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In re

**Turner & Cook, Inc.,  
Debtor.**

**Chapter 7  
Case # 10-11344**

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**John R. Canney, III, Trustee,  
Plaintiff,**

**v.**

**Fisher & Strattner, LLC, et al.,  
Defendants.**

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**Adversary Proceeding  
# 11-1033**

**ORDER TO SHOW CAUSE**  
**WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT**  
**FOR FAILING TO COMPLY WITH THE COURT'S JUDGMENT AND**  
**ORDERED TO PAY SANCTIONS FOR HIS FAILURE TO COMPLY**

On March 14, 2014, this Court entered an order granting in part and denying in part the Trustee's motion for partial summary judgment, and directing Mr. Fisher (the "Defendant") to turn over certain property to the Trustee (doc. # 147). A judgment to this effect was entered on March 24, 2014 (doc. # 152) (the "Judgment"). On March 26, 2014, the Defendant filed a motion for reconsideration (doc. # 153), which the Court denied on May 14, 2014 (doc. # 169) (the "Order"). The Defendant appealed from the Court's Order on May 28, 2014, and sought a stay of execution of the Order pending appeal (doc. # 172). The Court denied the request, finding that the Defendant had failed to set forth facts warranting a stay (doc. # 174).

On June 5, 2014, the Trustee filed an emergency motion, alleging that the Defendant had failed to turn over the property (doc. # 178) (the "Motion"). The Motion further asserts that the Defendant has continually delayed turnover of the property by allowing other parties use of the property and not following through on promises to contact the Trustee concerning the delivery of the property. The Trustee's claims are thoroughly supported by an affidavit that sets forth factual allegations and other evidence supporting a finding that the Defendant has willfully disregarded the Court's Order. While the Trustee's Motion paints a clear picture of the Debtor as someone who fully understands what the judgment in this proceeding requires him to do, and is blatantly refusing to comply with that judgment, due process requires that the Court set a hearing to afford the Debtor an opportunity to dispute the allegations and demonstrate that a finding of contempt is not warranted.

In determining what constitutes sufficient notice to the Debtor of such a hearing, the Court weighs heavily the clarity of this Court's March 14, 2014 Memorandum of Decision and Order and its March 24, 2014 Judgment, the specificity of the Trustee's allegations, and the risk of irreparable harm to the estate. The Order entered on the Trustee's motion for summary judgment concluded as follows:

IT IS FURTHER ORDERED that Mr. Fisher (1) shall forthwith turn over to the Trustee all property identified as subject to turn over in the accompanying memorandum of decision, and (2) effective immediately, is prohibited from disposing of, transferring, alienating or modifying the location or condition of any of that property, or authorizing or allowing others to do so, except as instructed by the Trustee.

Doc. # 147 (emphasis added). The Judgment entered to implement this decision again declared the Debtor's obligations in unequivocal language:

IT IS FURTHER ORDERED that Defendant Mark Fisher shall immediately turn over to the Plaintiff, and immediately notify the Plaintiff by telephone of the availability for transfer of possession to the Plaintiff of, the following property, along with their titles and all keys:

2002 Skytrack 8042 telehandler, Model #80422, Serial # 11705, with attachments  
John Deere 4700 tractor, Serial # LY4700H270828, with attachments  
2004 GMC Sierra 2500, VIN GTHK23284F191280  
2003 Chevy Silverado, VIN GCHK29403E114019

(doc. # 152) (emphasis added). These Court rulings make abundantly clear that the Defendant was to turn over the described property immediately, and effective immediately was to refrain from transferring or modifying the location of the described property. The Trustee's Motion avers that the Defendant has failed to turn over the property through this date, nearly three months after entry of the Judgment and Order, and has relocated the property in direct violation of the Order. Additionally, at this point, it appears that these pieces of property constitute a substantial portion of the estate's assets, Mr. Fisher's conduct puts at risk the estate's ability to recover and liquidate these assets, and the loss of these assets would be of significant harm to the estate. Based upon the clarity and severity of the Trustee's allegations, the Defendant's recalcitrance throughout this proceeding, and a weighing of these three salient factors, THE COURT FINDS there is cause to address the Motion on a dramatically expedited basis, and to require the Trustee and Mr. Fisher to appear in person to address whether Mr. Fisher should be held in contempt and punished for that conduct.

Accordingly, IT IS HEREBY ORDERED that

- (1) the parties shall appear, in person, at a hearing to be held at 2:30 p.m. on June 10, 2014, at the United States Bankruptcy Court in Burlington, Vermont;
- (2) if the Defendant delivers the property to the control or custody of Trustee, in compliance with the Order and Judgment, and the Trustee files a notice of compliance by 10:00 a.m. on June 9, 2014,

attorneys' fees in connection with his Motion;

- (3) if the Defendant fails to turn over the property in compliance with the Order and Judgment before 10:00 a.m. on June 9, 2014, or fails to appear at the June 10, 2014 hearing at 2:30 P.M., as required by paragraphs (1) and (2) above, the Court will issue a bench warrant for his arrest; and
- (4) the Trustee shall send a copy of this order to the Defendant, by email and regular first class mail, and also notify the Defendant of its contents by telephone (leaving a voice mail message if he does not answer), and filed a certificate of service affirming he has done so, by 2:00 p.m. today, June 6, 2014.

SO ORDERED.

June 6, 2014  
Burlington, Vermont



Colleen A. Brown  
United States Bankruptcy Judge