

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:09-bk-08501-ABB
Chapter 7

CHARLES KEVIN WATERS,

Debtor.

ORDER

This matter came before the Court on the Emergency Motion for Contempt (Doc. No. 16) filed by Webster Business Credit Corporation (“Webster”) seeking the turnover of a computer server and the entry of an order holding Charles Kevin Waters, the Debtor herein (“Waters”), and Patrick J. Hopper (“Hopper”) in contempt of an Order entered on March 18, 2009 in the bankruptcy case captioned In re Luxury Ventures, LLC, Case No. 9:07-bk-11224-ALP pending in the Fort Myers Division of the United States Bankruptcy Court for the Middle District of Florida. Webster, as alternative relief, requests relief from the automatic stay of 11 U.S.C. Section 362(a).

An evidentiary hearing was held on July 14, 2009 at which Waters, counsel for Waters, and counsel for Webster appeared. Waters was directed to file an affidavit within seven days setting forth his knowledge of the whereabouts of the computer server and Webster was directed to file a response thereto. Both parties timely filed affidavits (Doc. Nos. 29, 30). Webster’s Motion is due to be denied for the reasons set forth herein.

The March 18, 2009 Order referenced by Webster is Docket Number 410 in the Luxury Ventures, LLC case and is not an Order of this Court. Hopper is a debtor in a Chapter 7 bankruptcy case pending in the Tampa Division of the United States Bankruptcy Court for the Middle District of Florida captioned In re Patrick J. Hopper, Case No. 8:09-bk-12702-KPM. Webster’s Motion contains the case captions for Water’s, Hopper’s, and Luxury Ventures, LLC’s cases.

Waters affirms in his Affidavit (Doc. No. 29) he did not remove the computer server

nor did he “instruct anyone, including Patrick Hopper, to do so. I am not currently in possession of the computer server and am therefore incapable of returning it to Webster.” Affidavit at ¶5. Waters asserts Hopper is in possession of the computer server. Affidavit at ¶6. He contends he was not at the business premises where the computer server was located: “I was unable to return to the business premises due to my mother’s stroke.” Affidavit at ¶7. Waters attached to his Affidavit as Exhibit A the Affidavit of Patrick Hopper to Correct Facts Surrounding Webster’s Claim for Contempt (“Hopper Affidavit”).

Hopper prepared the Hopper Affidavit to “be viewed and considered when making decisions related to” the Luxury Ventures, LLC, Hopper, and Waters bankruptcy cases. Hopper Affidavit at p. 2. Hopper states he removed various computer equipment from the business premises and “unplugged the server and walked out of the store,” but does not unequivocally state he removed or has possession of the computer server.

Webster filed a Declaration of Stevan Buxbaum to Refute the Allegations Contained in the Affidavit of Patrick Hopper (Doc. No. 30) in which Buxbaum refutes Hopper’s recitation of certain events and asserts Hopper “took the computer server while our retained computer consultant was in the store preparing to copy the information on the server.” Doc. No. 30 at ¶5. Webster’s Declaration does not refute or contradict any statements made by Waters in his Affidavit.

Webster has established no basis for the issuance of a turnover or contempt order against Waters. He does not have the computer server and was not involved in its removal. Webster has established no basis for relief from the automatic stay in this case pursuant to 11 U.S.C. Section 362(d).

Webster, to the extent it requests a ruling regarding a violation of the March 18, 2009 Order or seeks relief regarding Luxury Ventures, LLC, must address those issues in the Luxury Ventures, LLC case. Webster, to the extent it seeks relief against Hopper, must address such issue in Hopper’s bankruptcy case.

Accordingly, it is

**ORDERED, ADJUDGED and
DECREED** that Webster's Motion for Contempt
(Doc. No. 16) is hereby **DENIED**.

Dated this 21st day of July, 2009.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

NOT FOR PUBLICATION