

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re)
SURGE TRANSPORTATION, INC.,¹) Case No.: 3:23-bk-1712
Debtor.) Chapter 11
_____)

**MOTION FOR ISSUANCE OF WRIT OF BODILY
ATTACHMENT AGAINST AURAM YERYMESKU AS
REPRESENTATIVE OF ADR LOGISTICS, LLC A/K/A ADR DISPATCH
FOR INTENTIONAL VIOLATION OF MULTIPLE COURT ORDERS**

Debtor Surge Transportation, Inc. (“Surge”), moves this Court for the issuance of a writ of bodily attachment against Auram Yerymesku, representative of ADR Logistics, LLC a/k/a ADR Dispatch (“ADR”), for violating this Court’s Order Granting Debtor’s Motion for Contempt and Sanctions Against ADR Logistics, LLC a/k/a ADR Dispatch for Its Intentional Violation of the Automatic Stay (the “Contempt Order”) [Docket No. 193] and the Order Imposing Additional Sanctions Against ADR Logistics, LLC a/k/a ADR Dispatch for its Intentional Violation of the Automatic Stay (the “Order Imposing Additional Sanctions”) [Docket No. 244]. In support, Surge states as follows:

¹ The Federal Employer Identification Number of the Debtor is 81-224742. The principal address of the Debtor is 7077 Bonneval Road, Suite 550, Jacksonville, Florida 32216.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core matter.
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested is 11 U.S.C. § 105 and Rules 9014 and 9020, Federal Rules of Bankruptcy Procedure.

BACKGROUND

4. On July 24, 2023 (the “Petition Date”), Surge filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.
5. Surge is continuing in possession of its property and managing its business as debtor in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
6. Surge is a Jacksonville based trucking/freight broker licensed with the U.S. Department of Transportation and the United States Federal Motor Carrier Safety Administration which specializes in sourcing extra truckload capacity during peak season periods and on short lead times. Surge maintains satellite offices in Chicago, Illinois and Ashburn, Virginia.
7. ADR is a motor carrier that, prepetition, delivered truckloads of freight pursuant to agreements with Surge. As of the Petition Date, ADR held an unsecured claim against Surge for unpaid motor carrier delivery charges.

8. Auram V. Yerymesku is the registered agent for, and it is believed to be, the owner of ADR. Yerymesku is also believed to be the author of the email communications between ADR and Surge and its representatives which were submitted into evidence in connection with the hearings that resulted in the Contempt Order and Order Imposing Additional Sanctions.

9. After the Petition Date, ADR hatched a corrupt and dishonest scheme to extort payment from Surge of its prepetition claim by pretending to be willing to provide routine freight delivery services for Surge and then holding the load hostage.

10. ADR was warned multiple times that these actions were a violation of the automatic stay to no avail, ultimately resulting in Surge filing its Motion for Contempt and Sanctions Against ADR Logistics, LLC a/k/a ADR Dispatch for its Intentional Violation of the Automatic Stay [Docket No. 119].

11. After a trial on the motion on September 13, 2023, this Court entered the Contempt Order on September 27, 2023. The Contempt Order found that ADR willfully violated the automatic stay, ordered ADR to refund Surge a total of \$13,075 and ordered ADR's representative to appear in person with counsel on October 25, 2023, to show cause why additional sanctions should not be imposed.

12. The Contempt Order was served on ADR. ADR received the Contempt Order, as evidenced by its response filed on September 29, 2023, which stated it would not comply with the Order filed by the "pocketed judge" [Docket No. 202].

13. ADR failed to refund Surge by the deadline and did not appear at the October 25, 2023, trial. As a result, the Order Imposing Additional Sanctions was entered on October 27, 2023.

14. The Order Imposing Additional Sanctions required ADR to pay additional sanctions, including \$22,653 in compensatory damages representing attorneys' fees and costs incurred by Surge and restocking and re-wrapping fees; \$128,000 in compensatory damages relating to the severing of the business relationship between Surge and its customer due to ADR's willful and malicious actions; and \$50,000 in punitive damages.

15. ADR was given 21 days to comply with the Order Imposing Additional Sanctions. The twenty-one-day deadline for payment passed without compliance.

