

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CASE NO. 05-85627
)	
RELIABLE AIR, INC. d/b/a)	Chapter 11
RELIABLE HEATING AND AIR,)	
Debtor.)	JUDGE MASSEY
_____)	
)	
RELIABLE AIR, INC. d/b/a)	
RELIABLE HEATING AND AIR,)	Adversary Proceeding No. _____
)	
Plaintiff,)	
v.)	
)	
DANIEL L. JAPE and)	
KIMBERLY E. RUSE,)	
)	
Defendants.)	

**VERIFIED COMPLAINT FOR TURNOVER OF PROPERTY OF THE ESTATE,
ENFORCEMENT OF THE AUTOMATIC STAY AND FOR INJUNCTIVE RELIEF**

COMES NOW Reliable Air, Inc., d/b/a Reliable Heating and Air (“Debtor” or “Plaintiff”), by and through the undersigned counsel, and files this Verified Complaint for turnover of property of the estate pursuant to 11 U.S.C. § 542 and Fed. R. Bankr. P. 7001 , enforcement of the automatic stay and for injunctive relief pursuant to 11 U.S.C. § § 105 and 362 and Fed. R. Bankr. P. 7065 against Daniel L. Jape (“Defendant Jape”) and Kimberly E. Ruse (“Defendant Ruse”), and shows this Court as follows:

1.

Debtor initiated this bankruptcy case (the “Bankruptcy Case”) by filing its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on November 22, 2005 (the “Petition Date”).

2.

No trustee or examiner has been appointed in the Chapter 11 case.

3.

This is a civil proceeding which arises under, arises in and relates to the aforesaid bankruptcy case under the Bankruptcy Code. It is a core proceeding within the meaning of 28 U.S.C. §§ 157 and 1334(b). Venue of this proceeding is proper under 28 U.S.C. § 1409.

4.

Defendant Jape is an individual. Pursuant to Bankruptcy Rule 7004, Defendant Jape may be served by United States mail, addressed as follows: Daniel L. Jape, 110 Wiley Bridge Court, Woodstock, Georgia 30188.

5.

Defendant Ruse is an individual. Pursuant to Bankruptcy Rule 7004, Defendant Ruse may be served by United States mail, addressed as follows: Kimberly E. Ruse, 110 Wiley Bridge Court, Woodstock, Georgia 30188 and/or Kimberly E. Ruse, 8523 N. Atlantic Avenue, Cape Canaveral, Florida 32920.

BACKGROUND

6.

Debtor installs and services heating and cooling systems for residential and commercial customers in the Atlanta area.

7.

Defendant Jape was employed by the Debtor and served as President of the Debtor until November 3, 2005. On or about November 3, 2005, the Board of Directors of the Debtor held a special meeting and removed Defendant Jape from his position as President. Barbara Jape was

appointed to serve as President, Secretary and Treasurer of Debtor. Prior to that time, she had served as Secretary and Treasurer.

8.

During his employment with the Debtor, Defendant Jape was paid an annual salary of \$130,000, plus other compensation and benefits. Over the last several months, Defendant Jape's attendance at work was sparse at best. When he did come to the office, he was frequently under the influence of alcohol and/or illegal substances. Defendant Jape was physically and verbally abusive to the Debtor's employees.

9.

On a number of occasions, employees of the Debtor had to restrain Defendant Jape from harming other employees.

10.

On a number of occasions, Defendant Jape made derogatory and/or sexually explicit comments to female employees of the Debtor.

11.

On a number of occasions, Defendant Jape destroyed property of the Debtor in front of the Debtor's employees.

12.

Defendant Jape has physically and verbally abused Barbara Jape, both at the Debtor's premises and away from the office.

13.

Defendant Ruse is the live-in girlfriend of Defendant Jape. Defendant Ruse is not and never has been an employee of the Debtor.

COUNT I: TURNOVER OF PROPERTY OF THE ESTATE- STOLEN PROPERTY

14.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 13 of this Complaint.

