

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
AMERICA'S VOICE, INC.,	)	Case No. 99-02704
	)	(Chapter 11)
Debtor.	)	
_____	)	
	)	
FERMAN PATTERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No.
	)	00-0006
AMERICA'S VOICE, INC. ,	)	
	)	
Defendant.	)	

DECISION RE MOTION FOR CONTEMPT

The plaintiff seeks to hold the debtor in contempt for failing to pay \$350.00 in attorney's fees awarded by an order entered on March 30, 2000 (which was vacated on April 25, 2000 and then reinstated on June 6, 2000) and \$519.80 awarded by an order entered on July 14, 2000.

I

A court's contempt powers are not ordinarily used in the enforcement of a monetary judgment. Instead, the plaintiff resorts to execution remedies under F.R. Civ. P. 69. "[W]hen a party fails to satisfy a court-imposed money judgment the appropriate remedy is a writ of execution, not a finding of contempt." Combs v. Ryan's Coal Co., 785 F.2d 970, 980 (11th Cir.), cert. denied sub nom. Simmons v. Combs, 479 U.S. 853 (1986). Accord, Aetna Cas. & Sur. Co. v. Markarian, 114 F.3d 346, 349 (1st Cir. 1997); Shuffler v. Heritage Bank, 720 F.2d 1141, 1147-48 (9th Cir. 1983); Chase & Sanborn Corp. v. Nordberg,

872 F.2d 397 (11th Cir. 1989).<sup>1</sup>

Contempt is available to assist in the collection of a monetary judgment only in rare circumstances, none of which exist here. For example, if a debtor has failed to turn over assets required to be turned over pursuant to an inquiry in assets available to satisfy the judgment, contempt may be an appropriate means of enforcing the judgment. See Freeman v. Heiman, 426 F.2d 1050 (10th Cir. 1970) (order to pay judgment in installments,

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<sup>1</sup> As observed in Baxter State Bank v. Bernhard, 186 F.R.D. 621 (D. Kan. 1999):

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The court notes that, as a general rule, courts addressing the execution of judgments hold that "the proper means ... to secure compliance with a money judgment is to seek a writ of execution." Hilao v. Estate of Marcos, 95 F.3d 848, 854 (9th Cir. 1996) (quoting Shuffler v. Heritage Bank, 720 F.2d 1141, 1148 (9th Cir.1983)). According to MOORE'S FEDERAL PRACTICE,

Rule 69(a) provides that the "process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise." This language appears to contemplate a means to enforce money judgments other than by writ of execution. However, such other means are confined only to cases in which established principles warrant equitable relief, such as when execution would be an inadequate remedy. For example, enforcement through the imposition of a contempt sanction would not be authorized absent exceptional circumstances.

13 MOORE'S FEDERAL PRACTICE 3D § 69.02 (1997). See also Combs v. Ryan's Coal Co., . . .; Gabovitch v. Lundy, 584 F.2d 559, 560-61 (1st Cir. 1978) ("[T]he legislative history and judicial application of Rule 69(a) make clear that the first sentence of the Rule expresses a limitation on the means of enforcement of money judgments and does not create a general power to issue writs of execution in disregard of the state law incorporated by the rest of the Rule").

based on hearing on assets, was enforceable by contempt); Atlas Corp. v. DeVilliers, 447 F.2d 799, 803 (10th Cir. 1971).<sup>2</sup>

Similarly, if the debtor avoids a writ of execution by misleading the marshal and liquidating assets, thus engaging in a contempt of the court's writ, contempt sanctions may be available to coerce payment of the judgment. Laborers' Pension Fund v. Dirty Work Unlimited, Inc., 919 F.2d 491, 494 (7th Cir. 1990).

Finally, the courts have used the contempt power to assure compliance with a federal statute requiring payments to a class of beneficiaries. See Combs, 785 F.2d at 980 n.4; Pierce v. Vision Investments, Inc., 779 F.2d 302 (5th Cir. 1986)

(prohibition of 28 U.S.C. § 2007(a) against imprisonment for debt in Texas did not apply to judgment obtained by Secretary of Housing and Urban Development requiring developer to escrow monies to pay to purchasers who had been harmed by violations of Interstate Land Sales Full Disclosure Act).

