, 2004.

1
2
3 S1-C1-7
Honorable Sarah Sharer Curley
Chief United States Bankruptcy Judge
4
5

6 Copy of the foregoing mailed
on the 26th day of August, 2004, to:
7

8 P. Douglas Combs
9 Laurie E. Eder
10 15815 E. Melrose Street
Gilbert, Arizona 85296

11 Douglas B. Price, Esq.
12 LAW OFFICE OF DOUGLAS B. PRICE, P.C.
13 401 West Baseline Road, Suite 207
Tempe, Arizona 85283
Attorney for Debtor

14 Daniel W. Glasser, Esq.
15 GREENBERG TRAURIG, LLP
16 2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
Attorney for Renaissance Aircraft, LLC

17 James E. Cross
18 OSBORN MALEDON, P.A.
19 2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2794
Attorney for Trustee
20

21
22 By June Lent
Deputy Clerk
23
24
25
26
27
28