

Friday August 18, 2023.

8:00 – 9:00 National Law Enforcement Museum / For Contempt Proceedings, Bench Warrants and Collections.

We honor the service, sacrifice and story of American Law Enforcement Officers as we call upon them to assist us with problematic bankruptcy issues involving recalcitrant parties. Join our expert panel in a robust and eye-opening discussion on the procedure and pursuit of contempt, the process to seek bench warrants for the arrest of parties and the collection of judgments and court orders, including using law enforcement.

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Judge Kesha Tanabe, United States Bankruptcy Court, District of Minnesota, St Paul, MN

The Trustee's Extraordinary Tools

NABT 2023 Conference

By Gary Seitz, Gellert Scali Busenkell & Brown LLC, Philadelphia, PA and Wilmington, DE and Alex Beeby, Sapienta Law Group, Minneapolis MN

In a perfect world, the debtor would disclose all assets in full candor to assist the trustee in the performance of his/her duties. Co-owners, custodians and transferees would voluntarily comply with trustee requests for turnover. The chapter 7 trustee serves a paramount role in ensuring that the system remains honest and open, and is statutorily mandated to investigate the debtor's financial affairs. Bankruptcy Courts and trustees are often very patient in working towards compliance. While not a common occurrence, case administration does not always proceed along a smooth course as intended by the Bankruptcy Code and Rules.

Debtors' self-effectuating duties

A chapter 7 debtor is required by statute to cease operation of a business upon filing for bankruptcy. A debtor has the affirmative duty to surrender all estate property and records to the

chapter 7 trustee¹. Moreover, § 521(a)(3) requires that a debtor “cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties” Unauthorized continuing operation of a chapter 7 debtor-owned business and debtor retention of control over its assets is absolutely inconsistent with these statutory mandates. Further, the Code also makes clear that continued operation, if allowed at all, can only occur by (or in cooperation with) the chapter 7 trustee and only after approval by the bankruptcy court.²

Despite self-effectuating duties embedded in the Code that require a debtor to cooperate with the trustee including turning over assets and financial records and the statutory shut down of a business debtor, a trustee may need to follow up in numerous communications with counsel or the debtor to obtain compliance. Trustees will document these requests in detail citing to the Code provisions.

Jurisdiction to Compel

Bankruptcy Courts have jurisdiction over proceedings that arise under title 11 or arise in a case under title 11, referred to as “core proceedings.”³ “Civil contempt proceedings arising out of core matters are themselves core matters.”⁴ For example, if a subpoena is issued pursuant to a Bankruptcy Court’s Order for Examination and Bankruptcy Rule 2004, and the discovery sought is necessary for the administration of the bankruptcy estate, then contempt and related proceedings are core proceedings under 28 U.S.C. § 157(b)(2), and the Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157(a) and 1334.

¹ See 11 U.S.C. § 521(a)(4). See generally *Brower v. Evans*, 257 F.3d 1058, 1068 n.10 (9th Cir. 2001) (“Shall means shall.”) (internal citation and quotation marks omitted).

² See 11 U.S.C. § 721.

³ 28 U.S.C. § 157(a), (b)(1); *McDougall v. Ag. Country Farm Credit Servs. (In re McDougall)*, 587 B.R. 87, 90 (B.A.P. 8th Cir. 2018).

⁴ *In re Skinner*, 917 F.2d 444, 448 (10th Cir. 1990).

Motion to Compel Compliance with Debtor's Statutory Duties – Contempt of Code

When informal efforts to obtain cooperation fail, on occasion, the trustee may seek judicial assistance by filing a motion to compel compliance. Like the proverbial “shot across the bow”, often the filing of such a motion alone is sufficient to get the debtor’s full attention and compliance long before the scheduled hearing. But then there are the extraordinary cases of rogue actors that require extraordinary measures. Those rogues are the targets of this panel.

Although unusual, these war stories are well known to trustees and follow definitive fact patterns. Despite the patience of Job – – month after month, the debtor breaks promise after promise to the Court and the Trustee to cooperate by producing books and records, bank account information and keys for the business that owns several parcels of real estate which appear to be producing rental income. Keys are not turned over or the keys that are provided do not work in the locks. The debtor has operated the business despite having advised the Trustee and the Court that the business has been shuttered. The debtor may have collected some revenue, liquidated some assets, or retained or spent cash during the bankruptcy without Court approval. Despite orders compelling performance of debtor duties, case administration is stalled and along the way the trustee has prematurely aged another ten years.

Since court orders in these cases have the same effect on the debtor as firing blanks, time has come to turn to the extraordinary weapons in the trustee’s arsenal. The Trustee’s next motions will be grounded in the contempt powers of the Court to enforce its orders. Stepping back for a moment, depending on the circumstances, the trustee may seek to file the initial motion on an *ex parte* emergency or expedited basis. It’s one thing for a debtor to refuse to turn over records but another thing entirely to intentionally continue to operate the business or dissipate cash assets. In those cases, the trustee may seek an order requiring the Debtor to: (1) immediately cease operations; (2) cease use or consumption of estate assets including cash; and

(3) turn over bank account balances, keys to properties, and banking records. Depending on the circumstances, these are usually quickly granted by the Court.

Due Process does not Require Notice to the Debtor

Debtors' attempts to undo such relief arguing that the relief provided to the Trustee on an *ex-parte* application violated the due process clause of the 14th Amendment of the U.S. Constitution, as well as Federal Rule of Bankruptcy Procedure 9014, have failed. Courts point out that, independent of the Order, the Debtor had a duty under the Code to cease operations and to surrender the relevant assets to the Trustee. When the Trustee seeks *ex-parte* relief on this basis, the Order merely restates a requirement, that Debtor cease business operations independent of the Trustee, which is already embedded in the Code. Thus, it matters not whether the Debtor had notice and an opportunity to be heard on the matter as the Order neither created a new obligation nor deprived the Debtor of any existing right. Even if the Debtor received notice prior to entry of the Order, the Debtor lacked standing under § 721 to argue that he be permitted to continue operate or retain property⁵. Therefore, whether the Debtor is given the opportunity to be heard on these matters is of no consequence.

Motion to Enforce Court Orders - Contempt of Court

The Court assists the Trustee by issuing orders to compel or enforce contempt sanctions, but what is a Trustee to do if the debtor continues with obstructive behavior? The contempt motion must be carefully drafted to ensure that due process requirements are fulfilled. Trustees and their counsel must also liaise with the US Marshal's office when crafting the relief and a proposed form of order to be enforced by their officers.

⁵ See *In re Gracey*, 80 B.R. 675, 378 (E.D. Pa. 1987), *aff'd*, 849 F.2d 601 (3d Cir. 1988).

Bankruptcy courts have statutory and inherent authority to issue civil contempt orders as necessary to enforce their orders⁶. “[I]f the penalty is to compensate the complaining party or to coerce the defendant into complying with the court's orders, the contempt is civil.”⁷

“Although there are no specific procedural steps to follow in civil contempt proceedings, due process requires that the appellant be given the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”⁸ In bankruptcy cases, while personal service is sufficient, motions for contempt may also be served by first-class mail addressed to an individual’s “dwelling house or usual place of abode.”⁹

For civil contempt, the movant must prove by clear and convincing evidence that the respondent: (1) knew about a court order; and (2) violated that order¹⁰. The burden then shifts to the respondent to show that, for reasons outside their control, they were unable to comply, despite reasonable efforts to do so¹¹. To coerce compliance or compensate the movant, “[t]he Court may levy a fine against the party in contempt, which is payable to the moving party or to the Court, or may order imprisonment.”¹²

A bankruptcy court may issue an order for contempt on a non-party for failure to comply with a trustee-issued subpoena, issued pursuant to Bankruptcy Rule 2004. Fed. R. Civ. P. 45(g), inc. by Fed. R. Bankr. P. 9016.¹³ Unless the recipient objects to the subpoena, intervening court

⁶ *Law v. Siegel*, 571 U.S. 415, 420–21 (2014); *In re Reed*, 888 F.3d 930, 936 (8th Cir. 2018); *In re Steward*, 828 F.3d 672, 686 (8th Cir. 2016); *Koehler v. Grant*, 213 B.R. 567, 569–70 (B.A.P. 8th Cir. 1997).

