

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT.

Andrew R. Korn, Receiver (the “Receiver”), the court-appointed Receiver in Cause No. DC-16-09291 (the “State Court Action”) pending before the 134th Judicial District Court of Dallas, County, Texas (the “State Court”) and a secured creditor in the above-captioned bankruptcy cases, files this motion (the “Motion”) for an order prohibiting the use of cash collateral under § 363(c)(2) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”),¹ requiring that all of the Receiver’s cash collateral be segregated and accounted for or, in the alternative, conditioning the Debtors’ use of the Receiver’s cash collateral on the Debtors providing the Receiver with the necessary adequate protection. In support of this Motion, the Receiver states as follows:

I. PROCEDURAL BACKGROUND

A. THE BANKRUPTCY FILINGS

1. On September 28, 2017, H. Melton Ventures, LLC (the “LLC”) filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code in Case No. 17-43922-RFN-11. On October 14, 2017, Henry James Melton, II (“Melton”) filed his voluntary petition for relief under chapter 11 of the Bankruptcy Code in Case No. 17-44206-RFN-11. And on October 17, 2017, Michael George Warden (“Warden” and, together with the LLC and Melton, each a “Debtor” and, collectively, the “Debtors”), filed his voluntary petition for relief under chapter 11 of the Bankruptcy Code in Case No. 17-33888-SGJ-11.

¹ All of the section references contained in this Motion will refer to the Bankruptcy Code, unless otherwise indicated.

B. THE PRIOR APPOINTMENT OF THE RECEIVER, AND THE ESTABLISHMENT OF THE RECEIVERSHIP ESTATE

2. On October 6, 2016, X Extreme Construction & Rehab, Inc. (“X Extreme”) obtained a *Final Judgment* (the “Judgment”) against the Debtors in the State Court Action, for knowingly and intentionally breaching a contract and a guaranty. The total amount awarded to X Extreme under the Judgment was \$205,832.26, plus post-judgment interest, and additional attorney’s fees if the Judgment was appealed. A copy of the Judgment is attached as Exhibit A.

3. None of the Debtors made a voluntary payment on the Judgment or cooperated in collection,² and X Extreme was unable to collect on the Judgment. X Extreme sought the aid of the State Court in the appointment of a Receiver, and on April 25, 2017, the State Court entered its *Order Granting Plaintiff’s Application For Post-Judgment Receivership Pursuant to TEX. CIV. PRAC. & REM. CODE § 31.002* (the “Receivership Order”). A copy of the Receivership Order is attached as Exhibit B. Under the Receivership Order, the Receiver was directed to liquidate the Debtors’ non-exempt property,³ and the Debtors were directed to turnover that property, plus the related documentation, to the Receiver, as well as all of their interests in businesses, ventures and

² See, James N. Gray Co. v. Armtek Sys., Inc., 2006 U.S. Dist. LEXIS 2516, at *9 (E.D. Ky. Jan. 24, 2006) (Courts normally expect defendants to pay any judgment without the Plaintiff having to resort to asset discovery); accord, Denton v. Denton, 147 So. 2d 545, 547 (Fla. App. 1962) (“The plaintiff as well as the defendant must honor the orders and judgments of the court, and the courts should liberally utilize the available and reasonable means of enforcing their judgments and decrees.”); cf, Integrated Control Sys. v. Ellcon-National, Inc., 2003 U.S. Dist. LEXIS 25310, at *6 n.5 (D. Conn. Aug. 17, 2003) (“This Court expects the complete cooperation of plaintiff in defendant’s collection efforts and will respond harshly to any actions perceived as stonewalling...”).

³ This listing of non-exempt property is comprehensive and includes: (1) all documents or records, including financial records; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action, choses of action and judgments; (9) contract rights, whether present of future; (10) accounts receivable; and (11) intangible property and property rights including, but not limited to intellectual property rights such as internet domains, patents, copyrights and trademarks. See the Receivership Order, Exhibit B, p. 2.

all related documents, for that purpose.⁴

4. After the Receiver was appointed, he filed his oath and posted his bond on April 27, 2017. Later that afternoon, the Receiver visited the LLC's offices. The Receiver was permitted to inspect the leasehold, but the Property Manager had already locked the LLC out of the premises. During the time period of May 12 – June 20, 2017, the Receiver collected the Debtors' cash and property through several levies. The Receiver's levies of cash include the following:

