

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

In re Edward Serrano,

Debtor.

Bankr. 19-20819

Chapter 13

Judge Jacqueline Cox

**Order on Rules to Show Cause ( Dkts. 65 & 67)**

**Background**

After creditor S.B.T. Investments LLC (“S.B.T.”) encountered resistance from the Debtor and his broker Mario Zelaya to its efforts to investigate the Debtor’s financial circumstances, it obtained an order compelling compliance with its discovery requests. Compliance did not ensue.

On March 16, 2020, this court entered a Rule to Show Cause at docket 65 addressed to Mario Zelaya to show cause why he should not be held in contempt of court for failure to obey a subpoena and the March 2, 2020 order that required him to produce documents by March 7, 2020 and to appear for a deposition by March 13, 2020.

On March 16, 2020, this court entered a Rule to Show Cause at docket no. 67 addressed to Debtor Edward Serrano to show cause why he should not be held in contempt of court for his failure to obey a subpoena and the March 2, 2020 order that required him to produce documents by March 5, 2020 and to appear for a deposition by March 12, 2020.

A contested hearing/trial on the Rules to Show Cause was held via Zoom for Government video conference on June 9, 2020.

An objection to claim filed at docket 60 was also set for hearing on June 9, 2020. The Debtor’s attorney withdrew the objection at the hearing after S.B.T. filed an amended proof of claim. Transcript of June 9, 2020 hearing (“Transcript”), p. 4.

Both Mario Zelaya and Debtor Edward Serrano testified.

Mr. Zelaya was the broker for real estate located at 4269 N. Ruby Street, Schiller Park, Illinois, owned by the Debtor and offered for sale on a Multiple Listing Service (“MLS”). He was subpoenaed to produce documents about efforts to sell the real estate. He admitted that he did not produce any documents even though he had some information such as text messages between him and the Debtor. In addition, he could have pulled information about persons who requested showings of the property. Transcript, pp. 7, 17, 22, 23, 77. He testified that he did not have a written listing agreement with the Debtor although they agreed on a 5% commission. He did not have any written sale materials but such information was available online. Transcript, p. 8. Mr. Zelaya admitted that he did not produce that information or any information about a tenant residing month to month in the premises, as noted on the MLS sheet. In addition, he did not produce the lease noted on the MLS sheet. Nor did he disclose the names of prospective buyers who toured the property. Transcript, p. 17. He did not disclose any communications asking for access to the premises for viewing by potential buyers.

Mr. Zelaya had a platform that allowed brokers to seek access to the property, but he did not produce any information from it. Transcript, p. 15. He testified that he could go on a Show Time app and get a report of the showings; however, he did not produce that information. Transcript, p. 16.

Mr. Zelaya admitted that he could, but did not, screen shot his text messages,. Transcript, p. 78.

At one point Mr. Zelaya testified that he misunderstood the request. Transcript, p. 19. He testified that he stopped opening the emails about this matter and that he did not contact S.B.T.’s attorney in response to the March 2, 2020 court order. Transcript, p. 27.

Mr. Zelaya disappeared from the screen when asked several times about not producing documents in response to creditor S.B.T.’s production request. Transcript, pp. 29-30.

When asked about the month-to-month lease mentioned on the MLS sheet the Debtor denied that there was a tenant with a lease on the premises. He admitted that he did not obtain and turn over his bank records even though S.B.T. requested them. Transcript, pp. 49, 60. He did not disclose who the tenant/occupant was until the trial, without disclosing her address; he testified that he has not looked at the MLS sheet that mentioned that a tenant was on the

premises. Transcript, pp. 63-64.

Perhaps, S.B.T. could have examined his bank records to discern whether he received rental payments. The Debtor responded in general that he did not have the records requested; he was reminded that he has a duty under the discovery rules to obtain and tender them. He did not take any steps to obtain the documents requested from a third party. Transcript, p. 44.

The Debtor produced only two pages of tax returns for two years; he did not produce schedules submitted with those returns. Transcript, pp. 48-49.

He did not produce information about his automobiles. Transcript, pp. 49-50, 56.

He did not produce documents evidencing his homeowner's insurance coverage. Transcript, p. 53.

Regarding tax returns, he indicated that he turned over what he had, but did not seek to obtain his Illinois tax returns. Transcript, p. 54: ("I produced what I had.").

He filed his federal tax returns after the fact. He did not testify that he supplemented a prior response with the later-filed tax returns.

The Debtor did not produce information relating to his ownership of real estate. Transcript, p. 57.

The Debtor did not turn over emails or texts between him and professional(s) retained to sell the Schiller Park real estate.

Federal Rule of Bankruptcy Procedure ("Fed. R. Bank. P.") 9014(c) applies Fed. R. Bank. P. 7034 to contested matters. Rule 7034(b)(2) states that parties to whom a request to produce is directed must respond in writing, respond to each item requested, state whether information is being withheld based on the objection and state with specificity the grounds for objecting to the request, including the reasons. Mr. Zelaya submitted nothing in response to S.B.T.'s requests. The court notes an affidavit the Debtor submitted at docket 45 that makes several assertions, including that the property in issue had not been rented, that he did not have a tenant with a lease there, and that he did not receive \$1000 per month rent. The Debtor's Motion to Quash, ¶ 7, states that all requested documents had been tendered. However, the Debtor's June 9, 2020 testimony shows otherwise.

