

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
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In re: Case No. 9:13-bk-15195-FMD  
Chapter 11

THE SANIBEL DIAMOND  
STORE, LLC,

Debtor.

**ORDER ON MOTION  
TO ENFORCE DISMISSAL  
ORDER AND TO HOLD DEBTOR'S  
PRINCIPAL IN CONTEMPT FOR  
VIOLATION OF ORDER OF DISMISSAL**

THIS CASE on for an evidentiary hearing on July 25, 2014, upon the *Motion to Enforce Dismissal Order and to Hold Debtor's Principal in Contempt for Violation of Order of Dismissal* filed by Myles Alpert ("Alpert") (the "Motion") (Doc. No. 169) and Alpert's *Supplemental Motion for Order to Show Cause and for Sanctions* (the "Supplemental Motion") (Doc. No. 181). The Court having considered the testimony by witnesses, the trial exhibits, and the arguments of counsel, and being otherwise fully advised in the premises, finds as follows:

1. Gene Rebeor ("Rebeor") is the managing member of the Debtor.

2. The Debtor previously operated a retail jewelry store on Sanibel Island, Florida.

3. Alpert holds an undisputed claim against the Debtor in the amount of \$146,813.39, which claim is secured by the Debtor's assets, including but not limited to inventory, fixtures, cash and accounts receivable. (Claim No. 5-1.)

4. On November 15, 2013, the Debtor filed a voluntary petition under Chapter 11. On November 19, 2013, the Debtor filed an *Emergency Motion for Sanctions and to Enforce the Automatic Stay Against Myles Alpert* (Doc. No. 8). In that motion, the Debtor alleged that

Alpert had a secured claim of approximately \$126,000, and that Alpert had obtained a writ of replevin and had seized the Debtor's inventory on November 15, 2013, both before and after the filing of the bankruptcy at 3:47 p.m.

5. Thereafter, at hearings conducted on November 22 and November 26, 2013, the Debtor and Alpert entered into an agreement whereby Alpert returned inventory to the Debtor and the Debtor was authorized to use Alpert's cash collateral. This agreement was memorialized in the Court's *Order Granting Debtor's Motion to Use Cash Collateral and Provide Adequate Protection to Secured Creditor Myles Alpert* (Doc. No. 47).

6. Pursuant to the agreement of the parties, the Court entered additional orders authorizing the Debtor to use Alpert's cash collateral in the operation of the Debtor's business. At a hearing conducted on March 27, 2014, the Court authorized the Debtor to use Alpert's cash collateral through May 21, 2014, pending a continued hearing on that date. The Court's ruling was memorialized in its *Amended Fourth Interim Order Granting Debtor's Motion to Use Cash Collateral* (Doc. No. 165) entered on June 2, 2014.

7. On May 16, 2014, the Debtor filed its *Supplemental Motion to Use Cash Collateral and to Provide for Adequate Protection to Secured Creditors the Florida Department of Revenue and Myles Alpert* (Doc. No. 158) (the "Supplemental Cash Collateral Motion"). On May 21, 2013, the Court denied the Supplemental Cash Collateral Motion and scheduled a status conference in the case for May 28, 2014.

8. On May 23, 2014, Alpert filed a motion to dismiss the Chapter 11 case (Doc. No. 162) (the "Motion to Dismiss").

9. The Motion to Dismiss was heard by the Court on May 28, 2014 (the "Dismissal Hearing"). The following parties attended the Dismissal Hearing by telephone: Joseph Trunkett, Esq. (counsel for the Debtor); Rebeor; and Richard Johnston, Jr. Esq., (counsel for Alpert).

Counsel for the United States Trustee, Benjamin Lambers, Esq., attended the hearing in person.

10. At the Dismissal Hearing, the Court stated as follows:

THE COURT: All right. Well, at this point, it seems to me that in light of the fact that the Debtor's no longer authorized to use cash collateral, *so that means the Debtor is not authorized to disburse any funds from the Debtor-in-Possession account and the Debtor is not authorized to sell any additional inventory.*

In light of those circumstances, it seems to me that it is appropriate to turn over the inventory and the cash to Dr. Alpert or to Mr. Johnston on his behalf.

(Transcript, Doc. No. p. 209 p.10, ll. 13-21, emphasis supplied.)

The Court when on to say

So it seems to me that the appropriate thing to do is to grant the motion, dismiss the case, . . . require the Debtor to turn over inventory and cash to Dr. Alpert or to Mr. Johnston on behalf of Dr. Alpert . . .

