

K. CONCLUSION

The Petitioner believes that he is a reasonable man and based upon all of the issues and facts stated above believes that the Contempt Order and Order for Bodily Detention be reversed.

The Petitioner requests that the Court grant the petition for writ of certiorari.

Respectfully Submitted,



Clifford Allen Brace

En Pro Per

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United State Court of Appeals
for the Ninth Circuit

No. 21-55153

Clifford Allen Brace, Jr.,
Plaintiff-Appellant

v.

Steven M. Speier, Chapter 7 Trustee,
Defendant-Appellees

Appeal from the United States District Court
for the Central District of California

Submitted: August 17, 2021
Filed: August 25, 2021

Before SILVERMAN, CHRISTEN, and LEE, Circuit
Judges

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Clifford Allen Brace, Jr. appeals pro se from the district court's order affirming the bankruptcy court's July 22, 2020 civil contempt order against Brace.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We have jurisdiction under 28 U.S.C. § 158(d)(1). We review de novo a district court's decision on appeal from a bankruptcy court, and apply the same standard of review the district court applied to the bankruptcy court's decision. *Christensen v. Tucson Estates, Inc.* (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). We affirm.

The bankruptcy court did not abuse its discretion in finding Brace in civil contempt for violating the automatic stay because the trustee showed by clear and convincing evidence that Brace

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knew of the automatic stay and refused to cure his violation. See *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191 (9th Cir. 2003) (a party seeking an order of contempt has the burden to show by clear and convincing evidence that the contemnor violated the automatic stay (citation and internal quotation marks omitted)).

We reject as without merit Brace's contentions that the bankruptcy court lacked jurisdiction and that the bankruptcy judge was biased against him.

Brace's motion for stay (Docket Entry No. 7) is denied.

AFFIRMED.

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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

No. 23-1641 JGB

Clifford Allen Brace, Jr.,
Plaintiff-Appellant

v.

Steven M. Speier, Chapter 7 Trustee,
Defendant-Appellees

AFFIRMING an Order by the United states
Bankruptcy Court for the Central District of
California (IN CHAMBERS)

Filed: February 2, 2021

Before The Honorable JESUS G. BERNAL

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Before the Court is Debtor's appeal, ("Appeal," Dkt. No. 1.), from the bankruptcy court's Order re: Further Adjudication of Civil Contempt Including Bodily Detention of Debtor, Clifford Allen Brace ("July 22 Contempt Order," Dkt. No. 1.) The Court finds the matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Appeal, the Court AFFIRMS the July 22 Contempt Order.

I. BACKGROUND

On May 16, 2011, Clifford Allen Brace,Jr. ("Appellant" or "Debtor") filed a voluntary petition under Chapter 7 of Title 11 of the United States Code in the United States Bankruptcy Court for the Central District of California, Riverside Division. (Dkt. No. 1.) He has filed numerous appeals stemming from his bankruptcy case, which included an Order that directed him to turn over property of the bankruptcy estate, the real property located at 16270 Apple Valley Road, Apple Valley, CA 92307 (the "Apple Valley Property," also known as the "Chippewa Property") and to account for and turn over any rents. (Id.)

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Appellant presently appeals the bankruptcy court's July 22, 2020 Contempt Order, which found good cause to further adjudicate Debtor to be in civil contempt. (Id.) The July 22 Contempt Order found Debtor to be in further contempt for violating the First Contempt Order,

Appellee's description of this case is as follows: Prior to entering bankruptcy, Debtor transferred his interests in several properties to a trust controlled by his spouse. (Answer 1.) After the bankruptcy court determined the properties were the community property of Debtor and his spouse (and thus the property of the bankruptcy estate in their entirety,) the Trustee recovered the properties, including the property relevant to this appeal. (Id.) Following that, Debtor leased the various properties and kept the rents. (Id.) As a result, the bankruptcy court adjudicated Debtor to be in contempt in a prior contempt order. (Id.) Debtor unsuccessfully appealed the prior contempt order. (Id. at 2.)

