

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 19, 2015 at 10:30 a.m.

1. [13-23119](#)-E-13 CYNTHIA MCDONALD
 [14-2210](#)
 MCDONALD V. JPMORGAN CHASE
 BANK, N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-21-14 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Amy M. Spicer

Adv. Filed: 7/21/14
Answer: 10/30/15

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

Notes:

Continued from 10/14/15. Specially set on the court's law and motion calendar.
Parties to file status conference statements on or before 11/12/15.

Answer to Complaint filed 10/30/15 [Dckt 31]

Defendants' Status Report filed 11/12/15 [Dckt 32]

Summary of Complaint

The Complaint itself is thirteen (13) pages long. The Complaint states the
following Causes of Action:

I. First Cause of Action Objection to the JPMorgan Chase Bank Proof of Claim.

A. The substance of this Objection is that Proof of Claim No. 2 filed
by JPMorgan Chase Bank, N.A. misstates the claim because it lists the following
information,

1.Principal Balance.....\$187,774.58
2.Arrearage.....\$ 22,403.04
3.Which Amounts Total.....\$210,177.62.

B. However, JPMorgan Chase Bank, N.A. has filed the claim for the lesser amount of \$204,873.32, which is \$5,300.00 less than the total of the principal amount and arrearage.

C. The amount of the Proof of Claim and the total of the Principal Balance and Arrearage cannot be reconciled.

D. This difference which cannot be reconciled is sufficient to disallow the Proof of Claim.

II. Second Cause of Action for Violation of California Rosenthal Act.

A. It is asserted that Plaintiff misapplied non-specific payments made by Plaintiff in 2012 and 2013, and that by misapplying the payments Defendant violated the Rosenthal Act.

B. It is asserted that the Proof of Claim filed is a misrepresentation of the debt, and such misrepresented Proof of Claim is a violation of the Rosenthal Act.

III. Third Cause of Action for Negligence.

A. It is alleged that JPMorgan Chase Bank, N.A. had a duty to file a Proof of Claim in Plaintiffs bankruptcy case which has some semblance of accuracy.

B. JPMorgan Chase Bank, N.A. violated the duty to file such proof of claim when it filed Proof of Claim No. 2 in Plaintiffs bankruptcy case.

IV. Fourth Cause of Action for Fraud and Intentional Misrepresentation (Cal. Civ. §§ 1572, 1709, and 1710)

A. It is alleged that when JPMorgan Chase Bank, N.A. filed Proof of Claim No. 2 it knew that the information therein was false. It is alleged that the Bank misapplied payments made by Plaintiff.

V. Fifth Cause of Action for Violation of Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 et seq.).

A. JPMorgan Chase Bank, N.A. misapplied nonspecified payments made by Plaintiff for the loan upon which Proof of Claim No. 2 is based.

VI. Sixth Cause of Action for Breach of Contract

A. It is alleged that JPMorgan Chase Bank, N.A. has breached the terms of the contract (promissory note) with Plaintiff. The breach of contract arises from misapplying nonspecified payments made by Plaintiff.

VII. Seventh Cause of Action for Conversion.

A. It is alleged that JPMorgan Chase Bank, N.A. misapplying nonspecified payments made by Debtors to the Bank on the loan constitutes a conversion of said monies.

VIII. Eight Cause of Actions for Attorneys Fees.

A. Pursuant to a nonspecified term of the Note and Deed of Trust and the California Civil Code, Plaintiff is entitled to attorneys fees.

SUMMARY OF ANSWER

JPMorgan Chase Bank, N.A. and US Bank National Association as Trustee, have filed an answer which specifically admits and denies allegations in the Complaint. The Answer also states seven affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 3, and 4; Dckt. 1. Plaintiff consents to the bankruptcy judge issuing all orders and final judgment for non-core matters, if any, stated in the Complaint.

In their answer, Defendants admit the allegations of jurisdiction and that the determination of validity and amount of Defendants' claim in the bankruptcy case are core proceedings. Answer ¶¶ 1 and 3, Dckt. 30.

Defendants affirmatively plead that the "do not consent to the entry of a final judgment by this Court as to any and all matters as to which Defendants, or either of them, have a right to the entry of a final judgment by an Article III court. The Answer does not identify which claims in the Complaint are non-core matters.

At the hearing the parties addressed the possible non-core claims which do not require the bankruptcy judge to determine in determining the validity and amount of Defendants' claim, identifying them as
xxxxxxxxxxxxxxxxxxxx.

To afford the parties the opportunity to brief the issue of whether such claims are core or non-core the court sets the following briefing Schedule and continued Status Conference:

- A. Defendants shall file and serve on or before ~~xxxxxxx~~, 2015, a supplemental brief identifying the non-core claims and the legal analysis upon which the assertion of non-core status is based.
- B. Plaintiff shall file and serve, on or before ~~xxxxxxx~~, 2015, a response supplemental brief responding to the asserted non-core claims and Plaintiff's legal analysis upon which it is contended that they are core claims.
- C. The continued status conference will be conducted at **2:30 p.m. on January 20, 2016.**

2. [11-27845](#)-E-11 IVAN/MARETTA LEE
Raymond E. Willis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-27-15 [[388](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Ivan S. Lee ("Debtor"), Debtor's attorney, creditors, and other parties in interest on October 29, 2015. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$1,167.00 due).