⁷ *Hubbard v. Fleet Mortg. Co.*, 810 F.2d 778, 781 (8th Cir. 1987).

⁸ *Fisher v. Marubeni Cotton Corp.*, 526 F.2d 1338, 1343 (8th Cir. 1975).

⁹ See Fed. Rs. Bankr. P. 7004(b)(1) (applying to service of summons and complaints in adversary proceedings), 9014(b) (incorporating Fed. R. Bankr. P. 7004 service requirements for contested matters), 9020 (providing for Fed. R. Bankr. P. 9014 to apply to contempt motions).

¹⁰ *Koehler*, 213 B.R. at 570; accord. *U.S. v. Open Access Tech. Intern., Inc.*, 527 F.Supp.2d 910, 912 (D. Minn. 2007).

¹¹ *Open Access*, 527 F.Supp.2d at 912.

¹² *Id.*; accord *Coleman v. Espy*, 986 F.2d 1184, 1190 (8th Cir. 1993).

¹³ see also *In re Corso*, 328 B.R. 375 (E.D.N.Y.) (affirming a contempt order issued under such circumstances).

involvement is not required prior to contempt proceedings.¹⁴ Service of a subpoena must “ensure the subpoena is placed in the actual possession or control of the person to be served,” but personal service is not required.¹⁵

Search and/or Seizure Warrant When the Debtor is Involved

One potential mechanism a trustee may utilize in attempting to uncover and foil abusive conduct is to request that the bankruptcy court issue a warrant in order to search the debtor's residence if the trustee suspects the debtor is hiding or misappropriating assets of the estate. Although an extreme measure, the question remains unresolved as to whether a bankruptcy trustee has the authority to seek a search warrant, and in turn whether this raises the specter of the debtor's privacy rights under the Fourth Amendment of the U.S. Constitution. The few reported decisions addressing this issue have reached contrasting results. Nevertheless, and despite the divergent judicial opinions, a guiding principle can be extrapolated from the thicket of bankruptcy and constitutional law to guide trustees, debtors and the courts.

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." The basic purpose of the Fourth Amendment prohibition against unreasonable searches and seizures is to safeguard the privacy and security of individuals against arbitrary intrusions by government officials¹⁶. The Fourth Amendment protects people from unreasonable searches and seizures of their person and property, as well as privacy.¹⁷ To invoke the protections of the Fourth

¹⁴ *U.S. S.E.C. v. Hyatt*, 621 F.3d 687, 694 (7th Cir. 2010); *see also Vitalis v. Sun Constructors, Inc.*, 2020 WL 4912298, at *15–16 (slip op.) (D.V.I. Aug. 20, 2020) (citing cases) (analyzing then rejecting a request for “leniency” of an intervening order compelling compliance with a subpoena).

¹⁵ *Firefighter’s Inst. For Racial Equality ex rel. Anderson v. City of St. Louis*, 220 F.3d 898 F.3d 898, 903 (8th Cir. 2000).

¹⁶ *Camara v. Mun. Court of San Francisco*, 387 U.S. 523, 529, 87 S.Ct. 1727, 1730, 18 L.Ed.2d 930 (1967).

¹⁷ *Soldal v. Cook County*, 506 U.S. 56, 62, 113 S.Ct. 538, 544, 121 L.Ed.2d 450 (1992).

Amendment, a person must demonstrate a legitimate expectation of privacy with respect to the subject of the search.¹⁸ It is well-settled that a legitimate expectation of privacy requires both a "subjective expectation of privacy" and "an objectively reasonable expectation of privacy."¹⁹ Notably, an individual's home is "accorded the full range of Fourth Amendment protections."²⁰

The decisive factor of whether a bankruptcy trustee has the authority to seek a search-and-seizure order, and whether such application implicates a debtor's Fourth Amendment rights, is not whether a particular court views a trustee as a government actor or as a private party, but the trustee's actual purpose for seeking the search-and-seizure order²¹. If the trustee's stated purpose is to uncover assets in the full administration of the bankruptcy estate for the benefit of creditors, a court will likely conclude that the Fourth Amendment is not implicated and does not impede the trustee's request. By contrast, where a trustee's aim in seeking a search-or-seizure order is to uncover criminal conduct or assist the government in uncovering criminal bankruptcy fraud by a debtor, a court will likely conclude that the Fourth Amendment and Rule 41 preclude the trustee's disruption of the privacy rights of the debtor.

Least Possible Power Adequate to the End Proposed

In considering sanctions to coerce compliance, courts consider the *United Mine Workers of America* factors:

[W]here the purpose is to make the defendant comply . . . [the Court] must then consider the character and magnitude of the harm threatened by continued

¹⁸ *In re Kerlo*, 311 B.R. 256, 265 (Bankr. C.D. Cal. 2004) (citing *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979)).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *In re Barman*, 252 B.R. 403 (Bankr. E.D. Mich. 2000)(to balance interests, the trustee makes a reasonable request for an inspection order. Written motion in compliance with federal and local rules, presenting detailed facts establishing that there is property of the estate on the premises. If the motion was *ex parte*, the trustee would need to set forth detailed facts as to why such relief was necessary without notice to the debtor. The request would also have to be reasonable in its proposed execution, with the inspection occurring during regular business hours, in the debtor's presence and without forcible entry); *In re Bursztyn*, 366 B.R. 353 (Bankr. D.N.J. 2007)(this remedy is reserved only for the rare situations where a bankruptcy trustee presents the Court with specific, concrete, and compelling reasons to justify such a procedure as well as convince [s] the Court that doing so is a matter of substantial need).

contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired²².

Courts should also utilize the “least possible power adequate to the end proposed.”²³ This may include incarceration²⁴.

Discretionary Referral to District Court

Bankruptcy Court judges must determine whether it is better to submit a Report and Recommendation to the District Court or to issue *sua sponte* bench warrant. If the Bankruptcy Court opts to refer the matter to the District Court, it will issue a report and recommendation to the District Court pursuant to Bankruptcy Rule 9033²⁵. Because the District Court regularly hears matters involving incarceration, the District Court is more familiar and experienced with the logistical and Constitutional issues implicated by incarceration.

However, Bankruptcy Courts do indeed have the authority to issue bench warrants *sua sponte* for civil contempt to coerce compliance with court orders²⁶.

²² *U.S. v. United Mine Workers of America*, 330 U.S. 258, 304 (1947); accord *Chiganti & Assocs., P.C. v. Nowotny*, 470 F.3d 1215, 1224 (8th Cir. 2006).

²³ *Shillitani v. U.S.*, 384 U.S. 364, 371 (1966); accord *Taylor v. Finch*, 423 F.2d 1277, 1279 (8th Cir. 1970).

²⁴ See *Coleman*, 986 F.2d at 1990 (“With coercive contempt penalties, the court issues sanctions such as fines or incarceration to force the offending party to comply with the court's order.”); *Open Access*, 527 F.Supp.2d at 912 (quoted supra); *Chowdhury v. Hansmeier*, Case Nos. 18-cv-3403, 19-cv-0156 (WMW), 2019 WL 1857111 (D. Minn. Apr. 25, 2019) (adopting a bankruptcy court recommendation of incarceration); *In re Boyd*, Bankr. No. 17-60096 (Bankr. D. Minn. Sept. 10, 2018), ECF No. 54 (ordering incarceration for civil contempt to compel compliance).

²⁵ See, e.g., *Hansmeier v. Chowdhury (In re Hansmeier)*, Adv. No. 16-04124, 2019 WL 1242699 (Bankr. D. Minn. Jan. 30, 2019), adopted in relevant part, 2019 WL 1857111.