Following that, in February 2020, Debtor orchestrated a foreclosure sale of the Apple Valley Property at issue here "pursuant to a fraudulent deed of trust." (Id.) As a result of the sale, Debtor

received \$229,000.00, which he kept. (Id.) The bankruptcy court determined that Debtor's Foreclosure Sale constituted a willful violation of the automatic stay set forth in 11 U.S.C. § 362(a). (Id.) The bankruptcy court also determined that Debtor's Foreclosure Sale additionally violated two previous orders of the court which determined that the Apple Valley Property was an asset of the estate and that prohibited Debtor from exercising any control over the Property. (Id.)¹

Appellant now pursues a "throw spaghetti at the wall" method of appeal, contending that the Bankruptcy court erred in issuing the bodily detention order for at least five reasons. (Opening.) None stick.

A. Automatic Stay Arguments

As a first principle, property of a bankruptcy estate is protected by an automatic stay until such property is no longer property of the estate. 11 U.S.C. § 362(c)(1) ("[T]he stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate"). "The purpose of § 362(a)'s

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automatic stay is to protect both the debtor and his creditors." In re Conejo Enterprises, Inc., 96 F.3d 346, 351 (9th Cir. 1996). Bankruptcy courts may grant relief from this automatic stay, but only upon showing of "cause." (Id. (quoting 11 U.S.C. § 362(d)).) Cause is determined on a case-by-case basis. (Id.)

Additionally, to hold a party in contempt, the movant must show by clear and convincing evidence that the party violated a specific and definite court order. In re Dyer, 322 F.3d 1178, 1190-91 (9th Cir. 2003). A bankruptcy court's automatic stay qualifies as a specific and definite court order. Id. at 1191. A stay violation also must be willful. Id. For purposes of finding contempt, willfulness does not depend on the party's intent or subjective belief. Id.

1. A court considering a bankruptcy appeal may take judicial notice of the underlying bankruptcy records. See In re E.R. Fegert, Inc., 887 F.2d 955, 957-58 (9th Cir. 1989). The Court may also take judicial notice of bankruptcy proceedings other than the one being appealed. See In re Coast Grain Co., 2006 WL 6810917, at *6 (B.A.P. 9th Cir. Jan. 31, 2006).

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All the movant needs to show is that the contemnor knew of the automatic stay and that he or she intended the actions that violated the stay. Id.

Appellant first argues that the bankruptcy court erred in issuing the bodily detention order "because there was no automatic stay in force" at the time of the foreclosure. (Opening 20.) He additionally argues that he had an "objectively reasonable" belief that his actions were permissible and thus contempt was unwarranted. (Id. at 26.) The Court does so here.

There was clearly an automatic stay in force in this case—it was automatically entered and the bankruptcy court did not grant relief for cause. However, even if there were no automatic stay, Appellant's argument would be without merit. Automatic stays are only one kind of Order; violation of other kinds of Orders may still give rise to contempt. And the bankruptcy court rightfully issued the Order below on the grounds that Debtor was in contempt of: "(1) the automatic stay in this bankruptcy case arising under 11 U.S.C. § 362(a), (2) the court's Order Granting Trustee's Omnibus Motion for Order Approving Compromise ('Compromise Order'), which was entered on October

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5, 2017 as Docket No. 12 , and (3) the court's Order Granting Emergency Motion for Turnover of Real Property ('Turnover Order,') which was entered on January 2, 2019 as Docket No: 170." (Dkt. No. 1.)

The Apple Valley Property was adjudicated to be property of the Brace Estate and thus subject to the automatic stay governing the Brace Estate's assets in the Compromise Order. (Dkt. No. 13 Exh. F, "Compromise Order".) The Turnover Order clearly stated that Debtor was prohibited from exercising control over the property. (Id. Exh. P, "Turnover Order, "Debtor and any entity under his direction or control, ... shall turn over the Property in its entirety and Debtor shall not, directly or indirectly, exercise any control over the Property including, but not limited to ... interfering with the Trustee's control over the Property in any manner.") This Court affirmed the Turnover Order. In Re Brace, 2019 WL 8011734, at *3-4 (C.D. Cal. Nov. 22, 2019). The Ninth Circuit affirmed the Court, though on the grounds that Appellant forfeited his appeal. In re Brace; 829 F. App'x 815 (9th Cir. 2020).