The court's decision is to sustain the Order to Show Cause and order the bankruptcy case to be closed.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$1,167.00].

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the bankruptcy case is closed.

The court makes no determination of whether the reopening of the bankruptcy case was required for the filing of Adversary Proceeding 15-02194 or must be open for the continued prosecution of that Adversary Proceeding.

Tentative Ruling: The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether a further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Contempt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing

The Motion for Contempt is granted.
--

Kimberly J. Husted ("Trustee") moves for an order holding Walter H. Schaefer ("Debtor") in contempt for violating court orders, Dckt. 101 and 135. Trustee seeks (1) compulsory sanctions in an amount no less than \$5,000.00 per day; or (2) ordering that the Debtor be imprisoned until such time as the Debtor complies with the court's orders.

FN.1. The court notes that the Motion contains a typographical error, misidentifying the trustee as J. Michael Hopper moving for an order of contempt. The court recognizes Kimberly J. Husted as the duly-appointed Trustee of the above-captioned bankruptcy estate.

ALLEGED CONDUCT OF DEBTOR IN VIOLATION OF PRIOR COURT ORDERS

Trustee alleges that Debtor violated court orders directing the Debtor to turn over certain real properties located in Costa Rica, corporations organized under the laws of Costa Rica which hold interests in the real properties, and ordering the Debtor to direct the Debtor's agents, attorneys, and brokers to comply with the Trustee's and her attorneys' instructions. Trustee provides the court with an exhaustive factual background, to contextualize the issue at hand, urging the court to grant the instant Motion. Trustee alleges the following:

Among the assets of the Debtor's bankruptcy estates is the Debtor's interest in:

- A. Certain real property commonly known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica ("First Condominium");
- B. Certain real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Undisclosed Condominium");
- C. Certain unimproved lots in Costa Rica identified as Guanacaste Nos. 37920-000 and 37922-000 ("Lots"); and
- D. Corporations organized under the laws of Costa Rica which hold title to the aforementioned real properties and identified as Morena Velar S.A. ("Velar"), Free Solutions Imperial S.A. ("Free Solutions"), Bayside Tambor JVM Dos S.A. ("Bayside"), and 3101495080 S.A. ("Lot Corporations").

Debtor's original schedules only disclosed the Debtor's interest in the First Condominium, valued at \$300,000 and not subject to liens or a claim of exemptions. However, Debtor failed to disclose the other Costa Rican properties and the entities holding title to those properties. The Trustee alleges that this thus impaired her ability to protect the estate's rights.

Debtor and Priscilla Camperud-Schaefer have been parties to a marital dissolution proceeding that has been pending in the Orange County Superior Court since May 11, 2010. Prior to a Federal Rule of Bankruptcy Procedure 2004 examination, the Trustee caused the documents filed in the marital case to be reviewed. Through such review, the Trustee discovered that the Debtor had investment accounts with RBC Capital Markets, LLC and Edward D. Jones & Co., L.P., escrow for the First Condominium through Breedy Abogados S.A., and interest in Velar.

On April 9, 2015, the Trustee caused the Motion for Turnover of the First Condominium, documents related to the First Condominium's control and transfer, including the shares and books for Velar, and the investment accounts. Trustee alleges that at the time the Motion for Turnover was filed, Trustee uncovered that the Debtor had stolen assets of the bankruptcy estate, and was not responding to turnover demands for adequate assurance that the First Condominium would not be placed out of reach of the Bankruptcy Court. An order granting the Motion for Turnover was entered on May 22, 2015. Dkct. 135.

On April 13, 2015, at the 2004 examination, the Debtor testified:

- A. That Velar held title to the First Condominium;
- B. Identified a previously undisclosed interest in a deposit account in the name of Velar at a San Jose, Costa Rica branch of Banco Nacional;
- C. Identified a Tambor, Costa Rica branch of Century 21 as real estate professionals with whom the First Condominium was listed for sale in 2014;
- D. Disclosed that the funds on deposit with the investment accounts were transferred for the operation of the Debtor's sheet metal fabricating business in Chester, California; and
- E. Stated there was no other real property in the world that he owned other than those disclosed in his original schedules.

During the 2004 examination, but not on the record, the Debtor confirmed that Breedy handled the Debtor's purchase of the First Condominium, incorporated Velar, and continues to serve as counsel for the Debtor and Velar.

Debtor disclosed, for the first time, his interest in the Undisclosed Condominium on April 17, 2015.

Luis Carballo, the estate's special counsel in Costa Rica, performed a public record search on April 23, 2015. Carballo advised the Trustee that Velar was not holding the condominium and had no assets. Rather, the Debtor was using two undisclosed corporations to hold the First and Undisclosed Condominium.