²⁶ *In re Burkman Supply, Inc.*, 217 B.R. 223, 226–27 (W.D. Mich. 1998) (“[W]here there is a history of non-compliance with court orders, a bankruptcy court has the power to incarcerate as a sanction for civil contempt.”) (citing cases); see also *In re Lawrence*, 279 F.3d 1294 (11th Cir. 2002) (affirming a bankruptcy court order of incarceration as a coercive sanction for civil contempt); *In re Tate*, 521 B.R. 427 (Bankr. S.D. Ga. 2014) (ordering incarceration as coercive sanction for civil contempt). See, e.g., *In re Boyd*, Bankr. No. 17-60096 (Ridgway, J.), ECF No. 54; *McDermott v. Zaligson (In re Zaligson)*, Adv. No. 17-04113 (Bankr. D. Minn. May 16, 2018) (Sanberg, C.J.), ECF No. 40; *In re Yehud-Monosson USA, Inc.*, Bankr. No. 11-42834 (Bankr. D. Minn. Jan. 3, 2012) (Dreher, J.), ECF No. 221.

Court Orders Divesting Title

Rule 70 of the Federal Rules of Civil Procedure provides the Court with specific authority to divest defendants of ownership or title to property when the defendants have failed and have refused to do as previously ordered within the time period provided by the Court.

F.R.C.P. 70 states, as follows:

(a) Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court *may* order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within the district, the court—instead of ordering a conveyance—*may* enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance. (emphasis added). The express language of Rule 70 establishes the extent of the district court's limited post-judgment authority: "If a judgment directs a party . . . to perform any other specific act . . . and the party fails to comply within the time specified, the court may direct the act to be done" F.R.C.P. 70.

Bankruptcy Rule 7070, which incorporates Fed. R. Civ. P. 70, allows the court in an adversary proceeding to vest title in another entity ("the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court."). Bankruptcy Rule 7070 provides: Rule 70 F.R.Civ.P. applies in adversary proceedings²⁷. This rule seems particularly suited to assisting trustees in recovering properties once a judgment is obtained.

Seizure When Third Parties are Involved.

Additional steps will be required when the relief sought by the trustee involves third parties. These may include persons who are holding property of the debtor, co-owners with the debtor or prior

²⁷ *In the Matter of Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988).

custodians. In these circumstances, the trustee will most likely have obtained a judgment through an adversary proceeding for turnover under sections 542 or 543, sale under 363(h) or avoidance. Section 542 of the Bankruptcy Code generally requires a noncustodial entity who has possession, custody, or control of property of the estate that the trustee may use, sell, or lease under § 363, or that the debtor may exempt under § 522, to deliver to the trustee the property or the value of the property, and to account for such property. Section 543 similarly requires a custodian with knowledge of the commencement of the case to deliver such property and the proceeds of such property to the trustee and account for such property. Avoided transfers are subject to turnover. If the third-party judgment debtor does not comply with the court order, then depending on the relief obtained, the trustee may turn to various writs available to invoke the assistance of the US Marshal.

Invoking the Involvement of the US Marshal – Writs

The United States Marshals Service occupies a uniquely central position in the federal justice system. It is the enforcement arm of the federal courts and is involved in virtually every federal law enforcement initiative. For the service of any writ or process, the form "USMS-285" is utilized by the U.S. Marshals Service and Federal Court. One complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned must be submitted. The applicable fees for such service(s) (Title 28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service. Some of the key writs of interest to trustees follow.

A **writ of assistance** is an order directing that a party convey, deliver, or turn over a deed, document, or right of ownership. This writ, which may also be called a writ of restitution or writ of possession, usually serves as an eviction from real property. In addition, if a judgment directs a party to execute a conveyance of land, to deliver a deed or other document, or to perform any other specific act, and if the party fails to comply within the time specified, the

court may direct the act to be done by some other person appointed by the court at the cost of the non-compliant party. Where so performed, the act has like effect as if done by the party. The writ is normally limited to execution within the state in which the district court is located unless extended by federal statute, rule or court order. The writ is issued by the Clerk of the U.S. District or Bankruptcy Court, at the discretion of the judge, after judgment is rendered. The writ is served by a U.S. Marshal or other person, presumably a law enforcement officer, specially appointed by the court in accordance with Federal Rule of Civil Procedure 4.1(a).

A **writ of body attachment** is a process issued by the court directing the U.S. Marshal to bring a person who has been found in civil contempt before the court. The process may also be called an order of commitment for civil contempt or a warrant for civil arrest. An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced anywhere in the United States. An order of civil commitment of a person held to be in contempt of a decree or injunction not involving the enforcement of federal law may only be served at any place within the state in which the district court is located, or at any place outside of the state that is within 100 miles of the courthouse. The writ is served by the U.S. Marshal or by a Deputy U.S. Marshal.

A **writ of execution** is a process issued by the court directing the U.S. Marshal to enforce and satisfy a judgment for payment of money. (Federal Rules of Civil Procedure 69). The writ is served by the U.S. Marshal or other person, presumably a law enforcement officer, specially appointed by the court pursuant to Federal Rule of Civil Procedure 4.1(a). The writ is served according to the instructions contained within the writ and pursuant to state law, which generally governs procedures for levy. The judgment creditor may be required to provide an indemnity bond and an advance deposit to cover the U.S. Marshal's estimated out-of-pocket expenses. The judgment creditor should accompany the U.S. Marshal in executing the writ so that he or she

may answer any questions that may arise during execution. Generally, the U.S. Marshal will maintain custody of the attached property, under court supervision. Alternatively, the judgment creditor may be named substitute custodian for the U.S. Marshal and maintain direct responsibility for custody of the attached property, either by court order or by written agreement with the U.S. Marshal. If the requesting party has arranged for moving or storage of the property, he or she must provide the U.S. Marshal with written proof that storage fees have been paid and that adequate insurance against loss or damage has been obtained, as evidenced by an insurance certificate. In addition, if the requesting party is named substitute custodian, he or she must provide the U.S. Marshal with a signed statement holding the U.S. Marshal harmless for any damages incurred as a result of the seizure while the property is in his or her custody. The U.S. Marshal is responsible for advertising and selling the seized property.

A **writ of garnishment** is a process by which the court orders the seizure or attachment of the property of a defendant or judgment debtor in the possession or control of a third party. The garnishee is the person or corporation in possession of the property of the defendant or judgment debtor, typically a bank. In accordance with Rule 64 of the Federal Rules of Civil Procedure, a writ of garnishment may be issued pre- or post-judgment, according to state law and practice. The requesting party may be required to provide an indemnity bond and an advance deposit to cover the U.S. Marshal's estimated out-of-pocket expenses. Under Rule 69 of the Federal Rules of Civil Procedure, any process issued to enforce a judgment for the payment of money is called a writ of execution. Consequently, in federal practice, there are no post-judgment writs of attachment or garnishment. Rather, the writ of attachment is denominated a writ of execution. Regardless of this denomination, however, enforcement of the writ is governed by state law as applicable to the analogous state law writ and procedure. Thus, a writ issued by a federal district court in Florida for enforcement of a judgment by garnishment will be called a

writ of execution, but the U.S. Marshals Service will enforce the writ according to Florida state procedures for garnishment.

The utilization of any of these writs by trustees are unusual and require coordination among the Court, Office of the U.S. Marshal, the Trustee, Counsel and others. The Marshal Service is typically helpful in setting up the event. The Trustee may need to coordinate the presence of a locksmith to avoid breaking down doors and to secure the property once the Marshal leaves. The Marshal provides logistics, manpower and protection. The Trustee should let the Marshal know if the debtor's schedules identify any firearms. The Marshals will not take any chances. Before execution of the writ, they will investigate whether the debtor has any registered firearms, a criminal record or any outstanding warrants.

The trustee and counsel will be asked to stay clear of the location at the time of execution. Once they clear the location and accomplish the mission, they will turn it over to the trustee. The Marshal Service has protocols that they will follow to ensure that the job is completed in a safe and efficient manner.