(*Id.*, at p. 11, ll. 4-9.)

Debtor's counsel then raised an issue to which Rebeor spoke:

MR. REBEOR: The payroll is automatic and it was deducted last Friday, and it was 1700.

THE COURT: Well, then, if it was already paid, it was already paid. Okay. You can work that out Mr. Johnston, Mr. Trunkett, okay?

(*Id.*, at p. 12, ll. 12-16.)

11. In light of the Court's having made three separate statements that the Debtor was required to turnover inventory and cash to Alpert, or to Mr. Johnston on his behalf, and the Court's having

specifically ruled that "the Debtor is not authorized to disburse any funds from the Debtor-in-Possession account and the Debtor is not authorized to sell any additional inventory," and in light of Rebeor's question regarding the automatic payroll deduction, the Court concludes that Rebeor understood the Court's ruling that the Debtor, as of May 28, 2014, was not authorized to disburse cash or to sell inventory.

12. The Court's conclusion that Rebeor understood the Court's ruling at the May 28, 2014 hearing is further buttressed by the fact that the Debtor terminated its business operations on May 28, 2014, the same day as the hearing.

13. On June 10, 2014, the Court entered its *Corrective Order Granting Creditor Myles Alpert's Motion to Dismiss* (Doc. No. 168) (the "Dismissal Order"), effective June 9, 2014. The delay in entry of the Dismissal Order did not relieve the Debtor from its obligation to turn over the inventory and cash on hand to Alpert as of May 28, 2014.

14. On June 11, 2014, Alpert filed an *Emergency Motion to Enforce Dismissal Order and to Hold Debtor's Principal in Contempt for Violation of Order of Dismissal* (Doc. No. 169) (the "Motion to Enforce"), in which Alpert alleged that Rebeor had failed to turn over the inventory and equipment to Alpert or Johnston. On June 12, 2014, Debtor's attorney filed a motion for leave to withdraw as counsel, citing irreconcilable differences. (Doc. No. 172.) The motion for leave to withdraw was granted by order entered on June 18, 2014. (Doc. No. 179.)

15. On June 16, 2014, the Court conducted a hearing on the Motion to Enforce and ordered Rebeor to meet Alpert's representative, Richard Bush, at the Debtor's place of business at 10:00 a.m. on Wednesday, June 18, 2014, for the purpose of complying with the turn over provisions of the Dismissal Order. The Court also rescheduled the hearing on the Motion to Enforce to June 18, 2014, at 2:00 p.m. The Court's ruling was memorialized in an interim order entered June on 17, 2014 (Doc. No. 178).

16. On June 18, 2014 at 2:00 p.m., Rebeor appeared at the hearing and explained that he had not been able to meet Alpert's representative, Richard Bush, at 10:00 a.m., but that he had met Mr. Bush later that afternoon. This meeting did not take place at the Debtor's place of business as ordered by the Court, but at Mr. Bush's hotel room. Rebeor represented that he would deliver the Debtor's check for the balance of funds in its bank account to Mr. Johnston by the close of business that day. At the conclusion of the hearing, Mr. Rebeor was told that if he had not heard otherwise from Mr. Johnston, and if the check was timely delivered to Mr. Johnston, there was no need for him to appear at a further continued hearing to be held on June 19, 2014.

17. On June 19, 2014, Alpert filed a *Supplemental Motion for Order to Show Cause and for Sanctions* (Doc. No. 181) (the "Supplemental Motion") in which Alpert alleged that Rebeor had delivered a check to Johnston, after business hours, in the amount of \$99.16 and that Rebeor had failed to turn over all of the Debtor's inventory to Alpert.

18. The Court conducted a hearing on June 19, 2014 on the Motion to Enforce and the Supplemental Motion. Rebeor was not present. The Court entered an order, *inter alia*, authorizing Alpert to take control and custody of the Debtor's business premises; prohibiting Rebeor from transferring or disposing of the Debtor's inventory, cash, and other assets, including the Debtor's books and records; and requiring Rebeor to appear before the Court in person on June 30, 2014 to show cause why he should not be held in contempt. The Court's order memorializing its ruling was entered on June 20, 2014 (Doc. Nos. 183, 191).

19. Rebeor appeared before the Court on June 30, 2014, at which time the Court set the Motion to Enforce and the Supplemental Motion for final evidentiary hearing on July 22, 2014, later continued to July 25, 2014. (Doc. Nos. 194, 198.)

