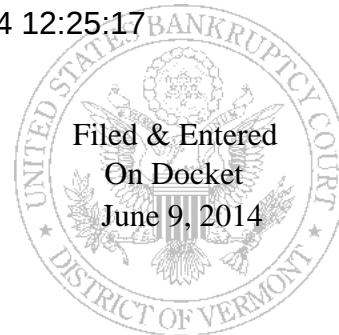


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re

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

**Chapter 7
Case # 10-11344**

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

v.

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

**Adversary Proceeding
11-1033**

AMENDED ORDER*
DENYING DEFENDANT'S SECOND REQUEST FOR RECONSIDERATION AND
DEFENDANTS SECOND REQUEST FOR A STAY PENDING APPEAL

On Friday, June 6, 2014, this Court entered an order to show cause directing the Defendant, Mark Fisher, to appear at a hearing on June 10, 2014, in Burlington, Vermont, and show cause why he should not be (i) held in contempt for failing to comply with this Court's judgment and order and (ii) ordered to pay sanctions for his failure to comply (doc. # 180). Therein, the Court set forth the procedural history underlying that order to show cause, as well as Mr. Fisher's conduct in this case leading to entry of that order, most particularly, his failure to comply with the unequivocal directive that he turn over certain property to the Plaintiff, the chapter 7 trustee. That order was entered on the docket shortly before noon, and Plaintiff's counsel served a copy of that order on Mr. Fisher before 1:00 P.M., i.e., within one hour of entry, on the same day. See doc. # 181. Four hours later, at approximately 5:00 P.M. on Friday afternoon, the Defendant filed a 10-page document labeled as the Defendant's motion to reconsider stay pending appeal and Defendant's alternative motion for emergency temporary stay in order to permit Defendant to seek a stay from District Court (doc. # 182, the "Instant Motion").

The Instant Motion is wholly unavailing. It begins by re-arguing the merits of his request for a stay. The Court has already denied him a stay in connection with his appeal (doc. # 174). The Defendant also reiterates his arguments as to the merits of the trustee's motion for summary judgment (doc. # 131). The Court has already granted the Plaintiff motion for summary judgment (doc. # 153) and denied the Defendant's motion for reconsideration (doc. # 168). The Court will not adjudicate them a third time.

The Defendant next describes the medical conditions from which he suffers, and which underlie the Social Security Administration's determination that he is totally disabled. Additionally, he sets forth the content of the letter from his physician, which he filed with the Court in May 2013 (doc. #100). Not only is the Court cognizant of Mr. Fisher's serious medical ailments, it has, as a result of these infirmities, authorized him to be excused from hearings and granted extensions of time if he filed letters from his physician at regular intervals. However, he failed to do that and the litigation proceeded. Judgment entered in this proceeding on March 24, 2104 (doc. # 152). The Court will not grant the Defendant any special relief at this time, post-judgment, based upon his poor health.

In the Instant Motion, the Defendant goes on to describe his difficult living situation and argues that if he is required to turn over assets of the estate it will indeed cause him "irreparable harm." He urges the Court to find this to be a sufficient basis to grant him reconsideration, vacate the judgment against him, and grant him a stay pending appeal. That argument is without merit. First, the Defendant put forth these arguments as part of his last motion for reconsideration (doc. # 153) and the Court found them to be insufficient (doc. ## 168, 169). Second, even if his compliance with the Court's order and judgment cause Mr. Fisher personal hardship – hardship he asserts constitutes irreparable harm – the pertinent statutes and ruling require that this property of the estate be sold and its proceeds distributed to unsecured creditors. Notwithstanding the Defendant's opinion to the contrary, the Plaintiff has established, and the Court has determined, that the property which is the subject of the Instant Motion is not Mr. Fisher's property. It is apparent the Defendant is absolutely convinced this property belongs to him, that he should be permitted to keep it, and that he desperately needs it. However, this does not change the fact that after careful consideration of the facts and law the Court has ruled he has no right to it. Therefore, the time has come for Mr. Fisher to turn over this property to the trustee.

Lastly, the Court also denies the Defendant's alternate request for a stay of the judgment so that he can file a request for a stay pending appeal in the U.S. District. Under Bankruptcy Rule 8005, the Defendant properly sought that stay pending appeal in this Court. He filed his notice of appeal with a request for a stay on May 28, 2014 (doc. # 172). This Court considered and denied the request for a stay by order entered the next day, on May 29, 2014 (doc. 174). More than one week passed and the Defendant took no steps to obtain a stay pending appeal from the U.S. District Court. He waited until the Plaintiff filed the motion to enforce his judgment. The timing strongly suggests that the Defendant is primarily acting to delay and thwart the Plaintiff's attempt to liquidate assets of the bankruptcy estate. This causes harm to the bankruptcy estate and to all unsecured creditors. The Defendant has not demonstrated a likelihood of success on the merits or a sound purpose for the relief. Thus, it is denied.

For the foregoing reasons, IT IS HEREBY ORDERED that (i) the Defendant's motion for this Court to reconsider its denial of the Defendant's request for a stay pending appeal, and (ii) the Defendant's alternative motion for an emergency temporary stay to permit him to seek a stay from the U.S. District Court (doc. # 182) are DENIED in all aspects.

The Court's June 6th order to show cause (doc. # 180) clearly identifies the options available to the Defendant:

1. he can deliver the property to the trustee before the June 10th hearing, and then be excused from appearing at the hearing; or
2. he can refuse to the deliver the property to the trustee and appear in Court on June 10th where he will be held in contempt, unless he can show the trustee's allegations as to his failure to comply with the Judgment and Order are untrue; or
3. he can refuse to deliver the property to the trustee and fail to appear at the hearing, which will result in his being arrested and subject to sanctions, unless and until he complies with this Court's judgment and order, i.e., delivers the subject property to the trustee.

SO ORDERED.

June 9, 2014
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

* amended solely to modify paragraph 3 on page 3.