

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

)	
In re:)	Case No. 10-00918
)	Chapter 7
CYRANO EDWARD WILSON,)	
)	Hearing Date: May 22, 2012
Debtor.)	Hearing Time: 9:30 a.m.
)	

**TRUSTEE’S MOTION FOR CIVIL CONTEMPT ORDER SURCHARGING
ATTORNEYS' FEES, COSTS AND COMMISSION FROM DEBTOR'S EXEMPTION
AND ATTORNEYS' FEES AND COSTS FROM CO-OWNER'S INTEREST
(Sale of 1047 48th Street, NE, Washington, D.C. 20019)**

COMES NOW, Marc E. Albert, Chapter 7 Trustee ("Trustee") for the estate of Cyrano Edward Wilson ("Debtor"), by his undersigned counsel, Stinson Morrison Hecker LLP, and in support of his Motion for Civil Contempt Order Surcharging Attorneys' Fees, Costs and Commission from Debtor's Exemption and Additional Attorneys' Fees and Costs From Co-Owner's Interest (the "Motion"), respectfully states as follows:

BACKGROUND

1. The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 – 1532, on September 20, 2010.
2. The Trustee is the duly appointed and qualified Chapter 7 trustee of the Debtor's bankruptcy estate.
3. The Debtor is *pro se*, and filed schedules listing a one-half interest in a single family home located at 1047 48th Street, NE, Washington, D.C. 20019 (the "Property") on Schedule A with a value of \$50,000.00.
4. On November 16, 2010, the Trustee objected to the Debtor's exemption of the Property in the amount of \$50,000.00 and requested that this Court limit the Debtor's exemption

in the Property to \$11,525.00, the allowable amount under § 522(d)(5) of the Bankruptcy Code. An order sustaining the Trustee's objection was entered on December 6, 2010.

5. Upon information and belief, the Property, which is identified in the District of Columbia land records as Square 5153, Lot 0020, was owned by the Debtor, Anthony Wilson, and Bernice Elizabeth Taylor as joint tenants in fee simple.

6. On May 26, 2011, the Trustee filed a complaint against Anthony Wilson and Bernice Elizabeth Taylor (collectively, the "Co-Owners") seeking to sell the Property free and clear of their co-owner interests pursuant to 11 U.S.C. § 363(h).

7. After neither of the Co-Owners filed an answer or otherwise responded to the complaint, on July 14, 2011, the Trustee filed a motion seeking default judgment against the Co-Owners. On July 19, 2011 this Court entered an order granting the motion with a corresponding default judgment [Docket Nos. 12 and 13 in Adversary Proceeding No. 11-10020].

8. The judgment authorizes the Trustee to sell the Property and distribute the net proceeds of the sale equally between the Co-Owners and the estate.

BASIS FOR FINDING OF CIVIL CONTEMPT

I. Legal Standard

9. In order for an individual to be held in civil contempt, it must be shown that the individual violated a specific order of the court, and that the individual had knowledge of the order. *See e.g., Stone v. Kasuba (In re Stone)*, 166 B.R. 269, 273-74 (Bankr. W.D. Pa. 1994); *In re Snider Farms, Inc.*, 125 B.R. 993, 996 (Bankr. N.D. Ind. 1991); *In re Butler Innovative Solutions, Inc.*, 2008 Bankr. LEXIS 4537, at *4 -5 (Bankr. D.D.C. July 29, 2008).

10. As set forth below, both the Debtor and co-owner Anthony Wilson have violated order of this Court of which they had knowledge.

II. Debtor and Co-Owner's Failure to Comply with Court Orders

11. On April 14, 2011, the Court entered an Order Granting Trustee's Motion for Order Seeking Examination of and Production of Documents from Debtor Pursuant to Federal Rule of Bankruptcy Procedure 2004 (the "2004 Exam Order"). The 2004 Exam Order required the Debtor to appear on April 28, 2011 at 10:00 a.m. unless the parties agree in writing to a different date and time for an examination pursuant to Federal Rule of Bankruptcy Procedure 2004. The Debtor, who filed an opposition to the motion seeking the examination, did not appear on April 28, 2011, nor did he contact Trustee's counsel to arrange for a substitute date and time.

12. On July 20, 2011, the Trustee's realtor, Betty Pair of Coldwell Banker Residential Brokerage, sent a letter to the Co-Owners enclosing a copy of the judgment permitting the Trustee to sell the entire Property. A copy of the letter, which references the Realtor's previous attempts to speak with Mr. Anthony Wilson about the Property, is attached hereto as Exhibit A.

13. On August 26, 2011, counsel for the Trustee sent letters to the Debtor and the Co-Owners requesting copies of the keys to the Property for the Trustee's Realtors. Counsel received no response to the letters.