Involvement of the US Marshal Across District/State Borders

Writs of Assistance and Writs of Execution for bankruptcy cases are normally limited to execution within the state in which the court is located unless extended by federal statute, rule or court order. Should a debtor have assets outside the jurisdiction where judgment was entered, the enforcement process has been streamlined to facilitate enforcement of federal judgments across state lines. Enforcement of a bankruptcy court order outside the state where it was entered is accomplished via 28 U.S.C. § 1963, which provides for registration of judgments. A simple form is available on the U.S. Courts' website, requiring only certification by the bankruptcy court

clerk and a certified copy of the judgment.²⁸ Notice to the debtor or other counterparty is not required when registering a federal judgment, enabling immediate enforcement and often catching a debtor off guard. The bankruptcy court order should be registered with the district court in the foreign state where enforcement is sought. Once judgment has been entered (and if prudent, domesticated or registered), a trustee can record the order with the state's applicable public records body, which is the secretary of state in many jurisdictions. In nearly every state, recordation of a judgment constitutes a statewide lien on real property in which the debtor holds an interest. A miscellaneous docket is opened for the enforcement pleadings and the motion for writ of assistance is filed there. The order granting the writ, issuance of the writ and transmission to the local office of the US Marshal proceed in the usual fashion.

International Enforcement

Enforcement of bankruptcy orders outside of the U.S. is another topic beyond the time limitations of this presentation. However, it is important to note that the NABT International Committee is a ready reference for assistance abroad. For example, the Committee is working with its member, Christopher Redmond, a delegate to the UNCITRAL Working Group on Asset Tracing and Recovery, to assist in the preparation of model legislative proposals on civil asset tracing and recovery of judgments in insolvency proceedings.

²⁸ See <https://www.uscourts.gov/forms/civil-judgment-forms/clerks-certification-judgment-be-registered-another-district>.

FORMS:

Motion to Compel Debtor

Order to Compel

Motion for Show Cause Order and Finding of Contempt

Bench Warrant

Contempt Order

Letter to US Marshal for Review of Proposed Form of Order

Motion For Writ of Assistance to Enforce Orders and Judgment

Order For Writ of Assistance

Summons And Writ of Assistance

Motion To Authorize United States Marshal Service to Enforce Bankruptcy Court Order

Order to Enforce

Writ of Execution to US Marshal

U.S. Marshals Service Form 285

Clerk's Certification of a Judgment to be Registered in Another District (AO 451)

**UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

ABC CAPITAL INVESTMENT, LLC,

Debtor.

CHAPTER 7

CASE NO. 22-13060-AMC

**MOTION OF GARY SEITZ AS CHAPTER 7 TRUSTEE
TO COMPEL THE DEBTOR TO TURNOVER RECORDS**

Gary F. Seitz, Esquire, Chapter 7 Trustee (“Trustee”) herein, hereby moves the court to compel the Debtor, ABC Capital Investment, LLC, through its three principals identified as Jason Walsh, Amir Vana and Yaron Zer, to turn over financial records, and in support represents that:

1. On November 15, 2022, a Voluntary Petition under Chapter 7 of Title 11 of the Bankruptcy Code was filed by ABC Capital Investment, LLC (the “Debtor”).
2. On November 15, 2022, Gary F. Seitz was appointed interim trustee.
3. The Creditors’ Meeting under Section 341 of the Bankruptcy Code was scheduled but not held on December 15, 2022 and January 12, 2023 due to the nonappearance of the Debtor.
4. The Meeting was rescheduled for January 19, 2023. The Debtor’s representative, Jason Walsh, appeared to testify on the Debtor’s behalf.
5. At the meeting, the Trustee learned about the financial records of the Debtor and requested that they be turned over.
6. Specifically, the Trustee requested:
 - a. Tax returns
 - b. Bank statements
 - c. QuickBooks electronic files for the Debtor’s accounts (collectively, the

“Records”).

7. The Records are property of this bankruptcy estate but have not been provided to the Trustee.

8. The Records are necessary to determine whether any transfers of property or assets occurred prior to the bankruptcy filing.

9. The trustee has a fiduciary duty to maximize the value of the estate for the benefit of creditors. To fulfill this duty, the trustee must have access to all of the debtor's financial records, including those that are relevant to transfers of property or assets prior to the bankruptcy filing.

10. The debtor's failure to produce the requested documents and information has hindered the trustee's ability to administer the estate properly, and has prevented the trustee from fulfilling his or her fiduciary duty to the creditors.

11. The debtor has a legal obligation to cooperate with the trustee and to provide all necessary information and documents, and the failure to do so is a violation of the debtor's duty under the bankruptcy code. Section 521(a)(4) of the Bankruptcy Code obligates the Debtor to turn over all property of the estate and records. The Debtor is obligated to cooperate with the Trustee in the fulfillment of his duties. §521(a)(3).

12. Under 11 U.S.C. § 542, the trustee has the authority to compel the debtor to turn over any property of the estate. The requested documents and information are property of the estate, and the debtor is obligated to turn them over to the trustee. The Trustee has repeatedly attempted to resolve this matter with the Debtor informally, but to no avail.

13. In order to complete administration of this case, the Trustee needs the Debtor's Records.

14. The Trustee requests that the Debtor be compelled to turn over all outstanding documents to the Trustee.

15. The Trustee has incurred unnecessary expense due to the Debtor's failure to fulfill its obligations and further requests that the court award the Trustee the costs and fees incurred in bringing this motion, pursuant to 11 U.S.C. § 330 and the court's inherent power to control its docket.

16. The Trustee has spent in excess of two hours in time seeking Debtor's compliance. The Trustee's hourly rate for bankruptcy matters is \$500. The Trustee has over 30 years' experience as an attorney and over 20 years' experience as a trustee. The Trustee's rate is well below the rates published by the Community Legal Services ("CLS") as reasonable in cases in which the law allows for the award of attorney's fees from opposing parties in order to compensate CLS for the legal services provided to its clients²⁹.

WHEREFORE, the Trustee requests that an order, in the form attached hereto, be entered granting the relief requested., i.e., an order compelling the Debtor to turn over the Records necessary to complete the administration of the estate and reimbursing the Trustee an award of costs and fees for compelling the Debtor to fulfill its obligations.

Dated: February 23, 2023

²⁹ <https://clsphila.org/about-community-legal-services/attorney-fees/>

**UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ABC CAPITAL INVESTMENT, LLC, Debtor.	CHAPTER 7 CASE NO. 22-13060-AMC
--	--

**MOTION OF GARY SEITZ AS CHAPTER 7 TRUSTEE
FOR SHOW CAUSE ORDER AND ORDER
TO HOLD DEBTOR AND ITS PRINCIPALS IN CONTEMPT**

TO THE HONORABLE ASHELY M CHAN, UNITED STATES BANKRUPYCY JUDGE

Gary F. Seitz, Esquire, Chapter 7 Trustee (“Trustee”) herein, in the interest of justice, hereby moves this Honorable Court pursuant to Fed. R. Bankr. P. 9020(b), to find Debtor, ABC Capital Investment, LLC, through its three principals identified as Jason Walsh, Amir Vana and Yaron Zer, in contempt of this Court’s order dated March 23, 2023 (“Order”), requests that an order to show cause be immediately issued to the contemnors Jason Walsh, Amir Vana and Yaron Zer, that the Court enforce compliance by the contemnors with this Court’s Order, by, among other things, imposing daily fines upon them, ordering them to pay additional fees and costs of the Trustee and incarcerate them until they have complied with the Order and in support thereof respectfully sets forth and represents as follows:

1. On November 15, 2022, a Voluntary Petition under Chapter 7 of Title 11 of the Bankruptcy Code was filed by ABC Capital Investment, LLC (the “Debtor”).
2. On November 15, 2022, Gary F. Seitz was appointed interim trustee.
3. The Creditors’ Meeting under Section 341 of the Bankruptcy Code was scheduled but not held on December 15, 2022 and January 12, 2023 due to the nonappearance of the Debtor.
4. The Meeting was rescheduled for January 19, 2023. The Debtor’s representative,

Jason Walsh, appeared to testify on the Debtor's behalf.

5. At the meeting, the Trustee learned about the financial records of the Debtor and requested that they be turned over.

6. Specifically, the Trustee requested:

- a. Tax returns
- b. Bank statements
- c. QuickBooks electronic files for the Debtor's accounts.

