

UNITED STATES BANKRUPTCY COURT

FOR THE

**EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In the Matter of:

PAUL A LEITNER-WISE

Debtor

Chapter 13

Case No. 15-11345-RGM

MOTION TO DISMISS WITH PREJUDICE IN REM,
NOTICE OF MOTION TO DISMISS WITH PREJUDICE IN REM
AND
NOTICE OF SCHEDULED HEARING ON THIS MOTION

Thomas P. Gorman, Chapter 13 Trustee, files this Motion to Dismiss this Chapter 13 case with Prejudice and asks the Court to impose *in rem* prejudice as to Debtor's real property in light of Debtor's flagrant bad faith conduct in this bankruptcy case.

1. Debtor filed this Chapter 13 case on April 20, 2015.
2. Debtor's prior Chapter 13 cases (Case No. 13-10713-BFK and Case No. 14-12420-BFK) were dismissed upon Trustee's Motion to Dismiss due to Debtor's failure to make Plan payments, and Trustee's Certification of Debtor's failure to commence making Plan payments, respectively. During the course of both these cases, Debtor's primary source of income was self-employment income from his business, Leitner-Wise Manufacturing, LLC, which ownership interest was disclosed on Debtor's Statement of Financial Affairs filed in both of Debtor's prior cases.
3. In Debtor's present Chapter 13 case, Debtor does not disclose any ownership interest in Leitner-Wise Manufacturing, LLC ("LWM") on his Statement of Financial Affairs. Debtor now takes the position that he has never had any ownership interest of

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any kind in LWM, and attributes the erroneous disclosures on his prior Statement of Financial Affairs to Debtor's previous bankruptcy counsel.

4. Debtor also presented sworn testimony to this effect to the Court on May 20, 2015, on his Motion to Extend the Automatic Stay. Both Debtor and his witness, Vanessa Truog, testified that Debtor never had any ownership interest in Leitner-Wise Manufacturing, LLC, nor did Debtor ever have any sort of managing role or the like in the company.

5. Upon Trustee's examination of Debtor at his June 2, 2015, Meeting of Creditors, Trustee discovered that there are two pending lawsuits filed against Debtor at the time of the petition that are not disclosed in Debtor's Statement of Financial Affairs. Accordingly, Trustee requested and Debtor has provided copies of the same.

6. The first undisclosed lawsuit was filed by BCI Defense, LLC in the Marshall County Circuit Court in the State of Indiana against Leitner-Wise Manufacturing, LLC, Debtor and, Vanessa Truog.¹ The BCI Defense Complaint refers to LWM as Debtor's business, and the lawsuit was filed to include Debtor as a defendant as he is the owner of LWM.

7. The second undisclosed lawsuit was filed by Beam Distributing, Inc. in the Circuit Court of the County of Henrico, Virginia against Debtor, Vanessa Truog, Leitner-Wise Manufacturing, LLC, Rich Caviar, LLC, and Muzzleshot, LLC.² The Complaint filed by Beam Distributing, Inc. alleges that Debtor is a member or manager of LWM.

8. Attached to the Complaint filed by Beam Distributing, Inc. are copies of the Articles of Incorporation for Leitner-Wise Manufacturing, LLC, which show that

¹ *BCI Defense, LLC v. Leitner-Wise Manufacturing, LLC, et. al*, No. 50C01-1501-CT-9 (Ind. Cir. Ct. Feb. 12, 2015).

² *Beam Distributing, Inc. v. Paul Andrew Leitner-Wise, et. al*, No. CL15-686 (Va. Cir. Ct. Mar. 20, 2015).

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Debtor was the organizer of the corporation, and that he did so as a member or manager of the company (Exhibit A).

9. Also attached to the Complaint filed by Beam Distributing, Inc. are copies of the Articles of Incorporation for Muzzleshot, LLC, which show that LWM was the organizer of Muzzleshot, LLC, and that Debtor signed the organizing paperwork on behalf of LWM as a Manager of LWM on June 4, 2014 (Exhibit B).

10. Also attached to the Complaint filed by Beam Distributing, Inc. is a copy of the executed Exclusive Distributor Agreement between Beam Manufacturing and LWM, showing Debtor as the signatory on the Agreement on behalf of LWM in his capacity as a Manager of LWM (Exhibit C).

