

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

<b>In re:</b>	)	<b>Chapter 7</b>
	)	
<b>Alpha Protective Services, Inc.,</b>	)	<b>Case No. 12-70482-JTL</b>
	)	
<b>Debtor.</b>	)	
_____	)	
	)	
<b>Neil C. Gordon,</b>	)	
<b>Chapter 7 Trustee for the Estate of</b>	)	<b>ADVERSARY PROCEEDING</b>
<b>Alpha Protective Services, Inc.,</b>	)	
	)	
<b>Plaintiff</b>	)	<b>NO. _____</b>
	)	
<b>VS.</b>	)	
	)	
<b>Jeffrey B. Brinson,</b>	)	
<b>WHI a/k/a Willowheart, LLC, and</b>	)	
<b>Theresa B. Norman,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**PLAINTIFF’S MOTION FOR AND MEMORANDUM OF LAW IN SUPPORT OF A  
TEMPORARY RESTRAINING ORDER**

COMES NOW, Neil C. Gordon, the Chapter 7 Trustee (the “Trustee”) of the estate of Alpha Protective Services, Inc. (the “Debtor”), and respectfully submits this Motion for and Memorandum of Law in Support of a Temporary Restraining Order, showing the Court as follows:

**I. INTRODUCTION**

This action by the Trustee seeks to recover assets diverted from the estate of Alpha Protective Services to a competing security company, Defendant Willowheart. At the time Alpha Protective Services filed for bankruptcy, it had valuable assets including handguns, assault

rifles, protective vests, helmets, and vehicles. During the pendency of this bankruptcy, however, the president of Alpha Protective Services, Defendant Brinson, acted in violation of his duties of good faith and loyalty by permitting Debtor's valuable assets to be used by a competing business for his own benefit and without any compensation to the estate. Under the guise of a never closed proposed asset purchase agreement and a never to close second proposed asset purchase agreement, Defendant Brinson's new company, Defendant Willowheart, is now offering the same security guard services previously provided by the Debtor at the same location using Debtor's valuable assets. In effect, despite the pendency of this bankruptcy case, Defendants have taken the estate assets out of the estate, without permission and for no consideration.

## **II. STATEMENT OF FACTS**

1. The Debtor operated a security firm in Thomasville, Georgia, which provided, *inter alia*, security guard services at various posts at Fort Bragg military base.
2. Defendant Brinson was the Owner, President, Chief Executive Officer, Chief Financial Officer and/or Secretary of the Debtor.
3. Defendant Willowheart is a facility support services company, which previous to the events in question, had never offered security guard services.
4. Defendant Norman is the President and registered agent of Defendant Willowheart.
5. On information and belief, Defendant Norman is the mother of Defendant Brinson.

6. On information and belief, Defendant Brinson now works for Defendant Willowheart.

7. The Debtor filed a petition under Chapter 11 of Title 11 of the United States Code on April 12, 2012 (the "Petition Date"), initiating Case No. 12-70482-JTL.

8. On December 14, 2012, the Debtor's motion for use of cash collateral came on for a final hearing. At the hearing, counsel to the Debtor's largest secured creditor, Bank of America ("BOA"), made an oral motion for the appointment of a Chapter 11 Trustee.

9. Pursuant to an order entered on December 17, 2012, the Court granted BOA's oral motion and directed the United States Trustee to appoint a Chapter 11 Trustee.

10. On December 18, 2012, the United States Trustee filed a *Notice of Appointment* [Doc. No. 149], appointing Neil C. Gordon as the Chapter 11 Trustee of the Debtor.

11. By order dated December 18, 2012, the Court approved the appointment of Neil C. Gordon as the Chapter 11 Trustee of the Debtor.

12. On December 19, 2012, the Trustee filed a *Motion to Convert Case to one under Chapter 7 of the Bankruptcy Code* [Doc. No. 154].

