

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>IN RE:</b>  <b>NITRO FLUIDS, LLC, <i>et al.</i>,</b>  <b>Debtors.<sup>1</sup></b>	§ § § § §	<b>Chapter 11</b>  <b>Case No. 24-60018 (CML)</b>  <b>(Jointly Administered)</b>
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<b>NITRO FLUIDS, LLC,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>MIKE’S GATES, LLC,</b>  <b>Defendant.</b>	§ § § § § § § § § §	           <b>Adv. Proc. No. 24-_____</b>
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**ORIGINAL COMPLAINT**

Plaintiff Nitro Fluids, LLC (“Plaintiff” or “Nitro”), by and through its undersigned counsel, hereby files this Original Complaint complaining of Mike’s Gates, LLC (“Defendant”). In support thereof, Plaintiff respectfully represents as follows:

**I. JURISDICTION AND VENUE**

1. On May 15, 2024 (the “Petition Date”), Nitro, NFH Leasing, LLC (“Leasing”), and Straitline Pumps, LLC (“Straitline”, and with Nitro and Leasing, the “Debtors”) commenced the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of the Debtors’ federal tax identification numbers, are Nitro Fluids, LLC (2119); NFH Leasing, LLC (9218); Straitline Pumps, LLC (4168). The location of the service address for Nitro Fluids, LLC and NFH Leasing, LLC is: 117 Broadway, Nordheim, TX 78141. The location of the service address for Straitline Pumps, LLC is: 13750 San Pedro Ave., Ste. 560, San Antonio, Texas 78232.

Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their financial affairs as debtors in possession.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

4. Plaintiff consents to entry of final orders and judgment by the Bankruptcy Court in this adversary proceeding.

## **II. BASES FOR RELIEF**

5. The predicates for the relief requested herein are sections 105(a) and 542 of the Bankruptcy Code and Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **III. PARTIES**

6. Plaintiff Nitro is one of the Debtors in the above-captioned Chapter 11 Cases. Nitro’s principal place of business is located at 117 Broadway, Nordheim, TX 78141.

7. Defendant is a limited liability company formed under the laws of the State of Texas. Defendant’s principal office is located at 16125 Channelview Drive, Channelview, Texas 77530. Defendant may be served with process at its principal place of business or via its registered agent, Michael Farquhar, 3902 Bogota Drive, Pasadena, Texas 77505.

## **IV. FACTS**

8. The Debtors provide oilfield services in multiple segments of the oil and gas drilling and fracturing market. Nitro owns equipment and performs work related to hydraulic fracturing, drilling, and well-completion activity.

9. Commencing on or about June 29, 2023, and continuing through October 24, 2023, Plaintiff delivered certain oil and gas valves and other property to Defendant for Defendant to perform cleaning and restoration services on the property. The property includes the following items (collectively, the “Estate Property”):

Quantity	Description
2	3" 15k Hydraulic Gates
14	3" 15k Manual Gates
2	5" 15k Bestway Manual Gates
6	7" 10k Bestway Body Bushings
22	7" 10k Mark IV Body Bushings
17	7" 10k Mark IV Gates
38	7" 10k Top Shelf Balance/Lower Stems
54	7" 10k Top Shelf Body Bushings
24	7" 10k Top Shelf Gates
12	7" 10k Top Shelf Operating/Upper Stems
3	7" 15k Mark IV Gates
26	7" 15k Bestway Body Bushings
13	7" 15k Bestway Gates
2	7" 15k Mark IV Balance/Lower Stems
8	7" 15k Mark IV Body Bushings
1	7" 15k Mark IV Operating/Upper Stems

10. Upon information and belief, Defendant provided goods and/or services on the Estate Property prior to the Petition Date. As of the Petition Date, the Estate Property was in possession of Defendant.

11. At no time following the Petition Date has Defendant sought to turn over the Estate Property. Nor did the Defendant seek relief from the automatic stay pursuant to section 362(f). “When a creditor fears that ‘adequate protection’ is in immediate jeopardy if possession is delivered consistent with § 542(a), the ‘congressionally established bankruptcy procedure’ is expedited relief under § 362(f).” *Transouth Fin. Corp. v. Sharon (In re Sharon)*, 234 B.R. 676,

685 (B.A.P. 6th Cir. 1999). Bankruptcy Code section 362 (f) provides that “[u]pon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer damage before there is an opportunity for notice and a hearing under subsection (d) or (e) this section.” *See also Expeditors Int’l v. Colortran, Inc. (In re Colortran, Inc.)*, 210 B.R. 823, 827-28 (B.A.P. 9th Cir. 1997) (“If the creditor is concerned that its interest will be irreparably harmed if the property is turned over before the motion for relief from stay can be heard it may request an emergency hearing under § 362(f).”). “The Bankruptcy Code does not offer [a creditor] the option of simply refusing possession when it fears inadequate protection of its lien.” *In re Sharon*, 234 B.R. at 685.

12. On June 12, 2024, Defendant filed Proof of Claim No. 10 in Plaintiff’s bankruptcy case (the “Claim”). The Claim asserts that Defendant is owed a total of \$285,617.00 for the goods and services it provided to Plaintiff prior to the Petition Date, including alleged amounts due to Defendant for the goods and/or services it provided to Plaintiff in connection with the Estate Property. The Claim alleges that Defendant holds a possessory lien on the Estate Property up to the amount of \$94,835.00.

13. Between June 27, 2024 and August 13, 2024, the counsel for the Debtors and counsel for the Defendant exchanged emails whereby the Debtors proposed, among other things, to stipulate to replacement liens in the Estate Property and any proceeds from the sale of the Estate Property to the same extent, validity, and priority as existed as of the Petition Date, with the Debtors’ postpetition debtor-in-possession lender, Simmons Bank, having agreed that such liens would constitute “Permitted Liens” (as such term is defined in this Court’s order approving the

Debtors' postpetition debtor-in-possession financing) (collectively, the "Proposed Adequate Protection").