Adolfo Breedy, an attorney with Breedy, informed the Trustee for the first time that the Debtor had no interest in the Lots, on April 27, 2015. Additionally, Trustee learned that Bayside held title to the First Condominium, Free Solutions held title to the Undisclosed Condominium, and the Lot Corporations held title to the Lots.

Trustee therefore requested that the Debtor stipulate for turnover, the Debtor amend his schedules and SOFA, and that the Debtor execute in the presence of a notary a consent authorizing Breedy to deliver the contents of all files in its possession to assist with the estate's liquidation of the assets in Costa Rica.

Court Orders For Turnover of Assets

May 5, 2015 Order For Turnover

On May 5, 2015, the court entered an order granting the stipulation that provided for Debtor to:

- A. Account for and turnover the legal and equitable interest of Velar, Free Solutions, Bayside, and the Lot Corporations;
- B. Account for and turnover the legal and equitable interests in the First Condominium, the Undisclosed Condominium, and the Lots;

C. Account for and turnover the legal and equitable interest of the Debtor and the Costa Rican corporations in funds held by Banco Nacional, Breedy, and Century 21; and

D. Direct all agents, including BN, Breedy, and Century 21, to comply with instructions of the Trustee and her attorneys with respect to the Costa Rican corporations and properties.

Order, Dckt. 122.

On May 6, 2015, Debtor's counsel e-mailed a copy of the Debtor's signed and notarized consent authorizing Breedy to deliver the contents of all files in its possession to Luis Carballo. However, Trustee asserts that the original was never provided to the Trustee.

On August 26, 2015, the Trustee requested that the Debtor provide the original notarized consent. The Trustee asserts that four other requests were made. Trustee was unable to proceed without the original notarized consent form. On September 14, 2015, the Debtor's counsel indicated that the Debtor was out of the country, and would return September 27, 2015, at which time he would provide an original signature.

Trustee has attempted to contact the Debtor, via text messages, to request the original notarized consent. The Trustee asserts that the Debtor has not responded to the Trustee's request nor has the Trustee received the necessary documentation to obtain the legal and equitable interests in the First Condominium, the Undisclosed Condominium, the Lots, and the related Costa Rican entities.

Trustee, by way of the aforementioned exhaustive factual background, asserts that Debtor has repeatedly failed to take reasonable steps to comply with the court's orders.

May 22, 2015 Order for Turnover

On May 22, 2015, the court filed the order granted the Trustee's Motion for Turnover of the following property: (1) The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor Costa Rica; (2) Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.; and (3) Account of RBC Capital Markets, LLC and Edward D. Jones & Co. L.P. previously disclosed by the Debtor in a pending marital dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

Order, Dckt. 135.

In the civil minutes, the court noted the following:

The factual circumstances surrounding this case are unique. The Debtor has allegedly relocated to Costa Rica and has failed to respond to any of the Movant's request for turnover. The assets requested by the Movant all fall within Property of the estate, pursuant to 11 U.S.C. § 541 and the documentation requested is necessary to determine the extent

of the estate's interest as well as necessary for the Movant to perfect any interest the estate may have in the assets. As pointed out by the Movant, the documentation requested is necessary for the Movant, as the fiduciary of the estate, to claim an interest in the Property.

The court ordered the following:

IT IS ORDERED that the Motion for Turnover of Property is granted.

IT IS FURTHER ORDERED that Debtor shall deliver on or before **May 22, 2015**, possession of:

1. The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor, Costa Rica ("Property")
2. Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.
3. Accounts of RBC Capital Markets, LLC and Edward D. Jones and CO. L.P. previously disclosed by the Debtor in a pending marital dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

APPLICABLE LAW

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct

by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

Once an alleged contemnor's noncompliance with a court order is established, the burden shifts to the alleged contemnor to produce sufficient evidence of its inability to comply to raise a question of fact. *In re Icenhower*, 755 F.3d 1130, 1139 (9th Circuit 2014)(internal citations and quotations omitted)

DISCUSSION

The court first notes that the Debtor, Debtor's counsel, and Debtor's Costa Rican counsel has failed to file a response to the instant Motion. The actions of Debtor in the instant case are troubling. On two separate occasions, the court has ordered that the Debtor turnover not only accounting but actual possession of certain assets located in Costa Rica.

Rather than complying with the court's April 23rd turnover order or the May 5th stipulated order, the Debtor has actively, consciously, and purposefully avoided providing the necessary documentation and turnover to the Trustee. The plain language of both orders show that the Debtor is in direct violation of two separate court orders. As stated by the Trustee, the Debtor has failed to turnover the ordered assets to the Trustee and appears to be actively "hiding" behind alleged jurisdictional barricades to hinder the Trustee from performing her fiduciary duties.

Attached to the Trustee's Motion are various correspondences between Trustee's counsel, Debtor's counsel, and Debtor's Costa Rican counsel. From these correspondences, the court can discern that the Debtor has avoided performing the court-ordered turnover through not providing the original notarized consent for the Trustee's counsel to effectuate the ownership of the estate's assets and not responding to Trustee's messages. This is only further emphasized by the Debtor being "out of the country" for a period of time. The Debtor nor Debtor's counsel has provided any information, evidence, or explanation why, after seven months from the court's first order for turnover, why the Debtor has consciously failed to comply with such.

