

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**BOILERMAKER-BLACKSMITH
NATIONAL PENSION FUND; et al.,**

Plaintiffs,

v.

Case No. 05-2368-JWL

FLUID SEALING, INCORPORATED,

Defendant.

MEMORANDUM AND ORDER

On April 28, 2006, the court entered an Order for Partial Default Judgment in this case (doc. 14) directing defendant Fluid Sealing, Incorporated (Fluid Sealing) and its officers to submit to an audit of Fluid Sealing's business records. Neither Fluid Sealing nor its officers have complied with that order. On May 2, 2007, in response to the plaintiffs' April 5, 2007 motion, the court entered an order (doc. 19) directing Fluid Sealing and Mr. Kenneth H. Lott, Secretary of Fluid Sealing, and thus one of its officers, to appear and show cause why they should not be held in contempt of court for refusing to comply with the court's April 28, 2006 Order.

On May 30, 2007, the date Fluid Sealing and Mr. Lott were directed to appear, this case was called for hearing at 9:00 a.m. Although the plaintiffs appeared by and through counsel, Fluid Sealing and Mr. Lott failed to appear either in person or by counsel, despite having received notice of the hearing.

Plaintiffs' counsel introduced into evidence at the hearing a letter, dated April 12, 2007, that she had received from Mr. Lott indicating that Fluid Sealing was no longer in business and that its records and assets had been repossessed by a bank. The letter further indicated that the principal parties, Kenneth Lott and Carol Lott had filed for and been discharged in bankruptcy. The letter also stated that Mr. Lott would "send this same notice to the courts and hope it will end this matter." The undersigned, however, as of the time of the hearing had received no contact in any respect from Mr. Lott, by letter or otherwise. As a result, the court indicated it would find Fluid Sealing and Mr. Lott in contempt.

Before the court had the opportunity to prepare and file an order memorializing its finding of contempt, the clerks office docketed a "Motion to Dismiss" (doc. #22) which apparently was received in the clerk's office on May 29 in paper form, and was stamped "filed" as of that date, but which was neither docketed nor furnished to chambers until it was entered on the docket on May 31, 2007. In that "motion," which the court treats as a response to the court's show cause order,¹ Mr. Lott in essence reiterates what he wrote to counsel for the plaintiffs in the letter received in evidence at the hearing. Although this filing constitutes some recognition of the court's orders, it is inadequate to establish good cause why the defendants have not complied with the court's orders. Fluid Sealing has not provided plaintiffs access to its records to verify the allegations and Mr. Lott has done nothing to cause the corporation to comply. Perhaps if Mr. Lott would contact counsel for

¹To the extent this pleading has been docketed as a motion, it is denied, as dismissal is not warranted.

the plaintiffs and assist her in locating records which would help calculate the amount of the contributions due to the plaintiffs' various funds and offer some corroboration of his allegations concerning the status of the corporation (such as a letter from the bank), plaintiffs might suggest to the court that substantial compliance had been achieved. But merely taking the position that he has neither the time nor the money to deal with this matter further does not excuse Mr. Lott from having caused Fluid Sealing to ignore this court's Order of April 28, 2006, if that is what has occurred.

NOW THEREFORE THE COURT ORDERS AND ADJUDGES that defendant Fluid Sealing and Kenneth H. Lott are in contempt of court, based on their willful, continuous disregard of, and failure to abide by, this court's April 28, 2006 Order.

THE COURT FURTHER ORDERS that defendant Fluid Sealing shall, beginning ten (10) days from the date of this Order, pay a fine in the amount of \$1,000.00 per day until it fully complies with the court's April 28, 2006 Order to submit to an audit or is otherwise discharged from that order. If Mr. Lott does not take steps to purge himself and Fluid Sealing of this Order of Contempt within ten (10) days of the date of this Order, the court shall upon the written application of plaintiffs issue a Writ of Body Attachment directing the United States Marshall's Service to arrest Mr. Lott and transport him in custody to the United States District Court for the District of Kansas for the reason that he has willfully failed to comply with the April 28, 2006 Order of this court.

IT IS SO ORDERED.

Dated this 1st day of June, 2007.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge