

RIMON P.C.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Courtney M. Roman

Hearing Date: January 28, 2025
Time: 10:00 a.m.

Objections Due: January 21, 2025
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,
Debtor.

Case No.: 24-10392 (DSJ)

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**NOTICE OF HEARING ON MOTION SEEKING AN
ORDER (I) COMPELLING THE TURNOVER OF THE ACCOUNT
BALANCE, (II) HOLDING PAYPAL, INC., IN CONTEMPT FOR
FAILURE TO COMPLY WITH A BANKRUPTCY COURT ORDER, AND (III)
AWARDING COST AND EXPENSES ASSOCIATED WITH THIS MOTION**

PLEASE TAKE NOTICE THAT, upon the motion (the “Motion”) of Kenenth P. Silverman, the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his counsel, Rimon P.C., will move before the Honorable David S. Jones, United States Bankruptcy Judge, for the United States Bankruptcy Court of the Southern District of New York, via Zoom for Government, on **January 28, 2025 at 10:00 a.m.** (the “Hearing”), or as soon thereafter as counsel can be heard, for entry of an order, substantially in the form annexed to the Motion as Exhibit D: (a) holding Paypal, Inc. (“Paypal”) in civil contempt for its failure to comply with this Court’s order dated October 15, 2024 (ECF Doc. No. 129) (the “Turnover Order”), which directed Paypal to turnover the proceeds maintained in a digital wallet with PayPal in the amount of \$128,711.90 (the “Account Balance”) to the Trustee within five days of the Order; (b) directing Paypal to turnover the Funds held in the digital wallet; (c) awarding costs and expenses associated with compelling Paypal’s compliance to the Trustee and Trustee’s counsel (d)



imposing monetary sanctions in an amount to be determined by the Court; and (e) for such other, further and different relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that prior to the Hearing, any party wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court's eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

PLEASE TAKE FURTHER NOTICE, that objections to the relief sought in the Motion shall be in writing, conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of this Court, must set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and must be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System may be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest on a disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with courtesy copies delivered directly to Chambers), and must be served upon (i) counsel to the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Brian Powers, Esq. and (ii) The Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York, 10004-1408, Attn: Mark Bruh, Esq., no later than **January 21, 2025 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court or by the filing of such notice of adjournment on the docket sheet for the Debtor's case.

PLEASE TAKE FURTHER NOTICE, that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

Dated: Jericho, New York
December 18, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: *s/ Brian Powers*
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
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RIMON P.C.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
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Jericho, New York 11753
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Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
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MOTION SEEKING AN ORDER (I) COMPELLING THE TURNOVER OF THE ACCOUNT BALANCE, (II) HOLDING PAYPAL, INC., IN CONTEMPT FOR FAILURE TO COMPLY WITH A BANKRUPTCY COURT ORDER, AND (III) AWARDING COST AND EXPENSES ASSOCIATED WITH THIS MOTION

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), hereby seeks entry of an Order, pursuant to 11 U.S.C. §105 (the “Bankruptcy Code”) and Rule 9020 of the Federal Rules of Bankruptcy Procedure (the “Rules”): (a) holding Paypal, Inc. (“Paypal”) in civil contempt for its failure to comply with this Court’s order dated October 15, 2024 (ECF Doc. No. 129) (the “Turnover Order”), which directed Paypal to turnover the proceeds maintained in a digital wallet with PayPal in the amount of \$128,711.90 (the “Account Balance”) to the Trustee within five days of the Order; (b) directing Paypal to turnover the Funds held in the digital wallet; (c) awarding costs and expenses associated with compelling Paypal’s compliance to the Trustee and Trustee’s counsel (d) imposing monetary sanctions in an amount to be determined by the Court; and (e) for such other, further and different relief as this Court deems just and proper (the “Motion”), and respectfully sets forth and represents as follows:

BACKGROUND

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(A) and (O).

The Bankruptcy Case

2. The Debtor was a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a United Kingdom based company. Prior to the Petition Date (defined herein), the Debtor operated retail locations in more than forty (40) locations across the country.

3. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

4. On March 11, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate and has since duly qualified.

Attempts to Have the Account Turned Over to the Estate

5. As a result of the Trustee’s investigation into the financial affairs, assets and liabilities of the Debtor, the Trustee was advised by the Debtor that the Debtor maintained a digital wallet account with PayPal, with an account balance as of the Petition Date in the amount of \$128,711.90 (the “Account Balance”) and on April 8, 2024, an email to was sent to PayPal requesting the turnover of the account. A copy of which was attached to the Turnover Motion (as defined below) as Exhibit B.