7. Subsequently, the Trustee requested loan documents for the loan receivables listed in the records obtained by the Trustee:

- a. ABC Capital Realty
- b. ABCapital Chicago
- c. Amir
- d. Dos Diones
- e. Giovani Holdings
- f. Giovani RE
- g. Jason Walsh
- h. Philadelphia Land Acquisition
- i. Progressive Capital (collectively ("Loan Documents" collectively with 6a through 6c, the "Records").

8. The Records are property of this bankruptcy estate.

9. While some Records have been provided, not all have been provided to the Trustee.

10. Specifically, the following Records have not been provided:

- a. QuickBooks electronic files for the Debtor's accounts
- b. Tax returns for the years 2020, 2021 and 2022.
- c. Bank statements for 2021 and 2022.

d. Loan Documents.

11. The Records are necessary to determine whether any transfers of property or assets occurred prior to the bankruptcy filing.

12. The trustee has a fiduciary duty to maximize the value of the estate for the benefit of creditors. To fulfill this duty, the trustee must have access to all of the debtor's financial records, including those that are relevant to transfers of property or assets prior to the bankruptcy filing.

13. The debtor's failure to produce the requested documents and information has hindered the trustee's ability to administer the estate properly, and has prevented the trustee from fulfilling his or her fiduciary duty to the creditors.

14. The debtor has a legal obligation to cooperate with the trustee and to provide all necessary information and documents, and the failure to do so is a violation of the debtor's duty under the bankruptcy code. Section 521(a)(4) of the Bankruptcy Code obligates the Debtor to turn over all property of the estate and records. The Debtor is obligated to cooperate with the Trustee in the fulfillment of his duties. §521(a)(3).

15. Under 11 U.S.C. § 542, the trustee has the authority to compel the debtor to turn over any property of the estate. The requested documents and information are property of the estate, and the debtor is obligated to turn them over to the trustee. The Trustee has repeatedly attempted to resolve this matter with the Debtor and counsel for the Debtor, but to no avail.

16. In order to complete administration of this case, the Trustee needs the Debtor's Records.

17. The March 23, 2023 ("Order") was served on counsel for the Debtor and a copy was mailed to the addresses provided for the Debtor's three principals. Several email messages were sent by the Trustee to counsel for the Debtor.

18. The Debtor and its principals have ignored the Trustee's follow-ups and the court's order compelling the turnover of all the Records.

19. The Debtor and its principals have ignored the court's order directing reimbursement of the Trustee's costs.

20. This Court has jurisdiction to determine this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (F), and (O).

21. A bankruptcy court's authority to hold a party in contempt derives from several sources, including the inherent authority of any court to regulate the conduct of those appearing before it, 11 U.S.C. §105 (the power to issue orders necessary or appropriate to carry out the Bankruptcy Code). *See In re Joubert*, 411 F.3d 452, 455 (3d Cir. 2005) (stating that 11 U.S.C. § 105 provides bankruptcy courts with a contempt remedy), *see, e.g., In re Walters*, 868 F.2d 665 (4th Cir. 1989); *and In re French Bourekas, Inc.*, 175 B.R. 517, 525 (Bankr. S.D.N.Y. 1994).

22. A “bankruptcy court has broad discretion to fashion a remedy for civil contempt” and that “sanctions may include actual damages, attorney’s fees, and, when appropriate, punitive damages. Bankruptcy courts may impose regimes of per diem fines that they analogize to confinement. Per diem fines, imposed for each day the “contemnor fails to comply with an affirmative court order ... exert a constant coercive pressure” to conform. *See In re Gregg*, 428 B.R. 345 (Bankr. D.S.C. June 9, 2009). Once the contemnor obeys and conforms, he is considered to have purged himself of contempt. *See International Union, United Mine Workers of America*, 512 U.S. at 828 (1994).

23. The standard to establish civil contempt has been described as follows: (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) ... that the decree was in the movant’s “favor”; (3) ... that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) ... that [the] movant suffered harm as a result. *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000) (internal quotations omitted); *Roe v. Operation Rescue*, 54

F.3d 133, 137 (3d Cir. 1995). All elements are established on the record before this court.

24. Here, the Order is clear: it requires that the Debtor and its principals provide specific Records and payment to the Trustee. See *Meyers*, 344 B.R. at 65 (“[A] valid order is one whose terms are specific and definite.”) (citing *Close v. Edison (In re Close)*, No. 93–17145DWS, Adv. No. 03–0153, 2003 WL 22697825, at *10 (Bankr. E.D. Pa. Oct. 29, 2003)).

25. The Debtor and its principals were all provided copies of the Order.

26. The Debtor and its principals did not comply with the Order and ignored the Trustee’s follow-up seeking compliance.

27. The Trustee and bankruptcy estate are harmed as a result of the contempt.

28. Punishment for civil contempt is coercive, imposed primarily to induce compliance, giving the contemner the opportunity to purge himself or herself of the contempt and secure cessation of the punishment. *In re Shafer*, 63 B.R. 194 Bankr. D. Kan. 1986). The Supreme Court's expression of this principle is that, by compliance with the order, the contemner "carries the keys of his prison in his own pocket." *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 498, 31 S. Ct 492, 498, 55 L. Ed. 797 (1911).

29. The Debtor and its principals must be coerced to induce compliance with the court’s order compelling the turnover of all the Records. Courts have a range of potential sanctions to use in enforcing compliance to court orders through civil contempt. For example, imprisonment and daily fines are proper sanctions for civil contempt when the contemnor is able to purge the contempt by committing an affirmative act. See *International Union, United Mine Workers of America*, 512 U.S. at 828 (1994).

30. Fines are commonly imposed. The court may impose a regimen of escalating penalties. For example, if the contemnor pays a fine but still disregards a court order, the court may impose additional fines.

31. Consistent with Fed. R. Bankr. P. 9020(b), the Trustee suggests that the Court immediately issue a show cause order directing the Debtor's counsel and Debtor, ABC Capital Investment, LLC, through its three principals identified as Jason Walsh, Amir Vana and Yaron Zer, to appear at an evidentiary hearing and show cause why they should not be held in civil contempt of court for their failure to comply with the terms of the order dated March 23, 2023.

32. Rules 9020 and 9014 of the Federal Rules of Bankruptcy Procedure govern contempt proceedings in bankruptcy courts. When a party fails to abide by a court order, another party in the proceeding may move the court to hold the non-compliant party in contempt.

33. A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience, and may be punished for contempt. *Wilson v. United States*, 221 U.S. 361, 376 (1911).

34. The Trustee has incurred additional unnecessary expense due to the Debtor's failure to fulfill its obligations and further requests that the court award the Trustee the additional costs and fees incurred in bringing this motion, pursuant to 11 U.S.C. § 330 and the court's inherent power to control its docket.

35. The Trustee has spent in excess of two hours in time seeking Debtor's compliance with the Order. The Trustee's hourly rate for bankruptcy matters is \$500. The Trustee has over 30 years' experience as an attorney and over 20 years' experience as a trustee. The Trustee's rate is well below the rates published by the Community Legal Services ("CLS") as reasonable in cases in which the law allows for the award of attorney's fees from opposing parties in order to compensate CLS for the legal services provided to its clients³⁰.

³⁰ <https://clsphila.org/about-community-legal-services/attorney-fees/>

WHEREFORE, the Trustee requests that an order, in the form attached hereto, be entered that the Court issue a show cause order directing the Debtor's counsel and Debtor, ABC Capital Investment, LLC, through its three principals identified as Jason Walsh, Amir Vana and Yaron Zer, to appear at an evidentiary hearing and show cause why they should not be held in civil contempt of court for their failure to comply with the terms of the order dated March 23, 2023 and further reimbursing the Trustee an award of costs and fees for additional time and expense compelling the Debtor to fulfill its obligations.

