

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

MICHAEL F. SPARFVEN : BK No. 99-14615  
Debtor Chapter 7

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**ORDER**

The issue at hand was raised on May 14, 2001, at a continued hearing on the Chapter 7 Trustee's Motion for Order in Aid of Administration. During his examination of Joseph T. Houlihan, Esq., Family Court counsel for the Debtor's wife, Dana Sparfven, Debtor's counsel indicated that his client in all likelihood would not be testifying but instead would invoke his privilege against self-incrimination under the Fifth Amendment of the United States Constitution. Through Attorney Houlihan, Mr. Kusinitz then began to introduce as exhibits various motions and papers filed on the Debtor's behalf in the Rhode Island Family Court. See Michael Sparfven's Exhibits JJ, KK, LL, MM, NN, and OO. Some of these papers were verified by the Debtor. See Exhibit MM & OO. Notwithstanding the Court's caution against possible waiver of his intended privilege claim, Debtor's counsel offered the exhibits and they were accepted as full exhibits.

Charles Pisaturo, Esq., the Chapter 7 Trustee called Michael Sparfven as a witness. Mr. Sparfven refused to answer the Trustee's questions, invoking his Fifth Amendment right. I ruled that by introducing the Family Court documents, some of them sworn, through an adverse witness,<sup>1</sup> the Debtor waived his rights under the Fifth Amendment and was subject to cross examination by the Trustee. I instructed Mr. Sparfven to answer the Trustee's questions. On the advice of his counsel, Mr. Sparfven refused to answer any questions, citing the Fifth Amendment. I warned Mr. Sparfven that his refusal to answer could subject him to a finding of contempt. Mr. Sparfven acknowledged and understood that he could be held in contempt, and refused to answer any of the Trustee's questions.

I found that Mr. Sparfven's refusal to answer questions by the Trustee, after being ordered to do so, constituted a wilful contempt in the Court's presence, and ordered the Debtor to surrender himself to the custody of the U.S. Marshal, to be incarcerated until he purged himself of said contempt by answering the Trustee's questions. See 11 U.S.C. § 105(a); Fed.

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<sup>1</sup> I see this as a strategically impermissible attempt by the Debtor to testify selectively and to avoid cross examination on a subject which was an important part of his defense to the Trustee's Motion.

R. Bankr. P. 9020(a); *Eck v. Dodge Chemical Co. (In re Power Recovery Systems, Inc.)*, 950 F.2d 798, 802 (1<sup>st</sup> Cir. 1991); *In re Latanowich*, 207 B.R. 326, 333 (Bankr. D. Mass. 1997). I also ruled that the effect of this order should be stayed for 24 hours from the date and time of its entry, to permit review of the merits of the Order and/or an extension of the stay by the District Court.

Dated at Providence, Rhode Island, this 15<sup>th</sup> day of May, 2001, at 11:35 a.m.

/s/ Arthur N. Votolato  
Arthur N. Votolato  
U.S. Bankruptcy Judge