

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 FOR AN ORDER TO  
SHOW CAUSE CONCERNING VICTORY SOLUTIONS'S FAILURE TO  
COMPLY WITH THE COURT'S DECEMBER 18, 2019 ORDER &  
MEMORANDUM IN SUPPORT THEREOF**

Plaintiff Real Good Technologies, LLC respectfully moves this Court for an order requiring Victory Solutions to show cause why it has failed to comply with the Court's December 18, 2019 Order requiring it to re-vest certain property within 30 days of entry of the Order. *See* Order, ECF No. 224 (Dec. 28, 2019).

**Background Detailing Victory Solutions  
Pattern of Disregard for This Court's Orders**

**A. Victory Solutions has chosen not to comply with the Court's December 18 Order.**

1. On December 18, 2019, the Court entered an Order requiring Victory Solutions to turnover "the property listed in Defendant Victory Solutions, LLC's Notice of Filing of Location of Equipment (ECF #155) that is not located in Cuyahoga County" within 30 days of the entry of the Order.

2. The Court contemporaneously issued an Order Adopting Report and Recommendation. *See* Order Adopting Report and Recommendation, ECF No. 223 (Dec. 18, 2019).

3. In accordance with the Court's December 18, 2019 Order, Victory Solutions was required to comply on or before January 17, 2020.

4. On February 3, 2020, the undersigned sent an email to counsel of record for Victory Solutions, Glenn Forbes, stating: "The Court's December 18, 2019 Order required compliance with the R&R within 30 days. That was 47 days ago and we've heard from neither nor your client. We're planning to move for an order to show cause." This email went unacknowledged.

5. Plaintiff's counsel is unaware of any attempt by Victory Solutions or its counsel to contact counsel for Real Good Technologies concerning the Court's December 18, 2019 Order or to otherwise indicate its intent to comply.

**B. Real Good Technologies was required to seek and obtain a Show Cause Order to get Victory Solutions to even submit the Notice of Filing of Location of Equipment (ECF #155).**

6. On July 8, 2019, in the wake of the dismissal of its second improper attempt at Chapter 11, plaintiff Real Good Technologies filed a notice of the bankruptcy dismissal (ECF No. 145), a revestment motion (ECF No. 146), and a notice of pending garnishments (ECF No. 147).

7. On July 18, 2019, through counsel, Victory Solutions responded by arguing that the subject property was subject to an IRS lien. (ECF No. 149).

8. On July 31, 2019, Real Good Technologies submitted a reply arguing that the property revested at the time the bankruptcy was dismissed or, in the

alternative, the IRS lien would only apply to that property that was in Cuyahoga County. (ECF No. 150).

9. On August 12, 2019, this Court issued an Order requiring Victory Solutions “file an accounting showing the location of the subject property at the time the bankruptcy case was dismissed” on or before August 19, 2019. (ECF No. 152).

10. The ECF Docket also contains the following description of the Court’s Order:

08/12/2019	<a href="#">152</a>	<b>Order:</b> On July 8, 2019, plaintiff filed a motion seeking an order compelling defendant to return certain property that has reverted under 11 USC 349(b)(3). (Related Doc. # <a href="#">146</a> ). On July 18, 2019 defendant filed a response. (Related Do. # <a href="#">149</a> ). On July 31, 2019, plaintiff filed a reply in support of its motion requesting an order requiring defendant to account for the relevant property and its location at the time the bankruptcy case was dismissed. The court finds that plaintiff’s request for an accounting of the location of the property is well taken. (Related Doc. # <a href="#">150</a> ). On or before August 19, 2019, defendant must file an accounting showing the location of the subject property at the time the bankruptcy case was dismissed. Signed by Magistrate Judge Thomas M. Parker on 08/12/2019. (S,MD) (Entered: 08/12/2019)
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11. On September 3, 2019, after Victory Solutions chose not to comply with the Court’s Order, Real Good Technologies files a Motion for an Order to Show Cause & Memorandum in Support Thereof. *See* Real Good Technologies, LLC’s Mot. for an Order to Show Cause & Mem. in Support Thereof, ECF No. 153 (Sept. 3, 2019).