Here, it is clear that the Debtor has failed to comply with two separate, yet interrelated, orders. The court has the authority to "enforce compliance with its lawful judicial orders." *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009). The Debtor's willful violation

at turning over the assets and attempts to avoid such through travel and jurisdictional barriers has wasted judicial resources, the Trustee's resources, and the estate's resources.

Rights of the Estate and Actions of the Trustee

At this juncture, while the Debtor has sought the extraordinary relief of the Bankruptcy Code but has chosen to flaunt the orders of this court and improperly retain, control, and use property of the bankruptcy Estate, the court is unsure of what the Trustee is doing as the sole person authorized to use, control, possess and dispose of this property of the estate.

The Trustee states that Breedy Abogados S.A. is a law firm based in San Jose, Costa Rica which has files and records relating to the pre-petition financial transactions of the Debtor, and possibly post-petition activities with respect of the estate. The Trustee asserts that these records, and the right to the records are property of the Bankruptcy Estate for which she has the sole right to possession, control, and use. But the law firm is refusing to provide the estate's records because the Debtor is refusing to authorize the law firm to provide the estate's records to the Trustee.

Additional records and property of the estate is sought from Century 21 Realty and Banco Nacional. The Trustee states that the Debtor is refusing to authorize Century 21 Realty and Banco Nacional to turn over the property of the estate to the Trustee.

The jurisdiction of this court with respect to property of the bankruptcy estate is worldwide. As discussed in 1-3 Collier on Bankruptcy, ¶ 3.01;

"The section [28 U.S.C. § 1334e)] applies to property "wherever located." This provision gives a United States court exclusive jurisdiction over property located, not only in the United States, but in other countries as well. 122 Nevertheless, a court in another country is not precluded from exercising jurisdiction over property that is part of a title 11 estate located in that country. Whether the exercise of that jurisdiction is appropriate involves such things as the extraterritorial effect of the automatic stay and the in personam jurisdiction of the United States courts over the entity at whose behest the foreign court is acting. That is to say, the extraterritorial jurisdiction of the United States courts for these purposes is in personam rather than in rem. If a creditor causes property of a title 11 estate to be seized in a foreign country, that creditor has violated the automatic stay. Whether that creditor can be sanctioned, however, is a function of that creditor's amenability to United States process. 123 By the same token, a United States court cannot control the action of the foreign court irrespective of section 1334(e). As one court put it, "the bankruptcy court is precluded from exercising control over property of the estate located in a foreign country without the assistance of the foreign courts."

Footnote 122. *Hong Kong & Shanghai Banking Corp. v. Simon*

(*In re Simon*), 153 F.3d 991 (9th Cir. 1998) , cert. denied, 525 U.S. 1141, 119 S. Ct. 1032, 143 L. Ed. 2d 41 (1999).

Footnote 123. *Id.*; *Atteberry v. Barclay's Bank plc (In re Atteberry)*, 159 B.R. 1 (D. Kan. 1993) ; *Levey v. Hamilton (In re Teknek, LLC)*, 354 B.R. 181 (Bankr. N.D. Ill. 2006) ; *In re Chiles Power Supply Co., Inc.*, 46 C.B.C.2d 1109, 264 B.R. 533 (Bankr. W.D. Mo. 2001); *Nakash v. Zur (In re Nakash)*, 190 B.R. 763 (Bankr. S.D.N.Y. 1996); *In re Lykes Bros. S.S. Co.*, 191 B.R. 935 (Bankr. M.D. Fla. 1995)."

The Ninth Circuit Court of Appeal has been clear and unqualified in determining that all property, wherever located in the world, of the Debtor is property of the bankruptcy estate and the bankruptcy court has jurisdiction over all of that property.

"The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). With certain exceptions, the estate is comprised of the debtor's legal or equitable interests in property "wherever located and by whomever held." *Id.* (emphasis supplied). The district court in which the bankruptcy case is commenced obtains exclusive in rem jurisdiction over all of the property in the estate. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983)(interpreting 11 U.S.C. § 1471, the statutory precursor to 11 U.S.C. § 1334(e)). The court's exercise of "custody" over the debtor's property, via its exercise of in rem jurisdiction, essentially creates a fiction that the property - regardless of actual location - is legally located within the jurisdictional boundaries of the district in which the court sits. See *Katchen v. Landy*, 382 U.S. 323, 327, 15 L. Ed. 2d 391, 86 S. Ct. 467 (1966) (noting that bankruptcy courts have "constructive possession" over estate property) (internal quotation marks and citations omitted); *Commodity Futures*, 700 F.2d at 1282 (noting that under the bankruptcy code, "all property of the debtor, wherever located, is in custodia legis of the bankruptcy court."). This includes property outside the territorial jurisdiction of the United States. See *Stegeman*, 425 F.2d at 986 (construing extraterritorial jurisdictional reach of prior Bankruptcy Act); see also *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996).

