

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

DANIEL E. KNICKERBOCKER,

Debtor.

Case No. DL 07-01275

Hon. Scott W. Dales

Chapter 7

PHILLIP E. HUTCHINSON,

Plaintiff,

Adversary Pro. No. 07-80269

v.

DANIEL E. KNICKERBOCKER,

Defendant.

ORDER

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

The court entered a judgment against Defendant Daniel E. Knickerbocker (the “Defendant”) in favor of Plaintiff Phillip E. Hutchinson (the “Plaintiff”), requiring the Defendant to pay the Plaintiff \$70,113.00 plus costs and interest under 28 U.S.C. § 1961. *See* Judgment in Adversary Proceeding dated April 8, 2008 (the “Judgment,” DN 56). Recently, the Plaintiff has started to take steps to collect the Judgment but has so far been unsuccessful. In the Motion for Proceedings Supplementary to Judgment (the “Motion,” DN 66), the Plaintiff reports that the Defendant owns rental property in Eaton County and is collecting rents that the Plaintiff seeks to intercept and apply against the Defendant’s debt represented by the Judgment. In his Motion, the Plaintiff asks the court to “enter an order appointing a receiver over the Defendant having the powers and duties set forth under Mich. Ct. R. 2.622.” *See* Motion at p. 2 (wherefore clause).

Plaintiff correctly notes that, generally speaking, in federal court, “proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located . . .” Fed. R. Civ. P. 69(a)(1). His quote, however, omits the last, but not least, clause of the rule, which may limit access to some state collection procedures: “but a federal statute governs to the extent it applies.” *Id.*

In the Bankruptcy Code's section entitled "Power of court," Congress provides that the court "may not appoint a receiver in a case under this title." *See* 11 U.S.C. § 105(b). Although it is conceivable that this proscription applies only to the base case and not adversary proceedings commenced within a case, the court notes that Part VII of the Federal Rules of Bankruptcy Procedure does not make Fed. R. Civ. P. 66 (Receivers) applicable in adversary proceedings, which the drafters probably would have done had they intended to authorize receiverships in adversary proceedings.

From the court's review of § 105(b), and the inference drawn from the omission of an analog to Fed. R. Civ. P. 66 in Part VII of the Federal Rules of Bankruptcy Procedure, the court is not satisfied that it has authority to grant the relief the Plaintiff requests. Therefore, the court will deny the Motion without prejudice and without the delay that would accompany a hearing on notice to the Defendant.

If the Plaintiff has authority for a bankruptcy court's appointment of a receiver, notwithstanding § 105(b) and the absence of a bankruptcy analog to Fed. R. Civ. P. 66, he may supplement his Motion. As an alternative—and perhaps a better option—the Plaintiff should consider domesticating the Judgment in Eaton County pursuant to Michigan's version of the Uniform Enforcement of Foreign Judgments Act, M.C.L. §§ 691.1171 *et seq.* Domesticating the Judgment will expedite the relief that the Plaintiff may very well deserve.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 66) is DENIED without prejudice to renewal, with supporting authority, within 14 days after entry of this Order.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Phillip E. Hutchinson, Daniel E. Knickerbocker, and Gary D. Nitzkin, Esq.

END OF ORDER

**IT IS SO ORDERED.**

Dated December 10, 2013



A handwritten signature in black ink, appearing to read "Scott W. Dales".

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Scott W. Dales  
United States Bankruptcy Judge