15.

On or about November 18, 2005, Defendant Jape, without the knowledge of the Debtor, changed a door lock to the Debtor's business premises.

16.

On or about November 19, 2005, Defendant Jape and Defendant Ruse entered the business premises without authorization. Defendant Jape destroyed property of the Debtor, including, but not limited to, corporate books and records, files and computers. Defendant Jape removed property of the Debtor, including, but not limited to, a hard drive from the computer of Barbara Jape (the "Stolen Property"). Upon information and belief, Defendant Jape has downloaded the information contained on the hard drive on a personal computer.

17.

The Stolen Property constitutes property of the estate under 11 U. S. C. § 541.

18.

Dissemination of information contained on the hard drive stolen by Defendant Jape would be detrimental to the Debtor's continued operations and may jeopardize its ability to reorganize.

19.

On or about November 21, 2005, Defendant Jape was arrested by the Cherokee County police for entering the Debtor's premises without authorization and removing the Stolen Property. Defendant was released on or about November 23, 2005.

20.

On or about December 2, 2005, Defendant Jape was arrested by the Cherokee County police for appearing at the Debtor's business premises in violation of a Family Violence Ex Parte Protective Order. Upon information and belief, Defendant Jape was released from police custody on bond.

21.

Section 542(a) of the Bankruptcy Code reads in part, "an entity, other than a custodian, in possession, custody or control, during the case, of property that the trustee may use, sell or lease under Section 363 of this title ... shall deliver to the trustee, and account for, such property ..."

22.

Upon information and belief, Defendant Jape is in possession, custody and control of the Stolen Property.

23.

Upon information and belief, Defendant Ruse is in possession, custody and control of the Stolen Property.

24.

Defendants are not legal custodians of any property of the Debtor, including the Stolen Property.

25.

The Stolen Property constitutes property of the estate which the Debtor may use, sell or lease pursuant to Section 363 of the Bankruptcy Code.

26.

Defendants refuses to turn over the Stolen Property.

COUNT II: TURNOVER OF PROPERTY OF THE ESTATE- VEHICLES

27.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 26 of this Complaint.

28.

Defendant Jape and Defendant Ruse are in possession of two vehicles which are leased assets of the Debtor (the "Vehicles").

29.

The Vehicles constitute property of the bankruptcy estate.

30.

Section 542(a) of the Bankruptcy Code reads, in part, "an entity, other than a custodian, in possession, custody or control, during the case, of property that the trustee may use, sell or lease under Section 363 of this title ... shall deliver to the trustee, and account for, such property ..."

31.

Defendant Jape is in possession, custody and control of the Vehicles.

32.

Defendant Ruse is in possession, custody and control of the Vehicles.

33.

Defendants are not legal custodians of any property of the Debtor, including the Vehicles.

34.

The Vehicles constitute property of the estate which the Trustee may use, sell or lease pursuant to Section 363 of the Bankruptcy Code.

COUNT III: MISAPPROPRIATION OF TRADE SECRETS

35.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 34 of this Complaint.

36.

Some or all of the Stolen Property, including, without limitation, customer lists, pricing information and job proposals, constitute "trade secrets" within the meaning of O. C. G. A. § 10-1-761. Said trade secrets are valuable and are not generally known or readily ascertained by proper means. Debtor makes all efforts to maintain the secrecy of its trade secrets which are reasonable under the circumstances.

37.

Defendants have misappropriated trade secrets of the debtor in violation of the Georgia Trade Secrets Act, O. C. G. A. § 10-1-761.

38.

The Debtor's remedy at law is inadequate; therefore, the Debtor is entitled to injunctive relief, enjoining Defendants from continuing their misappropriation and from engaging in any further misappropriation of the Debtor's trade secrets.

39.

In addition to injunctive relief, the Debtor is entitled to recover damages from Defendants for misappropriation, including both the actual loss caused by the misappropriation and any unjust enrichment caused by Defendants' misappropriation that is not taken into account in computing actual loss.