14. When the Debtor and Co-Owners proved non-responsive to the Trustee's repeated attempts to contact them regarding the provisions of the judgment, the Trustee filed a Motion to Compel Access to Real Property ("Motion to Compel"). This Court entered an order granting the Motion to Compel on November 1, 2011 (the "Order Compelling Cooperation").

15. The Trustee again attempted to contact the Debtor and Co-Owners, sending a letter with a copy of the Order Compelling Cooperation and requesting compliance with the order. The Debtor and Co-Owners remained wholly unresponsive to the Trustee. Therefore the

Trustee was unable either to coordinate access to the Property or to otherwise discuss the case with the Debtor.

16. The Order Compelling Cooperation provides, in part, that:

that the Trustee (or his counsel) and the Realtors are authorized to change the locks to the single family home located at 1047 48th Street, NE, Washington, D.C. 20019, and place a lockbox on the residence, and the Trustee is authorized to take such other action as is necessary to secure and sell the real property located at 1047 48th Street, NE, Washington, D.C. 20019. . .

Order Compelling Cooperation, p. 2.

17. Because of the lack of cooperation from the Debtor and the Co-Owners, the Trustee could not change the locks and install a lockbox on the Real Property as permitted in the Order Compelling Cooperation, so the Trustee filed a Motion for Order Directing United States Marshal Service to Assist in Enforcing Order Granting Trustee's Motion to Compel Access to Real Property on December 21, 2011 (the "U.S. Marshal Motion").

18. The Debtor filed a response to the U.S. Marshal Motion on December 28, 2011.

19. This Court entered an order approving the U.S. Marshal Motion on January 6, 2012 (the "U.S. Marshal Order"). In the U.S. Marshal Order, the Court notes that "debtor's response does not present a meritorious defense to the motion, and, indeed, signals that the debtor is unwilling to cooperate (as directed by prior order) with the trustee's efforts to sell the property, thereby necessitating the entry of this order." U.S. Marshal Order, p. 1.

20. On April 5, 2012, the Trustee, his Realtor and his locksmith, with the assistance of the U.S. Marshal Service, visited the Property, changed the locks and installed a lockbox so that the Realtor would have access to the Property for purposes of marketing and selling the Property.

SANCTIONS REQUESTED

21. Although the public records list an additional co-owner, Bernice Taylor, the Trustee has since learned that Ms. Taylor died in 1994 (the Trustee now has a copy of the death certificate) and the only remaining owners are the Debtor and Anthony Wilson (the "Co-Owner").

22. In this Motion, the Trustee seeks the entry of an order holding the Debtor and Co-Owner in civil contempt for the reasons set forth above. Upon findings that the Debtor and Co-Owner are in civil contempt, the Trustee requests sanctions against the Debtor and Co-Owner, as discussed more fully below, in the form of a surcharge against the Debtor's exemption in the property and Co-Owner's interest in the sale proceeds.

I. Trustee's Commission, Costs and Attorneys' Fees

23. The Trustee has filed a motion seeking to sell the Property free and clear of any and all liens on and interests in the Property, including the interest of the co-owner, Anthony Wilson, for \$42,500.00. Pursuant to § 326 of the Bankruptcy Code, the Trustee is permitted a commission on the sale.

24. As of April 16, 2012, the Trustee's counsel has incurred fees of \$10,933.00 and expenses of \$2,550.08. Attached hereto as Exhibit B is an invoice containing a detailed explanation of the fees and expenses.

25. Time entries on Exhibit B that are marked with a "T" are for work that is more properly classified as a trustee task, and are not included in the total fees above.

26. Time entries on Exhibit B that are marked with an "S" are time entries related to additional steps required by Trustee's Counsel as a result of the failure of the Debtor and Co-

Owner to cooperate with the judgment and orders permitting the Trustee to sell and market the Property. These time entries total \$2,724.00 (the "Additional Fees").

27. In addition, the Trustee's Realtors have incurred costs in the amount of \$330.00 consisting of fees charged by the U.S. Marshal Service for executing the U.S. Marshal Order (the "Additional Costs" and collectively with the Additional Fees, the "Additional Fees and Costs").

II. Surcharge of Debtor's Exemption and Co-Owner's Interest is Appropriate

28. As explained above, the Debtor has claimed an exemption in the Property of \$11,525.00. As a sanction for the civil contempt of the Debtor, the Trustee seeks an order permitting him to surcharge his commission and the attorneys' fees and costs (with the exception of the amount of attorneys' fees and costs sought to be surcharged against the Co-Owner) against the Debtor's claimed exemption.

