IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STARDUST, 3007 L.L.C. d/b/a Stardust, and MICHAEL MORRISON,	)	
Plaintiffs/Counterdefendants,	)	**CIVIL ACTION**
v.	)	**FILE NO. 14CV6963-9**
CITY OF BROOKHAVEN, GEORGIA,	)	
Defendant/Counterclaimant.	)	

ORDER GRANTING BROOKHAVEN'S
THIRD MOTION FOR CONTEMPT SANCTIONS

I. Introduction

This is the third contempt proceeding against Michael Morrison and Stardust, 3007 L.L.C. This Court has twice found them in contempt, and has ordered them to pay certain amounts to the City of Brookhaven as civil contempt sanctions. Morrison and Stardust have not paid as ordered. In this contempt proceeding, the City asks the Court to coerce Stardust and Morrison to pay the amounts already owed by closing Stardust and incarcerating Morrison until they pay.

The City also seeks criminal and civil sanctions for violations of the Injunction Order that have occurred since the Court's second contempt order issued in April 2018.

After conducting an evidentiary hearing and carefully analyzing the record, the Court finds that the City is entitled to the requested relief.

II. Background and Factual Findings

The clarity of the underlying Injunction Order, the proceedings leading up to this contempt proceeding, and the facts adduced at the most recent hearing are all relevant to Stardust's willful contempt. Thus, the Court summarizes them here.

Morrison and Stardust sued the City in this Court in 2014, and the City counterclaimed for injunctive relief. But this case was put on hold while Stardust pursued a separate federal lawsuit against the City, which resulted in an 80-page summary judgment order rejecting all of Stardust's federal constitutional claims.

The City then moved for a permanent injunction in this Court. On May 22, 2017, the Court granted the motion, holding that Michael Morrison and his company, Stardust, 3007 L.L.C., "have illegally operated a sexual device shop" for "more than four years." ("Injunction Order" at 2, 20.) The Court found that "Morrison manages Stardust, and makes all strategic decisions related to Stardust's operations." (*Id.* at 1 (citing Compl. ¶ 5).) The Court permanently enjoined Morrison and Stardust from operating a sexual device shop, i.e., a "commercial establishment that regularly features sexual devices." (*Id.* at 2.) Specifically, the Court enjoined

> Morrison, Stardust, and its employees "from engaging in or committing any of the following acts[:]"
>
> > a. Operating a sexual device shop without a valid sexually oriented business license issued by the City of Brookhaven.
> >
> > b. Operating a sexual device shop within 100 feet of any portion of the property line of another sexually oriented business.
> >
> > c. Operating a sexual device shop within 300 feet of any portion of the boundary line of a residential district, or the property line of a place of worship, park, or public library.

Stardust, 3007, LLC v. City of Brookhaven, 348 Ga. App. 711, 714 (2019), *cert. denied* (Oct. 7, 2019).

Stardust has never obtained a sexually oriented business license, and "[i]t is undisputed that Stardust shares a property line with the Pink Pony, an adult entertainment club and sexually oriented business, and Stardust is also within 300 feet of a residential area." *Id.* at 713.

The Injunction Order, however, gave Morrison and Stardust a clear way to avoid contempt. It stated that Stardust will be deemed a sexual device shop only if it regularly displays "at least 100 sexual devices." *Id.* at 714 (quoting Injunction Order at 23.) The Court noted that "Stardust can easily alter its displayed inventory" to less than 100 sexual devices. (Injunction Order at 16.) Thus, there is no confusion that the way for Stardust to avoid contempt is to display *less than* 100 sexual devices. But displaying 100 or more sexual devices—whether exactly 100, or 108, 130, 200, or 1000 sexual devices—subjects Stardust to contempt liability under the plain terms of the Injunction Order.

A. First Contempt Proceeding and Order

Despite the clarity of how to comply, Morrison and Stardust have continued to operate their sexual device shop in contempt of the Injunction Order.

The City therefore moved to have Morrison and Stardust held in contempt. On October 31, 2017, the Court held an evidentiary hearing. Morrison did not testify at, or even attend, the hearing. On November 9, 2017, the Court entered an order finding Morrison and Stardust in contempt of the Injunction Order. ("First Contempt Order. ") The Court reiterated that Morrison manages Stardust, and

controls its operation. (*Id.* at 1.) The evidence, including "[t]wo outdoor signs, large lettering in its windows, lighted display cases, and a separate room lined with dildos, vibrators, and the like show[ed] beyond a reasonable doubt that Stardust 'regularly features sexual devices.'" (*Id.* at 6.)

The First Contempt Order emphasized that "[t]he Injunction Order stated that Stardust and Morrison could comply by limiting the store's sexual device inventory to less than 100 sexual devices, but they willfully refused to do so." (*Id.* at 7.)