40.

Defendants' misappropriation was willful and malicious. Accordingly, the Debtor is entitled to an award of exemplary damages and reasonable attorneys' fees under O. C. G. A. §§ 10-1-763 and 10-1-764.

COUNT IV: ENFORCEMENT OF PROVISIONS OF AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362

41.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 40 of this Complaint.

42.

Upon initiation of the Bankruptcy Case, the provisions of 11 U.S.C. § 362 operate as a stay, applicable to all entities, including the Defendants, of "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."

43.

Defendants are in possession of property of the estate, including, but not limited, to the Stolen Property and the Vehicles, and exercises control over property of the estate in violation of the provisions of 11 U.S.C. § 362.

COUNT IV: INJUNCTIVE RELIEF

44.

The Debtor expressly incorporates herein by reference the allegations set forth in paragraphs 1 through 43 of this Complaint.

45.

Defendant Jape's conduct has created a tense and volatile work environment. The Debtor's

employees are frightened to come to work fearing for their own safety and the well-being of their property.

46.

Defendant Jape's conduct is disruptive to the Debtor's business and could significantly hamper the Debtor's ability to reorganize.

47.

Debtor seeks injunctive relief against Defendant Jape restraining and/or enjoining him from the following:

- (a) Physically appearing at the Debtor's business premises;
- (b) Contacting employees of the Debtor, either by phone, electronic means or in person;
- (c) Contacting customers of the Debtor, either by phone, electronic means or in person;
- (d) Threatening physical abuse to the Debtor, its property or its employees;
- (e) Taking possession of or destroying property of the Debtor.

48.

Debtor shows that immediate and irreparable injury, loss, or damage will result to the Debtor if Defendant Jape is not restrained and/or enjoined from the actions set forth above.

49.

The damage to Debtor would outweigh any potential detriment to Defendant Jape as a result of this restraining order and/or injunction.

50.

The Debtor's legal remedy is inadequate; therefore, the Debtor is entitled to injunctive relief.

WHEREFORE, the Debtor requests the Court to enter an Order and Judgment as follows:

- (a) in favor of the Debtor directing Defendants to turn over the Stolen Property to the

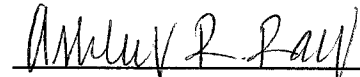
Debtor;

- (b) in favor of the Debtor directing Defendants to turn over the Vehicles to the Debtor;
- (c) in favor of the Debtor directing the Defendants to comply with the provisions of the automatic stay;
- (d) in favor of the Debtor restraining and/or enjoining the Defendant Jape from taking actions to harm the Debtor as set forth herein; and
- (e) granting such other and further relief as the Court deems just and proper.

This 7th day of December, 2005.

Respectfully submitted,

SCROGGINS & WILLIAMSON



J. ROBERT WILLIAMSON

Georgia Bar No. 765214

ASHLEY REYNOLDS RAY

Georgia Bar No. 601559

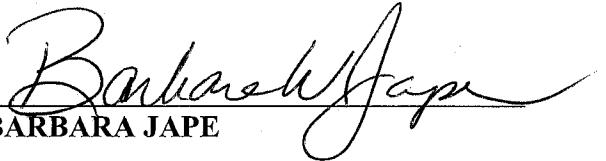
Counsel for the Debtor

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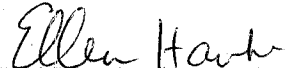
STATE OF GEORGIA
COUNTY OF FULTON

VERIFICATION

NOW COMES Barbara Jape, who first being duly sworn upon her oath, deposes and says that she is President of Reliable Air, Inc. d/b/a Reliable Heating and Air; that she is authorized in said capacity to verify the foregoing Complaint; that she has read said Complaint and the allegations contained therein are true and correct to the best of her knowledge, information and belief.


BARBARA JAPE

Sworn to and subscribed before me this
the 7th day of December, 2005.


Notary Public

**MY COMMISSION EXPIRES
SEPTEMBER 9 2007**

My commission expires: _____