

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES, )  
ex rel. MELANIE HALL, ADMINISTRATOR )  
 )  
Plaintiff/Appellee, )

AUG - 8 2022

JOHN D. HADDEN  
CLERK

v. )

Sup Ct. Case No. 120597

PREMIER GLOBAL CORPORATION; )  
PREMIER FACTORING, LLC; PREMIER )  
FACTORING GROUP, LLC; PF2, LLC; PF-3, )  
LLC; PF-5, LLC; PF-6, LLC; and PF-7, LLC, )  
 )

Defendants/Appellants.

**APPELLANTS’ REPLY BRIEF IN SUPPORT OF THEIR  
EMERGENCY MOTION TO STAY PENDING APPEAL**

In its response brief opposing the requested relief, the Oklahoma Department of Securities (“ODS”) does not—and cannot—refute three key facts.

- (1) The district court’s “Order Imposing Sanctions” (“Order”) deprived Premier of property rights, namely \$250,000 and its ability to conduct certain business in Oklahoma;
- (2) The district court entered the Order without allowing Premier to respond to the allegations in ODS’s Motion for Sanctions; and
- (3) With each day the Order remains in effect, Premier continues to lose business opportunities and to suffer reputational harm that cannot be fully compensated by money damages.

Based on these undisputed facts, a clear due process violation has occurred, and the Court should stay the improper Order and the district court proceedings pending this appeal.

Because it cannot deny the only facts that matter on this motion, ODS seeks to confuse the issue in several ways. *First*, ODS contends it is in the public interest for the improper Order to

remain in effect during this appeal. But despite ODS's efforts to cloud the issue, the district court deprived Premier of its property rights based only on its "finding" that Premier "failed to comply" with the Journal Entry. Order at 1. The district court made *no finding* that Premier's business posed any threat to the investing public in Oklahoma. Nor are the merits of ODS's purported "investigation" even at issue in this subpoena-enforcement action. Instead, ODS asks this Court to overlook a blatant due-process violation based on only on ODS's unsupported innuendo that Premier is a bad actor. This is untrue, but more importantly, it is irrelevant to the due process issue before this Court.

*Second*, ODS implies that the district court had multiple hearings on the sanctions motion before entering the Order. This did not occur. Although the court had hearings on other motions related to the discovery dispute between the parties, it *never* had a hearing on the Motion for Sanctions. How could it have had such a hearing? The Order was entered on the morning of the next business day after the motion was filed. Although "[d]ue process does not require endless hearings," Resp. at 7, it does require a new opportunity to be heard each time a new issue is raised and new relief is sought. Here, ODS raised a new issue when it alleged in its motion for sanctions that Premier had failed to produce all documents the Journal Entry required. ODS also sought new relief when it claimed sanctions should be entered based on Premier's alleged non-compliance with the Journal Entry. Due process required that Premier have an opportunity to respond to these new allegations and argue that it had, in fact, complied with the Journal Entry. Premier did not receive that opportunity. Thus, it is irrelevant how many prior hearings the district court had on other motions and different issues. The only thing that matters for purposes of this motion is that the

district court sanctioned Premier without permitting Premier to defend itself against ODS's allegations. This was a clear due process violation that requires reversal and a stay pending appeal.

*Third*, ODS wrongly suggests there is authority to support the district court's Order. Citing *CFTC v. Premex, Inc.*, 655 F.2d 779 (7th Cir. 1981), ODS contends it was permissible for the court to enter the Order "without an evidentiary hearing" because there was "no material issue of fact regarding the sufficiency of [Premier's] production." Resp. at 8. Indeed, there could be no "material issues of fact" when the district court heard only one side of the story. But unlike the district court here, the district court in *Premex* apparently permitted both sides to address the issue of whether sanctions should be entered. *Id.* at 783 (noting the district court's review of "the affidavits, briefs, and other materials"). The issue on appeal was merely whether due process required a "full evidentiary hearing" or whether the district court could rule based on the written submissions. *Id.* Unlike in this case, the defendants in *Premex* "received the CFTC's motion and supporting papers in ample time to prepare for a show cause hearing," "failed to demand such a hearing," and had an opportunity to present their defense through written arguments. *Id.* Because Premier received *no chance* to respond to ODS's allegations in any form, it was denied due process, and ODS has identified no authorities to the contrary.

*Finally*, ODS argues the Court should not stay the Order because the district court has set a hearing on August 19 to hear arguments and/or evidence regarding Premier's compliance with the Journal Entry. But the district court made clear that the August 19 hearing is not a hearing on the Motion for Sanctions, which was granted on July 11, 2022. *See* July 26 Hr'g Tr. at 33:6-34:17, Exhibit A. Instead, the court set the August 19 hearing as a hearing on Premier's motion to vacate "to determine whether or not the injunction should be lifted because of [Premier's] compliance"

with the Journal Entry. *Id.* at 33:12-15; *see id.* at 33:22-34:1 (“I’m not going to stay the enforcement of the order pending appeal, but I’m going to allow an evidentiary hearing to determine whether the injunction should be vacated based on compliance with the Court’s previous orders.”). When counsel for Premier objected and asked that the court instead hold a hearing on the Motion for Sanctions, the district court denied the request because “that would mean lifting my existing order that’s in place.” *Id.* at 34:2-6. Thus, the court set the hearing to determine—weeks after the fact—whether it was correct when it “found” that Premier did not comply with the Journal Entry and entered severe sanctions based on that finding.

ODS cites no authority supporting its suggestion that due process may properly be afforded almost six weeks *after* Premier was stripped of its property rights. In fact, due process does not work that way. Due process comes *before* rights are taken, not weeks later. Regardless of the results of the hearing on August 19, Premier was denied its due process rights when the Order was entered and suffers irreparable harm each day the improper Order remains in effect. Indeed, there are notes that are scheduled to renew between now and August 19 that Premier will be unable to renew unless a stay is granted.

In this case, a state entity and a district court have taken the remarkable position that it *does not matter* that a litigant was deprived of property without due process because the court may determine at a future hearing that the Order should not have been entered in the first place. That is not—and should not be—the law. Delayed due process is not due process at all. A stay should be entered to prevent further harm to Premier during the pendency of this appeal.

Respectfully submitted,

*Amelia A. Fogleman*

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## CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August 2022, a true, correct and exact copy of the above and foregoing instrument was mailed to the following person with proper postage thereon fully prepaid, via first-class mail:

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