The Court thus "impose[d] upon Michael Morrison and Stardust, 3007 L.L.C. $10,500 in criminal contempt fines, for which they are jointly and severally liable." The Court also ordered Morrison and Stardust to pay the City $23,874.36 in attorney fees and litigation expenses. (*Id.* at 13.)[1] Both the fine and the attorneys' fees were ordered to be paid within 10 days. As a coercive civil sanction, the Court imposed on Morrison and Stardust a fine of $10,000 for each and every subsequent violation of the Injunction Order that either of them might commit. (*Id.* at 12.)

B. Second Contempt Proceeding and Order

But Morrison and Stardust continued violating the Injunction Order, and the City moved for the civil contempt sanctions.

Morrison responded by affidavit, claiming that "Stardust covered up all mention of adult toys on the store's freestanding pylon sign, its windows, and its mobile billboard (located in the parking lot)." (Morrison Aff., ¶ 5, filed 12/26/2017.)

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[1] In finding the hourly rate of the City's attorneys to be reasonable, the Court cited a decision finding Mr. Wiggins's (higher) rate of $300/hr. to be reasonable. (*Id.*)

He also claimed that Stardust "remov[ed] any adult toys from the internally-lit glass display case." (*Id.*) Morrison also stated that it is "necessary" for Stardust to "have an abundant amount of sexual devices for a number of reasons" related to the business's profits and success. (*Id.* ¶ 6.) Nevertheless, he claimed that Stardust had "configured the display of sexual devices to less than 100 devices," even though maintaining that level would "force Stardust out of business." (*Id.* ¶ 8.)

At the second contempt hearing, Morrison did not appear. Instead, he sent Stardust's "store manager," Jessica Smith, who made no mention of Chris Coleman being involved in the store. Instead, Smith testified that she answers to Morrison. (April 5, 2018 Tr. 54:18-21.) The evidence presented at that hearing disproved Morrison's claims of compliance. ("Second Contempt Order," filed April 20, 2018.)

Smith, like Morrison, talked about the store's non-sexual device inventory, referred to items allegedly moved out of the store, and claimed that the store displays less than 100 sexual devices. But the Court found otherwise, holding that "Stardust and Morrison have continued their contumacious operation of a sexual device shop in violation of the Injunction Order and in disregard of the Contempt Order." (*Id.* at 5.)

Specifically, while Smith had photographs taken just before the hearing (and an inventory control list purportedly showing 97 sexual devices the day before), the Court observed that "her testimony was not responsive to the dates of contempt (November 10-17, 2017) cited" in the City's second contempt motion. (*Id.* at 6; Apr. 5, 2018 Tr. 97:25-98:2, 98:15-17.)

Moreover, the evidence showed that Stardust failed to keep its displayed sexual device inventory to less than 100. Smith explained that genital-stimulating sexual devices are displayed on a side wall in the back room of Stardust. (April 5, 2018 Tr. 64:21-23.) But Stardust *also* offers various restraints designed for sadomasochistic use, which count as sexual devices under the Injunction Order and the City's regulations. (Apr. 5, 2018 Ex. 1 at 3; Apr. 5, 2018 Tr. 30:18-31:1.)

While Stardust claimed in April 2018 that it displayed fewer than 100 sexual devices, that was based on its wrongful failure to count sadomasochistic devices, like gag balls and restraints, as sexual devices. (Apr. 5, 2018 Tr. 90:3-20, Ex. P13.)

The Court's order observed that Stardust's sexual devices included "butt plugs, anal beads, dildos, and nipple clamps, as well as mouth gags and other restraints for sadomasochistic use." (*Id.* at 6-7; *see also* April 5, 2018 Tr. at 11:18 (describing sexual devices, including "whips and different types of apparatuses that were used for sadomasochistic" restraints).)

The Court held that "[c]ontrary to Smith's unsupported assertions, these objects meet the definition of 'sexual device' because they are 'designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others,' and 'include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs.'" (Second Contempt Order at 7.)

Perhaps most significantly, the Court observed:

> Smith also lacked credibility on other issues. For example, she testified about the number of items allegedly moved out of the store and their retail value, but she did not bring an inventory control report for November, even though the inventory system is computerized. (April 5, 2018 Hrg. Tr. 100:8-18; 130:25-131:5.)

(*Id.* at 7.)

