

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MICHAEL A. DAMMAN, fdba DAMMAN  
POURED WALLS,

Debtor.

Case No. DK 09-03185  
Hon. Scott W. Dales  
Chapter 7

ORDER FINDING DEBTOR IN CONTEMPT

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

I. INTRODUCTION

The Chapter 7 Trustee intends to sell the Debtor's home, but the Debtor is resisting the Trustee's efforts. His recalcitrance has twice prompted the Trustee to seek the court's assistance. For reasons that follow, the court holds the Debtor, Michael A. Damman (the "Debtor") in civil contempt, and will again order him to cooperate with the Trustee regarding the proposed sale.

II. JURISDICTION AND AUTHORITY

The court has jurisdiction over the Debtor's case pursuant to 28 U.S.C. § 1334(a), and the Trustee's motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (E), referred to this court under 28 U.S.C. § 157(a) and LCivR 83.2(a) (W.D. Mich.). The court has authority to enter civil contempt orders. *In re Burkman Supply, Inc.*, 217 B.R. 223, 226 (W.D. Mich. 1998) (Bell, J.).

III. FINDINGS

By Order entered June 1, 2012, the court authorized the Trustee to sell the estate's interest in 3050 Walden Shores Blvd., Lake Wales, Florida (the "Florida Home"). The

bankruptcy estate jointly owns the Florida Home with the Debtor's ex-wife, Mary Damman, who supports the sale. As noted above, the Debtor has resisted the Trustee's sale efforts.

Indeed, on May 29, 2012, after hearing from the Trustee and the Debtor's counsel, the court entered the Order Granting Trustee's Motion to Compel Debtor to Cooperate with Trustee (the "May 29 Order," DN 217). Among other things, the May 29 Order directed the Debtor to cooperate fully with the Trustee, and warned him that he would suffer serious consequences, including dispossession, if he interfered with the Trustee's proposed sale.

On June 22, 2012, after consulting with his Florida realtor, the Trustee filed a Motion for Order to Show Cause Why Debtor Should Not Be Held in Civil Contempt for Failure to Comply with Court Order, for Turnover of the Real Estate and Apprehension and Removal of the Debtor from the Real Estate (the "Contempt Motion," DN 220). In response to the Contempt Motion, the court issued its Order to Show Cause that same day (DN 223), directing the Debtor to appear in court and show cause why the court should not hold him in contempt of the May 29 Order. The Trustee filed the Contempt Motion because he believes, based on reports of his real estate agent in Florida, that the Debtor is interfering with the Trustee's sale of the Florida Home.

At the June 28, 2012 show cause hearing, the Trustee and Debtor both appeared through counsel. Contrary to the court's order, the Debtor did not personally appear, presumably given the distance and costs involved.

The court reviewed the documents attached to the Contempt Motion, including the Affidavit of Ken Welch dated June 22, 2012 (the "Welch Affidavit," Exh. B), and the

Debtor's written statements dated March 9, 2012 and March 15, 2012 (Exh. C).<sup>1</sup> The court has carefully considered the arguments of counsel. Debtor's counsel explained that the Debtor has a history of mental illness, including Bi-Polar Disorder, and the Trustee stipulated to this history, though not to any present incapacity to honor his obligations regarding the Florida Home. In deference to the Debtor's illness, however, the Trustee did not seek immediate turnover at the hearing.

The court finds that the Debtor is in contempt of the May 29 Order and has flouted his duty to cooperate with the Trustee and the estate's other agents regarding the sale of the Florida Home. First, the court finds that the Trustee has a one-half interest in the Florida Home as co-tenant with the Debtor's former spouse, and that both co-tenants wish to effect a sale. Second, the court takes judicial notice of the May 29 Order and the admonitions to the Debtor contained in that document. Third, the Welch Affidavit establishes that the Debtor has made and broken several appointments for inspections of the Florida Home, inspections that the court infers are necessary to the Trustee's sale efforts. According to Mr. Welch's uncontested written testimony, the Debtor refused to allow anyone in the house on at least one of the days he agreed to make the premises available for inspection, after the court ordered him to cooperate. Reading between the lines, the court infers that the Debtor thwarted the realtor's reasonable efforts to reschedule the inspections.

