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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 05-80212

David Ronald Michal and Christine Renee
Michal,

CHAPTER 7

Debtors.

JUDGE MASSEY

Patricia A. McColm,

Plaintiff,

v.

ADVERSARY NO. 06-9036

David Ronald Michal and Christine Renee
Michal,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE RE
CONTEMPT FOR FAILURE TO COMPLY WITH SUBPOENA

Plaintiff moves for an order directing Robert Cronin to show cause why he should not be held in contempt for failing to comply with a subpoena duces tecum. As the motion indicates, the subpoena was issued by this Court, which did so at Plaintiff's request. But the place at which the documents were to be produced was in California. As the Court pointed out to Plaintiff at the last hearing, the applicable rule with regard to subpoenas limits the geographic area where they may be served. Fed. R. Civ. P. 45, made applicable by Fed. R. Bankr. P. 9016.

Civil Rule 45(b)(2) provides:

(2) Service in the United States. Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place:

- (A) within the district of the issuing court;
- (B) outside that district but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection;
- (C) within the state of the issuing court if a state statute or court rule allows service at that place of a subpoena issued by a state court of general jurisdiction sitting in the place specified for the deposition, hearing, trial, production, or inspection; or
- (D) that the court authorizes on motion and for good cause, if a federal statute so provides.

A subpoena may be properly served only within the limited geographic area specified in Rule 45(b)(2).

Nothing in the language of Rule 45(b)(2) itself provides for service at any place other than those locations specified in the rule itself. As the authors of an authoritative treatise on federal practice and procedure explain, Rule 45(b)(2) “states only that a subpoena may be served at any place listed in subdivisions (b)(2)(A)-(D). The provisions concerning the *possibilities for proper service*” are listed in 45(b)(2). Wright and Miller, 9A Federal Practice and Procedure § 2451 at 387 (emphasis added). The terms of Rule 45(b)(2) themselves do not provide for nationwide service of a subpoena.

Johnson v. Big Lots Stores, Inc., 251 F.R.D. 213, 216 (E.D.La. 2008).

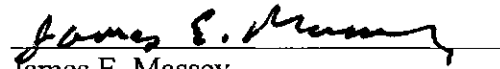
The issuing court may refuse to enforce a subpoena served outside of the geographical limits imposed by Rule 45(b)(2). *Dolezal v. Fritch*, 2009 WL 764542 (D.Ariz. 2009) (refusing to proceed with contempt hearing where subpoena was not served in compliance with Rule 45(b)(2)); *Traveler v. CSX Transp., Inc.*, 2006 WL 2375480, 2 (N.D.Ind.2006) (holding that “a subpoena is unenforceable when both the documents and the non-party subpoena recipient are located outside the reach of Rule 45(b)(2)”).

The cost to Mr. Cronin of moving to quash the subpoena would easily exceed the cost to Plaintiff of obtaining and serving a subpoena from the bankruptcy court in the relevant district in

California. This Court declines to enforce, and on its own motion quashes, the subpoena served on Mr. Cronic. *See* Civil Rule 45(c)(3). Plaintiff is free to obtain a subpoena from the bankruptcy court in California. The motion states that someone in that court told her the subpoena issued by this Court was sufficient and declined to issue the subpoena. This Court has no control over another court and no knowledge concerning whether Plaintiff complied with all requirements necessary to be entitled to the command of Rule 45(a)(3) that “[t]he clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it.”

Accordingly, Plaintiff’s motion for order to show cause re contempt for failure to comply with subpoena is DENIED.

Dated: March 31, 2009


James E. Massey
U.S. Bankruptcy Judge