Given this clear expression of intent by Congress in the express language of the Bankruptcy Code, we conclude that Congress intended extraterritorial application of the Bankruptcy Code as it applies to property of the estate.

Hong Kong and Shanghai Banking Corporation Limited v. William Neil Simon (In re William Neil Simon), 153 F.3d 991, 996 (9th Cir. 1998) , cert. denied, 525 U.S. 1141, 119 S. Ct. 1032, 143 L. Ed. 2d 41 (1999).

The Trustee, as the "owner" of this property (the real and personal property, including records) can act as the owner. If there is a question for

the bank and other parties, the court can issue the appropriate orders providing such assurances to third parties who are dealing with the Trustee in good faith. If the third parties are not dealing in good faith, the Trustee can proceed in this court, to the extent that in personam jurisdiction exists or enforce the Trustee's rights in the Costa Rican courts as appropriate.

The court determines that in addition to, and in support of, the corrective sanctions ordered, the court shall also address the statutory rights of the Trustee and provide a clear order to third parties as to property of the estate and powers of the Trustee.

Continuing Failure to Comply with Orders of the Court

The time for the Debtor to comply with the orders cooperatively and fully has come and gone. The Debtor has now shown through his inaction over the past seven months, whether through the failure to disclose the assets, failure to provide accounting of such assets, or the failure to actually provide the turnover, that he is unwilling and unable to comply with simplest of orders.

The Debtor has not provided any evidence as to why the Debtor cannot comply with the court's orders or how compliance with such is impossible. Instead, the Debtor stays mute, apparently ignoring these proceedings in the same manner as he is ignoring the court's orders.

In seeking to find a person in contempt for failure to comply with a court's prior order, the moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). If the moving party successfully makes the showing of violation of an order, the burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* (citing *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir.1999)).

A bankruptcy court's inherent power allows it to sanction "bad faith" or "willful misconduct," even in the absence of express statutory authority to do so. *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003). It also "allows a bankruptcy court to deter and provide compensation for a broad range of improper litigation tactics." *Id.* (citing *Fink v. Gomez*, 239 F.3d 989, 992-93 (9th Cir.2001)).

The inherent sanction authority differs from the statutory civil contempt authority in at least two ways. First, under the inherent power of a bankruptcy court, the court may sanction a "broad range" of conduct, unlike the "[c]ivil contempt authority[, which only] allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction)." *In re Lehtinen*, 564 F.3d 1052, 1058 (9th Cir. 2009) (quoting *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003)). Second, unlike the civil contempt authority, "[b]efore imposing sanctions under its inherent sanctioning authority, a court must make an explicit finding of bad faith or willful misconduct." *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003)(internal citation omitted).

"Civil penalties must either be compensatory or designed to coerce compliance." *Dyer*, 322 F.3d at 1192(citing *Hanshaw*, 244 F.3d at 1137-38).

Here, the court has been presented with clear and convincing evidence

that Debtor is willfully and intentionally failing to comply with the orders of this court. Debtor is interfering with the Trustee rights, interests, and control of the personal and real property of the bankruptcy case. By his wrongful conduct, Debtor is depriving the estate and the Trustee of the property of the estate, including all of the records and information in the hands of third parties.

Debtor filed this bankruptcy case on September 18, 2014. Under penalty of perjury on Schedule A he listed the Unit #2 property in Tambor, Costa Rica. Dckt. 12 at 10. He did not list interests in any other property in Costa Rica.

On Schedule B, Debtor did not list any interests in any companies, businesses, or entities other than AMI Precision, Inc. Schedule B, *Id.* at 11-13.

This case was converted to one under Chapter 7 on January 31, 2015. Order, Dckt. 48. The grounds for the conversion included Debtor (which serving as the Chapter 13 Debtor, who is a fiduciary of the bankruptcy estate) failing to comply with the Bankruptcy Code with respect to his stated attempts to sell property of the bankruptcy estate, defaulting in payments due under the Chapter 13 Plan, and the misuse of property of the estate by the corporation owned by the estate. Civil Minutes, Dckt. 46.

After the conversion of this case, Debtor proceeded to attempt to sell property of the estate to Ashman Auctions for \$220,000.00. Civil Minutes, Dckt. 164. After the conversion of the case, the Chapter 7 Trustee was the only person authorized to use, sell, lease, possess, or exercise any interest in or right to any property of the bankruptcy estate. 11 U.S.C. § 704. Debtor has been represented by knowledgeable, experienced, professionally regarded bankruptcy counsel. There has been no showing that Debtor had any belief that he could sell property of the bankruptcy estate after the conversion of the case to one under Chapter 7.

The assets in Costa Rica and the monies improperly obtained from the unauthorized attempt to sell the property of the estate may well exceed \$1,000,000.00 in value. Clearly, any corrective sanction issued by the court must be significantly large enough so that Debtor understands the serious consequences of failure to comply. For the first attempt at a corrective sanction, the court orders that if the Debtor fails to deliver the property, all documents and information, and provide the authorizations (though not required since the Trustee is the "owner" and sole person entitled to possession, control, and use of property of the estate, including records and information) by December 14, 2015, the court shall issue an order requiring the Debtor to pay a \$100,000.00 civil sanction to the court. Debtor can avoid the payment of the \$100,000.00 by merely complying with the prior orders of this court.

