

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings
	)	Under Chapter 7
HARLAN RAY SIMPSON,	)	
	)	No. BK 84-40193
Debtor.	)	
GIBSON KARNES, Trustee,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY NO.
	)	85-0220
JEFFREY WAYNE SIMPSON,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's Motion for Certificate of Contempt. On September 20, 1985 plaintiff filed a complaint alleging that a transfer of certain real estate from debtor to Jeffrey Wayne Simpson was null and void. The defendant failed to answer, and a default judgment was subsequently entered on October 28, 1985. Defendant was ordered to return the property, or its value, to the Trustee. The parties then entered into settlement negotiations, and on April 1, 1987 the plaintiff filed a Petition to Compromise. The petition provided, in part, as follows:

That the parties, by their respective counsel, have tentatively agreed that the Defendant will remit to the Trustee the sum of FIVE THOUSAND DOLLARS (\$5,000.00) in full and complete settlement of the above-entitled adversary proceeding.

(Petition to Compromise, ¶5). No objections to the petition were filed, and on May 1, 1987 this Court entered an order approving the

compromise. Defendant has since refused to pay the \$5,000.00, but has responded to plaintiff's demand for payment with an offer of \$2,000.00. Plaintiff now requests that defendant be held in contempt for failing to comply with the Court's orders of October 28, 1985 and May 1, 1987.

The first issue this Court must address is whether bankruptcy courts have contempt powers. "The cases are currently divided respecting the extent of the contempt power of a bankruptcy judge, if any, and the constitutionality of any such power. This uncertainty is due to the limitations on the powers of a non-Article III court...and to the statutory changes enacted subsequent to the Marathon decision..." Matter of Kalpana Electronics, Inc., 58 B.R. 326, 332 (Bankr. E.D. N.Y. 1986). Some courts have held that 11 U.S.C. §105(a) authorizes bankruptcy courts to exercise contempt powers. See, e.g., In re McCary, 60 B.R. 152, 154 (Bankr. N.D. Ill. 1986). Other cases have held that all courts, including bankruptcy courts, have "inherent" contempt powers. See In re Johns-Manville Corp., 26 B.R. 919, 924 (Bankr. S.D. N.Y. 1983). The Ninth Circuit, however, has recently held that bankruptcy courts do not have contempt powers, and that section 105(a) does not confer such authority on the bankruptcy courts. In re Sequoia Auto Brokers, Ltd., No. 85-2352 (9th Cir. Sep. 14, 1987).

The Court need not decide this issue in the present case. Regardless of whether bankruptcy courts have contempt powers, this is not a proper case in which to apply those powers. "In order to hold a party in contempt, the court must be able to point to a decree from the court which 'set[s] forth in specific detail an unequivocal command' which the party in contempt violated." Ferrell v. Pierce, 785 F.2d

1372, 1378 (7th Cir. 1986) (citations omitted). Furthermore, there is "no authority for the use of contempt proceedings...to enforce a court-approved compromise and settlement agreement, the terms of which are not incorporated in a court order, decree, or judgment." Gardiner v. A.H. Robins Co., Inc., 747 F.2d 1180, 1190 n. 13 (8th Cir. 1984). "[T]he court cannot use its contempt powers to enforce a court order which merely acknowledges and approves a settlement, without specifically commanding or enjoining any particular conduct." Id. The order approving the petition to compromise simply acknowledges and approves a compromise entered into by the parties. It does not "unequivocally command" the parties to perform some act, nor does it enjoin any particular conduct. As such, the court could not use its contempt powers, if any, to enforce this order.

Plaintiff also requests that defendant be held in contempt for failing to comply with the default judgment order, in which defendant was ordered to return the subject property to the Trustee. However, once the order approving the compromise was entered, defendant was no longer bound by the default judgment. The Court cannot, therefore, hold him in contempt for failure to comply with that order.

Finally, plaintiff requests that the order approving the compromise be vacated. In light of the apparent disagreement between the parties regarding the terms of the "settlement," the Court agrees that the order should be vacated.

Accordingly, plaintiff's Motion for Certificate of Contempt is DENIED. The Notice of Impending Dismissal for Want of Prosecution and the resulting Motion for Default Judgment, both of which were

erroneously filed, are STRICKEN. The Order Approving Compromise is  
VACATED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: October 6, 1987