20. On July 2, 2014, John C. Webb, Esq., filed his notice of appearance for both the Debtor and Rebeor.

21. On July 3, 2014, pursuant to the *Court's Order on Emergency Motion to Enforce Dismissal Order and to Hold Debtor's Principal in Contempt for Violation of Order of Dismissal and Supplemental Motion for Order to Show Cause and for Sanctions* (Doc. No. 198), Rebeor met with Alpert at the Debtor's business premises and turned over some additional inventory to Alpert. Alpert testified that the additional inventory turned over to him on that date was relatively insignificant, for example, the inventory included a number of watchbands.

22. Rebeor prepared, signed and caused to be filed with the Court a Monthly Operating Report ("MOR") for May 2014 (Doc. No. 202). The May MOR states that as of May 30, 2014 (two days after the May 28, 2014 hearing), the Debtor had funds on deposit in its debtor-in-possession bank account in the amount of \$19,267.59.

23. Rebeor prepared, signed and caused to be filed with the Court a MOR for the period June 1 through June 9, 2014 (the effective date of the dismissal of the case). (Doc. No. 203.) The June MOR and Rebeor's testimony at the July 25, 2014 hearing establish that Rebeor disbursed all but \$99.16 of the funds on deposit in the Debtor's bank account following the Dismissal Hearing. Although some of the disbursements were legitimate expenditures in connection with the wind up of the Debtor's business operations, they were contrary to the express ruling and order of this Court.

24. In addition to the legitimate business expenses, the disbursements made by Rebeor from the Debtor's bank account included:

\$1,000.00 to Wheels America Advertising, an entity that the Debtor had not disclosed as being owned by Rebeor and his wife;

\$2,000.00 salary to Rebeor, salary to which Rebeor was not entitled under the terms of the Court's prior cash collateral orders; and

\$10,000.00 for the purchase of a bank check payable to Rebeor's wife, which Rebeor endorsed and deposited into a joint bank account. Rebeor testified that the \$10,000.00 was for the

repayment of a loan from his wife to the Debtor. However, the Debtor's bankruptcy schedules do not disclose an obligation to Mrs. Rebeor; and, Mrs. Rebeor has not filed a proof of claim in this case. The Court finds that Rebeor's testimony on this issue is not credible. Further, Rebeor's actions in obtaining a bank check rather than issuing the Debtor's check directly to his wife supports the Court's conclusion that the Rebeor intentionally withheld \$10,000.00 from Alpert.

25. With respect to the inventory, the Court finds the testimony of the Debtor's store manager, Harriet Peters, to be credible. Ms. Peters worked in the Debtor's store for four years. She worked 40 hours per week and was present in the store during business hours on each day that the store was open for business. Ms. Peters worked at the store until it closed on May 28, 2014. The Court is aware that jewelry store employees typically collect the most valuable items of jewelry in the store at the end of each business day and place that inventory in a vault or safe overnight. The jewelry items are then replaced in display cases on the following day. Ms. Peters had firsthand knowledge of the jewelry items in the Debtor's inventory on May 28, 2014.

26. Ms. Peters worked with Richard Bush to meet with Rebeor on June 18, 2014, to accept the turnover of the Debtor's inventory and to take a physical inventory of the jewelry items turned over to Mr. Bush on behalf of Alpert. Ms. Peters has firsthand knowledge of the items turned over by Rebeor on June 18, 2014.

27. Mr. Bush testified that after Rebeor delivered the inventory on June 18, 2014, Ms. Peters asked him, 'Is that all there is?' Her question indicates that she clearly knew that various items of inventory were not turned over by Rebeor to Mr. Bush on behalf of Alpert. In addition, the fact that Rebeor did not turn over all the jewelry in his possession on June 18, 2014 is confirmed by the fact that he turned over additional jewelry items to Alpert on July 3, 2014.

28. Thereafter, at a meeting with Alpert, Ms. Peters dictated a list of jewelry items that she knew were in the Debtor's possession on May 28, 2014, but which had not been turned over to

Alpert. Alpert transcribed the list of items in an email to his attorney, Mr. Johnston. The email containing the list of jewelry items not turned over to Alpert was marked for identification purposes as Alpert's Exhibit No. 7. Alpert's Exhibit No. 7 was introduced into evidence by counsel for Rebeor and the Debtor and was admitted into evidence.