13. On December 20, 2012, the Court entered an *Order Granting Motion to Convert Case to Chapter 7* [Doc. No. 156].

14. Subsequently, the Trustee began liquidating the Debtor's business and terminated all employees of the Debtor.

15. At the time of the bankruptcy filing, the Debtor had a contract to provide security guard services to the United States Army installation, Fort Bragg. Upon beginning liquidation, the Debtor was no longer able to fulfill its contract obligations.

16. Subsequently, Defendant Willowheart, acting in concert with Defendant Brinson and Defendant Norman, contracted to provide security guard services to Fort Bragg similar to those previously provided by the Debtor for a period of 30 days commencing on December 22, 2012 (the "30 Day Contract"). The 30 Day Contract will expire on January 21, 2013.

17. Defendant Willowheart will receive approximately \$600,000.00 for performance of the 30 Day Contract.

18. Defendant Willowheart, acting in concert with Defendant Brinson and Defendant Norman, continue to employ the same persons to provide security guard services to Fort Bragg as were previously provided by the Debtor.

19. More importantly, without the permission of or authorization from the Trustee, Defendants continue to use the equipment and property of the Debtor to provide those services to Fort Bragg, including but not limited to: vehicles, hand guns, rifles, ammo, ammo pouches, ammo cases, handcuffs, handcuff cases, holsters, duty belts, beltkeepers, flashlights, flashlight rings, key ring holders, batons, OC spray, gun magazines, helmets, vests, radio holders, speedloaders, ear muffs, megaphones, and safety glasses (the "Debtor's Equipment and Property").

20. On December 31, 2012, the Trustee made demand for the return of all the Debtor's Equipment and Property.

21. Despite the Trustee's demand for the return of its property, Defendants have refused to return the Debtor's Equipment and Property to the Debtor.

22. On December 18, 2012, the very same day that Neil C. Gordon was appointed Trustee of the Debtor (and two days prior to the case being converted to a Chapter 7 bankruptcy), Defendant Willowheart purportedly entered into an Agreement with the Debtor to purchase its assets (the "Proposed Asset Purchase Agreement").

23. On information and belief, the Proposed Asset Purchase Agreement was drafted to be executed by and between Defendant Brinson (on behalf of Debtor) and his mother, Defendant Norman, (on behalf of Defendant Willowheart).

24. Pursuant to this Proposed Asset Purchase Agreement, the purchase price "shall be Outstanding invoices as of January 1, 2013 which will be approximately \$980,000 - \$1,000,000.00."

25. The closing date of the Proposed Asset Purchase Agreement was on or about January 1, 2013.

26. The Proposed Asset Purchase Agreement has not closed and, on information and belief, will not close.

27. On January 4, 2013, Defendant Willowheart proposed an Asset Purchase Agreement and Lease to purchase the assets of the Debtor's estate (the "Second Proposed Asset Purchase Agreement").

28. The Second Proposed Asset Purchase Agreement was to be executed between the Trustee and Defendant Willowheart for the purchase of, including but not limited to, firearms, gear, vehicles, and furniture for the purchase price of approximately \$171,551.00.

29. The Second Proposed Asset Purchase Agreement contains a provision allowing Defendant Willowheart to lease the included assets for a weekly lease rate of \$1,250.00 until the Court grants the Trustee the ability to sell those assets. *See* Compl. Ex. B § 10.11.

30. Importantly, the Second Proposed Asset Purchase Agreement also contains a provision allowing Defendant Willowheart to terminate the Second Proposed Asset Purchase Agreement prior to closing if the closing has not taken place by a certain, later to be specified, date. *See* Compl. Ex. B § 4.2(a)(2).

31. Significantly, Defendant Willowheart has the ability to ensure the closing does not occur by the currently unspecified closing date, effectively providing Defendant Willowheart a unilateral right to terminate the Second Proposed Asset Purchase Agreement.

