

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Real Good Technologies, LLC,

Plaintiff & Judgment
Creditor,

v.

Victory Solutions, LLC,

Defendant & Judgment
Debtor.

Action No. 1:17-cv-00149-DCN

**REAL GOOD TECHNOLOGIES, LLC'S MOTION SEEKING AN ORDER
COMPELLING VICTORY SOLUTIONS TO RETURN CERTAIN PROPERTY
THAT HAS BEEN REVESTED UNDER 11 U.S.C. § 349(b)(3)**

On July 2, 2019, the United States Bankruptcy Court for the Northern District of Ohio entered the attached order dismissing the Chapter 11 proceedings in *In re Victory Solutions LLC*, Bankr. Pet. No. 18-15798-(JPS) (Bankr. N.D. Ohio) (July 2, 2019) (Doc. 79). In response to this dismissal order, Plaintiff Real Good Technologies, LLC respectfully submits this motion seeking an order compelling Victory Solutions to return certain property that has been revested under 11 U.S.C. § 349(B)(3) and states the following:

Background

In re Victory Solutions I

1. Prior to the commencement of the now-dismissed Chapter 11 proceedings, Real Good Technologies obtained a default judgment for \$215,000 for the Debtors' breach of a settlement agreement in *Real Good Technologies, LLC v.*

Victory Solutions, LLC, Case No. 1:17-cv-00149-DCN (N.D. Ohio, Dec. 7, 2017). As of the timing of this filing, Victory Solutions has made, by agreement, certain adequate protection payments but the judgment remains outstanding. Victory Solutions failed to make several payments under the adequate protection agreement leading up to the dismissal of the underlying bankruptcy case.

2. Pursuant to a seizure order issued by the District Court in that case in November 2017, Real Good Technologies, accompanied by the United States Marshals, seized certain of the Debtor's telecommunications and computer equipment.

3. On December 7, 2017, Real Good Technologies filed a Report of Items Seized, demonstrating that it took possession of the following equipment:

No.	Description of Property
1,049	New AASTRA 57IVoip Digital Phones and Related Accessories (Feet, Constitution, Power Supply and Cables)
30	Used Android LG Model ZNFLK430 Tablets
13	Supermicro Rack Servers (1 marked "bad," 1 marked "no response," and 1 damaged case and damaged internal parts)
12	Portable Aero Cases Containing Supermicro Rack Server and a Switch
1	Portable Aero Case Containing Switch Only

See Pl. Real Good Technologies' Report of Items Seized (ECF No. 119) (Dec. 7, 2017).

4. Before Real Good Technologies could sell the seized equipment, the Debtor commenced a Chapter 11 case. *See In re Victory Solutions LLC*, Bankr. Pet. No. 18-10977-(JPS) (Bankr. N.D. Ohio), Chapter 11 Voluntary Petition (Feb. 26, 2018) (Doc. 1).

5. The next day, the Debtor moved for an order compelling Real Good Technologies to turn over the seized equipment pursuant to Section 543 of the Bankruptcy Code. *See Mot. for Turnover of Property* (Feb. 27, 2018) (Doc. 11).

6. Thereafter the parties entered into, and on March 21, 2018 the Court entered, the Stipulation and Order Providing for Turnover of Equipment and Granting of Adequate Protection (Mar. 21, 2018) (Doc. 27).

7. On September 24, 2018, the Bankruptcy Court entered an order dismissing the Chapter 11 case. *See Order of Dismissal* (Sept 24, 2018) (Doc. 92).

In re Victory Solutions II

8. On September 27, 2018, Victory Solutions again initiated Chapter 11 bankruptcy proceedings. *See In re Victory Solutions LLC*, Bankr. Pet. No. 18-15798-(JPS) (Bankr. N.D. Ohio), Chapter 11 Voluntary Petition (Sept. 27, 2018) (Doc. 1).

9. Upon filing its second Chapter 11 petition, Victory Solutions notified this Court and sought a stay of proceedings. *See Notice of Stay of Proceedings* (Sept. 27, 2018) (ECF No. 143).

10. This Court issued a stay of proceedings on October 31, 2018. *See Order* (Nov. 2, 2018) (ECF No. 144).

11. On July 2, 2019, the United States Bankruptcy Court for the Northern District of Ohio entered the attached order dismissing the Chapter 11 proceedings in *In re Victory Solutions LLC*, Bankr. Pet. No. 18-15798-(JPS) (Bankr. N.D. Ohio) (July 2, 2019) (Doc. 79).

12. In response to the Agreed Upon Order Dismissing the Case, the Bankruptcy Court found that “Victory Solutions [was] not authorized to be a debtor, so the case may not be converted.” *Id.* In doing so the court overruled Real Good Technologies’ objection seeking to convert the matter to a Chapter 7. *Id.*

13. On July 8, 2019, Real Good Technologies filed a copy of the Bankruptcy Court’s dismissal with this Court. *See* Notice of Bankruptcy Court’s Order of Dismissal of Chapter 11 Bankruptcy Proceedings, Ex. A (July 8, 2019) (ECF No. 145).

