

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

LORRAINE BROOKE ASSOCIATES,
INC.,

Case No. 07-12641-BKC-AJC
Chapter 7

Debtor.

**TRUSTEE DILLWORTH'S EMERGENCY MOTION (I) TO ENFORCE
THE AUTOMATIC STAY; (II) FOR AN ORDER TO SHOW CAUSE WHY
TMZ.COM SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR
VIOLATION OF THE AUTOMATIC STAY; (III) COMPEL THE PERSON
WITH MOST KNOWLEDGE AT TMZ.COM TO APPEAR AND
TESTIFY AT A 2004 EXAMINATION; AND (IV) COMPEL
COMPLIANCE WITH ORDER OF THIS COURT¹**

Trustee Dillworth is seeking an Emergency Hearing on this Motion in order to prevent any further dissipation of estate assets than what has already occurred through the unauthorized publishing of the manuscript of IF I DID IT.

Drew M. Dillworth, the duly appointed, qualified and acting Chapter 7

Trustee ("Trustee Dillworth") for the bankruptcy estate of Lorraine Brooke Associates, Inc. (the "Debtor"), through undersigned counsel, pursuant to 11 U.S.C. Sections 105(a) and 362(a)(3), files this *Trustee Dillworth's Emergency Motion To (I) Enforce The Automatic Stay; (II) For an Order to Show Cause Why Tmz.Com Should Not Be Held In Contempt Of Court For Violation Of The Automatic Stay; (III) Compel The Person With Most Knowledge At Tmz.Com To Appear And Testify At A*

¹ For the sake of brevity, a detailed factual background of the events leading up to the filing of the Debtor's bankruptcy case is not included in this Motion. A detailed factual background can be found in Trustee Dillworth's *Ex-Parte Motion for Status Conference and Request for Suspension of Automatic Dismissal of Case* (the "Status Conference Motion") (C.P. No. 11).

2004 Examination; and (IV) Compel Compliance with Order of this Court (the "Motion"). In support of the Motion, Trustee Dillworth states as follows:

1. On April 13, 2007, the Debtor filed for voluntary bankruptcy protection under chapter 7 of the Bankruptcy Code. Immediately upon the filing of the bankruptcy case, Trustee Dillworth was appointed. Soon after Trustee Dillworth's appointment, Trustee Dillworth and his advisors began investigating the facts and circumstances leading up to the filing of the Debtor's bankruptcy case. It became apparent that one of the assets of the Debtor's bankruptcy estate was the manuscript written by Orenthal J. Simpson ("Mr. Simpson"), which is commonly known as IF I DID IT (the "Manuscript").

2. On May 17, 2007, this Court held an evidentiary hearing on the Debtor's *Motion to Convert Case to Chapter 11* (the "Conversion Motion"). At the hearing on the Conversion Motion, undersigned counsel moved, *ore tenus*, for turnover of all intellectual property owned by the Debtor and to prevent unauthorized duplication, distribution or publication of intellectual property (the "Ore Tenus Motion"). The purpose of the Ore Tenus Motion was to prevent the unauthorized distribution of the Manuscript or any materials related thereto to preserve the value of these property rights for the benefit of the estate. This Court granted the Ore Tenus Motion from the Bench on May 17, 2007, and on May 23, 2007, this Court entered its *Order Granting Trustee's Ore Tenus Motion (I) For Turnover Of All Intellectual Property Owned By The Debtor And (II) To Prevent The Unauthorized Distribution Or Publication Of Intellectual Property* (the "Turnover Order") (C.P. # 90). In Paragraph 2 of the Turnover Order, this Court ordered as follows:

The Debtor, and all of its officers, directors, agents, employees, attorneys, and other individuals acting on its behalf, and all insiders thereto pursuant to Bankruptcy Code Sections 541, 362(a)(2), and 542 are directed to immediately turnover, surrender, give and place in the possession any and all copies, excerpts, summaries, duplications, replicas, manuscripts, hand written or type written copies, digital or computer stored copies, on any CD, tape, video tape, audio tape, DVD, of that certain intellectual property, book, transcript, manuscript or other form entitled IF I DID IT.

See, *Turnover Order*, ¶ 2.