Dated April 13, 2023

/S/ Gary F. Seitz

GARY F. SEITZ
Chapter 7 Trustee
Gellert Scali Busenkell & Brown, LLC
1628 JFK BLVD, STE 1901
Philadelphia, PA 19103
(215) 238-0011
gseitz@gsbblaw.com

**UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ABC CAPITAL INVESTMENT, LLC, Debtor.	CHAPTER 7 CASE NO. 22-13060-AMC
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**ORDER FINDING JASON WALSH, AMIR VANA AND YARON ZER
IN CONTEMPT OF THE COURT'S ORDER DATED MARCH 23, 2023**

Upon consideration of the motion filed by Gary F. Seitz, Chapter 7 Trustee, seeking to find Debtor, ABC Capital Investment, LLC (“Debtor”), through its three principals identified as Jason Walsh, Amir Vana and Yaron Zer, in contempt of this Court’s order dated March 23, 2023 (“Order”),

Proper, timely, adequate and sufficient notice of Order and an Order to Show Cause having been given to Jason Walsh, Amir Vana and Yaron Zer, and based on the record identified during the hearing on May 17, 2023, and this Court having taken such evidence, offers of proof, and arguments of counsel as needed,

it is hereby FOUND and DETERMINED by clear and convincing evidence that Jason Walsh, Amir Vana and Yaron Zer had notice of the Order; the Order created, in a clear and unambiguous way, obligations of Jason Walsh, Amir Vana and Yaron Zer to turn over specific Records of Debtor and pay a specific sum to the Trustee; and Jason Walsh, Amir Vana and Yaron Zer failed to comply with these obligations imposed by the Order; as a result the Trustee and Estate have been harmed. For these reasons, the Court concludes that Jason Walsh, Amir Vana and Yaron Zer’ failure to comply with the provisions of the Order set forth herein constitutes contempt of

Court.

This Order is designed to coerce Jason Walsh, Amir Vana and Yaron Zer' compliance with the relief granted to the Trustee in the Order directing turnover of all the Records and arising from contempt.

Therefore, the Court ORDERS the following:

1. As to coercion, Jason Walsh, Amir Vana and Yaron Zer shall pay \$500.00 per day to the Trustee for the benefit of the Estate beginning on the date of this Order and continuing each day until the date Jason Walsh, Amir Vana and Yaron Zer deliver the last of the missing Records and full payment to the Trustee of the sums due under the Order and as set forth herein.

2. As to compensation, Jason Walsh, Amir Vana and Yaron Zer shall pay \$2,000 to the Trustee to reimburse him for his time and expense in seeking compliance with the Order and shall pay the sum of \$5,000 to the Estate.

3. Jason Walsh, Amir Vana and Yaron Zer are jointly and severally liable for the total sums due hereunder for all coercive sanctions, payment for expenses, and compensation for damages.

The Bankruptcy Court shall have jurisdiction over the parties, including the parties in representative capacities, for all purposes relating to the Motion to Enforce.

BY THE COURT:

Dated: _____

Ashely M. Chan
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Bankr. No. 21-41171 KLT
Natalia Rose Nevin,
Debtor. Chapter 7

BENCH WARRANT FOR ARREST

To: United States Marshal and any other Authorized United States Officer:

YOU ARE HEREBY COMMANDED TO ARREST: Kevin Nevin

and bring him forthwith into the custody of the United States and before United States Bankruptcy Judge Kesha L. Tanabe without unnecessary delay for his failure to comply with the Court's Contempt Order dated February 17, 2022 (ECF No. 45, see also ECF No. 57).

SO ORDERED by: Kesha L. Tanabe, United States Bankruptcy Judge

DATED: April 27, 2022

/e/Kesha L. Tanabe

Kesha L. Tanabe
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND
FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 04/27/2022
Tricia Pepin, Clerk, by JS

RETURN

This warrant was received on (date) _____, and the person was
arrested on (date) _____ at (city and state) _____.

Date: _____

Arresting Officer's Signature

Printed name and title

Facsimile to: 304-366-2465
United States Marshals Service
James A. Byrne - U.S. Federal Courthouse
601 Market Street, 2nd Floor, Room #2110
Philadelphia, PA 19106

RE: Chapter 7 Estate of Matthew J McLaughlin and Michele S. McLaughlin
(District of Maine; Case No. 20-10077)

Greetings:

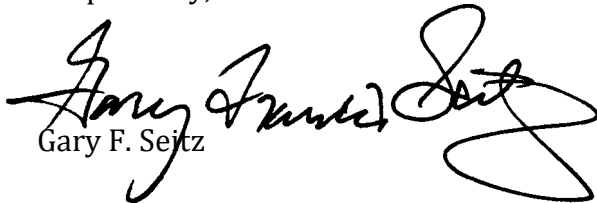
This firm represents Nathaniel R. Hull as local counsel in his capacity as chapter 7 bankruptcy trustee ("Trustee") in the case of Matthew J McLaughlin and Michele S. McLaughlin (District of Maine; Case No. 20-10077) with respect to real estate at 3062 Bradley Road, Chalfont, Pennsylvania ("Property") that is an asset of the bankruptcy estate.

The Property is occupied by a family member related to the debtor in the Maine bankruptcy proceeding. The Trustee obtained an order in the Maine bankruptcy case requiring the debtor's family member to cooperate in the sale of the Property. Cooperation has not been forthcoming. The Trustee intends to file a Motion to Enforce the previous Order that, among other things, may result in having the individual forcibly removed by the US Marshal.

The Trustee wishes to ensure that your office is comfortable with the terms of the court's order directing the assistance of your office. Attached is a draft form of order. Please let me know if the terms are acceptable.

Thank you for your assistance.

Respectfully,


Gary F. Seitz

Enclosure

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

**MATTHEW J. MCLAUGHLIN
and MICHELE S. MCLAUGHLIN,**

Debtors.

Chapter 7

MSC Case No. _____

**MOTION FOR WRIT OF ASSISTANCE TO ENFORCE ORDERS AND JUDGMENT
OF THE BANKRUPTCY COURT FOR THE DISTRICT OF MAINE
HOLDING KURT DUPUIS IN CONTEMPT, IMPOSING CIVIL SANCTIONS
AND DIRECTING THE US MARSHAL TO SEIZE
3062 BRADLEY ROAD, CHALFONT, PENNSYLVANIA**

COMES NOW, Nathaniel R. Hull (the “Trustee”), through undersigned counsel, solely in his capacity as the duly-appointed chapter 7 trustee for the bankruptcy estate (the “Estate”) of Matthew J. McLaughlin and Michele S. McLaughlin (*f/k/a* Michele S. Holyoke) (the “Debtors”), pending in the United States Bankruptcy Court for the District of Maine at Case No. 20-10077 and shows the Court as follows:

1. On July 1, 2022 the Honorable Michael A. Fagone, United States Bankruptcy Judge, District of Maine entered an Order (“July Order”) Holding Kurt Dupuis in Contempt and Imposing Civil Sanctions. A certified true copy of the July Order is attached hereto, incorporated by reference thereto herein and is marked as Exhibit 1. The July Oder was not appealed and the deadline to appeal has passed.

2. Among other things, the July Order provided that Kurt Dupuis either turn over access to the real estate located at 3062 Bradley Road, Chalfont, Pennsylvania (“Property”) or the US Marshal Service would be authorized to enforce the court’s order.

3. The Trustee obtained an order approving the sale of the Property in March of 2022.

A certified true copy of the March Order is attached hereto, incorporated by reference thereto herein and is marked as Exhibit 2. . The March Order was not appealed and the deadline to appeal has passed.

4. The March and July Orders are derived from the November 24, 2021 Judgment of the Honorable Michael A. Fagone, United States Bankruptcy Judge, District of Maine (“Judgment”) resulting from the resolution of the adversary proceeding commenced by the Trustee against Mr. Dupuis. A certified true copy of the Judgment is attached hereto, incorporated by reference thereto herein and is marked as Exhibit 3. The Judgment was not appealed and the deadline to appeal has passed.

5. Despite the Judgment and the March and July Orders, Mr. Dupuis has not cooperated with the Trustee, has not provided access and has not turned over the Property.