32. On information and belief, Defendant Willowheart is using the Second Proposed Asset Purchase Agreement as a strategic tactic to use Debtor's Equipment and Property through the end of the 30 Day Contract with no intention on closing the Second Proposed Asset Purchase Agreement and paying only a miniscule weekly lease price provided for in Section 10.11 of the Second Proposed Asset Purchase Agreement.

33. Defendants continue to use the Debtor's Equipment and Property to profit from the 30 Day Contract.

34. Defendants have not compensated the Debtor for the use of the Debtor's Equipment and Property.

### **III. ARGUMENT AND CITATION OF AUTHORITY**

35. Temporary injunctive relief is proper where it appears by the pleadings that plaintiff is entitled to the relief demanded, and such relief consists in restraining an act, the continuance of which would produce injury to the plaintiff during the pendency of the litigation. FED. R. CIV. P. 65(b).

36. To obtain such relief, an applicant must show (i) substantial likelihood that it will prevail on the merits of his claim; (ii) a threat of irreparable injury if the injunction is not granted; (iii) that such harm to the applicant outweighs any threatened harm the injunction may have on other parties; and (iv) that the injunction is not offensive to the public interest. *See Statewide Detective Agency v. Miller*, 115 F. 3d 904, 905-06 (11th Cir. 1997).

37. In the discussion that follows, the Trustee shows the Court that he has a substantial likelihood to succeed on his conversion claim and that irreparable harm will result if Defendants are not immediately enjoined from continued use of Debtor's Equipment and Property. Further, the hardships suffered by the Debtor if relief is denied greatly outweigh any harm that injunctive relief would cause Defendants, and issuance of a temporary restraining order will well serve the public interest.

#### **A. Substantial Likelihood of Success**

##### **1. Trustee Will Most Likely Succeed on his Conversion Claim**

38. The Trustee has a substantial likelihood of success on the merits of his conversion claim.

39. “To establish ‘the elements of a conversion claim: the complaining party must show (1) title to the property or the right of possession, (2) actual possession in the other party, (3) demand for return of the property, and (4) refusal by the other party to return the property.’” *Holmes v. GE Capital Corp. (In re Holmes)*, 369 B.R. 708, 740 (Bankr. M.D. Ga. 2007) (quoting *Johnson v. First Union National Bank*, 255 Ga. App. 819 (2002)).

40. Here, it is indisputable that the Debtor’s estate has title to and/or the right of possession in Debtor’s Equipment and Property and that Defendants have actual possession of the Debtor’s Equipment and Property. Further, the Trustee made demand for the return of the property on December 31, 2012, and the Defendants have failed to return that property.

41. Therefore, the Trustee’s likelihood of success on his conversion claim is substantial.

2. *Trustee Will Most Likely Succeed on his Willful Violation of the Automatic Stay Claim*

42. The Trustee has a substantial likelihood of success on the merits of his claim for Defendants’ continuing and willful violation of the automatic stay.

43. Under 11 U.S.C. 362(a)(3), “any act . . . to exercise control over property of the estate” violates an automatic stay.

44. Here, it is indisputable that Defendants are currently exercising control over property of the Debtor’s estate, i.e. Debtor’s Equipment and Property.

45. Defendants’ willful and continuing exercise of this control is in violation of the automatic stay.

46. Therefore, the Trustee's likelihood of success on his willful violation of the automatic stay claim is substantial.

**B. Irreparable Harm**

47. In this case, the Debtor will suffer the unique and irreparable harm that accompanies a large amount of weaponry, including, *inter alia*, hundreds of unaccounted for Beretta 92FS hand guns and Mossberg and M-4 semi-automatic rifles.

48. The Debtor owned and operated a well-equipped security company with a frightening amount of dangerous equipment that, although still a part of the Debtor's estate, is in no way in the Debtor's control. The Debtor is incurring the extraordinary risk of substantial liability, even ignoring the extreme moral implications, of an arsenal of heavy firearms and protective gear currently in its estate but completely outside of its control.