16. At the October 25 trial, the Court stated it would entertain a motion for writ of bodily attachment in the event of ADR's willful failure to comply with its orders:

ADR Logistics is ordered to pay the entirety of the sanctions listed above and file an affidavit of proof of payment with the Court within twenty-one (21) days of the entry of this Order. In the event ADR Logistics fails to comply, the Court will entertain a motion for writ of bodily attachment based upon the willful failure of ADR Logistics and its authorized representatives to comply with multiple court orders.

Paragraph 7, Order Imposing
Additional Sanctions.

17. The Order Imposing Additional Sanctions was served on ADR by U.S. Mail and also by electronic mail. ADR received this order, as evidenced by an email received by counsel for Surge, wherein the representative from ADR believed to be Mr. Yerymesku responded with profanity and a chain of middle finger emojis and reiterated it would not comply with the order of the "bought out judge."

18. Despite this Court's previous orders, ADR continues its threats. In an email dated December 18, 2023, ADR stated:

Your last chance to remove the freight guard against our company.

Just because you have a judge bought out and bribed does not mean you can interfere with our way of life through theft of our labor and now lying that we hostaged load.

We have multiple companies we can book Surge loads through and we will actually hostage a load.

We will show you this email once we have load through another company and will continue to do so until you drop your lies and accept the fact that you've only paid us for services we provided and deny to acknowledge your bankruptcy fraud claim and your kangaroo court bullshit.

ARGUMENT

19. Bankruptcy courts have authority to enforce their own orders and the power to sanction contempt of those orders. *Alderwoods Group, Inc. v. Garcia*, 682 F.3d 958, 969 (11th Cir. 2012) (“[A] bankruptcy court necessarily has power to enforce its own orders regarding administration of the estate”); *see also In re New River Dry Dock, Inc.*, 497 B.R. 359, 361 (Bankr. S.D. Fla. 2013).

20. Further, bankruptcy courts are able to issue sanctions, including writs of bodily attachment, pursuant to 11 U.S.C. § 105(a), which provides:

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).

21. The Contempt Order and Order Imposing Additional Sanctions clearly required ADR to perform certain actions, all of which have been willfully ignored.

22. Imprisonment may be an appropriate remedy for civil contempt so long as the prison term is conditional and coercive:

A contempt order or judgment is characterized as either civil or criminal depending upon its primary purpose. . . . If the purpose of the sanction is to coerce the contemnor into compliance with a court order, or to compensate another party for the contemnor's violation, the order is considered purely civil. Imprisonment is an appropriate remedy for either civil or criminal contempt, depending on how it is assessed. If the prison term is conditional and coercive, the character of the contempt is civil.

Ingalls v. Thompson (In re Bradley),
588 F.3d 254, 263 (5th Cir. 2009).

23. Surge seeks a writ of bodily attachment in order to compel ADR to comply with the Contempt Order and Order Imposing Additional Sanctions. Surge does not seek to imprison Auram Yerymesku as punishment, but rather as a means to compel his company's compliance with this Court's orders. The failure of ADR and Auram Yerymesku to attend the hearings, abide by the previous orders and the profane and disrespectful responses reflect a complete disregard for and an intention to continue to flout the directives of this Court.

24. The latest email from December 18 reflects that absent the Court taking further action, Mr. Yerymesku and ADR have no intention of complying with the previous orders and instead plan on taking further actions to damage Surge. Surge has no other recourse than to request the issuance of a writ.

WHEREFORE, Surge requests the entry of an order (i) issuing a writ of bodily attachment against Auram Yerymesku, representative of ADR, (ii) awarding attorney fees and costs incurred in bringing this action against ADR for its failure to comply with the Contempt Order and Order Imposing Additional Sanctions, and (iii) such other relief as is appropriate.

THAMES | MARKEY

/s/ Bradley R. Markey

By _____
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Certificate of Service

I hereby certify that on December 19, 2023, the foregoing was transmitted to the Clerk of the Court for uploading to the Case Management/Electronic Case files (“CM/ECF”) System, which will send a notice of electronic filing to all creditors and parties in interest who have consented to receiving electronic notices in this case. A copy of the foregoing was also furnished on December 19, 2023, by e-mail and Federal Express overnight mail to:

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Nampa, ID 83687-5603

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2169 SE 171st Avenue
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/s/ Bradley R. Markey

Attorney