The Court concluded that "[b]ecause Morrison and Stardust continued to operate a sexual device shop at 3007 Buford Highway NE, the Court finds that Morrison and Stardust failed to purge their contempt of the Injunction Order." (*Id.*)

The Court thus enforced the coercive civil sanctions set forth in the First Contempt Order, and for the 21 violations it found to have occurred (three violations each on seven different days), the Court ordered Morrison to "tender to the Brookhaven City Clerk, within ten (10) days of the entry of this order, a bank cashier's check payable to the City of Brookhaven, in the amount of $210,000.00" (Second Contempt Order at 8.) The Court separately ordered Stardust to also pay $210,000 within 10 days. (*Id.*)

Morrison and Stardust appealed both of the contempt orders. On February 20, 2019, in a published decision, the Georgia Court of Appeals upheld both orders. *Stardust, 3007, LLC v. City of Brookhaven*, 348 Ga. App. 711, 723 (2019) ("[T]his contempt proceeding was the second one, and, therefore, *Stardust was well aware of what was required to comply with the injunction*, what civil penalties it would face if it failed to comply, and that the superior court would consider each calendar day as a separate violation.") (emphasis added).

C. Third Contempt Proceeding

On April 25, 2019, the City filed its third motion for contempt sanctions. The

City seeks closure of the store and incarceration of Morrison for failure to pay monies owed under the First and Second Contempt Order. The City also seeks sanctions for every day of Morrison's and Stardust's violation of the Injunction Order since the Second Contempt Order (April 20, 2018), "including but not limited to April 10, April 11, and April 12, 2019." (Third Contempt Motion at 4.)

Morrison and Stardust did not file a response, which was due within 30 days. Ga. Uniform Sup. Ct. R. 6.2 (providing that "each party opposing a motion *shall* serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion") (emphasis added).

The Georgia Supreme Court denied Morrison's and Stardust's petition for certiorari, as to both contempt orders, on October 7, 2019.

The Court held a hearing on February 18, 2020. Morrison did not attend.

The first witness was Aleksander Dimov, the City's finance director. He testified that neither Morrison nor Stardust has submitted any payments on the amounts due under the First Contempt Order or the Second Contempt Order. (Feb. 18, 2020 Tr. 9:12-11:1.)

The second witness, Larry Johnson, is a Brookhaven code enforcement officer with 15 years of code enforcement experience. (*Id.* at Tr. 12:20-25.) He is familiar with the City's definition of sexual devices, which includes devices designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others. (*Id.* at Tr. 14:15-17.) He made three separate visits to Stardust, on April 10, 11, and 12, 2019. (*Id.* at 13:1-4.)

On his April 11, 2019 visit, Mr. Johnson took a picture of Stardust's 20-foot, freestanding pylon sign in its parking lot abutting Buford Highway. (*Id.* Tr. 13:8-13; City's Ex. 13.) Although Stardust represented at the 2018 hearing that it had "removed all the -- the verbiage about toys from all the signs, the window signs, the freestanding signs" (April 5, 2018 Tr. at 121:19-21), Johnson's photograph shows the changeable copy on the sign promoting "ADULT TOYS" and "VIBRATORS." (Ex. 13.) Similarly, the first word on the top portion of the sign is "TOYS." (*Id.*)

On *each* of his visits (April 10, 11, 12), he counted 200 sexual devices as defined by the City's ordinance—*i.e.*, more than *twice* the limit allowed under the Court's clear Injunction Order. Johnson "stopped counting at 200" during his counts, (Feb. 18, 2020 Tr. 14:15-15:11), as there were "over 200 sexual devices" displayed on each visit. (*Id.* at Tr. 24:5-10.) Johnson counted sexual devices that stimulate the genitals, anus, buttocks, and female breasts, such as "Mistress, The Perfect Pussy," a "vibrating pussy stroker with simulated pubic bone," and "Thinz," a 6" dildo, both of which he purchased. (*Id.* at Tr. 15:15-16:21; *see also* City's Ex. 8 at 2-6 (photographs).) He also counted dozens of anal stimulators such as butt plugs. (*Id.* at Tr. 24:11-15.)

Johnson also counted sadomasochistic sexual devices like those detailed and counted in prior hearings and orders. On April 12, 2019, Mr. Johnson took a picture of lighted display case across the room, opposite the wall devoted to genital and anus-stimulating sexual devices. (City's Ex. 8, at 7.) The lighted display case contained sadomasochistic sexual devices such as bondage collars, "restraints to tie

people up," and whips. (Feb. 18, 2020 Tr. 16:23-25; 21:17-20; 17:7-11; 21:25-22:1.) To the left of the lighted display case were additional sadomasochistic devices (whips, restraints, bondage collars) from brands such as Scandal, Fetish, and Fantasy Gold that advertise their products with sexual images of persons in various positions of subjugation. (*Id.* at 17:1-3; City's Ex. 8, at 7.)[2]

Next, investigator Jose Santana testified that he visited Stardust on November 19 and 26, 2019, and on December 2, 2019. Santana saw Stardust's outdoor signage that promoted adult toys and vibrators. (Feb. 18, 2020 Tr. 26:9-22, 27:23-28:3; City's Exs. 9, 10.) He purchase multiple sexual devices, including a "King Cock" double dildo, a "Poppin Pecker" dildo, and "Fetish Kit" with cuffs, a ball gag, feather tickler, and nipple suckers. (City's Exs. 9, 10.) On each of his 2019 visits, Santana counted from 130 to 135 sexual devices on display in Stardust. (Feb. 18, 202 Tr. 30:8-14.) Mr. Santana returned to Stardust on February 13, 2020, and on that visit, he counted more than 120 sexual devices. (Feb. 18, 2020 Tr. 31:23-32:1.)