DATE PAYMENT RECEIVED	SOURCE OF PAYMENT	AMOUNT OF PAYMENT (\$)
May 12, 2017	Cirque Unit 1106, 2500 N. Houston St., Dallas, TX 75219	9.70
June 1, 2017	Chase Bank, via cashier's check dated May 26, 2017	17,971.73
June 2, 2017	Veritex Community Bank, via cashier's check dated May 30, 2017	3,805.18
June 17, 2017	Havana Social Club, 3030 Olive St., Suite 103, Dallas, TX	1,002.11

The Receiver's levies on personal property include the following:

DATE OF LEVY	LOCATION OF LEVY	PERSONAL PROPERTY LEVIED
May 12, 2017	Cirque Unit 1106, 2500 N. Houston St., Dallas, TX 75219	Samsung large screen television with remote, pool table, couch with pillows, xBox video game equipment, king size bed and bedding, night stands, headphones, Apple Ipad, several pairs of men's boot, Keurig coffee maker, George Foreman Grill
May 30, 2017	1900 Carnegie Lane, Grapevine, TX 76051	Personalized photograph album of Melton's football accomplishments at the University of Texas, assorted sports memorabilia
June 17, 2017	W (Residences – South Tower), 2408 Victory Park Lane, Dallas, TX	2014 Land Rover, Range Rover Model, Texas License Plate GHH-5908; color white

⁴ The documents to be turned over to the Receiver include the following (going back 36 months): (1) bank statements; pass books and other bank or financial records; (2) federal income and state franchise tax returns; (3) all motor vehicle Certificates of Title; (4) real property deeds and deeds of trust; (5) business journals, ledgers, accounts payable and receivable files; (6) state sales tax reports; and (7) credit applications and other documents stating debtor's financial condition (for the preceding 72 months). See the Receivership Order, **Exhibit B**, p. 2, and Exhibit A thereto.

The Receiver's levies are detailed in his Receiver's First Interim Report of June 20, 2107, a copy of which is attached as **Exhibit C**.

5. Because the Debtors did not cooperate with the Receiver or comply with the Receivership Order as they should have, the Receiver filed his *Motion For Contempt & Sanctions Against Defendants and For Additional Expenses* (the "Contempt Motion") on May 15, 2017. The hearing on the Contempt Motion was originally scheduled, and then continued until October 17, 2017. Because Melton sought bankruptcy relief on October 14, 2017, and Warden sought bankruptcy relief on October 17, 2017, the hearing on the Contempt Motion could not proceed. The State Court entered an Order on October 17, 2017 abating the State Court Action. A copy of that order is attached as **Exhibit D**.

II. FACTUAL BACKGROUND

6. Melton played varsity football at the University of Texas at Austin. After he graduated from college, he played professional football in the National Football League (the "NFL") for the Dallas Cowboys, Chicago Bears, Tampa Bay Buccaneers and the Denver Broncos. At this point in time, Melton's professional football career is over. Nevertheless, over the course of that career, Melton earned a lot of money. From Melton's tax records, the Receiver determined that Melton's earning over the past several years are the amounts set forth below:

YEAR	GROSS EARNINGS (\$)
2015	1,311,633 – this number represents Melton's estimated tax liability, not gross earnings
2014	3,507,489
2013	8,149,655
2012	591,376
2011	577,509
2010	341,194

7. Despite Melton's success at earning money, a success that improved as the years went by, he not only failed and refused to pay the Judgment, he continued to live a lavish lifestyle,

openly and notoriously. Melton traveled the world, and posted pictures of himself on Instagram, letting X Extreme and the Receiver know that even though the Judgment was entered against him, and even though he was not paying the Judgment, Melton was still living the high life. These pictures are the following:

