

9-18-06 JD

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	:	
	:	CASE NO. 05-95215-JB
CHARLES RANDALL HAMBLLEN and	:	
JANET SMITH HAMBLLEN,	:	
	:	
Debtors.	:	CHAPTER 7
	:	
_____	:	
S. GREGORY HAYS, TRUSTEE,	:	
	:	
Movant,	:	
	:	
vs.	:	CONTESTED MATTER
	:	
CHARLES RANDALL HAMBLLEN and	:	
JANET SMITH HAMBLLEN,	:	
	:	
Respondents.	:	
	:	

ORDER AND NOTICE OF HEARING

On September 7, 2006, the Chapter 7 Trustee, S. Gregory Hays, filed a report of noncompliance with the Court's Order entered August 17, 2006, and a request for the entry of an Order to show cause why Debtors, Charles Randall Hamblen and Janet Smith Hamblen, should not be held in contempt ("Motion for Contempt") for failing to fully comply with provisions (b), (d), and (e) of the Court's August 17, 2006 Order (Docket #269). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (E).

On July 13, 2006, the Trustee had filed a motion to compel debtors to deliver property to the Trustee, to cooperate with the Trustee, and to vacate their residence (Docket #232). A hearing on this motion as well as on the Trustee's objections to Debtors' exemptions and request

to surcharge Debtor's exemptions was held on August 10, 2006. At the conclusion of this hearing, the Court announced an oral ruling and then entered a written Order on August 17, 2006 (Docket #261) on the motion to compel. That Order specifically required Debtors to take certain actions, among which were the following:

*(b) to meet with the Trustee's personal property appraiser at 510 Pennroyal Lane, Alpharetta, Georgia, on Saturday, August 12, 2006, at 12:00 noon, to permit the appraiser to view, photograph, and take any other reasonable action necessary to appraise any and all of Debtors' personal property, including without limitation, their furniture, art, and jewelry[.]*

With respect to this requirement, the Trustee alleges in his Motion for Contempt that Janet Hamblen did not fully cooperate with the Trustee's personal property appraiser and that she did not meet with and show the appraiser any of her jewelry. The Trustee further alleges that it appears that the home had been "stripped" of substantial assets and that his agent, who picked up Janet Hamblen's BMW 330i on August 11, 2006, reported that Debtor Randy Hamblen was removing personal property from the residence.

In subparagraph (d) of the August 17, 2006 Order, Debtors were required to vacate the property at 510 Pennroyal Lane, Alpharetta, Georgia, not later than 5:00 p.m. on August 31, 2006, and, among other things, to turn over their garage door openers. The Trustee reports that Debtors did vacate the premises, but alleges that they failed to turn over the garage door openers. The Trustee alleges that Debtors advised him that the garage door openers were inside the house, but the Trustee has been unable to locate them.

The August 17, 2006 Order also required Debtors to turn over to the Trustee copies of the following documents or information not later than 5:00 p.m. on August 30, 2006:

*(1) the most recent account statements for the IRA accounts listed on bankruptcy schedules B and C, including, but not limited to, the Hartford 401(k) accounts, Merrill Lynch IRA accounts, Charles*

*Schwab IRA accounts and AIM IRA accounts;*  
*(2) the original Bill of Sale, original title, and any other documents relating to the purchase by Mr. Hamblen of a Chevrolet Avalanche for \$28,000.00 within ninety (90) days of filing bankruptcy, including the name, mailing address, phone number or other information for the person from whom the Avalanche was purchased;*  
*(3) copies of all bank statements and cancelled checks for any and all accounts in the name of Intown Artisans, LLC;*  
*(4) copies of all bank statements and cancelled checks from date of opening to date of closing of an account described by Janet Hamblen in her August 10, 2006 testimony and in Exhibit T-11 into which Debtors deposited \$200,000.00 in the name of Janet Hamblen's mother, Sarah Smith;*  
*(5) any documents or statements relating to monies received and disbursed from the life insurance policy inside the Hamblen Family Irrevocable Trust in the amount of approximately \$27,000.00 as described in Exhibit T-11;*  
*(6) a printed copy of the directory of the Debtors' personal computer(s); and*  
*(7) the current mailing address and phone number for Randall Hamblen's parents, Jean and Charles Hamblen.*

The Order provided that if Debtors could not locate any of the documents or information, then both Debtors should execute and file with the Clerk's Office not later than 5:00 p.m. on

September 6, 2006, a notarized affidavit setting forth the relevant facts explaining such reason or reasons why such documents or information cannot be produced. With respect to this requirement, the Trustee alleges that Debtors have failed to turn over required documentation or information and have not filed a notarized affidavit setting forth an explanation as to why they could not produce the items.

