UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
H.R.P. II, LLC	)	CASE NO. 17-21695
	)	
Debtor.	)	Chapter 11

ORDER DENYING MOTION FOR RULE TO SHOW CAUSE AND EXECUTION PURSUANT TO F.R.C.P. 70 AND F.R.B.P. 9020 AND 9021 (Dkt. No. 452)

I. Background

On September 4, 2019, Attorney Renee M. Babcoke ("Babcoke") filed an Application for Final Compensation Pursuant to 11 U.S.C. § 330. (Dkt. No. 262). The Court granted Babcoke's application on November 8, 2019, and issued an order (the "Order") requiring the debtor, H.R.P. II, LLC ("Debtor") to pay the sum of $24,317.50 to Babcoke in monthly payments of $1,000.00 until a Reorganization Plan is approved. (Dkt. No. 269). On October 11, 2021, Babcoke filed a Motion for Rule to Show Cause and Execution Pursuant to Federal Rule of Civil Procedure 70 and Federal Rules of Bankruptcy Procedure 9020 and 9021 (the "Motion"), requesting that Debtor be held in contempt for failure to pay attorney fees pursuant to the Order. (Dkt. No. 452). On November 1, 2021, Debtor filed a response to the Motion (the "Response") requesting the Court deny the Motion. (Dkt. No. 459). On November 19, 2021, Babcoke filed a Reply to the

Debtor's Response. (Dkt. No. 463).

In the Response, Debtor does not dispute that a portion of Babcoke's fees remain unpaid and payments are not currently being made to Babcoke. *See* Response, ¶ 1. Debtor provides that there are currently insufficient funds in the Debtor's account from which to pay the attorney fees and that Debtor is unable to make payments until real estate assets can be sold. *See* Response, ¶ 3. In the Reply, Babcoke argues that Debtor's assets have been dissipated and that funds are available through Debtor's counsel that can be used to pay Babcoke's attorney fees. *See* Reply, ¶ 10(b)(7). Babcoke requests the Court enter an order of contempt directing Debtor's counsel to pay her these funds with additional interest. *See* Reply, ¶ 11. For the reasons stated herein, the Motion is denied.

II. Analysis

It is firmly established that the power to punish for contempt is inherent in all courts. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (internal citations omitted). The powers of contempt are essential to the ability of the court to enforce "the due and orderly administration of justice and in maintaining the authority and dignity of the court . . ." *Cooke v. United States*, 267 U.S. 517, 539 (1925). Civil contempt is appropriate where a party has not been "reasonably diligent and energetic in attempting to accomplish what was ordered." *American Fletcher Mort. Co. v. Bass*, 688 F.2d 513, 517 (7th Cir. 1982) (internal citations

omitted). A complaining party must prove that the order was violated by clear and convincing evidence. *Stotler and Co. v. Able*, 870 F.2d 1158, 1163 (7th Cir. 1989) (internal citations omitted).

Here, Babcoke has failed to show by clear and convincing evidence that Debtor has not been reasonably diligent in attempting to follow the Order. In her Reply, Babcoke asserts that there are funds that have been paid to Debtor's current counsel that should be "disgorged." Babcoke, however, did not request an evidentiary hearing on the Motion and did not submit any affidavits or any other evidence to support this claim. The absence of any supporting evidence is fatal to her claim. Therefore, Babcoke has failed to carry her burden of proof.

Further undercutting Babcoke's claim is that Debtor's recent Monthly Operating Reports show nominal cash on hand. This suggests that Debtor's failure to follow the Court Order is not in bad faith. Under these circumstances, a finding of contempt is unwarranted. For the foregoing reasons, Babcoke's Motion for Rule to Show Cause and Execution Pursuant to Civil Rule 70 and Bankruptcy Rules 9020 and 9021 is DENIED.

All of the foregoing is ordered, adjudged, and decreed this 25th day of March 2022 in Hammond, Indiana.

James R. Ahler

James R. Ahler, Judge
United States Bankruptcy Court