Stardust called Chris Coleman. Though never mentioned before in the litigation, Chris Coleman testified that he was general manager of Tokyo Valentino, a chain of adult stores that includes Stardust. (Feb. 18, 2020 Tr. 36:14-16; Tr. 52:12-14; *see also* City's Ex. 12, Tokyo Valentino website homepage.) Coleman testified to

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[2] Johnson testified that he did not count "other devices, games, party favors" as sexual devices. (Feb. 18, 2020 Tr. at 21:20-24.) Additionally, the City's witnesses did not include alleged "medical devices" in their counts, even though at least some of those devices—such as sexual enema kits with wands having raised ribs or bumps to stimulate the anus (*id.* at Tr. 63:19-64:2; City's Ex. 14)—would qualify as sexual devices.

having known Morrison "approximately seven years," and to have been in this management position since mid-2016. (Feb. 18, 2020 Tr. 51:13-19; Feb. 18, 2020 Tr. 53:12-14 (claiming to have been the manager in 2017).) Coleman admitted that the Tokyo chain of stores, including Stardust in Brookhaven, specialize in sexual devices, which Coleman called "adult toys." (Feb. 18, 2020 Tr. 54:9-19.)

Although Coleman presented well, his testimony was inconsistent and not credible. He claimed to be the general manager for the last three and a half years, but testified that he was *not aware* of the Court's permanent injunction order issued on May 22, 2017. (*Id.* at Tr. 65:11-13.) And while he claimed that he directed legal counsel to write a settlement letter,[3] he later disclaimed being involved "in the legalities of the store," (*id.* at Tr. 66:6-7), and admitted that he was unaware that the Court's contempt orders had been affirmed on appeal. (Id. at Tr. 66:9-11.)

Coleman actually established that Stardust is in contempt, as he claimed that the store displays 100 sexual devices. (Feb. 18, 2020 Tr. 42:25-43:2.) That *itself* is a violation of the Injunction Order, which states that Stardust will be considered a sexual device shop if it displays 100 devices. But even that claim undercounts the sexual devices on display.

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[3] Stardust's counsel improperly testified from the lectern about Stardust's alleged overtures to resolve this case by a settlement. (Feb. 18, 2020 Tr. 48:4-13.) Stardust's counsel argued that an alleged offer to close the store was akin to a purging of its contempt. (Feb. 18, 2020 Tr. 49:1-9.) But Stardust does not need any settlement to comply with the Court's orders, and Stardust's offer to comply on its *own* terms—including the City giving up the monetary sanctions it has already been awarded while Stardust's conduct has protracted this litigation—only shows its contempt. (*See* Feb. 18, 2020 Tr. 49:16-17 (City's response argument).)

Coleman explained that the back room in Stardust has a wall entirely dedicated to the display of sexual devices, and that that wall contains 100 sexual devices. (Feb. 18, 2020 Tr. 43:14-16; *see also id.* Tr. 45:1-4 "Q. How many sexual devices are you attempting or making sure that Stardust does not exceed on that wall? A. One hundred.") The sexual device wall, labeled on Stardust's diagram as "adult toys," goes from the top down to the bottom with sexual devices. (Feb. 18, 2020 Tr. 61:18-23.) He admitted that items like the Simply Sweet Pink Popper dildo and the King Cock were among the sexual items displayed there. (Feb. 18, 2020 Tr. 40:9-16; City's Ex. 9 p. 2; City's Ex. 10 p.2.)

But Coleman's testimony ignores the lighted display case containing sexual devices, which Johnson photographed. (City's Ex. 8, at 7; Feb. 18, 2020 Tr. 16:23-25; 21:17-20; 17:7-11; 21:25-22:1.) It also ignores sadomasochistic sexual devices on the wall to the left of the lighted display case. (City's Ex. 8, at 7; *Id.* at 17:1-3.) Thus, Coleman presented no evidence to refute Johnson's testimony that on April 10, 11, and 12, 2019, the store had more than 200 sexual devices on display. Nor did Coleman present evidence to refute Santana's testimony that there were more than 100 sexual devices on each of his visits.