6. A judgment in an action for the recovery of property entered in bankruptcy court may be registered by filing a certified copy of the judgment in any other district when the judgment has become final by appeal or expiration of the time for appeal. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner. 28 U.S. Code § 1963.

7. Rule 70(d) of the Federal Rules of Civil Procedure provides for enforcement of federal court orders by obtaining a writ of assistance.

8. Accordingly, the trustee moves the court for a writ of assistance directing the United States Marshal to seize possession of the Property, remove Mr. Dupuis and put the trustee in possession of the Property.

WHEREFORE, Trustee prays that the court issue a writ of assistance directing the United States Marshal to seize possession of the Property, remove Mr. Dupuis and put the Trustee in

possession of the Property so that he may fulfil his duties in the bankruptcy court and other relief as may be just and necessary.

Dated: August 22, 2022

GELLERT SCALI BUSENKELL & BROWN LLC

By: /s/ Gary F. Seitz
Gary F. Seitz
8 Penn Center
1628 JFK Blvd, Suite 1901
Philadelphia, PA 19103
Counsel for the Plaintiff/Trustee
215-238-0011
gseitz@gsbblaw.com

CERTIFICATE OF SERVICE

I, Gary F. Seitz, hereby certify that on August 22, 2022, I caused a true and correct copy of the foregoing Motion and all attachments to be served on Kurt Dupuis at 3062 Bradley Road, Chalfont, Pennsylvania by first class postage paid mail.

/s/ Gary F. Seitz

Gary F. Seitz

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:)	
)	
MATTHEW J. MCLAUGHLIN	)	Chapter 7
and MICHELE S. MCLAUGHLIN,	)	MSC Case No. _____
)	
Debtors.)	
)	

ORDER FOR WRIT OF ASSISTANCE

TO: CLERK OF COURT:

Please issue a Writ of Assistance in the above captioned matter and direct the United States Marshall Service (US Marshall) to seize the real estate located at 3062 Bradley Road, Chalfont, Pennsylvania (“Property”) and remove Kurt Dupuis as set forth in the Judgment and Orders of the Honorable Michael A. Fagone, United States Bankruptcy Judge, District of Maine attached to the Motion for Writ of Assistance. The US Marshall is authorized and directed to enforce the Court’s Orders at any time deemed appropriate by:

- (1) entering upon the premises of the Property and any and all structures and vehicles located thereon,
- (2) evicting and removing Mr. Kurt Dupuis and any unauthorized persons from all locations at the Property, including but not limited to, the structures, the vehicles and the grounds,
- (3) using force as necessary to accomplish this mission, including arrest and incarceration,
- (4) when the US Marshall concludes that Mr. Kurt Dupuis and all unauthorized

persons and entities have vacated, or been removed and evicted from the Property, it shall relinquish possession and custody of the Property, and any personal property found thereon, to the Trustee (Nathaniel R. Hull) or the Trustee's professionals (Gary Seitz of Gellert Scali Busenkell & Brown, LLC as counsel and Lon Clemmer of Tranzon Alderfer as auctioneer), and

(5) should Mr. Kurt Dupuis or any person acting on his behalf or in concert with him, after the US Marshall relinquishes possession and custody of the Property to the Trustee, attempt to enter onto the Property after that date and time, that person shall be found in contempt of this Court, and shall be subject to arrest and incarceration.

Dated: _____

Judge, USDC

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:)	
)	
MATTHEW J. MCLAUGHLIN	)	Chapter 7
and MICHELE S. MCLAUGHLIN,	)	MSC Case No. _____
)	
Debtors.)	
)	

SUMMONS AND WRIT OF ASSISTANCE

TO: United States Marshall Service (US Marshall):

Whereas further to a judgment and orders issued by the Honorable Michael A. Fagone, United States Bankruptcy Judge, District of Maine the Trustee seeks assistance in the above captioned matter by way of seizure of the real estate located at 3062 Bradley Road, Chalfont, Pennsylvania (“Property”), removal of Kurt Dupuis or any other unauthorized person and turnover of the property to the Trustee (Nathaniel R. Hull) or the Trustee’s professionals (Gary Seitz of Gellert Scali Busenkell & Brown, LLC as counsel and Lon Clemmer of Tranzon Alderfer as auctioneer) as set forth in the Judgment and Orders, the court has ordered that the US Marshall is directed to enforce the Court’s Orders at any time deemed appropriate by:

- (1) entering upon the premises of the Property and any and all structures and vehicles located thereon,
- (2) evicting and removing Mr. Kurt Dupuis and any unauthorized persons from all locations at the Property, including but not limited to, the structures, the vehicles and the grounds,
- (3) using force as necessary to accomplish this mission, including arrest and incarceration,

(4) when the US Marshall concludes that Mr. Kurt Dupuis and all unauthorized persons and entities have vacated, or been removed and evicted from the Property, it shall relinquish possession and custody of the Property, and any personal property found thereon, to the Trustee (Nathaniel R. Hull) or the Trustee's professionals (Gary Seitz of Gellert Scali Busenkell & Brown, LLC as counsel and Lon Clemmer of Tranzon Alderfer as auctioneer), and

(5) should Mr. Kurt Dupuis or any person acting on his behalf or in concert with him, after the US Marshall relinquishes possession and custody of the Property to the Trustee, attempt to enter onto the Property after that date and time, that person shall be found in contempt of this Court, and shall be subject to arrest and incarceration.

Dated: _____

, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:)	
	)	Chapter 7
SCIMECA FOUNDATION, INC.)	
	)	Case No. 10-13662 (BIF)

**MOTION TO AUTHORIZE UNITED STATES MARSHAL SERVICE
TO ENFORCE BANKRUPTCY COURT ORDER DATED SEPTEMBER 19, 2013
DIRECTING PETER DEFEO AND INTERNATIONAL ARTIST STUDIOS
TO VACATE THE FOREMOST BUILDING
(EXPEDITED CONSIDERATION REQUESTED)**

The Chapter 7 Trustee, Gary F. Seitz, (the “Trustee”), of the Estate of Scimeca Foundation, LLC (the “Debtor” or “Scimeca”) by and through his undersigned counsel, Gellert Scali Busenkell & Brown LLC, hereby moves this Honorable Court to enter an Order Authorizing the United States Marshal Service (“US Marshals”) to Enforce this Court’s Order Dated September 19, 2013 Directing Peter Defeo and International Artist Studios to Vacate the Foremost Building, no later than September 30, 2013, and seeks expedited consideration under Local Rule 5070-1(f) and respectfully sets forth and represents as follows:

1. On or about May 3, 2010, (the “Petition Date”) the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code.
2. On or about November 6, 2012, this court entered an Order to converting this case to a Chapter 7 case.
3. On or about November 6, 2012, the United States Trustee appointed Gary F. Seitz, as the chapter 7 trustee of the Debtor’s bankruptcy estate, and he continues to serve in that capacity.
4. On or about July 17, 2013, the Trustee moved this Court for an order to Sell Property Of the estate under Section 363(b) (the “Sale Motion”). In particular, the Trustee sought to sell the Debtor’s Real Property located at 517-525 South 4th Street, Philadelphia, PA, (the “Foremost

Building”), pursuant to an Agreement of Sale (“AOS”) with the purchaser Phil Harvey and/or his assigns (the “Purchaser”).

5. Pursuant to the AOS underlying the Sale Motion, the Purchaser required, as a condition of the sale that any unit leased to the Debtor’s principal, Peter DeFeo and International Artists Studio (“IAS”) be removed from the property prior to closing.

6. On or about September 16, 2013, after an evidentiary hearing, over the course of five days, this Court granted the Sale Motion and in paragraph 8 of this Court’s Order stated:

“Peter DeFeo and International Artist Studio are directed to vacate the Foremost Building within 14 days of this order, taking all of their personal property and giving the trustee or his agent, Richard Astrella, any and all keys that can be used to enter the Foremost Building and/or any interior location with the building”

See D. I. 515 page 2, ¶ 8.