The bankruptcy court did not err when it found Debtor in contempt of three separate Orders

and the presence and clarity of both the Compromise Order and the Turnover Order make any argument that Appellant had no notice that he could not sell the Property absurd.

B. Jurisdictional Arguments

Appellant also raises a number of jurisdictional arguments. (See, e.g., Opening 22, 26.) As the Court has previously articulated in response to identical arguments made in Debtor's other appeals, "Appellant's jurisdictional arguments are meritless." In re Brace, 2019 U.S. Dist. LEXIS 228037, at *8 (C.D. Cal. Nov. 22, 2019) (noting that "Appellant raised the same issues in an appeal to the Bankruptcy Appellate Panel, which rejected the jurisdictional contention as specious.").

The bankruptcy court has jurisdiction over the Property pursuant to 28 U.S.C. §§ 157(b)(2)(A), (E) and 1334(b). The Contempt Order resulted from a core proceeding under 28 U.S.C. § 157(b)(2)(E).

Appellant also makes the jurisdictional argument that the proceeds from the sale of the

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Apple Valley Property are actually the property of the "GEJ Estate." (Reply 8.) He claims that the bankruptcy court "does not have jurisdiction over those probate assets and therefore does not have jurisdiction over assets which are not a part of the Debtor[s] estate." (Id.) These arguments are contrary to the final Orders of the Bankruptcy Court and beyond the scope of this appeal. A bankruptcy court's final orders are not subject to later collateral attack based upon challenges to its subject matter jurisdiction. *Traveler's Indem. Co. v. Bailey*, 557 U.S. 137, 147 (2009). The Compromise Order, which Debtor did not appeal, and the Turnover Order, which Debtor appealed and lost, both conclusively establish that the Apple Valley Property was the property of the Brace Bankruptcy Estate—not the GEJ Estate. See *In re Brace*, 829 F. App'x at 816 (finding Appellant waived his right to appeal the Turnover Order by not appearing at the hearing; finding the District Court correctly affirmed the bankruptcy court on the merits). Appellee is clear that Appellant's Opening impermissibly collaterally attacks prior final bankruptcy court Orders in this appeal. (Response 22.) This cannot continue.

C. Miscellaneous Arguments

Appellant finally raises a number of catch-all arguments. One, repeated in the Reply, is that the bankruptcy court's bodily detention order is invalid because it does not specify the means by which Debtor was to purge the contempt. (Reply 14.) Appellant argues that he cannot return the \$229,000.00 he gained in the unlawful foreclosure sale of the Property because such proceeds are not in his possession—they are in the possession of the GEJ Estate, which is not a party to the bankruptcy action. (Id., at 15.) This argument is discussed above. Appellant's characterization of the funds he gained from the foreclosure sale as belonging to another estate is a fiction already rebutted by the bankruptcy court in Orders not subject to appeal here. Though Debtor is within his right to appeal the July 22 Contempt Order, the Court is neither willing nor able to unwind previous Orders (specifically, the Compromise and Turnover Orders—both final) in this proceeding. "Under the 'law of the case' doctrine, one panel of an appellate court will not as a general rule reconsider questions which another panel has decided on a prior appeal in the same case." *Kimball v. Callahan*, 590 F.2d 768, 771 (9th Cir. 1979).

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IV. CONCLUSION

For the foregoing reasons, the bankruptcy court's order is **AFFIRMED**.

IT IS SO ORDERED.

IN THE UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

Clifford Allen Brace, JR., Case No.6:11-bk-26154-sy
Debtor-Plaintiff,
Chapter 7

v.

Steven M. Speier, Further adjudication of
Trustee-Defendant civil contempt including
bodily detention of
debtor, Clifford Allen
Brace, JR.

