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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re:
**JERRY L. ICENHOWER dba
Seaview Properties, and DONNA L.
ICENHOWER,**
Debtors.
**KISMET ACQUISITION, LLC, a
Delaware limited liability company,
Successor-in-Interest to Gerald H.
Davis, Chapter 7 Trustee,**
Plaintiff,
v.
**JERRY L. ICENHOWER, an
individual; et al.**
Defendants.

**Case No. 03-11155-A7
Adv. No. 06-90369-A7
Adv. No. 04-90392-A7**

**ORDER TO SHOW CAUSE
RE: CONTEMPT FOR
VIOLATION OF CONTINUING
PRELIMINARY INJUNCTION**

**Date: December 11, 2008
Time: 10:00 a.m.
Dept: Courtroom 2**

**TO: Alejandro Diaz Barba ("Alex Diaz") and Martha Margarita De La Torre (aka
"Mrs. Diaz") (collectively "Diaz Defendants"):**

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1 IT IS HEREBY ORDERED, and notice is given, that pursuant to 11 U.S.C.
2 § 105 and Fed. R. Bankr. P. 9020 :

3 The Diaz Defendants shall appear on **December 11, 2008 at 10:00 a.m.**, in
4 Department 2 of the United States Bankruptcy Court, 325 West "F" Street, San
5 Diego, California, to show cause why the Diaz Defendants should not be held in
6 contempt for violating this Court's continuing Preliminary Injunction incorporated
7 into its Amended Consolidated Judgment,¹ and ordered to immediately cease and
8 desist from taking all such actions ("OSC re: Contempt").

9 The Preliminary Injunction provides, *inter alia*:

10 the Diaz Defendants, and each of them, and their respective agents,
11 servants, employees, partners, representatives, independent contractors,
12 lessees, assigns, attorneys and all other persons in active concert and/or
13 participation with any of them, are hereby restrained and enjoined from
14 doing, directly or indirectly, any of the following:

15 a. Expending, disbursing, transferring, assigning, selling,
16 conveying, devising, pledging, mortgaging, creating a security interest
17 in, encumbering, concealing, disposing of, secreting, or in any other way
18 diverting, using or making unavailable, or in any manner whatsoever
19 dealing in or disposing of the whole or any part of the Villa Property
20 and/or of any interest in the Villa Property Trust"

21 [D.E. 72]

22 The acts constituting "cause" for this OSC re: Contempt are set forth in the
23 Response of Kismet Acquisition, LLC ("Kismet") to the Declaration of Patrick
24 Martin Regarding the Status of the Diaz Defendants' Compliance with the Amended
25 Consolidated Judgment ("Kismet Response"),² and the accompanying Declaration of
26 Ali M.M. Mojdehi filed in support of the Kismet Response ("Mojdehi Decl.")³
27 Specifically, the Court directs the Diaz Defendants to the Kismet Response , Part II.C.

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25 ¹ Adv. Proc. 04-90392, D.E. # 504, 514 and 530; Adv. Proc. 06-90369, D.E. # 213, 223 and 239. Hereinafter,
26 all docket references shall refer to Adv. Proc. 04-90392, unless otherwise specified.

27 ² D.E. # 703.

28 ³ D.E. # 707.

1 at pages 11-13 (“The Storming of the Gate”), and Part III at pages 13-15 (“The
2 Signing Ceremony”), and the evidence offered in support thereof.

3 The evidence shows that *prior to executing the documents* performing the
4 transfer of the Villa Property ordered in the Amended Consolidated Judgment
5 (“Transfer Documents”), the Diaz Defendants, through their agent Mr. Guillermo
6 Alejandro Rivera Gonzalez (“Rivera”), forcibly broke through the guarded gate of the
7 road leading to the Villa Property and seized possession of the Villa Property.⁴
8 Rivera’s seizure of the Villa Property was assisted by four armed men and a guard
9 dog (“Armed Guards”).

10 Thereafter, when Mr. Gabriel Luis Gallo Reynosa (“Gallo”), in his capacity as
11 attorney-in-fact to Axolotl Inmobiliaria S. de R.L. De C.V. (“Axolotl”), the entity
12 designated by Kismet in the Transfer Documents to hold the beneficial trust interest,
13 attempted to take possession of the Villa Property, he encountered Rivera and his
14 Armed Guards. Additionally, he encountered two men in police uniform who
15 identified themselves as “Officer Meleno” and “Officer Martin,” but who refused to
16 show their official police badges and refused to disclose their last names to evidence
17 they were acting in an official police capacity.