29. The Trustee would escrow the entire amount attributable to the Debtor's exemption pending a separate order approving an application for approval of the Trustee's commission and compensation of the Trustee's counsel for the requested fees.

30. The judgment permitting the Trustee to sell the Property free and clear of the Co-Owner's interest, provides that the Trustee must "distribute the net proceeds of the sale (the proceeds remaining after satisfaction of any and all liens on the Property and after payment of costs of sale, not including any compensation of the trustee) equally between the defendants and the estate." As a sanction for the civil contempt of the Co-Owner, the Trustee seeks an order permitting him to surcharge one-half of the Additional Fees and Costs against the Co-Owner's interest in the sale proceeds.

31. The Trustee would escrow \$1,527.00, the amount of one-half of the Additional Fees and Costs, from the Co-Owner's interest in the sale proceeds pending a separate order

approving an application for approval of compensation of the Trustee's counsel for the requested fees.

32. The sanctions requested herein are appropriate given the actions of the Debtor in this proceeding and the Co-Owner in connection with the Trustee's efforts to market and sell the Property. *See 56 Assoc. and 57 Assoc. v. DiOrio*, 381 B.R. 431 (D. R.I. 2008) (affirming Bankruptcy Court order awarding attorneys' fees in connection with motion to compel access to property).

33. The Court noted the Debtor's lack of cooperation in the U.S. Marshal Order.

34. Further, both the Order Compelling Cooperation and U.S. Marshal Order already provide that the Trustee may seek attorneys fees and costs from the Debtor for preparing the related motion.

35. The fees and costs the Trustee is seeking from the Co-Owner's interest relate only to the additional actions the Trustee was forced to take due to the Co-Owner's failure to comply with the judgment permitting the Trustee to market and sell the Property, and the Trustee seeks only one-half of these attorneys' fees and costs from the Co-Owner.

36. The Trustee believes that due to the circumstances described above, in which the Debtor and Co-Owner demonstrate a lack of respect for the authority of this Court, these costs and fees should not be paid by the estate to the detriment of creditors, nor should the Trustee's counsel or Realtors be denied compensation or reimbursement for their efforts.

WHEREFORE, based on the foregoing, Marc E. Albert, Chapter 7 Trustee for the estate of Cyrano Edward Wilson, respectfully requests that this Court enter an Order:

- a. holding debtor Cyrano Edward Wilson in civil contempt for failure to comply with orders of this Court; and

- b. permitting the Trustee to surcharge the Trustee's commission, costs and attorneys' fees as set forth herein against the Debtor's exemption in the Property as a result of the Debtor's contempt; and
- c. authorizing and directing the Trustee to hold the entire amount of the Debtor's exemption in the sale proceeds in escrow pending Court approval of the attorneys' fees and Trustee's commission; and
- d. holding co-owner Anthony Wilson in civil contempt for failure to comply with orders of this Court relating to the sale of the Property; and
- e. permitting the Trustee to surcharge one-half of the additional costs and attorneys' fees as set forth herein against the Co-Owner's interest in the Property as a result of the Co-Owner's contempt; and
- f. authorizing and directing the Trustee to withhold and place into escrow the amount of one-half of the additional attorneys fees as set forth herein from the Co-Owner's interest in the sale proceeds pending Court approval of the attorney's fees; and
- g. granting such other and further relief as is just and proper.

Dated: April 25, 2012

Respectfully submitted,

/s/ Katherine M. Sutcliffe Becker
Marc E. Albert, Bar No. 345181
Katherine M. Sutcliffe Becker, No. 481394
Stinson Morrison Hecker LLP
1775 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20006
Tel: (202) 785-9100
Fax: (202) 785-9163
Email: malbert@stinson.com
E-mail: kbecker@stinson.com
Attorneys for Marc E. Albert, Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Trustee's Motion for Civil Contempt Order Surcharging Attorneys' Fees, Costs and Commission from Debtor's Exemption and Additional Attorneys' Fees and Costs From Co-Owner's Interest, was served on the following via first class mail, postage pre-paid on this the 25th day of April, 2012:

Martha L. Davis, Esq.
Office of the U.S. Trustee
115 S. Union Street, Suite 210
Alexandria, VA 22314

Mr. Anthony Wilson
1047 48th St. NE
Washington, DC 20019

Mr. Anthony Wilson
1029 48th Street, NE
Apt. 301
Washington, DC 20019-3919

Mr. Cyrano Edward Wilson
121 Rock Creek Church Road, NW
Washington, D.C. 20011

Mr. Cyrano Edward Wilson
1047 48th St. NE
Washington, DC 20019

NCO Portfolio Management
c/o/ Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

/s/ Katherine M. Sutcliffe Becker
Katherine M. Sutcliffe Becker