

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23-CVS-2481

ITG BRANDS, LLC,
Plaintiff,

v.

WILL SPENCER, THE WINSTON CUP
MUSEUM, LLC, and JKS
MOTORSPORTS, INC.,
Defendants.

**DEFENDANTS WILL SPENCER'S
AND THE WINSTON CUP MUSEUM,
LLC'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR CONTEMPT**

NOW COME Defendants Will Spencer ("Spencer") and The Winston Cup Museum, LLC ("Museum LLC"), by and through undersigned counsel, and hereby oppose Plaintiff ITG Brands, LLC's ("ITG" or "Plaintiff") Motion for Contempt (ECF No. 42) (the "Motion"). For the reasons herein, ITG's Motion should be denied.

I. NO BASIS EXISTS FOR CRIMINAL CONTEMPT.

A. There Is No Clear And Present Danger Of An Imminent And Serious Threat To The Administration Of Criminal Justice.

ITG acknowledges that its request to hold Spencer and the Museum LLC in criminal contempt is governed by N.C. Gen. Stat. § 5A-11. ECF No. 42, p. 1. However, this statute provides:

No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

§ 5A-11(b). ITG's motion is based entirely upon the content of a broadcast or communication—a YouTube video—and nowhere in ITG's filings does it suggest that

“a clear and present danger of an imminent and serious threat to the administration of criminal justice” exists. For that reason alone, ITG’s motion for criminal contempt should be denied.

B. Spencer’s And The Museum LLC’s Conduct Was Not Willful.

Even if the hurdle created by subsection (b) was not so exceptionally high, criminal contempt still requires “willful disobedience of a court order.” § 5A-11(a)(3). ITG’s motion should be denied because there was no willful disobedience. Spencer and the Museum LLC were motivated only by their desire to continue sharing stories about NASCAR’s “Golden Era.”

Mitchell Stapleton, a/k/a “Stapleton42,” is a content creator on YouTube who describes his channel as follows:

The Golden Era of auto racing lives here! We love classic NASCAR and the life stories from those who lived it along with wrapping all those lessons into our own vehicle builds. We want to help you learn something new, tech tips or life lessons from successful individuals.

Screenshot at ECF No. 45.4. Stapleton has hundreds of videos on his channel and nearly 300,000 subscribers. *Id.* His YouTube channel is a walk down NASCAR’s memory lane. Aff. Of William L. Spencer, ECF No. 45.1, ¶ 20.

Stapleton (and, critically, not Spencer or the Museum LLC) created the YouTube video at the center of ITG’s motion. *Id.* at ¶ 21. He and/or his team wrote it, filmed it, edited it, produced it, inserted the graphics for it, and posted it. *Id.* Spencer’s role in the video is that of a tour guide. For more than an hour, Spencer leads the viewer through a tour of the Winston Cup Museum, telling story after story about artifact after artifact. The content in the video of which ITG complains is a

part of the video that Spencer had nothing to do with. *Id.* Spencer’s sole focus in the video is to share his passion for the sport and his fond memories from his extensive career. *Id.* at ¶ 22. He is always eager and willing to share his stories, and it was purely in this vein that the museum posted a link to Stapleton’s video. *Id.* at ¶¶ 21-22. It was a way to share the racing history of which Spencer has been proud to be a part. *Id.* at ¶ 22. That linking to Stapleton’s video could somehow constitute a violation of the mediated settlement agreement (“Agreement”) or the Court’s 2 November 2023 Order and Final Judgment (“Order”) never even occurred to Spencer or the Museum LLC. *Id.* Again, the goal was to share racing history, not defy a court order, willfully or otherwise. *Id.*

Nonetheless, once ITG filed its motion, the museum had the link to Stapleton’s video removed before 6:00 a.m. on Monday, 11 December 2023. *Id.* at ¶ 23. Spencer, the Museum LLC, and JKS Enterprises, Inc. (collectively, the “Museum Parties”) have diligently tried to comply with the Order and the Agreement. For example, the Agreement required the Museum Parties to stop selling branded merchandise manufactured after 2003 that contained Winston, Winston Cup, Winston Cup Series, or any other ITG mark and branding and to destroy such merchandise. They have done that. *Id.* at ¶ 12.