The court is mindful of the parties' stipulation that the Debtor has a history of mental illness. Nevertheless, on the present record, the court is not persuaded that the Debtor lacks sufficient self-control or capacity to comply with the May 29 Order. In

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<sup>1</sup> Under Fed. R. Civ. P. 43(c), the court considered and relied on the Welch Affidavit at the show cause hearing. Moreover, the Debtor's written statements are admissions authenticated by statements of counsel.

reaching this conclusion, the court notes that the Debtor's own words undermine his counsel's efforts to blame the Debtor's illness for his contempt. In the March 15, 2012 writing, for example, the Debtor states, "I will use my BiPolar condition and all the wrongs that have been used against me in the court system and see if I can achieve a just settlement." *See* Exh. C. In fact, at the hearing the parties reported that they have been negotiating a settlement regarding the Florida Home, involving possible payment to the Debtor in exchange for cooperation and eventual surrender of this estate asset, to accommodate the illness.

In the Welch Affidavit, the realtor reports that the Debtor likewise cancelled an inspection on the morning it was scheduled to occur, informing the realtor that "he was having serious mental problems that day and he was just not up to anyone coming in." *See* Exh. C.

Nevertheless, the Debtor also reports in his March 9, 2012 statement that he has "finally gotten the right meds 3 years ago." *See* Exh. C. It would appear that the Debtor is in fact using his undisputed medical condition to extend his control over the Florida Home, or extract some benefit from the Trustee.

In summary, the record preponderates in favor of finding contempt, and against finding sufficient justification for the Debtor's refusal to cooperate. The Debtor is in civil contempt of the May 29 Order.

#### IV. CONCLUSION AND ORDER

The court acknowledges the hardship that the Debtor will suffer from having to vacate the Florida Home, and commends the Trustee for his compassion, patience and

restraint in suffering the Debtor's continued occupancy rather than seeking immediate turnover, as he might have required weeks ago under 11 U.S.C. § 542.

If the court were free to ignore the interests of the estate and third parties, it would not be inclined to interfere with the Debtor's occupancy, especially given his illness and the other hardships that have led him to this court. Nevertheless, the court is constrained by its responsibilities to uphold federal law and to consider not just the Debtor's interests, but the interests of his creditors.

Accordingly, this Order will prescribe the manner in which the Debtor may purge his contempt. The court, however, reiterates its earlier warning that it will enlist the United States Marshals Service to dispossess the Debtor and gain control of the Florida Home, upon proper application, if the Debtor fails to purge himself of his contempt as prescribed in this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Contempt Motion is GRANTED as provided herein.

IT IS FURTHER ORDERED that Michael A. Damman is in contempt of the May 29 Order for failing to cooperate fully with the Trustee and other estate professionals regarding the sale of the Florida Home.

IT IS FURTHER ORDERED that the Debtor may purge himself of the contempt by: (1) permitting the Trustee or his agents to conduct and complete all necessary and customary inspections of the Florida Home within 7 days after entry of this Order; and (2) surrendering possession of the Florida Home to the Trustee or his agents, in good, habitable, and "broom clean" condition, at least 7 days before any closing of the sale of the Florida Home.

IT IS FURTHER ORDERED that the Trustee shall give the Debtor not fewer than 48 hours advance notice of any inspections of the Florida Home, and not fewer than 14 days advance notice of the sale closing.

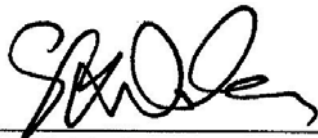
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Michael A. Damman; Scott A. Chernich, Esq., Chapter 7 Trustee; Scott Hogan, Esq.; Kerry D. Hettinger, Esq.; and the United States Trustee.

END OF ORDER

**IT IS SO ORDERED.**

Dated July 2, 2012



  
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Scott W. Dales  
United States Bankruptcy Judge