Effect of Dismissal by Bankruptcy Court

14. As noted above, on July 2, 2019, the United States Bankruptcy Court for the Northern District of Ohio entered the attached order dismissing the Chapter 11 proceedings in *In re Victory Solutions LLC*, Bankr. Pet. No. 18-15798-(JPS) (Bankr. N.D. Ohio) (July 2, 2019) (Doc. 79). Under 11 U.S.C. § 362(c)(2)(B) of the Bankruptcy Code, the stay of proceedings has been terminated as of the time of the dismissal.

15. As a result of the dismissal, under 11 U.S.C. § 349(b)(3), the property Real Good Technologies relinquished under terms of the adequate protection

agreement “revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.”

16. Section 349, in its entirety, provides:

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 349.

17. Upon dismissal of the Chapter 11 proceeding, on July 2, 2019, the property identified in ¶ 3 above revested to Real Good Technologies under section (b)(3). *See* H.R. Rep. 95-595, at 338 (1977) (“Subsection (b) specifies that the dismissal reinstates proceedings or custodianships that were superseded by the bankruptcy case, reinstates avoided transfers, reinstates voided liens, vacates any

order, judgment, or transfer ordered as a result of the avoidance of a transfer, and reverts the property of the estate in the entity in which the property was vested at the commencement of the case.”). *See also In re Steenstra*, 307 B.R. 732, 738 (B.A.P. 1st Cir. 2004) (“[O]nce the bankruptcy petition is dismissed, and the estate terminates, § 349(b)(3) provides that the former property of the bankruptcy estate reverts in the entity which held the property prior to the commencement of the case.”); *In re Lewis & Coulter, Inc.*, 159 B.R. 188, 190 (Bankr. W.D. Pa. 1993) (“The effect of dismissal of a bankruptcy case is set forth at 11 U.S.C. § 349. Unless the court indicates otherwise, the general effect of an order of dismissal is to restore the status quo ante. It is as though the bankruptcy case never had been brought. The purpose of Section 349 is “to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case.” H. Rep. No. 595, 95th Cong., 1st Sess., 338 (1977); S. Rep. No. 989, 95th Cong., 2d Sess., 48-49; 1978 U.S. Code Cong. & Ad. News, 5787, 5834-35.”).

WHEREFORE, Real Good Technologies respectfully requests that the Court enter an order compelling Victory Solutions to return to Real Good Technology the following reverted property now that the Chapter 11 proceedings have been dismissed:

No.	Description of Property
1,049	New AASTRA 57IVoip Digital Phones and Related Accessories (Feet, Constitution, Power Supply and Cables)

No.	Description of Property
30	Used Android LG Model ZNFLK430 Tablets
13	Supermicro Rack Servers (1 marked "bad," 1 marked "no response," and 1 damaged case and damaged internal parts)
12	Portable Aero Cases Containing Supermicro Rack Server and a Switch
1	Portable Aero Case Containing Switch Only

and that Victory Solutions shall make it available to Real Good Technology within thirty (30) days of the issuance of the Court's order and such other and further relief as is just.

Date: July 8, 2019

Respectfully submitted,

/s/ Michael L. Murphy

Michael L. Murphy (DC 480163)

BAILEY & GLASSER, LLP

1055 Thomas Jefferson Street NW,
Suite 540

Washington, D.C. 20007

Phone: 202-463-2101

Facsimile: 202-463-2103

E-mail: mmurphy@baileyglasser.com

Lydia M. Floyd (Ohio 0088476)
**PEIFFER, WOLF, CARR &
KANE, A Professional Law
Corporation**
1422 Euclid Avenue
Suite 1610
Cleveland, OH 44115
Telephone: (216) 589-9280
Facsimile: (888)411-0038
E-mail: lfloyd@prwlegal.com

*Attorneys for Real Good Technologies,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Real Good Technologies, LLC's Motion Seeking an Order Compelling Victory Solutions to Revest Certain Property as Required by 11 U.S.C. § 349(B)(3)* was served upon the following through the Court's ECF system and further via email to the following:

Victory Solutions, LLC
Attn: Shannon Burns
19751 Progress Drive
Strongsville, OH 44136
shannon@victorysolutions.us

Victory Solutions, LLC
Attn: Melissa Anderson, Accountant & Authorized Agent
19751 Progress Drive
Strongsville, OH 44136

Glenn E. Forbes, Esq
FORBES LAW LLC
Main Street Law Building
166 Main Street
Painesville, OH 44077
gforbes@geflaw.net

Bankruptcy Counsel for Victory Solutions

July 8, 2019

/s/ Michael L. Murphy
Michael L. Murphy (DC 480163)
BAILEY & GLASSER, LLP