The Agreement called for the Museum Parties to remove past social media posts about ITG or the litigation, including a 3 July 2023 Facebook post. They have done that. *Id.* at ¶ 13. The Agreement required them to monitor comments left by visitors on the museum’s social media pages and to remove any comments that are

disparaging of ITG. They have done that as well. *Id.* at ¶ 14. But for the Museum Parties' first statements on social media in September on the heels of the successful fourteen-hour mediation (statements in which they attempted to express their happiness that litigation was finally going to be over), the Museum Parties did not receive any other complaint from ITG about their performance under the Agreement. *Id.* at ¶ 11.

The Museum Parties believed both sides were moving past the litigation, particularly after 3 November 2023. On that day, ITG's counsel came to retrieve the Winston Cup trophy and the framed piece with artist's renderings of winning drivers, as called for in the Agreement.¹ *Id.* at ¶¶ 15-16. After the pieces were loaded into a van, Spencer, always eager to share his passion for racing, gave counsel a tour of the museum. The two spent approximately an hour together inside the museum. *Id.* at ¶ 16. It was an extremely cordial meeting and tour. *Id.*

The Museum Parties have no desire for any further entanglement with ITG. Three lawsuits have been enough.² Their focus remains on preserving racing history and doing so within the confines of the Agreement. To that end, the Museum Parties have even had the undersigned reach out to ITG's counsel to determine ITG's position

¹ Unfortunately, the Museum Parties discovered shortly before this that the Championship ring, also part of the Agreement, had been stolen. ECF No. 45.1 at ¶ 15. This was promptly disclosed to ITG's counsel, and the parties are working through it. *Id.* at ¶¶ 15-16.

² ITG's Geraldine Bowen Barker suggests in her Affidavit there were only two lawsuits. ECF No. 43.1 at ¶ 5. However, Ms. Barker did not include *ITG Brands, LLC v. JKS Promotions, LLC*, 21 CVS 6260 (Guilford County Superior Court), which was voluntarily dismissed on or about 7 September 2022.

on certain potential future conduct. ECF No. 45.3. This is not the mark of parties engaged in willful defiance of a court order.

Spencer and the Museum LLC have not acted in willful defiance of the Order. At all times they have acted in good faith. For the above reasons, ITG's request for criminal contempt should therefore be denied.

II. NO BASIS EXISTS FOR CIVIL CONTEMPT.

ITG's request for civil contempt is governed by N.C. Gen. Stat. § 5A-21, which provides that conduct must be willful in order to be punished. § 5A-21(a)(2a). As shown above, Spencer and the Museum LLC did not willfully violate the Order and Agreement. ITG's request for civil contempt should therefore be denied.

ITG's request should also be denied because the goal of a civil contempt order is to compel a party's compliance with a court order. *Brower v. Brower*, 70 N.C. App. 131, 133, 318 S.E.2d 542, 544 (1984). A party subject to a civil contempt order can obtain his release by complying with the order. *Id.* To the extent the link's presence on the Museum LLC's website could constitute noncompliance with the Order, it has already been removed. ECF No. 45.1 at ¶ 23. There is no compliance that can be compelled.

ITG demands that Spencer and the Museum LLC issue a retraction as part of any "purge" condition (ECF No. 43 at p. 10), but the undersigned respectfully contends that a retraction constitutes an entirely new obligation. The "purge" condition must reside in the original order. *See Adkins v. Adkins*, 82 N.C. App. 289, 291, 346 S.E.2d 220, 222 (1986) (the standard is whether one "has the present means

to comply with the court order *and hence to purge oneself of the contempt*") (emphasis added).

For the above reasons, ITG's motion for civil contempt should be denied.

CONCLUSION

For the reasons contained herein, ITG's Motion for Contempt should be denied.

This the 19th day of December, 2023.

/s/ Joshua B. Durham

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RULE 7.8 CERTIFICATION

The undersigned certifies that this responsive brief complies with B.C.R. 7.8.
The text, headings, footnotes, quotations, and citations do not exceed 7,500 words.

This the 19th day of December, 2023.

/s/ Joshua B. Durham

Joshua B. Durham

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was filed with the Court on the date set forth below via the Court's electronic filing system, which sends notice to all counsel of record.

This the 19th day of December, 2023.

/s/ Joshua B. Durham
Joshua B. Durham