Most important, like Jessica Smith before him, Coleman failed to bring an inventory control report to substantiate his claim that Stardust keeps its displayed sexual devices to less than 100. (Feb. 18, 2020 Tr. 58:2-5.) This despite the fact that that the Court had previously found that Smith was not credible because she admitted that Stardust's inventory system is computerized, but failed to bring an

inventory control report to substantiate Stardust's claim of compliance. (Second Contempt Order at 7.) So even though Stardust had knowledge that the City was seeking contempt sanctions for violations on April 10, 11, and 12, 2019, Coleman did not testify specifically about those dates or bring an inventory control report to prove the store's sexual device inventory on that date.

Additionally, although Coleman testified about a video taken by Attorney Wiggins on January 28, 2020 (which, in any event, does not disprove the dates asserted by the City), Stardust did not even offer the video into evidence. (Feb. 18, 2020 Tr. 47:6-9.)

III. Legal Standards Relating to Contempt

"Constitutional courts of Georgia have inherent and legislative authority to punish for contempt, any person in disobedience of its judgments, orders, and processes. Proper administration of justice by our courts demands they have the power to enforce obedience, by contempt proceedings if necessary." *In re Orenstein*, 265 Ga. App. 230, 232 (2004) (quoting *In re Boswell*, 148 Ga. App. 519, 520 (1978)).

"Contempt of court can be described as 'disregard for or disobedience of the order or command of the court'…" *In re Earle*, 248 Ga. App. 355, 358 (2001) (quoting *In re Booker*, 195 Ga. App. 561, 564 (1990)); *Davis v. VCP South, LLC*, 297 Ga. 616, 623 (2015). Courts have broad discretion to issue contempt orders to enforce prior orders. *Stardust*, 348 Ga. at 722 (affirming this Court's imposition of civil contempt sanctions enunciated in prior contempt order); *see also DeKalb Cty. v. Adams*, 262 Ga. App. 243, 245 (2003) (affirming contempt order as "trial court's effort to enforce its earlier, lawful contempt order"); *Williamson v. Palmer*, 199 Ga. App. 35, 35

(1991) (discussing contempt order directing party to cease operating business after it failed to comply with injunction enforcing restrictive covenant). It is undisputed that "[t]rial courts may impose a harsh sanction" when their orders are repeatedly disregarded. *Bayless v. Bayless*, 280 Ga. 153, 155-56 (2006).

Sanctions for contempt are broadly categorized as criminal or civil. *Ensley v. Ensley*, 239 Ga. 860, 861-62 (1977). "The distinction between criminal and civil contempt is that criminal contempt imposes unconditional punishment for prior acts of contumacy, whereas civil contempt imposes conditional punishment as a means of coercing future compliance with a prior court order." *City of Cumming v. Realty Dev. Corp.*, 268 Ga. 461, 462 (1997).

Criminal contempt is established by proof beyond a reasonable doubt of a willful violation of the court order. *In re Bowens*, 308 Ga. App. 241, 242 (2011). But the standard for civil contempt is more lenient, as a preponderance of the evidence is sufficient. *In re Singleton*, 323 Ga. App. 396, 403 (2013).

"[A] trial court has broad discretion to determine if a party is in contempt of its order, and the exercise of that discretion will not be reversed on appeal unless grossly abused." *Cross v. Ivester*, 315 Ga. App. 760, 761 (2012).

Inability to pay is "a defense only when the contemnor demonstrates that he has exhausted all resources and assets available and is still unable to secure the funds necessary to enable compliance with the court's order." *Bernard v. Bernard*, 347 Ga. App. 429, 434 (2018) (affirming incarceration of husband, previously held in contempt, until he paid entire child support and alimony arrearage of $107,056.76).

The burden is on the contemnor, not the trial court, to affirmatively show his inability to pay. *Cross*, 315 Ga. App. at 764. "Indeed, the contemnor must show clearly that he has in good faith exhausted all the resources at his command" *and* "that he cannot borrow sufficient funds to comply with the obligation." *Bernard*, 347 Ga. App. at 435. It is insufficient to provide only evidence about present income or available cash; the contemnor must show the total amount of the contemnor's earnings beginning from the date of the order imposing the monetary obligation through the present. *Cross*, 315 Ga. App. at 764; *see also Vickers v. Vickers*, 220 Ga. 258, 259-260 (1964) (holding that one year's tax return is "wholly insufficient to show conclusively or affirmatively that [contemnor] was unable to comply with the former judgment of the court"); *Scruggs v. Scruggs*, 184 Ga. 853, 854 (1937) (affirming incarceration where contemnor merely swore that his income was insufficient to pay the monies owed, without revealing the amount of his earnings).

A court may incarcerate a contemnor for failure to pay monies owed under a prior contempt order, without giving a new purge provision. *McCarthy v. Ashment*, 835 S.E.2d 745 (Ga. App. 2018) (affirming trial court's decision to incarcerate a husband after he was held in contempt a third time for failing to pay child support). The court rejected the contemnors' argument, stating that he "was not incarcerated on a new monetary obligation but instead the trial court incarcerated [him] on prior monetary obligations, i.e. child support and attorney fee arrearage." *Id.* at 753.