The court, based on the foregoing, grants the Motion. The Debtor is ordered to on or before December 14, 2015:

1. The Debtor shall account for and turnover to the Trustee the legal and equitable interests of the Debtor in the following corporations organized under the laws of Costa Rica (hereinafter collectively "Corporations"):

- (a) MORENA VELAR S.A., #3-101-498655
- (b) FREE SOLUTIONS IMPERIAL S.A., #3-101-423100;
- (c) BAYSIDE TAMBOR J V M DOS S.A., #3-101-426279;
- (d) 3101495080 S.A., #3-101-495080;

2. The Debtor shall account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the following Costa Rica real property (hereinafter collectively "Subject Properties"):

- (a) BAYSIDE UNIT #2, Tambor, Puntarenas, #57104-F-00;
- (b) 184 LOS DELFINES, Tambor, Puntarenas, #27402-F-00;
- (c) LOT, Guanacaste, #37920-000;
- (d) LOT, Guanacaste, #37922-000.

3. The Debtor shall account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the funds held for their benefit by (hereinafter collectively "Funds");

- (a) BANCO NACIONAL DE COSTA RICA ("Banco");
- (b) BREEDY ABOGADOS S.A. ("Abogados");
- (c) CENTURY 21 GLOBAL ("Brokers").

4. The Debtor shall irrevocably direct all agents, including the Banco, the Abogados and the Brokers, to comply with the instructions if the Trustee and his attorneys with respect to the Corporations, Subject Properties and Funds, including disclosure of information, production of documents, remittance of funds, delivery of possession of the Subject Properties and surrender of shares and books for the Corporations.

The court shall also order the Debtor to appear in court at 10:30 a.m. on December 17, 2015, at the continued hearing on this Motion. At that time, if Debtor has not complied with the prior orders, in addition to the \$100,000.00 civil sanction, the court shall consider the issuance of further civil sanctions, monetary and non-monetary (including civil incarceration) to obtain compliance with the court's orders. Additionally, the court will consider whether to refer this failure to comply with the court's orders to the United States District Court for that court's exercise of its criminal contempt powers.

The court shall issue a Chambers Prepared Order (not a minute order) substantially in the following form holding that:

Kimberly J Husted, the Chapter 7 Trustee has filed this Motion for Contempt based on the failure of Walter Helge Schaefer, the Debtor, to comply

with the prior orders of the court. On May 5, 2015, (Dckt. 122) pursuant to the Stipulation of Walter Helge Schaefer, the Debtor, and the Chapter 7 Trustee, the court ordered:

The Debtor shall account for and turnover to the Trustee the legal and equitable interests of the Debtor in the following corporations organized under the laws of Costa Rica (hereinafter collectively "Corporations"):

- (a) MORENA VELAR S.A., #3-101-498655;
- (b) FREE SOLUTIONS IMPERIAL S.A., #3-101-423100;
- (c) BAYSIDE TAMBOR J V M DOS S.A., #3-101-426279;
- (d) 3101495080 S.A., #3-101-495080.

The Debtor shall account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the following Costa Rica real property (hereinafter collectively "Subject Properties"):

- (a) BAYSIDE UNIT #2, Tambor, Puntarenas, #57104-F-00;
- (b) 184 LOS DELFINES, Tambor, Puntarenas, #27402-F-00;
- (c) LOT, Guanacaste, #37920-000;
- (d) LOT, Guanacaste, #37922-000.

The Debtor shall account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the funds held for their benefit by (hereinafter collectively "Funds"):

- (a) BANCO NACIONAL DE COSTA RICA ("Banco");
- (b) BREEDY ABOGADOS S.A. ("Abogados");
- (c) CENTURY 21 GLOBAL ("Brokers").

The court further ordered that, pursuant to the Stipulation of Walter Helge Schaefer, the Debtor, that,

The Debtor shall irrevocably direct all agents, including the Banco, the Abogados and the Brokers, to comply with instructions of the Trustee and his attorneys with respect to the Corporations, Subject Properties and Funds, including disclosure of information, production of documents, remittance of funds, delivery of possession of the Subject Properties and surrender of shares and books for the Corporations.

In the Stipulation by which Walter Helge Schaefer, the Debtor, has already given his irrevocable direction to all agents to comply with the instructions of the Trustee to turnover and deliver all property of the bankruptcy estate, books, records and information. Stipulation, Dckt. 121, a copy of which is attached to this Order as Addendum A. The irrevocable instruction is stated in the Stipulation ¶ B as follows:

The Debtor hereby irrevocably directs all agents, including the Banco, the Abogados and the Brokers to comply with instructions of the Trustee and his attorneys with respect to the Costa Rica Assets, including disclosure of information,

production of documents, remittance of funds, delivery of possession of the Subject Properties and surrender of shares and books for the Corporations.