18 When Gallo identified himself as the agent of the new owner of the Villa
19 Property and requested Rivera to give him possession, Rivera refused to turn over
20 possession, stating that “he was in possession of the VILLA VISTA HERMOSA and
21 that he will not give access to anybody.” Further, Rivera identified himself as a
22 personal friend of Alex Diaz, and asked: “Mr. Notary does a judge acting in the
23 United States of America ha[ve] jurisdiction to resolve the status of a property in
24 Mexico, as it is the case of Villa Vista Hermosa?” (emphasis added). In response to
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26 ⁴ Mojdehi Decl. at ¶ 29 (indicating these events occurred approximately one half hour *prior to* the scheduled
27 closing); *see also* Ex. KK (Certification of Fact, Notarial Instrument No. 18, 116, Vol. L, Book 6th (certifying the
28 damage to the gate entrance caused by Rivera’s truck and certifying the logbook showing the time of Rivera’s entrance).

1 being told that Axolotl is the new owner of the Villa Property pursuant to the
2 executed Transfer Documents, Rivera stated, “he did not care, that he was in
3 possession of the property” The denial of possession was witnessed by a notary
4 (an official acting on behalf of the Mexican government) and others who had
5 accompanied Gallo to formally witness the turning over of possession of the Villa
6 Property. The witness statements are contained in a notarized Certification of Facts,
7 Notarial Instrument No. 18, 117, Vol L, Book 6.⁵

8 At the closing ceremony in Guadalajara, Mexico, the Diaz Defendants and their
9 attorney, Patrick Martin (“Mr. Martin”) of Procopio, Cory, Hargreaves & Savitch
10 LLP (“Procopio Firm”), were informed of Rivera’s seizure of the Villa Property prior
11 to the closing, Mr. Martin was asked to instruct the Diaz Defendants to tell Rivera
12 to vacate the Villa Property immediately. Mr. Martin declined to issue the instruction
13 stating, “I cannot give advice to my client on Mexican Law issues”⁶ Thus, Kismet
14 directly asked the Diaz Defendants to instruct Rivera to vacate the Villa Property.
15 Mr. Diaz stated, “I am here to comply with the order of Judge Adler Let’s leave.”
16 Mr. Martin affirmatively agreed, and they left. The refusal of Mr. Martin and the
17 Diaz Defendants to instruct Rivera to vacate the Villa Property was video taped.⁷

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22 ⁵ Mojdehi Decl. at Ex. JJ.

23 ⁶ The Court observes that the Procopio Firm is familiar with the terms of the Continuing Preliminary Injunction,
24 which involves *United States law*. Just a few days prior to the closing ceremonies, the Procopio Firm represented Mr.
25 Diaz at a contempt hearing involving multiple actions in violation of the Continuing Preliminary Injunction . [D.E. #712]
26 Further, Mr. Martin and his Procopio Firm colleague, Enrique Hernandez Pulido (“Mr. Hernandez”), have advised Mr.
27 Diaz on the “illegality” of the Amended Consolidated Judgment and the “legal impossibility” of performing the transfer
28 ordered by the Amended Consolidated Judgment, and Mr. Hernandez has filed a declaration in support of the Diaz
29 Defendants “legal impossibility” defense purporting expertise on Mexican real estate issues *and advising the Court as
30 to what Mexican law says*. [D.E. #582] In light of these facts, Mr. Martin’s sudden position that he cannot advise his
31 clients on Mexican law issues is disingenuous.

32 ⁷ Mojdehi Decl. at Ex. II (transcript).

1 The seizure of possession was brought to the Court's attention at a continued
2 contempt hearing on December 4, 2008 and was discussed in detail.⁸ Mr. Diaz
3 personally attended this hearing along with Mr. Jeffrey Isaacs ("Mr. Isaacs") of the
4 Procopio Firm. Neither Mr. Isaacs nor Mr. Diaz stepped forward to state that they
5 had instructed Rivera and his Armed Guards to vacate the Villa Property.

6 At the December 4, 2008 hearing, the Court announced that Rivera's *pre-*
7 *closing seizure of the Property* and his continuing refusal to turn over possession, if
8 established at evidentiary hearing, constitute actions by the Diaz Defendants in
9 violation of the Continuing Preliminary Injunction. Further, the Court announced that
10 compensatory and coercive sanctions would continue to accrue at the rate previously
11 awarded in connection with its prior Order to Show Cause re: Contempt⁹ until
12 possession is restored to Kismet's designee, Axolotl.

13 The hearing on this OSC re: Contempt shall be for the purposes of hearing live
14 testimony from the Kismet's witnesses authenticating their statements, and from the
15 Diaz Defendants' witnesses responding to facts set forth above. No additional
16 pleadings are authorized.

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19 Dated: 5 Dec 08


LOUISE DE CARL ADLER, Judge

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25 ⁸ The December 4, 2008 contempt hearing was a follow up hearing to determine whether compulsory sanctions
26 should issue for the Diaz Defendants' failure to perform the transfer ordered by the Amended Consolidated Judgment
27 at the closing ceremonies scheduled in Tijuana, Mexico on November 19, 2008. [D.E. #712] Additionally, on November
28 20, 2008 the Court heard a separate contempt hearing for (other) actions taken in violation of the Continuing Preliminary
Injunction which the Court, discussed in note 7, *supra*. [*Id.*]

⁹ D.E. # 399; D.E. # 420 (amended).