The Bankruptcy Code and the Bankruptcy Rules prescribe a number of duties which must be performed by debtors. Section 521 of the Bankruptcy Code, entitled "Debtor's duties," delineates the following debtor's obligations among others:

*§ 521. The debtor shall— ...*  
*(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;*

*(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]*

11 U.S.C. § 521. Rule 4002 also specifically outlines a debtor's duties and includes "(4) cooperat[ing] with the trustee in the preparation of an inventory, ... and the administration of the estate...." Fed. R. Bankr. P. 4002.

The Trustee alleges that Debtors have specifically violated the Court's August 17, 2006 Order. Upon a proper showing, this Court has the power to find Debtors in civil contempt. 11 U.S.C. § 105; *Lawrence v. Goldberg (In re Lawrence)*, 279 F. 3d 1294 (11<sup>th</sup> Cir. 2002); *Hansbrough v. Birdsell, Trustee (In re Hercules Enterprises, Inc.)*, 387 F. 3d 1024 (9th Cir. 2004); *In re Shore*, 193 B.R. 598 (S.D. Fla. 1996); *Commercial Banking Company v. Jones (In re Maxair Aircraft Corp. of Georgia)*, 148 B.R. 353 (M.D. Ga. 1992). Debtors may be found in civil contempt once the Trustee supports his allegations with clear and convincing evidence. *Hercules Enterprises* at 1028; *Shore* at 602. To rebut the Trustee's evidence, Debtors must go beyond a mere assertion of inability to comply and establish that they have made a good faith effort to comply. *Lawrence* at 1297; *Shore* at 602. Debtors are advised that civil contempt may include incarceration and payment of fines and fees. *Lawrence* at 1297; *Shore* at 603; *Maxair Aircraft* at 358-59.

IT IS ORDERED and NOTICE IS HEREBY GIVEN that the Trustee and Debtors Charles Randall Hamblen and Janet Smith Hamblen shall personally appear for an evidentiary hearing on the Trustee's Motion for Contempt for Debtors' failure to comply with the Order entered on August 17, 2006 by not providing the Trustee with the required information and documents or the filing of an affidavit as to why they could not be produced, by failing to meet with the Trustee's personal property appraiser to show Debtors' jewelry to the appraiser, and by not providing the Trustee with garage openers. Debtors should also be prepared to address the allegation that they

have concealed and removed personal property belonging to the estate. The hearing will be held on **OCTOBER 6, 2006**, at **9:30 a.m.**, in COURTROOM 1402, UNITED STATES COURTHOUSE, RICHARD B. RUSSELL FEDERAL BUILDING, 75 SPRING STREET, S.W., ATLANTA, GEORGIA. Upon the Trustee's presentation of evidence to support his allegations, Debtors shall show cause why they should not be held in civil contempt for their failure to comply with the Order entered on August 17, 2006.

To ensure that Debtors receive a copy of this Order, service shall be upon the only address currently shown on the docket for Debtors, and the Trustee's counsel, Alex Teel, is directed to forward a copy of this Order upon Debtors through the e-mail address or addresses that he has been using to communicate with them. In addition, the Court is serving William Russell Patterson with a copy of this Order, with directions that he, as counsel for Sarah Smith, the mother of Janet Hamblen, forward a copy of this Order to Debtors. The Court is also serving Evan Altman, counsel for the Hamblen Family Irrevocable Trust and Halstin Family, LLC, with a copy of this Order, with directions that he forward a copy of this Order to Debtors. The Trustee, Mr. Patterson, and Mr. Altman are each directed to file a certificate in this case setting forth all methods by which they have attempted to serve a copy of this Order upon Debtors Charles and Janet Hamblen.

IT IS SO ORDERED, this 18<sup>th</sup> day of September, 2006.

  
JOYCE BIHARY  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

A copy of the foregoing Order and Notice of Hearing mailed by United States Mail to the following:

Charles Randall Hamblen  
Janet Smith Hamblen  
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Alpharetta, GA 30004

Mrs. Sara Smith  
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Kathy Harmon  
Judicial Assistant to Judge Bihary

Date: September 18, 2006