3. As noted above, the Turnover Order specifically directs the Debtor, as well as third parties, to turnover all existing versions, in whatever form, of the Manuscript. Undersigned counsel served the Turnover Order on all interested parties, including the Debtor's Counsel. The Turnover Order was also widely circulated to various news agencies by counsel for the Goldman family.

4. Pursuant to 11 U.S.C. § 541, the Manuscript, and all material and intellectual property related thereto, is property of the Debtor's bankruptcy estate. Given the highly sensitive nature of the Manuscript, it is of the utmost importance that Trustee Dillworth is able to possess and control all versions, electronic or otherwise, until the estate's assets can be liquidated. This Court understood the urgency, and thus entered the Turnover Order.

5. As Trustee Dillworth explained in his *Emergency Motion to Compel Debtor's Compliance with Court Order* (the "Emergency Motion to Compel"), the Manuscript is a unique asset, which contains material and descriptions that are extraordinary sensitive. Furthermore, in the Emergency Motion to Compel, Trustee Dillworth warned that the Manuscript is the exact type of asset that could be easily

duplicated, transmitted, sold or transferred. The Emergency Motion to Compel is set for hearing on June 27, 2007 at 11:00 a.m.

6. On June 15, 2007, this Court conducted an evidentiary hearing on the Debtor's objection to the claim filed by the Goldman family. At the conclusion of the hearing, the Court overruled the objection and found that the Goldman claim was valid claim against the estate. Furthermore, the Court stated:

The Court finds and determines that it is appropriate to conclude that there is a lack of separate existence between Lorraine Brooke and Simpson, and that this must be determined and found, as a matter of law, to prevent fraud and an injustice. The incorporation of Lorraine Brooke Associates was clearly accomplished to perpetrate a fraud, a deception without any legitimate business purpose, deliberately practiced in order to secure an unfair or an unlawful benefit or accomplishment.

7. The outcome of the hearing on June 15, 2007 was widely reported by news agencies and on the Internet.

8. In an amazing and disappointing coincidence, on June 19, 2007, it came to the attention of Trustee Dillworth that the website www.tmz.com (the "TMZ Website") published the Manuscript through a direct web link on the TMZ Website.²

It is important to emphasize the widespread dissemination of the Manuscript that became available as a result of TMZ's decision to publish the Manuscript in readily accessible PDF format on the TMZ Website. For approximately two hours, any internet user, anywhere in the world, could literally download the Manuscript in readily accessible PDF format and load it onto their hard-drives for dissemination to any email user across the globe. Of course, it is possible, if not highly likely, that

² Trustee Dillworth retrieved a copy of what was published by TMZ, which TMZ made available on the TMZ Website in readily accessible and commonly used PDF format. At the request of this Court, Trustee Dillworth will make the PDF copy of the Manuscript available to this Court for *in camera* review.

during the time that the Manuscript was published on the TMZ Website, literally tens, if not hundreds of thousands of people, downloaded the Manuscript, and now hold property of this Debtor's bankruptcy estate on their hard drives, property that is now freely transferable around the globe at the click of a mouse.

9. TMZ is a subsidiary of Time Warner and America Online, the same entities that participated in the wide ranging publicity about this bankruptcy case and Trustee Dillworth's potential sale of the Manuscript following the Court's ruling on June 15, 2007. Each of the 118 pages of the Manuscript published by TMZ is emblazoned with the company's logo. As of the time of the filing of this Motion, the TMZ Website has removed the direct web link to the Manuscript, but still quotes substantial portions of the Manuscript in two separate articles available for viewing to the general public. Shockingly, the posted manuscript has the legal copyright notation.

10. Undersigned counsel has repeatedly attempted to make contact with Debtor's counsel in order to effectuate the turnover of the Manuscript. Generally, the Debtor's counsel informed the undersigned that the Debtor no longer was in possession of the Manuscript in any form. At a hearing before this Court on June 15, 2007 (the "Hearing"), Leonardo DaVinci Starke, I, Esq ("Mr. Starke") delivered to undersigned counsel a sealed envelope containing an outline of the Manuscript (the "Outline"). The Outline was provided to Trustee Dillworth through the discovery process, and differs substantially from the Manuscript that was posted on the TMZ Website.

11. Based on the documents produced to Trustee Dillworth by the Debtor and Mr. Starke, it is clear that the Debtor and Mr. Starke held original copies of the Outline, as "copies" of the Outline were provided to Trustee Dillworth. What is unclear to Trustee Dillworth, is the entire universe of entities holding copies of the Manuscript and the Outline.