49. Further, the weapons and gear owned by the Debtor and in possession and control of Defendants are being used by security guards that recently suffered truly difficult circumstances. Indeed, Willowheart's employees now using these weapons were previously working for the Debtor, which has recently begun liquidation proceedings and was unable to meet its payroll for the pay period before the recent holidays. Further, those employees were also recently terminated from their positions with the Debtor, had all medical benefits terminated with no option for COBRA coverage, and were informed that any 401K or ERISA benefits would likely take a year or much longer to be disbursed.

50. The Trustee seeks the immediate cessation of use and return of all Debtor's Equipment and Property to reconcile the current disconnect between: (1) the ownership and

accompanying liability of the Debtor's Equipment and Property; and (2) the control and use of the Debtor's Equipment and Property.

51. Absent an injunction requiring the immediate cessation of use and the return of Debtor's Equipment and Property, Plaintiff will suffer irreparable harm.

**C. Balancing of Harms**

52. The balance of the hardships in this case tips strongly in favor of the Debtor. Defendants' refusal to immediately cease use of and return Debtor's Equipment and Property is preventing the Debtor from attempting to meet the obligations owed to its creditors.

53. In contrast, there is no way Defendants can argue entitlement to any portion of Debtor's Equipment and Property. Indeed, the Debtor's Equipment and Property belong to the estate – not the Defendants. Requiring Defendants to part ways with equipment and property to which they have no legal or equitable entitlement is not a cognizable hardship.

54. Further, the Plaintiff is not required to post a bond in this proceeding as would normally be required under Federal Rule of Procedure 65(c). *See* FED. R. BANKR. P. 7065 (“Rule 65 FED. R. CIV. P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).”).

**D. The Public Interest Will Be Served by an Injunction**

55. Finally, the public interest is served by the entry of a temporary restraining order on the use of Debtor's Equipment and Property. Indeed, the public interest suffers a great

disservice if the owner of an arsenal of firearms and military-grade protective equipment has no control over it.

56. Further, it is the entire purpose of laws on conversion to prevent the unlawful retention of another's property and the public interest is best served by the diligent enforcement of those laws, especially in a situation such as this with so many heightened concerns regarding the nature of the converted equipment and property.

57. Similarly, the purpose of laws pertaining to an automatic stay is to protect the assets of a bankruptcy estate. Allowing the continued and willful violation of the automatic stay will expressly contravene that purpose.

58. For these and other reasons, issuance of emergency injunctive relief will serve the public interest.

**PRAYER**

WHEREFORE, the Trustee respectfully requests that this Court enter an Order:

- A. Requiring the Defendants to immediately cease all use of and return Debtor's Equipment and Property; and
- B. For such further relief as this Court deems just and appropriate.

Respectfully submitted, this 4<sup>th</sup> day of January, 2013.

ARNALL GOLDEN GREGORY LLP

/s/ Neil C. Gordon  
NEIL C. GORDON  
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Chapter 7 Trustee of the Estate of Alpha  
Protective Services, Inc.

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the foregoing *MOTION FOR AND MEMORANDUM OF LAW IN SUPPORT OF A TEMPORARY RESTRAINING ORDER* by sending a copy of same via email and by depositing a copy of same in the United States mail in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

Wesley J. Boyer  
Katz, Flatau and Boyer, LLP  
355 Cotton Avenue  
Macon, GA 31201  
[wjboyer\\_2000@yahoo.com](mailto:wjboyer_2000@yahoo.com)

and by depositing a copy of same in the United States mail in a properly addressed envelope with adequate postage affixed thereon to assure delivery to:

Jeffrey Bruce Brinson  
P.O. Box 6670  
Thomasville, GA 31758

Willowheart, LLC  
c/o Theresa B. Norman, registered agent  
7550 Dixie Barwick Road  
Barwick, GA 31720

Theresa B. Norman  
7550 Dixie Barwick Road  
Barwick, GA 31720

This 4<sup>th</sup> day of January, 2013.

/s/ Neil C. Gordon  
Neil C. Gordon