Finally, as to the contempt question, "including any factual issues as to the ability to pay," that is for the trial court to determine in its broad discretion.

Bernard, 347 Ga. App. at 435. A contempt order will not be overturned on appeal if there is *any* evidence of a willful refusal to comply with the court's order. *Id.*

IV. Civil Contempt Sanctions for Violations of Prior Contempt Orders

Morrison and Stardust have plainly failed to comply with portions of the First Contempt Order and Second Contempt Order that required them to pay attorney's fees and contempt sanctions to the City. This contempt is separate from, and does not rely upon, their violations of the Injunction Order in 2019 and 2020.

Morrison and Stardust are, however, liable for contempt for each of those violations of the Injunction Order.

The fact that this is the City's *third* motion for contempt supports strict enforcement of the Court's Injunction Order.

A. Morrison and Stardust are in contempt of the prior contempt orders, and have not met their burden of showing inability to pay.

The First Contempt Order directed Morrison and Stardust to pay a criminal contempt fine to the clerk of court, and to pay the City of Brookhaven $23,874.36 in attorney fees and litigation expenses, within 10 days of the entry of that order. (First Contempt Order at 12-13.) Neither Morrison nor Stardust has paid the City its attorney fees and litigation expenses. (Feb. 18, 2020 Tr. 10:1-14.)

The Second Contempt Order directed Morrison and Stardust to *each* pay the City of Brookhaven $210,000, within 10 days of the entry of the order, for their failure to purge their contempt. (Second Contempt Order at 8.) Neither Morrison nor Stardust has paid the required sum, as both of them were ordered to. (Feb. 18, 2020 Tr. 10:15-11:2.)

Morrison and Stardust have, however, continued to earn a profit by operating their store in Brookhaven, one of six adult stores in the Tokyo Valentino enterprise. (Feb. 18, 2020 Tr. 51:3-5, 52:12-14; *see also* City's Ex. 12, Tokyo Valentino website.) Rather than use Stardust profits to pay the required amounts to the City, Stardust has put the money back into the store to acquire merchandise to keep the store full. (Feb. 18, 2020 Tr. 51:3-5.) Stardust has also been paying its legal counsel, Mr. Wiggins, for all the years that this litigation in state court has been pending, and also for the litigation in federal court. (Feb. 18, 2020 Tr. 60:19-61:7.)

Morrison did not respond to the City's *third* contempt motion, nor did he come to the hearing. He has presented no evidence whatsoever to demonstrate that he is unable to secure the funds necessary to comply with the orders to pay the civil contempt sanction or attorney fees and litigation expenses to the City. *See Cross v. Ivester*, 315 Ga. App. 760, 764 (2012) (holding that burden is on contemnor to "conclusively or affirmatively" show inability to pay, including that he has "exhausted all of the resources" available to him, has "made a diligent and bona fide effort to comply," and "that he cannot borrow sufficient funds to comply").

Nor has Stardust shown an inability to pay. Stardust's general manager testified that Stardust did not, on the date of the hearing, have a lump sum of $210,000 to pay the City (Feb. 18, 2020 Tr. 51:6-8), but that does not help Stardust. *Cross*, 315 Ga. App at 765 (holding that contemnor failed to carry his burden because he did not reveal the amount of his earnings from the time the order requiring payment was entered to the present). To the contrary, it is the result of

Stardust's choice to use its profits in 2018 and 2019 for other purposes instead of paying the contempt fines and attorney's fees as the Court ordered Stardust and Morrison to do. Coleman testified that Stardust is one store in a chain of several adult stores (in Atlanta, Sandy Springs, Gwinnett County, Marietta, etc.), but did not testify that Stardust had made any effort to borrow money from one of those stores, or to borrow product from them so as that Stardust could direct its profits toward paying what it owed.

Because Morrison and Stardust have not paid the amounts ordered, and because neither met their high burdens of showing a conclusive inability to pay, the Court finds both Morrison and Stardust in willful contempt of the First Contempt Order and the Second Contempt Order.

B. Morrison to be incarcerated until he has paid the $210,000 civil contempt sanction imposed by the Second Contempt Order.

Morrison's contempt for the Court's orders is evident in that he has not even attempted to pay the $210,000 sanction imposed by the Second Contempt Order. (*See* Second Contempt Order, entered 4/20/2018, at 8). The Court therefore orders that Morrison be incarcerated until he purges his contempt and pays to the City of Brookhaven the $210,000 sum the Court previously ordered him to pay.

C. Stardust to be closed until Stardust, 3007 L.L.C. has paid the City the sums imposed by the First Contempt Order and the Second Contempt Order.