Because coercive contempt sanctions may not be employed to collect a monetary judgment, it follows that compensatory contempt sanctions are equally unavailable. Ordinarily, the so-called American rule is that attorney's fees are not recoverable in litigation or in the collection of a judgment.<sup>3</sup> To the extent

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<sup>2</sup> In this adversary proceeding, no inquiry has been held to identify assets to be turned over to satisfy the monetary sanction award (and the court has not determined whether such an approach is appropriate under F.R. Civ. P. 69 and the law of the District of Columbia which it incorporates).

<sup>3</sup> Fees incurred in collecting a contempt award are possibly an exception to that rule: when someone is in contempt, the compensable harm arguably ought to include attorney's fees

that the Motion for Contempt seeks to recover damages for the delay in payment, that is a question of interest to which the plaintiff is entitled for reasons discussed in part IV.

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occasioned by the contempt. Had the awards here been based on contempt, an argument could be made that attorney's fees incurred in collecting the contempt damages award should also be compensable as additional damages arising from contempt.

## II

The March 30 order simply directed that "the Debtor shall pay to Plaintiff's Counsel the sum of \$350.00 as reasonable attorneys' fees." Although couched in mandatory language, the order was simply a monetary award collectible like any monetary judgment. Accordingly, contempt is not an appropriate sanction with respect to the \$350 award.

## III

The July 14 order directing the deposit of \$519.80 arose as follows. The court's Final Judgment entered on April 25, 2000, directed that a stay pending appeal would be granted if the judgment amount of \$36,857.00 plus \$200 to cover appellate costs was deposited with the court within 10 days. The court entered an Order on June 7, 2000, staying the judgment pending appeal because the necessary deposit had been made. The court awarded \$519.80 in costs by an order entered on June 13, 2000. Because execution of the judgment had been stayed, but the deposit had not covered the costs recovered at the trial court level, the plaintiff filed a motion to require the debtor to deposit the additional sum of \$519.80 in the registry of the court. Implicitly, the motion sought to increase the deposit required as a condition to staying collection of the judgment. The court's July 14 order granted that motion by directing that the debtor "deposit the additional sum of \$519.80 in the Registry of the Court, within 14 days after entry of this order."

Although the July 14 order placed a time limit on making the

deposit, this was because the deposit was related to the stay pending appeal: if the deposit were not made, the court would have entertained a motion to vacate the stay. In any event, the \$519.80 was a compensatory award of costs. As in the case of the \$350.00 award of attorney's fees, the \$519.80 was not collectible by employing a motion for contempt. Accordingly, contempt is not an appropriate sanction with respect to the \$519.80 award of costs.

#### IV

Because the plaintiff must treat the sanctions orders as monetary awards, the debtor is entitled to recover interest on these awards under 28 U.S.C. § 1961. Such interest should be recoverable from the deposit that has been posted as a bond and the interest earned on that deposit.

The costs award of \$519.80 became part of the judgment and bore interest from the date of entry of the judgment even though it was not entered until over two months after that date. Copper Liquor, Inc. v. Adolph Coors Co., 701 F.2d 542 (5th Cir. 1983) (en banc unanimous decision); 28 U.S.C. § 1920 (costs become part of judgment).

The March 30, 2000 fee award of \$350.00 specified no deadline for payment. March 30, 2000 could arguably be used as the date from which interest runs.<sup>4</sup> But for simplicity's sake,

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<sup>4</sup> Although the motion to reconsider that award was not resolved until June 6, 2000, that is no different than an unsuccessful motion to vacate a final judgment.

it will be treated in the same manner as the award of costs which, after all, are incurred sometimes months before entry of the final judgment, yet do not bear interest until entry of the final judgment. The \$350 award will thus bear interest from the April 25, 2000 date on which the final judgment was entered.

An order follows.

October 4, 2000.

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S. Martin Teel, Jr.  
United States Bankruptcy Judge

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