6. PayPal responded by proposing a three-tranche turnover, the first amount of \$100,000 was to be turned over on April 15, 2024, \$20,000 was to be turned over on May 31, 2024, and the final balance was due to be released on August 29, 2024 in the amount of \$8,000.

7. Counsel for the Trustee contacted PayPal to advise that the proposed tranche plan was acceptable to the Trustee, and on April 17, 2024, wiring instructions were sent to and received by PayPal.

8. Thereafter, Trustee's counsel followed up through email correspondence with PayPal on April 18, 2024, April 19, 2024, April 22, 2024, April 25, 2024, April 29, 2024, May 7, 2024, and June 11, 2024.

9. On several occasions, employees of the Debtor's parent company, which had online access to the PayPal account, attempted to assist the Trustee in his attempts to have the Proceeds turned over. Those attempts were similarly fruitless.

10. Upon information and belief, at some point during the process, PayPal released the Proceeds to a closed bank account previously maintained by the Debtor with HSBC. The Proceeds were returned to PayPal by HSBC and remain in the Debtor's account with PayPal.

11. On June 27, 2024, counsel sent a final request for a turnover with the wiring instructions and PayPal responded by asking us to contact another department within PayPal to assist with the turnover.

The Entry of the Turnover Order

12. On September 12, 2024, the Trustee filed a motion for an order pursuant to Bankruptcy Code §542(a) directing the turnover of funds to the Trustee by PayPal, and an account of the transfer of any such funds to a third party (ECF Doc No. 108) (the "Turnover Motion").

13. On September 12, 2024, the Trustee's claims and noticing agent, Kurtzman Carson Consultants, LLC dba Verita Global served the Trustee's Turnover Motion on all parties, including PayPal, and filed and filed a Certificate of Mailing on September 18, 2024 (ECF No. 114).

14. Pursuant to the order entered on October 15, 2024, which granted the Turnover Motion (ECF Doc. No. 129) (the “Turnover Order”), PayPal was directed to (i) turnover the Account Balance to the Trustee within five (5) business days of entry of the Turnover Order and (ii) provide a full accounting of the Account Balance to the Trustee within fourteen (14) days of the entry of the Turnover Order. A copy of the Turnover Order is annexed to the Declaration of Kenneth P. Silverman in support of this Motion (the “Silverman Declaration”) as **Exhibit A**.

15. Subsequently, on October 17, 2024, the Trustee served a copy of the Turnover Motion and Turnover Order on PayPal via FedEx. Attached to the Silverman Declaration as **Exhibit B** is the Affidavit of Service (ECF Doc. No. 139).

16. On October 18, 2024, FedEx delivered the package to PayPal, and FedEx records indicate that it was signed for by “E. ED.” Attached Silverman Declaration as **Exhibit C** is a copy of the FedEx proof of delivery.

17. To date, PayPal has not turned over the Account Balance to the Trustee, contacted the Trustee to make arrangements to do so, or otherwise attempted to comply with the Turnover Order.

18. PayPal’s immediate production of the Account Balance and the accounting of the Account Balance remains essential to the administration of the Debtor’s estate.

PAYPAL IS IN CONTEMPT OF THE TURNOVER ORDER

19. As demonstrated above, PayPal received service of the Turnover Order on October 18, 2024, and has neglected to comply with the Turnover Order. Therefore, PayPal willfully and knowingly violated the Turnover Order of this Court.¹

¹ As noted above, the Trustee and his retained professionals have, prior to this instant Motion, repeatedly sought production of an accounting of the Account Balance and the transfer of the Account Balance. PayPal has not produced any documents which were fully responsive to the Trustee’s requests. PayPal’s prior non-compliance formed the basis for the Turnover Motion and the continued lack of response from PayPal demonstrates that PayPal intends the continue

20. Accordingly, the Trustee has been compelled to make the instant Motion pursuant to Federal rule of Bankruptcy Procedure 9020 and Bankruptcy Code §105 for an order (a) adjudging PayPal in civil contempt of this Court for failing (i) to comply with the Turnover Order, (b) directing PayPal's transfer of the Account Balance to the Trustee; and (c) awarding costs and expenses to the Trustee and his counsel.

21. Rule 9020 of the Federal Rules of Bankruptcy Procedure provides, in relevant part:

Contempt Proceedings - (b) Other contempt. Contempt committed in a case or proceeding pending before a bankruptcy judge ... may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charge and describe the contempt as criminal or civil, and shall state the time and place of hearing, allowing for reasonable time for the preparation of the defense.

See Bankruptcy Rule 9020.