29. Prior to turning over the inventory to Mr. Bush on June 18, 2014, and to Alpert on July 3, 2014, Rebeor had removed the price tag from each piece of jewelry. The price tags included a SKU number, a brief description of the item (by type of metal, gram and/or carat weight), and the retail price of the item. Rebeor testified that he threw the removed price tags away. But, he could have turned over the inventory with the price tags attached, or he could have photocopied the price tags so as to have a record of the items turned over.

30. The Debtor maintained inventory records utilizing The Edge jewelry software program. The Edge software program was operational as of May 28, 2014. Rebeor testified that the hard drive on the computer on which The Edge software was maintained had since "crashed" and the Debtor's computerized inventory records are no longer available. The Court finds that Rebeor's testimony on this issue is not credible.

31. Alpert testified that the door to the safe at the Debtor's business premises was left open but was in "locked" position (meaning that the door could not be closed nor could the safe be utilized). The safe is a "double-lock" safe, using both a key and a combination. Alpert and Ms. Peters testified that the key was missing. Rebeor testified that the key was in the store. When asked where in the store the key was located, Rebeor testified that he had "tossed" the key at the safe and perhaps it was on the floor. The Court finds Rebeor's actions in "tossing" the key at the safe were taken for the purpose of frustrating Alpert.

32. At the July 25, 2014 hearing, Rebeor was called as a witness in Alpert's case-in-chief and also testified on his own behalf. Despite these two opportunities to testify, Rebeor did not contradict or rebut Ms. Peters' testimony regarding the

number of items of jewelry that were not turned over. Nor did Mr. Rebeor affirmatively testify that he had turned over all of the jewelry.

33. Despite the existence of the list of jewelry items that were not turned over to Alpert (Exhibit No. 7), the Court cannot determine the value of those items, as it is impossible to appraise or value a piece of jewelry from a brief description. The Court's inability to value the missing jewelry items is directly attributable to Rebeor because he failed to turn over the jewelry and failed to maintain the Debtor's computerized inventory listing.

34. The Court finds that its oral ruling and directive for the turnover of the Debtor's inventory and cash to Alpert at the May 28, 2014 Dismissal Hearing were effective as of the date of the hearing. This Court recognizes the general rule that an order is not effective until it is entered by the Court.<sup>1</sup> This rule supports the finality of orders; establishes a definite time for appeal; ensures that parties have notice of the contents and requirements of an order; and protects the due process rights of the parties impacted by the order.<sup>2</sup> However, a narrow exception exists when a party has notice of, and participates in, a hearing; hears and understands the court's oral ruling made at that hearing; and then attempts to circumvent that ruling prior to the entry of a written order memorializing that ruling.<sup>3</sup> In such a case, there is a sound reason to deviate from the well-accepted practice that orders are effective only when written and docketed because none of the notice, appellate, finality or due process rights or concerns are implicated.

35. In this case, Rebeor had notice of the Dismissal Hearing; appeared telephonically; had the benefit of the appearance of counsel for the Debtor; actively participated in the hearing; and,

by asking about the automatic deduction for the payroll in the amount of \$1,700, expressed to the Court his understanding of the Court's oral ruling requiring the Debtor to cease disbursements from the funds in its bank account and to immediately turn over the Debtor's cash and inventory to Alpert. Therefore, this Court finds that its oral ruling was effective upon pronouncement from the bench at the Dismissal Hearing held on May 28, 2014, and that Rebeor, as the principal of the Debtor, was bound to follow that ruling.

36. The Court finds that Rebeor's actions in failing to turn over the cash in the Debtor's bank account; disbursing \$2,000.00 to himself as salary; purchasing a bank check payable to his wife in the amount of \$10,000.00; disbursing \$1,000.00 to Wheels America Advertising, a company in which he failed to disclose an ownership interest; failing to turn over all the Debtor's inventory; removing the price tags from the jewelry items that were turned over; "tossing" the key to the safe; and facilitating or arranging the "crash" of the computer on which The Edge software was maintained, constituted a wilful and malicious injury to Alpert or the property of Alpert within the meaning of 11 U.S.C. § 523(a)(6).