On May 22, 2015, the court filed a second order requiring that Walter Helge Schaefer, the Debtor, deliver, on or before **May 22, 2015**, possession of:

1. The real property commonly known as Los Del Fines, Bayside, Unit #2, Tambor, Costa Rica ("Property")
2. Documents related to the Property's control and transfer including the shares of books for the Costa Rica corporation known as Morena Velar, S.A.
3. Accounts of RBC Capital Markets, LLC and Edward D. Jones and CO. L.P. previously disclosed by the Debtor in a pending marital dissolution proceeding, along with any documents related to their control and transfer, including statements and deposit and withdrawal receipts reflecting current location of proceeds.

with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property

to the Chapter 7 Trustee.

As set forth in the court's findings of fact and conclusions of law for the November 19, 2015 hearing on this Motion, Walter Helge Schaefer, the Debtor, has willfully and intentionally failed to comply with the above orders. Further, that the court will afford Mr. Schaefer a final opportunity to comply before a Civil Sanction of \$100,000.00 is imposed and the court considers further civil sanctions, monetary and civil incarceration, and the referral of this matter to the United States District Court for the Eastern District of California for punitive sanction proceedings.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

Therefore, upon review of the Motion, supporting pleadings, the files in this case; the failure of Walter Helge Schaefer, the Debtor, to comply with prior orders of the court; the reported attempted unauthorized sales of property of the bankruptcy estate by Walter Helge Schaefer, the Debtor, after this case was converted to one under Chapter 7; and good cause appearing;

IT IS ORDERED that a further hearing on this Motion is continued to 10:30 a.m. on December 17, 2015, for the court to ascertain the compliance of Walter Helge Schaefer, the Debtor,

with this Order, issuance of further civil corrective sanctions if this Order has not been complied with, and consideration of referring this failure to comply with the orders of this court to the United States District Court for the Eastern District of California for proceedings pursuant to that court's criminal contempt power.

IT IS FURTHER ORDERED that if Walter Helge Schaefer, the Debtor, fails on or before **December 14, 2015**, to:

1. Account for and turnover to the Trustee the legal and equitable interests of the Debtor in the following corporations organized under the laws of Costa Rica (hereinafter collectively "Corporations"):

- (a) MORENA VELAR S.A., #3-101-498655
- (b) FREE SOLUTIONS IMPERIAL S.A., #3-101-423100,
- (c) BAYSIDE TAMBOR J V M DOS S.A., #3-101-426279,
- (d) 3101495080 S.A., #3-101-495080;

2. Account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the following Costa Rica real property (hereinafter collectively "Subject Properties"):

- (a) BAYSIDE UNIT #2, Tambor, Puntarenas, #57104-F-00,
- (b) 184 LOS DELFINES, Tambor, Puntarenas, #27402-F-00,
- (c) LOT, Guanacaste, #37920-000,
- (d) LOT, Guanacaste, #37922-000;

3. Account for and turnover to the Trustee the legal and equitable interests of the Debtor and the Corporations in the funds held for their benefit by (hereinafter collectively "Funds"):

- (a) BANCO NCIONAL DE COSTA RICA ("Banco"),
- (b) BREEDY ABOGADOS S.A. ("Abogados"),
- (c) CENTURY 21 GLOBAL ("Brokers");

the court shall issue an order imposing and requiring Walter Helge Schaefer, the Debtor, pay \$100,000.00 in Civil Sanctions to the Clerk of the United States Bankruptcy Court, for said monies to be deposited in the U.S. Treasury. Walter Helge Schaefer, the Debtor, may avoid the imposition of the \$100,000.00 in Civil Sanctions by timely complying with this order which only requires what was the Debtor was ordered to do in prior orders.

IT IS FURTHER ORDERED that all persons, including all agents, expressly including, without limitation,

- A. Banco Nacional De Costa Rica,
- B. Breedy Abogados S.A., and
- C. Century 21 Global,

and their respective agents, employees, officers, representatives, and attorneys, are authorized to and shall comply with instructions of the Trustee and his attorneys with respect to the Costa Rica Assets, including disclosure of information, production of documents, remittance of funds, delivery of possession of the properties and businesses described in this Order and deliver possession of the of the shares and books for the Corporations and business enterprises listed in Paragraph 1 in the forgoing section of this Order.

Kimberly J. Husted, the Chapter 7 Trustee is the sole person authorized to hold, possess, use, sell, lease, or control any and all property of the bankruptcy estate of Walter Helge Schaefer, the Debtor. 11 U.S.C. § 704. "Property of the bankruptcy estate," wherever located in the world, is defined in 11 U.S.C. § 541 to include: legal; equitable; community property; and inherited, through dissolution of marriage, or life insurance obtained within 180-days after the commencement of the bankruptcy case property, rights, and interests, and all Proceeds, product, offspring, rents, or profits of or from such property.

IT IS FURTHER ORDERED that in addition to Kimberly J. Husted, the Chapter 7 Trustee, having the right to hold, possess, use, sell, lease, or control any and all property of the bankruptcy estate, including the records and information relating thereto, Walter Helge Schaefer, the Debtor has irrevocably authorized and directed in the Stipulation filed with this Court (copy attached as Addendum A to this Order) all and each agent, including those specifically stated above, to comply with the instructions of Kimberly J. Husted, the Chapter 7 Trustee, for the turnover of assets, information, and documents.