22. Bankruptcy courts have the inherent authority to enforce compliance with their orders through the issuance of civil contempt orders. See 11 USC §105(a); Fed. R. Bankr. P. 9020; *In re Flushing Hospital & Med. Ctr.*, 395 B.R. 229, 241 (Bankr. E.D.N.Y. 2008); *In re Chief Exec. Officers Clubs, Inc.*, 359 B.R. 527, 534 (Bankr. S.D.N.Y. 2007). The civil contempt power is necessary to protect "the due and orderly administration of justice and in maintaining the authority and dignity of the court." *Railway Express, Inc. v. Piper*, 447 U.S. 752, 763-64 (1980).

23. In order to hold a party in civil contempt, the movant must establish a knowing violation of a sufficient, specific and precise order and knowledge of such order. See *Fidelity Mortg. Investors v. Camelia Builders, Inc.*, 550 F.2d 47, 51 (2d Cir. 1976), *cert. denied*, 429 U.S. 1093 (1977). "Willfulness is not required and intent is irrelevant because of the remedial and coercive nature of civil contempt." *Shillitani v. United States of America*, 384 U.S. 364, 368

this behavior. Moreover, PayPal has successfully hindered the Trustee's attempts to obtain the rightful property of the estate.

(1966); *In re Damon*, 40 B.R. 367, 374 (Bankr. S.D.N.Y. 1984).

24. The standard to apply to determine if there is contemptuous activity is clear:

In order to hold the alleged contemnor in contempt, the court need only (1) have entered a clear and unambiguous order, (2) find it established by clear and convincing evidence that that order was not complied with, and (3) find that the alleged contemnor has not clearly established his inability to comply with the terms of the Order.

Huber v. Marine Midland Bank, 51 F.3d 5 (2d. Cir. 1995).

25. Here, this Court entered a clear and unambiguous order directing PayPal to turnover the Account Balance and provide the Trustee with an accounting of the funds held, of which, through service thereof, PayPal was undeniably aware of and failed to comply. Moreover, PayPal is receiving notice of this Motion and has nearly 30 additional days to comply with the Turnover Order if it seeks to avoid sanctions.

26. Moreover, due to PayPal's noncompliance with and blatant disregard for this Court's order, caused the Trustee to incur otherwise unnecessary costs to ensure compliance. We respectfully submit that the Trustee should be awarded appropriate and reasonable legal fees and expenses in connection with the Motion in an amount to be determined by the Court but in no event less than \$5,000.

27. Moreover, PayPal's pattern of non-compliance and blatant disregard for this Court's order make it appropriate for the Court to issue continuing monetary sanctions in order to ensure compliance with the Court's order.

28. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order finding PayPal in civil contempt of the Turnover Order entered by this Court, directing the transfer of the

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

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ORDER (I) COMPELLING THE TURNOVER OF THE ACCOUNT BALANCE, (II) HOLDING PAYPAL, INC., IN CONTEMPT FOR FAILURE TO COMPLY WITH A BANKRUPTCY COURT ORDER, AND (III) AWARDING COST AND EXPENSES ASSOCIATED WITH THIS MOTION

Upon the Order granting the Trustee’s Turnover Motion and directing PayPal to turnover funds to the Trustee within five (5) business days of the entry of the order (ECF Doc. No. 129) (the “Turnover Order”) and upon the motion (the “Motion”) of Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of Buth-Na-Bodhaige, Inc. (the “Debtor”) seeking entry of an order (a) holding Paypal, Inc. (“Paypal”) in civil contempt for its failure to comply with the Turnover Order, which directed Paypal to turnover the proceeds maintained in a digital wallet with PayPal in the amount of \$128,711.90 (the “Account Balance”) to the Trustee within five days of the Order; (b) directing Paypal to turnover the Funds held in the digital wallet; (c) awarding costs and expenses associated with compelling Paypal’s compliance to the Trustee and Trustee’s counsel (d) imposing monetary sanctions in an amount to be determined by the Court; and (e) for such other, further and different relief as this Court deems just and proper; and good and sufficient cause appearing for the relief granted herein, it is hereby

FOUND, that the Turnover Order is clear and unambiguous as to PayPal; and it is further

FOUND, that PayPal has violated the Turnover Order by failing to turnover any funds to the Trustee; and it is

ORDERED, that PayPal is hereby directed to turnover the funds to the Trustee within five (5) days of the date hereof in order to purge or cure such contempt; and it is further

ORDERED, that PayPal shall be assessed sanctions in the amount of the reasonable fees and costs associated with the Trustee's efforts to compel compliance the Turnover Order, but in no event less than \$5,000.00, and \$_____ per day after the date of entry of this Order to be paid to the Debtor's estate until such time as PayPal has complied with the Turnover Order; and it is further

ORDERED, that the Trustee is hereby authorized to do such things, expend such monies, and execute such documents as to effectuate the terms and conditions of this Order.

Dated: New York, New York
January __, 2025

Honorable David S. Jones
United States Bankruptcy Judge