(Filed July 22, 2020)

On June 18, 2020 at 9:30 a.m. the court conducted a hearing on the continued Order to Show Cause re: Civil Contempt Order for Willful Violation of the Automatic Stay by Alleged Creditor Conducting Unlawful Foreclosure. Sale of Estate Property ("OSC") entered on April 1, 2020 as Docket No. 212 ("Hearing"). The chapter 7 trustee, Steven M. Speier, ("Trustee") appeared by and through counsel, D. Edward Hays of Marshack Hays LLP. Debtor

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Clifford Allen Brace, Jr. ("Debtor") failed to appear. Seth P. Cox appeared on behalf of Catamount Properties 2018, LLC ("Catamount")

The court has read and considered the Trustee's Application for Issuance of an Order to Show Cause re: Civil Contempt for Willful Violation of the Automatic Stay by Alleged Creditor Conducting Unlawful Foreclosure Sale of Estate Property filed on March 23, 2020 as Docket No. 209, the Debtor's objection filed on March 30, 2020 as Docket Nos. 210 and 211, the OSC, the Debtor's objection filed on April 2, 2020 as Docket No. 214, Debtor's further written response filed on April 17, 2020 as Docket No. 216, Trustee's reply filed on April 23, 2020 as Docket No. 217, Catamount's response filed on April 24, 2020, as Docket No. 218, the Order Adjudicating Debtor, Clifford Allen Brace, Jr., in Civil Contempt for Willful Violation of the Automatic Stay by Conducting Unlawful Foreclosure Sale of Estate Property ("First Contempt Order") entered on May 5, 2020 as Docket No. 222, the Declaration of Judith E. Marshack re: Attorney's Fees and Costs Incurred by Trustee and the Estate Related to Contempt Motion and Order to Show Cause Hearing filed on May 21, 2020 as Docket No. 235, and Clifford

Allen Brace Jr.'s Objections to Attorney's Fees and Costs Submitted Incurred by Trustee and the Estate Related to Contempt Motion and Order to Show Cause Hearing filed on June 8, 2020 as Docket No. 245. After hearing and considering oral argument, the court found good cause to further adjudicate Debtor to be in civil contempt. For the reasons set forth in the papers filed by Trustee and based on the findings and conclusions as stated by the court on the record,

IT IS ORDERED THAT

1. In addition to the First Contempt Order, which adjudicated Clifford Allen Brace, Jr. in civil contempt of (1) the automatic stay in this bankruptcy case arising under 11 U.S.C. § 362(a), (2) the court's Order Granting Trustee's Omnibus Motion for Order Approving Compromise ("Compromise Order"), which was entered on October 5, 2017 as Docket No. 123, and (3) the court's Order Granting Emergency Motion for Turnover of Real Property ("Turnover Order"), which was entered on January 2, 2019 as Docket No. 170, for his actions in conducting a foreclosure sale ("Foreclosure Sale") of the estate's real property commonly known as 16270 Chippewa

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Road, Apple. Valley, CA 92307 [APN: 0441-057-03] ("Property")¹ and coming into possession of and failing to return the \$229,000 in proceeds of the sale, Clifford Allen Brace, Jr. is further adjudicated to be in civil contempt for failing to timely purge his contempt by turning over the proceeds of the foreclosure sale in the amount of \$229,000 within seven days after entry of the First Contempt Order as required by that order.

2. Within 30 days after entry of this order, Debtor is further ordered to pay damages of \$26,080.99 to the estate arising from Debtor's contempt to date, comprised of attorneys' fees and costs incurred by Trustee and the estate related to the contempt motion and order to show cause hearings.

3. Debtor failed to purge his contempt or to establish by admissible evidence sufficient cause why he should not be held in further contempt at the continued hearing held on June 18, 2020 as required by the First Contempt Order.

¹ The legal description of the Property is set forth in the exhibit to this order.

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The court thus now finds that no lesser alternative is available than to enter a bodily detention order for Debtor.