All persons may rely upon the irrevocable authorization provided in the Stipulation attached hereto as Addendum A and in this Order upon receipt of a copy of this Order which has been certified by the Clerk or a Deputy Clerks of the United States Bankruptcy Court for the Eastern District of California.

IT IS FURTHER ORDERED that Walter Helge Schaefer, the Debtor, and his counsel shall appear at the United States Bankruptcy Court, 501 I Street, Courtroom 33 (Sixth Floor), Sacramento, California at 10:30 a.m. on December 17, 2015, for

the continued hearing on this Motion.

ADDENDUM A

Case Number: 2014-29361

Filed: 5/5/2015 2:10:58 PM

Doc # 121

1 3

2 J. RUSSELL CUNNINGHAM, State Bar #130578
3 J. LUKE HENDRIX, State Bar #271424
4 GABRIEL P. HERRERA, State Bar #287093
5 NABEEL M. ZUBERI, State Bar #294600
6 DESMOND, NOLAN, LIVAICH & CUNNINGHAM
7 1830 15th Street
8 Sacramento, California 95811
9 Telephone: (916) 443-2051
10 Facsimile: (916) 443-2651

11 Attorneys for Kimberly J. Husted
12 Chapter 7 Trustee

13 UNITED STATES BANKRUPTCY COURT

14 EASTERN DISTRICT OF CALIFORNIA

15 SACRAMENTO DIVISION

16 In re:

Case No. 14-29361-E-7
Chapter 7

17 WALTER HELGE SCHAEFER,

DNL-7

18 Debtor.
19

20 **STIPULATION FOR TURNOVER OF COSTA RICA ASSETS**

21 KIMBERLY J. HUSTED ("Trustee") and WALTER HELGE SHAEFER
22 ("Debtor"), in support of their stipulation, recite that:

23 1. On September 18, 2014, the Debtor commenced the above-captioned
24 bankruptcy case by filing a voluntary Chapter 13 petition. The Debtor's case was converted
25 to one under Chapter 7 on January 31, 2015, since which time the Trustee has served as the
26 duly appointed trustee for the Debtor's bankruptcy estate ("Estate").
27
28

1 2. Property of the Estate includes the legal and equitable interests of the Debtor
2 in the following corporations organized under the laws of Costa Rica (hereinafter
3 collectively "Corporations"):

- 4 (a) MORENA VELAR S.A., #3-101-498655;
5 (b) FREE SOLUTIONS IMPERIAL S.A., #3-101-423100;
6 (c) BAYSIDE TAMBOR J V M DOS S.A., #3-101-426279;
7 (d) 3101495080 S.A., #3-101-495080.

9 3. Property of the Estate includes the legal and equitable interests of the Debtor
10 and the Corporations in the following Costa Rica real property (hereinafter collectively
11 "Subject Properties"):

- 12 (a) BAYSIDE UNIT #2, Tambor, Puntarenas, #57104-F-00;
13 (b) 184 LOS DELFINES, Tambor, Puntarenas, #27402-F-00;
14 (c) LOT, Guanacaste, #37920-000;
15 (d) LOT, Guanacaste, #37922-000.

17 4. Property of the Estate includes the legal and equitable interests of the Debtor
18 and the Corporations in the funds held for their benefit by (hereinafter collectively
19 "Funds"):

- 20 (a) BANCO NACIONAL DE COSTA RICA ("Banco");
21 (b) BREEDY ABOGADOS S.A. ("Abogados");
22 (c) CENTURY 21 GLOBAL ("Brokers").

24 **NOW WHEREFORE**, it is stipulated that:

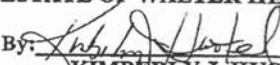
25 A. The Debtor shall account for and turnover the Corporations, the Subject
26 Properties and the Funds (hereinafter "Costa Rica Assets") to the Trustee.
27
28

1 B. The Debtor hereby irrevocably directs all agents, including the Banco, the
2 Abogados and the Brokers to comply with instructions of the Trustee and his attorneys with
3 respect to the Costa Rica Assets, including disclosure of information, production of
4 documents, remittance of funds, delivery of possession of the Subject Properties and
5 surrender of shares and books for the Corporations.
6

7 WHEREFORE, the parties respectfully request an order consistent with the
8 foregoing and for such other and further relief as the Court deems necessary and proper.
9

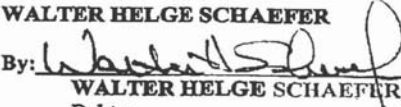
10 Dated: ^{May} April 5, 2015

ESTATE OF WALTER HELGE SCHAEFER

11 By: 
12 KIMBERLY J. HUSTED
13 Trustee

14 Dated: April 5, 2015
15 MAY

WALTER HELGE SCHAEFER

16 By: 
17 WALTER HELGE SCHAEFER,
18 Debtor
19
20
21
22
23
24
25
26
27
28