- An Instagram picture, taken on December 31, 2106, showing Melton on a camel at the pyramids in Egypt, with the caption “Strutting into 2017 like . . .” A copy of this picture is attached as **E**.
- An Instagram picture taken of Melton sitting in a pool in Santorini, Greece. A copy of this picture is attached as **Exhibit F**.
- An Instagram picture, taken on January 4, 2017, showing Melton lounging by the water in Miami. A copy of this picture is attached as **Exhibit G**.
- An Instagram picture, taken on March 1, 2017, showing Melton and friends in San Pedro, Belize. A copy of this picture is attached as **Exhibit H**.
- An Instagram picture, taken on February 6, 2017, showing Melton at the Waste Management golf tournament in Phoenix, Arizona. A copy of this picture is attached as **Exhibit I**.
- An Instagram picture, taken on February 28, 2017, when Melton claims to be chasing sunsets in Belize. A copy of this picture is attached as **Exhibit J**.
- An Instagram picture, taken on March 22, 2107, showing Melton posing by a helicopter in San Francisco. A copy of this picture is attached as **Exhibit K**.
- An Instagram picture, showing Melton lounging by the Atlantic Ocean at the Fountaine Blue Hotel. A copy of this picture is attached as **Exhibit L**.
- An Instagram picture taken on December 30, 2016 showing Melton’s residence, his Land Rover (which was subsequently levied upon by the Receiver), and his Ferrari. A copy of this picture is attached as **Exhibit M**.
- A picture of Melton from the Havana Social Club website (The Havana Social Club is a cigar bar located in Victory Plaza, the home of the Dallas Mavericks). A copy of this picture is attached as **Exhibit N**.

8. The Receiver was making progress in collecting the Debtors' non-exempt assets and liquidating them. Although the Receiver faced resistance from the Debtors, the Receiver was addressing that with his Contempt Motion. The Debtors filed their bankruptcy cases to avoid facing the State Court Judge at the hearing on the Contempt Motion. On October 11, 2017, the State Court Judge admonished Melton and Warden that when the hearing on the Receiver's Contempt Motion resumed on October 17, 2017, if the Court found that his Receivership Order had been violated, there was going to be a contempt. Melton sought bankruptcy relief on October 14, 2017, and Warden sought bankruptcy relief on October 17, 2017. The purpose and timing of their bankruptcy filings was to avoid the State Court Judge's: (a) vindication of his authority; (b) imposition of respect for, and submission to, his lawful mandates; (c) punishment for their disrespectful conduct - conduct that was offensive to the dignity of the court; and (d) preservation of the Court "from the approach and insults of pollution."⁵

III. RELIEF REQUESTED

9. Under § 363(c)(2), a debtor in possession may not use, sell, or lease cash collateral unless one of two alternatives is met: first, each entity that has an interest in such cash collateral must consent or, second, the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of that section. The Receiver does not consent to the Debtors using his cash collateral in any way, shape or form, and requests that this Court enter an order prohibiting such usage, and directing that the Debtors provide an accounting of the Receiver's cash collateral that they used post-petition (if any) and reimburse the Receiver for any unauthorized usage of his cash collateral post-petition. In the alternative, if this Court does authorize the Debtors to use the Receiver's cash collateral, then the Receiver requests that such authorization be subject to the

⁵ Anderson v. Dunn, 19 U.S. 204, 227 (1821).

Debtors providing the Receiver with adequate protection, as well as an accounting of the Receiver's cash collateral that they used post-petition to date.

IV. LEGAL ARGUMENT

A. THE RECEIVER'S INTEREST IN CASH COLLATERAL

10. The Bankruptcy Code defines "cash collateral," in pertinent, as:

. . . . cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities . . . whether existing before or after the commencement of a cause under this title.⁶

This definition can be broken down into five (5) component parts: (a) cash and cash equivalents; (b) whenever acquired – either before or after the start of the bankruptcy case; (c) in which the bankruptcy estate and an entity other than the bankruptcy estate have an interest; (d) including the proceeds, products, offspring, rents, or profits of property; and (e) including fees, charges, accounts or other payments attributable to the occupancy of lodging properties.⁷

11. Usually, when we think of cash collateral, we think of the typical fact pattern involving a lender that has a security interest in the debtor's property, including proceeds of that property, which in turn includes any cash and cash equivalents that represent the proceeds of the collateral. However, in defining cash collateral, the statute includes all entities that have **an interest**, not just entities that have a security interest.⁸

12. The Receiver has an interest in all of the Debtors' assets because the Receiver is a lien creditor of the Debtors. Under Texas law, a "lien creditor" is defined to include "a receiver

⁶ 11 U.S.C. § 363(a).