Stardust, 3007 L.L.C. has continued earning money doing business in the City of Brookhaven but has ignored the Court's orders to pay money to the City. The Court therefore orders Morrison and Stardust to immediately close their store at

3007 Buford Highway NE, and to keep it closed, until Stardust, 3007 L.L.C. has purged its contempt by (1) paying the City of Brookhaven the attorney fees and litigation expenses ($23,874.36) required by the First Contempt Order (*see* First Contempt Order, entered 11/9/2017, at 13), and (2) by paying the City the civil contempt sanction ($210,000) that Stardust was ordered pay to the City by the Second Contempt Order. (*See* Second Contempt Order, entered 4/20/2018, at 8.)

Finally, because Stardust and its operators have shown that they will not willingly obey this Court's orders, the Court directs the DeKalb County Sheriff's Office to enforce the closure order, if necessary, by padlocking the Stardust building at 3007 Buford Highway NE.

V. Criminal and Civil Contempt Sanctions for Additional Violations of Injunction Order

A. Morrison and Stardust are in contempt of the Injunction Order.

Stardust and Morrison had actual knowledge of the Court's May 22, 2017 permanent injunction. (First Contempt Order at 3.) They also had notice of the November 9, 2017 contempt order (First Contempt Order), which was emailed to their attorney on that date and was served upon the store the following day, November 10, 2017. (Second Contempt Order at 4.)

In the First Contempt Order, the Court found that Stardust featured sexual devices in several ways: by promoting "Toys" and "Lubes" on two outdoor signs and with large lettering in its windows and by prominently displaying sexual devices in lighted display cases, and by selling more than 100 sexual devices as defined in the City's SOB Code. (*Id.* at 5 (quoting definition of "sexual device" in Brookhaven Code

§ 15-401 as including "dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs").)

"The Injunction Order stated that Stardust and Morrison could comply by limiting the store's sexual device inventory to less than 100 sexual devices, but they willfully refused to do so." (*Id.*)

As the Court's factual findings above demonstrate, Stardust and Morrison have continued their contumacious operation of a sexual device shop in violation of the Injunction Order. They have declined to purge their contempt, despite facing $10,000-per-violation civil contempt fines set in the First Contempt Order, despite having been fined $210,000 each in the Second Contempt Order, and in disregard of the appellate court orders affirming each of this Court's orders in this case.

On April 10, 11, and 12, 2019, City code enforcement officer Larry Johnson visited Stardust and saw more than two hundred sexual devices displayed in the store on each visit—items including dildos, butt plugs, artificial vaginas, and whips and other devices for sadomasochistic use. (Feb. 18, 2020 Tr. 21:25-22:3, 22:13-23:5; City Ex. 8 at 7; *see* Brookhaven Code § 15-401 (defining "sexual device" to also include objects designed for "sadomasochistic use or abuse of oneself or others").) Johnson saw sexual devices displayed on a wall from floor to ceiling. He also saw sexual devices in a glass case in the corner of that room, and on the wall beside that display case. (City Ex. 8 at 7; Feb. 18, 2020 Tr. 22:13-17; 23:22-24.) Stardust also featured sexual devices with outdoor signs that said adult toys, as well as lubes, vibrators, and lingerie. (City Ex. 13, Feb. 18, 2020 Tr. 13:8-25.)

Investigator Jose Santana visited Stardust on November 19 and 26, 2019, and on December 2, 2019. Santana saw Stardust's outdoor signs that promoted novelties, adult toys, and vibrators. (Feb. 18, 2020 Tr. 26:9-22, 27:23-28:3; City's Exs. 9, 10.) On each visit, Santana counted from 130 to 135 sexual devices on display in Stardust. (Feb. 18, 202 Tr. 30:8-14.) Mr. Santana returned to Stardust on February 13, 2020, and counted more than 120 sexual devices on that visit. (Feb. 18, 2020 Tr. 31:23-32:1.)

These observations establish that Morrison and Stardust have persisted in operating a sexual device shop through 2019 and into 2020. The permanent injunction enjoins Morrison and Stardust from operating a sexual device shop at 3007 Buford Highway NE: (1) without a sexually oriented business license and (2) too close to a residential district and (3) too close to another sexually oriented business. Stardust has never had a sexually oriented business license, and it is within 300 feet of a residential zone and 100 feet of the strip club Pink Pony. (*See* Second Contempt Order at 7.) Because Morrison and Stardust continued to operate a sexual device shop at 3007 Buford Highway NE, the Court finds beyond a reasonable doubt that Morrison and Stardust have again violated—and failed to purge their contempt of—the Injunction Order.

B. Morrison is sentenced to 180 days incarceration for his criminal contempt.

O.C.G.A. § 15-6-8(5) authorizes the Court to punish contemptuous acts by a fine, by imprisonment up to 20 days, or both. "These penalties are applicable to each separate act of contempt found by the trial court." *Reece v. Smith*, 292 Ga. App. 875,

875 (2008); *see also Gay v. Gay*, 268 Ga. 106, 106 (1997). They may be imposed for each act of contempt if there are sufficient findings to support multiple acts of contempt. *Lee v. Envtl. Pest & Termite Control, Inc.*, 243 Ga. App. 263, 264 (2000).

