

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
PIKE NURSERY HOLDING LLC,)	CASE NUMBER: 07-79129-mgd
)	
Debtor.)	
_____)	
)	
MARCUS A. WATSON, SR.,)	
Chapter 7 Trustee,)	
Plaintiff,)	
)	
v.)	Adversary Case No. _____
)	
ARMSTRONG GARDEN CENTERS,)	
INC.,)	
Defendant.)	
_____)	

COMPLAINT

COMES NOW Marcus A. Watson, Sr., Chapter 7 Trustee for the Estate of Pike Nursery Holding LLC, and moves this Court for a temporary restraining order and upon a final hearing a permanent injunction and declaratory judgment with respect to two Dell computer servers and the electronic data and information contained thereon. In support of his Complaint, the Trustee shows this Court as follows:

1.

Marcus A. Watson is the duly appointed Chapter 7 Trustee of the Estate of Pike Nursery Holding LLC.

2.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1334 in that this action arises in a case under Title 11 of the United States Code, as amended (the “Bankruptcy Code”).

3.

This action arises under or relates to a Title 11 case pending in this Court, and venue is proper in this Court under 28 U.S.C. § 1409.

4.

This action is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (E).

5.

Armstrong Garden Centers, Inc. (“Armstrong”) is subject to the jurisdiction of this Court by virtue of conducting business in the State of Georgia and also by having voluntarily subjected itself to the jurisdiction of this Court.

6.

The Estate is the owner of two Dell computer servers on which is contained all of the financial information of Pike Nursery Holding LLC. This information

which is vital to the collection of accounts receivable as well as preference actions as well as 503(b)(9) claims. These servers have the only electronic copies of this information.

7.

Pursuant to an arrangement between the Trustee and the Defendant, the Trustee has been permitted to maintain the computer servers at the 2675 Breckinridge, Suite 300, Duluth, Georgia 30096 location of the Defendant. During the time period that the computer servers have been at Armstrong's location, Armstrong has utilized the information thereon to prepare projections.

8.

On March 5, 2009, and in the days leading up thereto, the Trustee was informed by Armstrong that it owned the servers and that it intended to remove the servers from the jurisdiction of this Court and transport it to California.

9.

The Trustee objected to this action and advised Armstrong that the computer servers were vital and necessary to the administration of this case and contained evidence whose integrity must be preserved and contained email information which was necessary to the administration of the Estate.

10.

At approximately 3:20 p.m. on March 5, 2009, Armstrong advised a representative of the Trustee that it was its intention to “wipe clean” the servers at 5:00 p.m. on March 5, 2009. This action would destroy all evidence of the accounting records of Pike Nursery Holding LLC which is vital for the Trustee to use in order to collect accounts receivable and also to pursue preference actions. In addition, beginning on March 4, 2009, Armstrong interfered with the Trustee’s access to that information.

11.

If the computer servers are removed from the jurisdiction of this Court or if the information contained thereon is compromised, the Trustee will be irreparably injured and harmed for which he has no adequate remedy at law.

12.

Unless restrained, Armstrong appears intent on removing the servers from the jurisdiction of this Court and destroying all information contained thereon.

13.

By virtue of the foregoing, the Trustee is entitled to an order of this Court restraining and enjoining Armstrong from removing the servers from the jurisdiction of this Court and further from tampering with or otherwise affecting such information or precluding the Trustee with having access to it.

14.

Furthermore, the Trustee is entitled to an order of this Court declaring that the Estate is the owner of this personal property and directing Armstrong to surrender it to the Trustee.

15.

Pursuant to an Order of this Court entered on December 17, 2008 [Docket No. 656], Armstrong compromised and waived all claims which it may have in this case in exchange for the allowance of an administrative claim in the Chapter 11 case of \$200,000. This claim was agreed to by the Trustee in consideration of Armstrong's contention that certain disputed property had not been delivered to it pursuant to the its Asset Purchase Agreement.

16.

Armstrong has acted in bad faith and been unnecessarily stubborn and litigious so as to entitle the Trustee to recover his attorney's fees and costs of this action.

WHEREFORE, the Trustee is entitled to an order of this Court restraining and enjoining Armstrong Garden Centers, Inc. from removing the Dell computer servers from the jurisdiction of this Court or otherwise tampering, removing, altering, destroying, or interfering with any of the electronic data contained thereon

and from preventing the Trustee from having access to such information and further declaring that such Dell server is property of the Estate, that the Trustee be awarded his reasonable attorney's fees and costs of this action and for such other and further relief as this Court deems just and proper.

\s\ John A.Christy
John A. Christy, Esq.
Georgia Bar 125518
J. Carole Thompson Hord
Georgia Bar No. 291473
Attorneys for Marcus A. Watson, Sr.
Chapter 7 Trustee

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516
(404) 681-3450

VERIFICATION

Came before me, an officer duly authorized to administer oaths, Marcus A. Watson, Sr., who after having been sworn, deposes and states that facts in the foregoing complaint are true and correct and based upon his personal knowledge.

This 5th day of March, 2009.


MARCUS A. WATSON, SR.

SWORN to and subscribed
before me this 5th day
of Mar, 2009.


Notary Public