12. It is obvious from the TMZ Website posting that TMZ holds a copy of the Manuscript. Even after TMZ deleted the link to the entire Manuscript, substantial portions of the Manuscript were quoted by TMZ. It logically follows that TMZ also holds a copy of the Manuscript or the Outline. It is unclear where TMZ retrieved the Manuscript. Trustee Dillworth has contacted counsel for TMZ and Warner Brothers and demanded that the materials be immediately removed from the TMZ Website. As of the filing of this Motion, TMZ has not responded to Trustee Dillworth's demands.

13. As with any other chapter 7 case, Trustee Dillworth is interested in administering the assets of the Debtor's bankruptcy estate, maximizing value for the Debtor's secured and unsecured creditors, and strictly adhering to his fiduciary duties as a chapter 7 trustee. As Trustee Dillworth has stated on multiple occasions, without all copies of the Manuscript and the Outline, Trustee Dillworth will not be able to effectively and efficiently administer the Debtor's estate.

14. Now, as a result of the actions of TMZ, the Manuscript and portions of the Outline have been made available on the World Wide Web at the TMZ Website. With the Manuscript being made available in the public domain, it is highly likely that the Manuscript's value has been diminished or destroyed. Although Trustee

Dillworth is not aware of how much web traffic that the TMZ website receives per day, it is worth noting that over 400 comments were already posted as a result of the TMZ Website's publishing of the Manuscript.

15. The automatic stay is the hallmark of the bankruptcy process, and is a concept that must be strictly enforced in order to allow trustees to effectively administer the assets of a bankruptcy estate for the benefit of all creditors. By publishing the Manuscript on the TMZ Website, TMZ blatantly and intentionally violated the automatic stay. Section 362(a)(3) of the Bankruptcy Code provides that "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" is a violation of the automatic stay. See, 11 U.S.C. § 362(a)(3).

16. Although it is unclear how TMZ obtained a copy of the Manuscript, it is clear from the TMZ Website that the Manuscript was published and that hundreds, if not thousands, of visitors to the TMZ Website viewed the Manuscript or portions thereof. As such, it is apparent that TMZ obtained and misappropriated property of the estate. TMZ misused the Manuscript for their own personal profit, while at the same time depriving the Debtor's estate and its secured and unsecured creditors the substantial value surrounding the Manuscript. What is unclear is what act or acts that TMZ engaged in in order to obtain the Manuscript.

17. Furthermore, TMZ currently holds a version of the Manuscript, and thus is likely in violation of this Court's Turnover Order if it fails to deliver all such copies to Trustee Dillworth. Failure to obey the Turnover Order would also result in a continuing violation of § 362(a)(3).

18. This Court has the power pursuant to 11 U.S.C. § 105 to enter “any order, process or judgment that is necessary to carry out the provisions of this title” and thus has the power to fashion immediate relief in the instant case. TMZ should be required to immediately retract and remove any and all postings of the Manuscript or any information related thereto. Additionally, TMZ shall be required to immediately appear for a 2004 examination and be required to disclose the source of the Manuscript. Finally, TMZ should be required to retain and turnover any and all recorded information, within the scope of the Bankruptcy Code and Rule 34(a) of the Federal Rules of Civil Procedure.

19. As the damages are immeasurable at this time, Trustee Dillworth reserves all rights, remedies and causes of action, including pursuit of punitive damages, against TMZ and any related subsidiaries, parents or related entities.

WHEREFORE, Trustee Dillworth respectfully requests that this Court enter and Order:

- A. Granting this Motion;
- B. Directing TMZ to comply with the Turnover Order;
- C. Directing the person with the most knowledge of the substance of this Motion to immediately appear and testify at a 2004 Examination;
- D. Requiring TMZ to show cause why it should not be held in contempt of this Court for violating the automatic stay;
- E. Awarding attorney’s fees and costs incurred attempting to secure the production of the Manuscript, including preparing, filing and prosecuting this Motion and any necessary 2004 Examinations; and

F. Granting such other and further relief as this Court deems just and proper.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualification to practice in this Court set forth in Local Rule 2090-1(a).

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically to all registered parties via CM/ECF on this 19th day of June, 2007.

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