Accordingly, for the foregoing reasons, it is

ORDERED:

1. The Motion to Enforce and the Supplemental Motion are GRANTED.

2. Rebeor shall pay Alpert, as the Debtor's cash as of May 28, 2014, the sum of \$16,141.66<sup>4</sup> within thirty (30) days from the date of this Order. If that amount is not paid in full within that time frame, upon submission of an affidavit from Alpert, the Court will enter Judgment in the amount of \$16,141.66 against Gene Rebeor and in

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<sup>1</sup> See, e.g., Fed. R. Bankr. P. 5003, 7058 and 9022.

<sup>2</sup> See *In re Brown*, 290 B.R. 415, 419-420 (Bankr. M.D. Fla. 2003); *In re: Nail*, 195 B.R. 922, 927-929 (Bankr. N.D. Ala. 1996) (citing *Bethlehem Mines Corp. v. United Mine Workers of America*, 476 F.2d. 860 (3<sup>rd</sup> Cir. 1973)).

<sup>3</sup> *In re Brown*, 290 B.R. at 421; *In re Nail*, 195 B.R. at 428.

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<sup>4</sup> This amount is calculated by taking the cash on hand in the DIP Account on June 1, 2014 of \$19,267.59; less the ADT Security cost of \$65.71, rent of \$1,800.00, electric of \$267.95, CourtCall charge of \$30.00, Credit Card servicing fee of \$224.28, sales tax to Florida Department of Revenue of \$638.8, and the cashier's check delivered to Dr. Alpert of \$99.16.

favor of Myles Alpert, and that judgment will constitute a willful and malicious injury by Rebeor against Alpert or the property of Alpert within the meaning of 11 U.S.C. § 523(a)(6).

3. Rebeor shall turn over to Alpert or to his attorney, Richard Johnston, Jr., Esq., the items of jewelry described in Exhibit 7, a copy of which is attached hereto as Exhibit A, within seven (7) days of the date of this Order. If the jewelry is not turned over as ordered herein, then upon submission of an affidavit from Alpert, the Court will enter a judgment against Rebeor and in favor of Alpert in the amount of \$75,000.00, and such judgment shall constitute a willful and malicious injury by Rebeor against Alpert or Alpert's property within the meaning of 11 U.S.C. § 523(a)(6).

4. The Court reserves jurisdiction to award further sanctions to Alpert in the event there is evidence that Rebeor has withheld other assets of the Debtor from Alpert.

**Dated:** August 7, 2014.

\_\_\_\_\_/s/  
Caryl E. Delano  
United States Bankruptcy Judge

Richard,

I met Rebeor on July 3, 2014. I inventoried and took possession of a limited number of items but stopped when it became apparent that the higher value items were missing. I hired a lock smith to change the locks.

On July 6, 2014 I met Harriet Peters at the store and brought the inventory I removed from the store. Therefore she was able to view all the inventory at the end of May when Rebeor closed the business and compare it to the present items as well as items dropped off at Hampton Inn on June 18.

According to Harriet she can attest that the the following items were missing ( other items may still be unaccounted for) :

1. Gold Pandora (1/4 tray gold Pandora beads and a diamond heart on gold chain and 1/4 tray sterling silver Pandora beads
2. multiple gold chains
3. a safe key which used to be on top of safe which is needed to make safe usable and change safe combination
4. valuable watches ( at least 4)
5. gold Pandora rings ( at least 4) and 2 full trays of Pandora silver rings
6. gold Pandora earrings
7. gold Lestage bangles (at least 3)
8. silver Lestage bracelets
9. Chri Dori jewelry ( at least 7 pieces)
10. at least 2 yellow diamond rings
11. gold bracelet with half row nice size diamonds
12. diamond rings ( 1 over 2 carats)
13. Gelln Abaci rings, necklaces and earrings
14. loose diamonds ( only one sold since jewelry returned to Rebeor from me)
15. book of appraisals of the inventory including jewelry and diamonds
16. 2 slides ( 1 sapphire)
17. Claude Thibaudeau rings
18. diamond earrings
19. touch screen all in one computer which could have aided in tracking all inventory and sales/ credit card terminal/printer
20. deleted Edge software on remaining DELL computer which could have aided in tracking inventory and sales
21. 50 pieces of silver jewels
22. Sanibel Diamond Rings and loose stones
23. Debbie Brook bag with catholic cross on it

I am copying Harriet so she can review list and revise to make more accurate if necessary. When she testifies you can use this list to help her present to the court the missing inventory.

The bottom line is that Rebeor has not complied with court order. He has removed and possibly destroyed records and retained inventory and store equipment.

Myles

**Exhibit A**