11. Also attached to the Complaint filed by Beam Distributing, Inc. is a copy of a Bill of Sale between Beam Distributing, Inc. and LWM dated July 16, 2014, and executed by Debtor on July 22, 2014 before a Notary Public, in his capacity as a Manager of LWM (Exhibit D).

12. Also attached to the Complaint filed by Beam Distributing, Inc. appears to be a copy of a lawsuit initiated by Debtor himself on December 5, 2014, in the U.S. District Court for the Eastern District of Alexandria³, which named Beam Distributing, Inc. as the defendant (Exhibit E).

13. Under Section 4 of Debtor's Statement of Financial Affairs filed in this case, Debtor affirmatively claims that there are no lawsuits to which Debtor was or is a party within the one year preceding the filing of this bankruptcy on April 20, 2015.

14. Under Section 18 of Debtor's Statement of Financial Affairs filed in this case Debtor fails to disclose his ownership interest and/or managing roles in LWM or

³ *Paul Leitner-Wise, et. al v. Beam Distributing, Inc.*, No. 2:14-cv-619-RGD (E.D. Va. Dec. 5, 2014).

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Muzzleshot, LLC, which Debtor held within the six years preceding the filing of this bankruptcy on April 20, 2015.

15. It appears that Debtor's sworn testimony to the Court on May 20, 2015, that he has never held any ownership interest or managing role in LWM is false.

16. Additionally, it appears that Section 4 and Section 18 of Debtor's Statement of Financial Affairs filed in this case are materially inaccurate.

17. Trustee also notes that a Motion for Entry of Order Directing 2004 Examination and Production of Documents has been filed by LWRC International, LLC ("LWRCI"), wherein LWRCI seeks production of a royalty contract that Debtor values at \$5,000,000.00 on his Schedule B and that Debtor seeks to assume under Section 6B of his proposed Chapter 13 Plan. LWRCI contends that it is unaware of this royalty contract and that it does not have any contracts of any kind with Debtor.

18. Thus, based on LWRCI's allegations set forth in its Motion, it would appear that Debtor's Schedules B and G filed in this case are also materially inaccurate.

19. Given that Debtor's May 20, 2015 sworn testimony was fundamentally misleading at best, and knowingly false at worst, coupled with Debtor's bankruptcy Schedules filed in this case that are materially inaccurate, it is clear that Debtor's transparency and veracity cannot be relied upon.

20. Debtor's bad faith conduct and lack of candor with the Court is so egregious that Debtor should not be allowed to reap the benefits of Chapter 13 bankruptcy, nor should he be allowed to continue to enjoy the protections of bankruptcy while further hindering the rights of his creditors.

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WHEREFORE, Trustee prays that the Court dismisses Debtor's case with *in rem* Prejudice as to Debtor's real property in light of Debtor's brazen efforts to mislead the Court and his creditors in this Chapter 13 case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then on or before five business days prior to the hearing date, you or your attorney must:

File with the court a written response with supporting memorandum as required by Local Bankruptcy Rule 9013-1(H). Unless a written response and supporting memorandum are filed and served by the date specified, the Court may deem any opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing. If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before five business days prior to the scheduled hearing. You must mail a copy to the persons listed below.

Attend the hearing to be held on July 8, 2015 at 9:30 a.m., in Courtroom 1 on the 2nd floor, United States Bankruptcy Court, 200 South Washington Street, Alexandria, VA 22314. If no timely response has been filed opposing the relief requested, the court may grant the relief without holding a hearing.

A copy of any written response must be mailed to the following persons:

Thomas P. Gorman
300 North Washington Street, Ste.400
Alexandria, VA 22314

Clerk of the Court
United States Bankruptcy Court
200 South Washington Street
Alexandria, VA 22314

If you or your attorney do not take steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: June 16, 2015

/s/ Thomas P. Gorman

Thomas P. Gorman
Chapter 13 Trustee
300 N. Washington Street, #400

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Alexandria, VA 22314

(703) 836-2226

VSB 26421

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of June, 2015, served via ECF to authorized users or mailed a true copy of the foregoing Motion to Dismiss with Prejudice, Notice of Motion and Notice of Hearing to the following parties.

Paul A Leitner-Wise
Chapter 13 Debtor
917 Juniper Place
Alexandria, VA 22304

William Francis Markley
Attorney for Debtor
1940 Duke Street, Suite 200
Alexandria, VA 22314

____/s/ Thomas P. Gorman_____
Thomas P. Gorman