4. Pursuant to the court's civil contempt powers, a writ of bodily detention and warrant for civil arrest is issued and the United States Marshals Service is authorized and directed to arrest and incarcerate Clifford Allen Brace, Jr. until he appears at a rescheduled hearing on the OSC at a date and time selected by the court, or is discharged according to the law.

5. The United States Marshals Service is authorized to take all necessary actions in connection with Mr. Brace's apprehension including, but not limited to, the use of reasonable force. Mr. Brace's last known street address is 22421 Barton Road, Suite 190, Grand Terrace, CA 92313.

6. The bankruptcy estate will hold the United States Marshals Service harmless of any liability that may arise as a result of executing any writ of bodily detention;

7. The United States Marshals Service is authorized and directed to detain and incarcerate the Mr. Brace until this court determines that he has fully purged all contempt;

8. If Mr. Brace is found in a district outside the United States Bankruptcy Court for the Central District of California, he shall be taken into custody and removed as follows:

A. If taken into custody at a place less than 100 miles from the United States Bankruptcy Court, Central District of California, 3420 Twelfth Street, Suite 345, Riverside, California 92501-3819 ("Courthouse"), he shall be brought forthwith before this court; or

B. If taken into custody at a place 100 miles or more from the Courthouse, he shall be brought without unnecessary delay before the nearest available United States bankruptcy judge. If, after hearing, the bankruptcy judge finds that the person in custody is the Debtor, Clifford Allen Brace, Jr., or if Mr. Brace waives a hearing, the bankruptcy judge shall order removal, and Mr. Brace shall be released only

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on conditions ensuring prompt appearance before this court.

9. The provisions of this order are civil and not criminal in nature and are designed only to coerce compliance with this court's orders and judgments including turnover of the \$229,000 of foreclosure sale proceeds and payment of the \$26,080.99 in monetary damages as set forth in this order.

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Date: July 22, 2020

/s/ Scott H. Yun _____
Scott H. Yun
United States Bankruptcy Judge

LEGAL DESCRIPTION

Real property in the Town of Apple Valley, County of San Bernardino, State of California, described as follows:

LOT 50, TRACT NO. 4763, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 60 OF MAPS, PAGES 77 THROUGH 82, INCLUSIVE, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER. THE INTEREST HEREIN RESERVED, SAVED AND EXCEPTED SHALL BE FREE AND CLEAR OF ALL COST FOR EXPLORATION, DRILLING AND MARKETING OF ANY AND ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS BY REASON OF ANY EXPLORATION OR DRILLING FOR SUCH OIL, GAS AND OTHER HYDROCARBONS AND MINERALS SAVED OR PRODUCED BY GRANTEE, HIS HEIRS, PERSONAL

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REPRESENTATIVES, SUCCESSORS, LESSEES OR ASSIGNS, AND SHALL FURTHER BE FREE OF ANY OTHER EXPENSES IN CONNEMON THEREWITH WITHOUT THE GRANTORS PRIOR WRITTEN CONSENT TO ANY SUCH EXPLORATION, DRILLING OR MARKING, PROVIDED, HOWEVER, THAT SUCH RESERVED RIGHTS SHALL NOT BE EXERCISED BY MEANS OF ANY ENTRY UPON THE SURFACE OF, IN, UNDER OR ACROSS THE HEREIN DESCRIBED PROPERTY AND THE SUB-SURFACE THEREOF TO A DEPTH OF 500 FEET MEASURED IN A VERTICAL DIREmON FROM THE EARTH'S SURFACE OF SAID LAND. SAID RESERVED INTEREST BEING THE SAME UNDIVIDED INTEREST REFERRED TO IN THE DECLARATION OF RESTRIMONS NOW OF RECORD COVERING SAID TRACT, AS RESERVED IN THE DEED FROM iLLIE INSURANCE AND TRUST COMPANY, RECORDED FEBRUARY 26, 1965, IN BOOK 6338, PAGE 323, OFFICIAL RECORDS.

APN: 0441-057-03