The court has stated many times that the purpose of bankruptcy is to allow honest debtors

to make a fresh start by discharging their debts. Bankruptcy courts provide extraordinary relief; however, debtors have to cooperate with their creditors' efforts to examine their financial circumstances. The Debtor has performed miserably in this regard. He admitted that he did not turn over bank records. He explained that he did not have them in his possession. He has a duty to obtain them and turn them over. Note the Debtor's response to the production request, attached to his Motion to Quash at docket 57, at ¶ 3. The creditor requested account records at financial institutions for the prior four years. The response does not include records, only the name of a bank, PNC, with a \$1,719.70 balance. This is inadequate, including because no part of an account number(s) is disclosed.

The Debtor testified that he did what was in his power to do to produce requested documents/information. Transcript, p. 79. However, that is not true since he did not obtain the information/documents requested which he is otherwise required to do according to Bankruptcy Code ("Code") sections 11 U.S.C. § 521(e)(2)(A), 521(e)(2)(C), 521(f)(1), 521(f)(2), 521(f)(3) and 521(f)(4). Those Code sections require debtors to disclose tax returns, not just part of the returns filed. The creditors and trustees to whom debtors have to make the disclosures need not be satisfied with being told to get the information/documents elsewhere.

Debtor's counsel argued that the creditor's discovery motion was improper because it was filed in an adversary proceeding which sought to deny the Debtor a chapter 7 discharge under section 727 of the Code, when this is a chapter 13 case. The only adversary proceeding filed in bankruptcy case 19-20819 is 19-01046 wherein creditor S.B.T. sought to deny the Debtor a discharge of its debt under section 727 of the Code. Review of the docket therein does not show that the discovery motions and efforts in issue were filed in that adversary proceeding; they were filed in the bankruptcy case. Counsel's concerns are without merit.

### **Contempt Generally**

Bankruptcy courts have authority to impose civil contempt remedies. *In re Stasz*, 387 B.R. 271, 276 (B.A.P. 9th Cir. 2008). A contempt sanction is civil if it is remedial, for the benefit of the petitioner and criminal if it is punitive, if its purpose is to vindicate the authority of the court. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827-28 (1994). It is not clear whether creditor S.B.T. seeks remedial relief. However, the distinction between

criminal and civil contempt goes to the nature of the relief sought and the purpose of the relief. Penalties for criminal contempt are intended to be punitive, while sanctions for civil contempt are employed to coerce compliance with a court order or to compensate a petitioner for losses sustained.

Mario Zelaya and the Debtor Edward Serrano have made themselves judges of the validity of the subpoena and the March 2, 2020 order by refusing to obey the order and not reaching out to the creditor's attorney to discuss it. If this conduct were to be allowed to stand, this court would become impotent and "the judicial power of the United States" would be a mere mockery. *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911).

On today's date Supreme Court Justice Kavanaugh noted that "[i]n our system of government . . . no one is above the law." *Trump v. Vance*, 2020 WL 3848062, \* 13 (July 9, 2020). Mr. Zelaya and the Debtor Edward Serrano are not above the law. Their explanations of why and how they refused to comply with the subpoenas and the March 2, 2020 order are inexcusable efforts to place themselves above the law.

Considering the status of this chapter 13 case, where the Debtor has repeatedly refused to produce routine information, despite a court order to do so, this court finds that in addition to the civil contempt remedies imposed herein, dismissal of this case and a two-year bar to refile is warranted because the Debtor has not only violated a court order, he has refused to comply with his section 521 obligations.

Creditor S.B.T. was well within its rights to seek the requested information from the Debtor and Mr. Zelaya, much of which the Debtor was required to disclose under section 521 of the Code.

### **Conclusion**

The court finds that it would be futile to enter civil remedial remedies as to Mario Zelaya and the Debtor requiring future compliance with the subpoenas and the March 2, 2020 order. Their trial testimonies show that they have no intention of complying with their obligations to obey subpoenas.

Based on his trial testimony the court finds Mario Zelaya in indirect civil contempt based on his wilful refusal to comply with the March 2, 2020 order and the subpoena served on him by

creditor S.B.T. He is hereby found liable to pay S.B.T. the attorneys' fees and costs it incurred in attempting to secure his compliance.


The court hereby finds, based on his trial testimony, that the Debtor Edward Serrano is in indirect civil contempt of court for his failure to comply with the subpoena S.B.T. served on him and his later failure to obey the March 2, 2020 order by refusing to obtain and turn over the requested information. Debtor Edward Serrano is liable to S.B.T. for the attorneys' fees and costs it incurred in attempting to secure his compliance with the discovery requests/subpoena.

Creditor S.B.T. may file an itemization of the fees and costs it incurred in pursuing compliance with the subpoenas and the March 2, 2020 order.

Further, this bankruptcy case is dismissed as an additional sanction.

The Debtor Edward Serrano is barred from filing a petition for bankruptcy relief under all chapters of the Bankruptcy Code for two years, on or before July 9, 2022.

Judge:



Date: July 9, 2020