

ORDERED.

Dated: July 27, 2011



Eileen W. Hollowell
Eileen W. Hollowell, Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re: 4415 EAST GRANT ROAD, L.L.C. Debtor.	Chapter: 11 Case No.: 4:11-bk-03219-EWH
In re: MAX CHRIS MONSTON AND IRENE MURRAY MONSON Debtors.	Case No.: 4:10-bk-31122-EWH
In re: ABERDEEN GROUP, L.L.C. Debtor.	Case No.: 4:10-bk-30737-EWH
In re: CULVER CITY SELF-STORAGE, LLC Debtor.	Case No.: 4:10-bk-30734-EWH
In re: ARIZONA SELF-STORAGE AT LINDSAY ROAD LLC Debtor.	Case No.: 4:10-bk-30727-EWH
In re: THORNYDALE SELF STORAGE ASSOCIATES, LLC Debtor.	Case No.: 4:10-bk-30723-EWH

1	In re:	
2	SAHUARITA SELF STORAGE	
3	L.L.C.	
		Debtor.
4	In re:	
5	NOGALES SELF STORAGE	
6	ASSOCIATES, L.L.C.	
		Debtor.
7	In re:	
8	MARIPOSA ROAD SELF-STORAGE	
9	ASSOCIATES and MARANA	
10	HOSPITALITY II, LLC	
		Debtors.

Case No.: 4:10-bk-30721-EWH

Case No.: 4:10-bk-30716-EWH

Case No.: 4:10-bk-30713
(Jointly Administered)

**MEMORANDUM DECISION ON
DEBTOR’S MOTION FOR TURNOVER**

INTRODUCTION

4415 East Grant Road, L.L.C. (“Debtor”), one of the debtors in these jointly administered cases seeks the turnover of approximately \$50,000 in rents collected prepetition by a state court appointed receiver. For the reasons explained in the balance of this memorandum, the request will be granted.

FACTS AND PROCEDURAL HISTORY

Debtor operates an apartment complex in Tucson. Wells Fargo Bank, N.A. (the “Creditor”) commenced litigation prepetition, in state court, to appoint a receiver to manage the Debtor’s property. On September 17, 2010, a state court appointed MCA Financial Group, Ltd. as receiver (the “Receiver”). The state court’s order (the “Receivership Order”) directed the Receiver to collect rents generated on the Debtor’s behalf and to place the profits in escrow for the benefit of creditors. The Receivership Order directs the Receiver to maintain the value of the apartment complex, provide ordinary maintenance and repair

1 services, provide goods and services, and pay operating expenses. The
2 Receivership Order also provided that, after the Receiver collected rents and
3 paid certain expenses, the:

4 Receiver shall place remaining funds not needed to pay expenses
5 of the Receivership Estate or for a working capital fund, in an
6 escrow account that shall be property of [the Creditor] or such
7 creditor(s) that establish a senior interest in the funds, which funds
8 shall be distributed upon further order of [the state court], and
9 which funds are property of a creditor to be designated by the
10 Court but in any event shall not be property of [the Debtor].

11 The Receiver ultimately retained \$49,000 in profits in escrow (the
12 “Retained Funds”). The Debtor commenced the instant bankruptcy case on
13 February 9, 2011.

14 The Creditor filed its “Motion for an Order that Funds Held by the
15 Receiver are not Property of the Estate” on May 31, 2011 (DE 245) (the
16 “Motion”) asserting that the language of the Receivership Order requires this
17 Court to determine that the Retained Funds are not property of the estate. The
18 Debtor responded on June 30, 2011, countering that the Retained Funds are
19 property of the bankruptcy estate, that the Creditor only retains a security
20 interest on the Retained Funds, and that those funds are necessary for the
21 Debtor’s reorganization.