The Court finds Morrison in criminal contempt for violating all three parts of the Injunction Order on April 10, 11, and 12, 2019, as discussed above. The Court thus finds Morrison guilty of nine violations of the Injunction Order.

This is now the *fourth* time that the Court has found Morrison's operation of Stardust to be illegal. This Court first found Morrison and Stardust in violation of the City's regulations, so it entered the Injunction Order. When Morrison and his store were found in contempt of the Injunction Order, the Court imposed a joint $10,500 criminal contempt fine, which Morrison and Stardust have not paid. When Morrison and his store continued violating the injunction, the Court ordered Morrison and Stardust to each pay civil contempt fines of $210,000 for their failure to comply with the injunction and thereby purge their contempt. They did not pay.

Despite these monetary sanctions, Morrison has persisted in operating Stardust as a sexual device shop with more than 100 sexual devices, in violation of the Injunction Order. On April 10, 11, and 12, 2019, the store had over 200 sexual devices on display—more than *double* the threshold that violates the Injunction Order. That is not a counting error—it is willful contempt of the Injunction Order. Therefore, the Court punishes Morrison's contempt by imposing a term of 180 days imprisonment—20 days for each of the 9 violations committed on April 10, 11, and 12, 2019—as authorized under O.C.G.A. § 15-6-8(5).

C. Morrison and Stardust are liable for an additional $210,000, *each*, in coercive civil contempt sanctions for violating the Injunction Order.

Sanctions for civil contempt are not subject to a statutory limit. But when contemnors fail to purge their contempt and the court enforces the conditional punishment, it must be enforced precisely as set forth in the contempt order that imposed the sanction. *Murtagh v. Emory University*, 321 Ga. App. 411 (2013).

In *Murtagh*, the trial court ordered (in 2005) that a contemnor would face a $15,000 fine for any future contempt conduct; two years later the trial court found that the contemnor had violated the order three times. But rather than mathematically impose a $45,000 fine (3 violations x $15,000 per violation), the court imposed a $15,000 fine (3 violations x $5,000 per violation). The Court of Appeals held that, by reducing the per-violation civil contempt fine adjudicated in 2005, the trial court improperly re-adjudicated the matter. *Id.* at 416. As a result, the contempt fine was deemed to be for *criminal* contempt, and because it exceeded the statutory limit (at the time, $500 per act), the appeals court reduced the fine to $1,500 (3 acts of criminal contempt x $500 per act). *Id.*

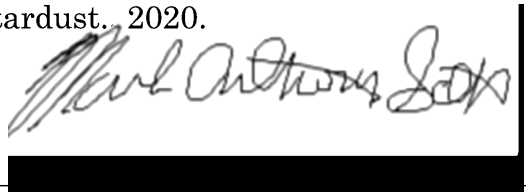
To coerce Morrison's and Stardust's compliance, the First Contempt Order imposed a $10,000 per violation fine on each of them, which was purgeable by obeying the Injunction Order. Because Morrison and Stardust refused to purge their contempt, the Court enforces its civil contempt sanction as follows:

The Court finds that Stardust, 3007 L.L.C. knowingly committed a total of 21 acts of contempt by operating Stardust as a sexual device shop (three violations per day) on seven dates: April 10, 11, 12, November 19, 26, and December 2, 2019, and

February 13, 2020. The Court hereby renders judgment in favor of the City of Brookhaven and against Stardust, 3007 L.L.C. in the amount of $210,000.00. Stardust, 3007 L.L.C. shall tender to the Brookhaven City Clerk, within ten (10) days of the entry of this order, a bank cashier's check payable to the City of Brookhaven, in the amount of $210,000.00.[4]

The Court finds that Michael Morrison knowingly committed a total of 21 acts of contempt by operating Stardust as a sexual device shop (three violations per day) on seven dates: April 10, 11, 12, November 19, 26, and December 2, 2019, and February 13, 2020. The Court hereby renders judgment in favor of the City of Brookhaven and against Michael Morrison in the amount of $210,000.00. Morrison shall tender to the Brookhaven City Clerk, within ten (10) days of the entry of this order, a bank cashier's check payable to the City of Brookhaven, in the amount of $210,000.00.[5]

So **ORDERED** this 20th day of Maytardust., 2020.



MARK ANTHONY SCOTT, Judge
Superior Court of DeKalb County
Stone Mountain Judicial Circuit

[4] This judgment is separate from that entered against Stardust on April 20, 2018.
[5] This judgment is separate from that entered against Morrison on April 20, 2018.