12. On September 20, 2019, Magistrate Judge Parker issued a 28 U.S.C. § 636(e)(6)(B)(iii) Certification and set a hearing for October 1, 2019 requiring Victory Solutions to “show cause why it should not be held in contempt for failing to comply with this court’s August 12, 2019 order.” *See* 28 U.S.C. § 636(e)(6)(B)(iii) Certification, ECF No. 154 (Sept. 20, 2019).

13. On September 30, 2019, on the eve of the hearing, Victory Solutions finally chose to comply with the August 12 Order and submitted the required inventory. *See* Notice of Filing of Location of Equipment, ECF No. 155 (Sept. 30, 2019). Upon which the Court cancelled the October 1 hearing, but only after counsel for Real Good Technologies had spent 3.7 hours reviewing documents and preparing for the hearing.

14. As of the filing of this show cause motion, Victory Solutions has yet to respond to the Court's Order by filing its inventory detailing the location of the property listed in plaintiff's revestment motion:

<b>No.</b>	<b>Description of Property</b>
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* 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), ECF No. 146 (July 8, 2019); Pl. Real Good Technologies' Report of Items Seized (ECF No. 119) (Dec. 7, 2017).

**C. Victory Solutions has chosen from the very outset of these proceedings to not participate as indicated by its choice to take a default judgment and to not appear for a deposition.**

15. This is not the first time that Victory Solutions has failed to participate in these legal proceedings:

- a. Victory Solutions failed to appear at the outset of this case and a default judgment was entered on April 19, 2017. (ECF No. 16).
- b. Shannon Burns failed to appear for his deposition and Real Good Technologies was required to move to convene the deposition in the presence of the Magistrate Judge. (ECF No. 32).

**Applicable Law**

16. This Court has, among its inherent equitable powers, the power to hold in contempt parties who are disobedient of its orders. The contempt power may be used to redress any of a wide variety of forms of misconduct that occur during the course of litigation and to preserve both the orderly administration of justice and the inherent dignity of the District Court itself. *See Vaughn v. City of Flint*, 752 F.2d 1160 (6th Cir. 1985) (contempt power inherent in trial court); *Hoist Mfg. Co. v. LiRocchi*, 490 F.2d 105, 113 (6th Cir. 1974) (same).

17. Victory Solutions' continued defiance of this Court's Order undermines the orderly administration of justice.

**Conclusion**

18. For the foregoing reasons, Real Good Technologies respectfully requests that this Court enter an Order (a) requiring Victory Solutions to

demonstrate why it should not be held in contempt; (b) requiring Victory Solutions to submit an updated Notice of Filing of Location of Equipment disclosing which property is currently outside Cuyahoga County; (c) requiring Victory Solutions to submit a declaration to Real Good Technologies disclosing all bank accounts being used by Victory Solutions and/or Shannon Burns for income generated by the property of Victory Solutions located outside of Cuyahoga County; (d) requiring Victory Solutions to pay the costs and fees associated with preparing and filing this motion; and (e) granting any other relief this Court deems just and appropriate.

Date: February 10, 2020

Respectfully submitted,

/s/ Michael L. Murphy

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*Attorneys for Real Good Technologies, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Real Good Technologies, LLC's Motion for an Order to Show Cause Concerning Victory Solutions's Failure To Comply With The Court's December 18, 2019 Order & Memorandum in Support Thereof was served upon the following through the Court's ECF system and further via email to the following:

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February 10, 2020

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

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**[PROPOSED] ORDER**

This matter came before the Court on Real Good Technologies, LLC's Motion for an Order to Show Cause Concerning Victory Solutions's Failure to Comply With The Court's December 18, 2019 Order & Memorandum in Support Thereof ("Motion"), filed on February 6, 2020. Upon consideration of the Motion, and any opposition thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2020, hereby

ORDERED, that the Motion be granted, and it is

FURTHER ORDERED, that Victory Solutions is ordered to show cause why it should not be held in contempt for its failure to comply with this Court's December 18, 2020 Order (ECF No. 152), and it is

FURTHER ORDERED, that Victory Solutions shall file its show cause within seven (7) days of the entry of this Order.

\_\_\_\_\_  
Hon. \_\_\_\_\_