7. The Trustee, since this Court’s order has been entered, through his agents, has been monitoring Mr. DeFeo’s and IAS’s progress regarding their efforts to vacate the premise. It does not appear that Mr. DeFeo and IAS are taking adequate measures to timely vacate the Foremost Building.

8. The Trustee has contacted the US Marshal Service regarding the requirements needed by them in anticipation of engaging their services to effectuate the terms of the Order and effectuate a prompt eviction of Mr. DeFeo and IAS so that the sales transaction may close.

9. The US Marshals provided the following guidelines necessary for their service to have Authority to execute this Court’s Order dated September 19, 2013.

10. The US Marshals will need an Order substantially in the form attached hereto authorizing and directing at any time appropriate after September 30, 2013 (1) the US Marshals to enter the Foremost Building, for the purpose of gaining access to any unit Peter DeFeo and/or IAS

is in possession of, in particular, units 244/444, 245/445, 247/44, 248/448, 250/450 and 598/498; (2) evicting any unauthorized persons and entities from the Foremost Building in accordance with this Court's Order dated September 19, 2013, including but not limited to, the structures, vehicles, and grounds, and (3) using force as necessary to accomplish this mission, including arrest. When the United States Marshal concludes that all unauthorized person shave vacated, or have been evicted from the Foremost Building, he shall relinquish possession and custody of the Foremost Building, and any personal property found thereon to the Trustee, and (3) if Peter DeFeo or any person affiliated with IAS, or any person acting on behalf of IAS or Peter DeFeo, or in concert with them, or residing or operating thereon, either fail to vacate and depart from the Foremost Building by 12:01 am on October 1, 2013, or attempt to enter onto the Foremost Building property after that date and time, that person shall be found in contempt of this Court, and shall be subject to arrest and incarceration.

11. Time is of the essence for the eviction as the Purchaser has already waited a considerable period of time since the AOS was executed on April 16, 2013.

12. The Trustee hopes that the US Marshal services are unnecessary but preparation must be made in light of the apparent lack of concern by Mr. DeFeo and IAS regarding the need for timely removal of all items or property from the Foremost Building.

13. Expedited consideration is sought for this motion because the Trustee is set to close on the AOS late on Monday, September 30, 2013 and a condition of this sale is the removal of Peter DeFeo and IAS sand their belongings from the building. It would be prejudicial to the Purchaser to force him to wait any longer that required by this Court's Order dated September 19, 2013 to close the sales transaction on the Foremost Building after it has been approved after hearing and

order of this court. It will be prejudicial to the creditors and the estate if the closing does not occur as the Trustee would not receive the funds necessary for potential distribution.

14. A copy of this motion is being provided to the Office of the United States Trustee, Counsel for the Debtor, Counsel for the Secured Creditor, Mr. Peter A. Defeo and for all parties having requested notice in this case.

15. To avoid further delay after September 30, 2013, the Trustee seeks an expedited Hearing on Monday, September 30, 2013. In the event that Peter DeFeo and IAS and their belongings have been removed from the building prior to the hearing, the Trustee will immediately notify the court to cancel the hearing.

WHEREFORE, the Trustee respectfully requests that the Court enter an order, on an expedited basis: (i) granting this Motion and enter an order in substantially the same form as the proposed order authorizing the US Marshals to execute this Court's Order dated September 19, 2013 to evict Peter DeFeo and IAS from the Foremost Building; (ii) and to use force as necessary to accomplish this mission, including arrest; and (iii) grant such other and further relief as is just.

Dated: Philadelphia, PA
September 24, 2013

GELLERT SCALI BUSENKELL & BROWN LLC

By: /s/ Jennifer M. Zelvin
Gary F. Seitz (PA ID #52865)
Jennifer M. Zelvin (PA ID #313462)
The Curtis Center
601 Walnut Street, Suite 280 South
Philadelphia, PA 19106
Telephone: 215-238-0010
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jzelvin@gsbblaw.com

Counsel to the Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:)	
	)	Chapter 7
SCIMECA FOUNDATION, INC.)	
	)	Case No. 10-13662 (BIF)

ORDER

Upon consideration of the Motion of Gary F. Seitz, (the “Trustee”) Chapter 7 Trustee, of the Estate of Scimeca Foundation, Inc. (the “Debtor), for an Order Authorizing the United States Marshal Service (“US Marshals”) to Enforce this Court’s Order Dated September 19, 2013 Directing Peter Defeo and International Artist Studios (“IAS”) to Vacate the Foremost Building, no later than September 30, 2013 (expedited consideration requested), and upon the hearing, and with due consideration having been given to any responses received to the motion; and it appearing from the Certificate of Service on file that proper and sufficient notice and service has been made of the Motion, after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Court has determined that in accordance with its Order entered on September 19, 2013 Peter DeFeo and International Artist Studio, if they have not vacated as of September 30, 2013; it is further

ORDERED that the United States Marshal is authorized and directed to enforce this Court’s Order dated, September 19, 2013 at any time that he deems appropriate after 12:01 am on October 1, 2013 by (1) entering the Foremost Building, and any and all structures and vehicles located thereon, (2) evicting any unauthorized persons from all locations at the Foremost Building, including but not limited to, the structures, the vehicles and the grounds, and (3) using force as necessary to accomplish this mission, including arrest; and it is further

ORDERED that when the United States Marshal concludes that all unauthorized persons and entities have vacated, or been evicted from the Foremost Building, he shall relinquish possession and custody of the Foremost Building, and any personal property found thereon, to the Trustee, and it is further

ORDERED that, should Peter DeFeo, or any person acting on his behalf, or in concert with him, or on behalf of IAS, or in concert with IAS, or residing thereon or doing business with IAS, either fail to vacate and depart from the Foremost Building by October 1, 2013 at 12:01 a.m. or attempt to enter onto the Foremost Building property after that date and time, that person shall be found in contempt of this Court, and shall be subject to arrest and incarceration.

Dated: _____

BY THE COURT

BRUCE I. FOX
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court

_____ District Of _____

In re _____	)	Case No. _____
Debtor)	
	)	Chapter _____
_____)	
Plaintiff)	
)	
v.)	
_____	)	Adv. Proc. No. _____
Defendant)	

WRIT OF EXECUTION TO THE UNITED STATES MARSHAL

Name and Address of Judgment Creditor

Amount of Judgment:
\$ _____

Other Costs:
\$ _____

vs.

Name and Address of Judgment Debtor

Date of Entry of Judgment:

TO THE UNITED STATES MARSHAL FOR THE _____ DISTRICT OF _____:

You are directed to levy upon the property of the above named judgment debtor to satisfy a money judgment in accordance with the attached instructions.

TO THE JUDGMENT DEBTOR:

You are notified that federal and state exemptions may be available to you and that you have a right to seek a court order releasing as exempt any property specified in the marshal's schedule from the levy.

Date

Clerk of the Bankruptcy Court

PROCESS RECEIPT AND RETURN

See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF	COURT CASE NUMBER
DEFENDANT	TYPE OF PROCESS

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	Number of process to be served with this Form 285
	Number of parties to be served in this case
	Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF	TELEPHONE NUMBER	DATE
	<input type="checkbox"/> DEFENDANT		

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No.	District to Serve No.	Signature of Authorized USMS Deputy or Clerk	Date
--	---------------	------------------------	-----------------------	--	------

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	Date	Time	<input type="checkbox"/> am <input type="checkbox"/> pm
Address (complete only different than shown above)	Signature of U.S. Marshal or Deputy		

Costs shown on attached USMS Cost Sheet >>

REMARKS

UNITED STATES DISTRICT COURT

for the

_____)	
<i>Plaintiff</i>)	
v.	)	Civil Action No. _____
_____)	
<i>Defendant</i>)	

CLERK'S CERTIFICATION OF A JUDGMENT TO BE REGISTERED IN ANOTHER DISTRICT

I certify that the attached judgment is a copy of a judgment entered by this court on (date) _____.

I also certify that, as appears from this court's records, no motion listed in Fed. R. App. P. 4(a)(4)(A) is pending before this court, the time for appeal has expired, and no appeal has been filed or, if one was filed, it is no longer pending.

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

Print

Save As...

Reset