⁷ In re Trujillo, 485 B.R. 238, 250 (Bankr. D.Colo. 2012) ("Trujillo").

⁸ Trujillo, 485 B.R. at 250.

in equity from the time of appointment.”⁹ The Receiver is a “receiver in equity” for the purposes of TEX. BUS. & COM. CODE § 9.102(a)(52)(D).¹⁰

13. A receiver is a representative, arm, agent, and officer of the court that appoints him.¹¹ When a receiver is appointed, the court is adjudicating that the property in question should no longer be in control of the parties to the lawsuit, and should, instead, be in the custody of the court.¹² Once the receiver assumes control of the court denominated receivership assets and receivership estate, the property is deemed to be in *custodian legis*, not in the possession of the receiver, the court’s agent, but in the possession of the court.¹³ The title of the receiver to such property begins as of the date of the order appointing him. At that time, the title to the property of the party in control ends and the title of the court and its agent immediately starts.¹⁴ A receivership destroys no prior vested rights, nor does it determine any rights between parties.¹⁵

14. Entry of the Receivership Order established the Receiver as the State Court’s agent, representative, arm, and officer. It also established the Receiver as a lien creditor of the Debtors, which means that since the Receivership estate is comprised of all of the Debtors’ non-exempt assets, the Receiver has an interest in all of the Debtors’ cash collateral.

⁹ TEX. BUS. & COM. CODE § 9.102(a)(52)(D).

¹⁰ TEX. CIV. PRAC. & REM. CODE § 64.004 (Application of Equity Rules) (“Unless inconsistent with this chapter or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver.”). *Huston v. FDIC*, 800 S.W.2d 845, 849 (Tex. 1990). *Sargeant v. Al Saleh*, 512 S.W.3d 399, 411 (Tex.App.-Corpus Christi 2016, mandamus denied).

¹¹ *Taylor v. Sternberg*, 293 U.S. 470, 472 (1935) (“*Taylor*”). *Alexander v. Hillman*, 296 U.S. 222, 237 (1935) (“*Alexander*”). *Huffmeyer v. Mann*, 49 S.W.3d 554, 560 (Tex.App.-Corpus Christi 2001, no writ) (“*Huffmeyer*”). *Bateman v. Brown*, 297 S.W. 773, 775 (Tex.Civ.App.-Amarillo 1927, writ dismissed w.o.j.) (“*Bateman*”).

¹² *Huffmeyer*, 49 S.W.3d at 560.

¹³ *Bateman*, 297 S.W. at 775. *Taylor*, 293 U.S. at 261-262. *Moody v. State*, 538 S.W.2d 158, 161 (Tex.Civ.App.-Waco 1976, writ refused n.r.e.), *cert. denied*, 434 U.S. (1978).

¹⁴ *Huffmeyer*, 49 S.W.3d at 560.

¹⁵ *Id.*

B. THE DEBTORS' ONGOING USE OF THE RECEIVERS' CASH COLLATERAL VIOLATES THE BANKRUPTCY CODE

15. Under § 363(c)(2), a debtor may not use or sell a creditor's cash collateral without the consent of the creditor holding the interest or leave of court.¹⁶ The Debtors have never sought or obtained either the Receiver's consent or leave of this Court for the use of the Receiver's cash collateral; and the Receiver does not consent to the Debtors' usage of the Receiver's cash collateral for any purpose. In addition, § 363(c)(4) requires the Debtors to segregate and account for all of their usage of the Receiver's cash collateral, which they have not yet done. The Debtors' use of, and failure to account for, the Receiver's cash collateral violates § 363(c).¹⁷ The Debtors cannot meet their burden to demonstrate active compliance with the Bankruptcy Code's express limitations on the use of cash collateral.

16. "[T]he plain language of Sections 363(c)(2) and (4) requires the [Debtor] to *actively* comply with the Codes' requirements."¹⁸ Therefore, the Debtors, "as the debtor[s]-in-possession, have the burden of establishing [their] compliance with Sections 363(c)(2) and (4) of the Code."¹⁹

C. THE DEBTORS SHOULD BE PROHIBITED FROM USING THE RECEIVER'S CASH COLLATERAL AND ORDERED TO ACCOUNT FOR ALL CASH COLLATERAL RECEIVED AND/OR DISBURSED SINCE THE PETITION DATES

17. If a debtor uses cash collateral without creditor consent or court approval, § 363(e) demands that:

at any time, on request of an entity that has an interest in the property used, sold, or leases, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection.²⁰

¹⁶ In re Gary L. Zars, 434 B.R. 421, 431 (W.D.Tex. 2010) ("Zars").