14. The Defendant refused.

15. Plaintiff now brings this action to enforce the Defendant's obligation to turn over the Estate Property.

## V. LEGAL DISCUSSION

16. Bankruptcy Code section 542(a) requires that a person in possession of estate property shall deliver such property to the trustee. The Bankruptcy Code's edict is a mandatory obligation burdening every party, including the Defendant, that arises immediately when the Debtors filed their bankruptcy petitions. *See Knaus v. Concordia Lumber Co. (In re Knaus)*, 889 F.2d 773, 775 (8th Cir.1989). Accordingly, "without doubt, a creditor's knowing retention of property of the estate constitutes a violation of § 362(a)(3)." *Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission)*, 98 F.3d 1147, 1151 (9th Cir. 1996) (quoting *Chugach Timber Corp. v. N. Stevedoring & Handling Corp. (In re Chugach Forest Prods.)*, 23 F.3d 241, 242 (9th Cir. 1994)); *see also In re Abrams*, 127 B.R. 239, 242 (B.A.P. 9th Cir. 1991)); *accord Knaus*, 889 F.2d at 775.

17. "To effectuate the purpose of the automatic stay, ***the onus to return estate property is placed upon the possessor***; it does not fall on the debtor to pursue the possessor." *In re Abrams*, 127 B.R. at 243 (emphasis added). One court directly addressed possessory lien issues directly, determining that a "creditor who possesses property of the estate on the date the bankruptcy petition is filed has an obligation to turn that property over to the debtor. . . . The onus to return estate property is place upon the possessor. . . . ***A creditor who requires possession in order to achieve or maintain perfection has the right to file a motion for relief from the stay and request adequate protection such that its lien rights are preserved.***" *Id.*

18. In effect, the Defendant here had the obligation to “tender the goods or face sanctions for violation of the stay.” *Colortran*, 210 B.R. at 827-28. And “while the creditor may suggest terms of adequate protection, it may not unilaterally condition the return of the property on its own determination of adequate protection.” *Id.* “If the creditor and the debtor cannot agree on what constitutes adequate protection, **the creditor** can request a hearing, with the debtor having the burden of proving that the creditor's rights will be adequately protected.” *Id.*<sup>2</sup>

19. Despite the Defendant’s clear obligation to turnover the Estate Property, the Plaintiff now files this lawsuit seeking turnover and costs for violating the automatic stay.

## **VI. CAUSES OF ACTION**

### **COUNT I**

#### **Turnover of Property of the Estate Pursuant to Section 542(a) of the Bankruptcy Code**

20. Plaintiff restates and realleges each of the foregoing paragraphs as if fully set forth herein.

21. Section 542(a) of the Bankruptcy Code provides in pertinent part “an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under 363 of this title, or that the debtor may exempt under 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property . . . .” 11 U.S.C. § 542(a).

22. The Estate Property is property of Plaintiff and its bankruptcy estate pursuant to section 541 of the Bankruptcy Code. The Estate Property has consequential value and benefit to the Plaintiff’s bankruptcy estate.

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<sup>2</sup> “If the creditor is concerned that its interest will be irreparably harmed if the property is turned over before the motion for relief from stay can be heard, it may request an emergency hearing under § 362(f).” *Id.*

23. Accordingly, pursuant to section 542(a) of the Bankruptcy Code, Defendant must turn over to the Plaintiff the Estate Property.

**COUNT II**  
**Damages for Violations of the Automatic Stay**

24. Plaintiff restates and realleges each of the foregoing paragraphs as if fully set forth herein.

25. By failing to fulfil Defendant's turnover obligations under the Bankruptcy Code, Defendant has and continues to exercise control over property of the Estate in direct violation of section 362(a)(3) of the Bankruptcy Code.

26. At no time did Defendant seek relief from the automatic stay, nor did Defendant seek emergency relief pursuant to section 362(f).

27. Under section 362(k) of the Bankruptcy Code, "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

28. Here, the Debtor's bankruptcy estate has been damaged, resulting in actual damages to be proven at trial, because the Debtors have incurred costs to force turnover of the Estate Property even though the Bankruptcy Code specifically contemplates that a debtor need not expend limited estate resources to compel parties to fulfil such parties' independent, unequivocal obligations under the Bankruptcy Code.

29. Worse yet, the Estate Property has been unavailable to potential bidders to inspect during the pendency of the Debtors' sale process, which may ultimately result in depressed sales prices of such assets (and perhaps others).

30. Accordingly, the Plaintiff requests a money judgment against the Defendant for all damages resulting from its violations of the automatic stay, including all of the Plaintiff's

reasonable attorney's fees and expenses, and further including such punitive damages as the Court deems appropriate to deter other violations of the automatic stay.

**VII. PRAYER FOR RELIEF**

Plaintiff respectfully requests that the Court enter judgment in favor of the Plaintiff and against the Defendant:

- (i) Finding and concluding that Defendant is in possession, custody, and/or control of the Estate Property;
- (ii) Finding and concluding that the Estate Property is property of the Plaintiff and its bankruptcy estate under section 541 of the Bankruptcy Code;
- (iii) Ordering Defendant to turn over the Estate Property or the value of the Estate Property to Plaintiff pursuant to section 542(a) of the Bankruptcy Code;
- (iv) Awarding post-judgment interest at the maximum legal rate running from the date of judgment until the date the judgment is satisfied in full, plus costs; and
- (v) granting Plaintiff such other and further relief as is just, proper, and equitable.

Dated: September 27, 2024

Respectfully submitted,

/s/ Eric T. Haitz

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