22 ISSUE

23 Is the Creditor required to turn over the Retained Funds to the Debtor?

24 JURISDICTION

25 Jurisdiction is proper under 28 U.S.C. §§ 1334 and 157(b)(2)(A).
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ANALYSIS

A custodian is required to deliver all property in the custodian’s possession to the trustee as of the date that the custodian acquires knowledge of a bankruptcy case. 11 U.S.C. § 543(b)(1).¹ The Bankruptcy Code defines “custodian” broadly to include a state court receiver. 11 U.S.C. § 101(11). Specifically, § 101(11)(C) provides that a custodian is a receiver that is “appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor’s creditors.” In a chapter 11 case, the debtor-in-possession normally has the powers of the trustee, so the custodian should turnover estate property to the debtor in possession. 11 U.S.C. § 1107(a).

Section 543(b) is broadly interpreted. See McClanahan v. Met. Adjustment Bureau (In re Met. Adjustment Bureau), 22 B.R. 67, 70 (9th Cir. BAP 1982). The custodian is required to deliver and account for all property in his or her possession, custody, or control. 11 U.S.C. § 543(b)(1). The only real limitation on the breadth of § 543 is that the property must be “property of the debtor.” 11 U.S.C. § 543(b)(1); see also Collier on Bankruptcy ¶ 543.03 (16th ed. 2010).

¹ All statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 Here, the Creditor is a custodian for the purposes of § 543 because the
2 Receivership Order created a receivership as that term is defined in § 101(11).
3 The Retained Funds were rents generated from the Debtor's apartment
4 complex, so they are the Debtor's property and subject to turnover under
5 §543(b)(1), even if the Creditor or other creditors may be able to claim a
6 security interest in the Retained Funds. Here, the creditor argues the
7 Receivership Order requires a different result.
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9 The language of the Receivership Order states that the Retained Funds
10 are not the Debtor's property, but the Receivership Order does not determine
11 that the Retained Funds are the Creditor's property. Instead, it provides that
12 the Receiver is to hold the funds in escrow subject to a later determination of
13 whether it is the Creditor's property and/or the property of any other creditors
14 "that establish a senior interest in the funds." The Receivership Order also
15 required the Receiver to return to the state court before it could distribute the
16 funds to creditors, including the movant. Therefore, even prepetition the
17 Creditor did not have an absolute right to the Retained Funds.
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20 While state law generally defines the extent of a debtor's interest in
21 property, it is federal law that determines whether property is property of the
22 estate for the purposes of bankruptcy law. E.g., In re Pettit, 217 F.3d 1072,
23 1078 (9th Cir. 2000) citing Butner v. United States, 440 U.S. 48, 54-55 (1979).
24 The definition of property of the estate is very broad and includes all legal and
25 equitable interests of a debtor. 11 U.S.C. § 541(a)(1). Because the
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1 Receivership Order did not finally determine that the Creditor owned the
2 Retained Funds, the Court finds that the Debtor retained an equitable interest
3 in those funds. Accordingly, they must be turned over.²

4 **CONCLUSION**

5 For the foregoing reasons, a separate order will be entered requiring the
6 Receiver turn over the Retained Funds to the Debtor and provide an
7 accounting pursuant to § 541(b).
8

9 Dated and signed above.

10 Notice to be sent via the Bankruptcy
11 Noticing Center ("BNC") to:

12 4415 East Grant Road, L.L.C.
13 4572 E. Camp Lowell Dr.
14 Tucson, AZ 85712

15 Michael W. McGrath
16 Frederick J. Petersen
17 Scott H. Gan
18 Mesch, Clark & Rothschild
19 259 North Meyer Avenue
20 Tucson, AZ 85701

21 Gerald L. Shelley
22 Nicolas B. Hoskins
23 Fennemore Craig, P.C.
24 3003 N. Central Avenue, Suite 2600
25 Phoenix, AZ 85012-2913

26 Christopher J. Pattock
27 Office of the U.S. Trustee
28 230 N. First Avenue, Suite 204
Phoenix, AZ 85003

² For example, if the Debtor tendered all funds due to the Creditor on its note, notwithstanding the Receivership Order, the Debtor would have a claim to the Retained Funds because once the Creditor was fully satisfied, it could not receive more than the amount of its debt.