

Individuals and Corporations Need to Beware of Civil Contempt in Bankruptcy Court

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It probably does not surprise the majority of the readers that when an individual in bankruptcy court violates a court order that the bankruptcy court can find that individual in civil contempt of court. In Florida, civil contempt is punishable by incarceration, if the party in contempt has the present ability to comply with the court order and willfully refuses to do so. *See, Bowen v. Bowen*, 471 So.2d 1274, 1277 (Fla. 1985). Moreover, according to the 11th Circuit, a bankruptcy court has the power to imprison an individual for contempt of court when the individual fails to comply with a bankruptcy court order. *See, In re Lawrence*, 279 F.3d 1294, 1297 (11th Cir. 2002).

If an individual can be incarcerated for failure to comply with a bankruptcy court order, what happens when a corporation violates a bankruptcy court order?

The pertinent case law provides that a corporation may be held in civil contempt for its failure to comply with a bankruptcy court order. *See, In re Stebbins*, 293 B.R. 113, 115 (Bankr. W.D.N.Y. 2003). The bankruptcy court may order a corporation held in civil contempt to pay any actual damages sustained as a result of the corporation's failure to perform, as well as legal fees incurred by the complainant. *Id.* Stated differently, the court has the ability in a civil contempt proceeding to impose a fine to be paid to the complainant, by the contemnor corporation, as compensation for any damages sustained as a result of the corporation's conduct. *See, In re Spanish River Plaza Realty Co., Ltd.*, 155 B.R. 249, 254 (Bankr. S.D. Fla. 1993).

Furthermore, the corporate officers and directors of the contemnor corporation may also be held in civil contempt if they prevented the corporation from complying with the terms of the bankruptcy court order or failed to take appropriate action within their power with respect to the corporation complying with the terms of the bankruptcy court order. *See, In re Hentges*, 2007 WL 1577801, 3 (Bankr. N.D. Okla. 2007). In addition, the bankruptcy court has the authority to designate which individual is the person in control of the corporation. *See, In re Continuum Care Services, Inc.*, 375 B.R. 692, 694 (Bankr. S.D. Fla. 2007). The bankruptcy court is further authorized to incarcerate the appropriate corporate officers and directors, deemed in civil contempt, for failing to comply with a bankruptcy court order, provided that the contemnor is able to comply with the court's order; however, once the contempt is purged by the contemnor, imprisonment can no longer continue. *See, In re Spanish River Plaza Realty Co., Ltd.*, 155 B.R. at 254.

It is also important to consider that the complainant may be entitled to sanctions against the contemnor for violation of a bankruptcy court order, pursuant to section 105(a) of the Bankruptcy Code, which provides, in pertinent part, that "the court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The bankruptcy court may impose such sanctions, under section 105(a), upon "a finding of civil contempt...based on clear and convincing evidence that a court order was violated." *In re Williams*, 1999 WL 33587415, 2 (Bankr. S.D. Ga. 1999) (*citing Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539, 1545 (11th Cir. 1996)).

In conclusion, both individuals and corporations before the bankruptcy court should recognize that the bankruptcy court has the ability to find either of them in civil contempt for the failure to comply with a bankruptcy court order.

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