¹⁷ In re Premier Interval Resorts, Inc., 2003 WL 145069 at * 4-5 (N.D.Tex. Jan. 15, 2003), affirmed, 82 Fed.Appx. 126 (5th Cir. 2003).

¹⁸ Id., at * 6 (emphasis in the original).

¹⁹ Id.

²⁰ 11 U.S.C. § 363(e). Zars, 434 B.R. at 431.

In fact, “[t]he Code imposes a mandatory duty on the bankruptcy court to condition the use of cash collateral” by the Debtors.²¹ Conditions that provide “adequate protection” include cash payments, additional or replacement liens, or any relief that would provide the “indubitable equivalent” of the interest.²² Regardless of the conditions, the Debtors bears the burden of proof in establishing that the Receiver will be adequately protected.²³

18. In these bankruptcy cases, the Debtors should be prohibited from using the Receiver’s cash collateral for any purpose absent the Receiver’s consent. The Debtors should also be ordered to segregate the Receiver’s cash collateral and account for all of the Receiver’s cash collateral received and/or disbursed since the petition dates, identifying each transfer by date, amount, purpose and recipient. The Receiver reserves his rights to seek the return of any transfer(s) of cash collateral identified by the Debtors; however, at a minimum the Debtors should also be ordered to disclose and return any transfers to insiders and any funds expended on matters unrelated to the preservation of the value of the Debtors’ estates. The Receiver further reserves his right to seek additional relief after conducting discovery into the Debtors’ unauthorized use of cash collateral.

V. PRAYER

The Receiver prays that this Court grant this Motion by issuing an order that: (a) prohibits the Debtors from using the Receiver’s cash collateral for any purpose; (b) requires the Debtors to segregate the Receiver’s cash collateral and account for all of the Receiver’s cash collateral received and/or disbursed since the petition dates, identifying each transfer by date, amount, purpose, and recipient; (c) requiring the Debtors to return any of the Receiver’s cash collateral that

²¹ Zars, 434 B.R. at 431. In re Winn’s Stores, 177 B.R. 253, 258 (Bankr. W.D. Tex. 1995).

²² 11 U.S.C. § 361. Zars, 434 B.R. at 431.

²³ 11 U.S.C. § 363(p). Zars, 434 B.R. at 431.

were transferred to insiders or expended on matters unrelated to the preservation of the value of the Debtors' estates since the petition dates; or, in the alternative (d) conditioning the Debtors' use of the Receiver's cash collateral on the Debtor's providing to the Receiver the necessary adequate protection; and (e) awarding the Receiver such other and further relief, special or general, at law or in equity, as this Court may deem just and proper.

Dated: November 8, 2017

Respectfully submitted,

NELIGAN LLP

By: /s/ Seymour Roberts, Jr.

Seymour Roberts, Jr.
Texas State Bar No. 17019150
sroberts@neliganlaw.com
325 N. St. Paul, Suite 3600
Dallas, TX 75201
Telephone: (214) 840-5300
Facsimile: (214) 840-5301

**COUNSEL FOR ANDREW R. KORN,
Receiver**

CERTIFICATE OF CONFERENCE

I hereby certify that on November 8, 2017, I spoke with David Ritter, counsel of record for the LLC, and Kevin Wiley, counsel of record for Melton and Warden, regarding the merits of the above and foregoing pleading. They were opposed to the requested relief, so this matter is presented to the Court for determination.

/s/ Seymour Roberts, Jr.
Seymour Roberts, Jr.

CERTIFICATE OF SERVICE

I certify that on this 8th day of November, 2017, a true and correct copy of the foregoing *Motion and Brief for Order Prohibiting the Use of Cash Collateral and for An Accounting or, In the Alternative, for Adequate Protection* was electronically served using this Court's CM/ECF system.

/s/ Seymour Roberts, Jr.
Seymour Roberts, Jr.