NOT FOR PUBLICATION

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SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re STEPHEN A. PURNER, Debtor.	Bankruptcy No. 03-03932 Adversary No. 04-90536
HAROLD TAXEL, Chapter 7 Trustee, Plaintiff, v. FREDERICK D. HALE and JAMES A. HENNENHOEFER, Defendants.	MEMORANDUM DECISION

This is an adversary proceeding brought by Harold Taxel, as Chapter 7 trustee for the above-named debtor ("Trustee"), seeking the turnover of funds from a custodian pursuant to Section 543 of the Bankruptcy Code ("Code"). The Court heard the Trustee's motion for summary judgment ("Motion") on September 22, 2005. The Court took the matter under submission at that time, but withheld a ruling upon being notified that the parties were discussing a possible settlement.

Having subsequently been informed that the negotiations have concluded without a settlement, the Court now issues its ruling on the Motion.

The debtor, Stephen Purner ("Debtor"), and his ex-wife were involved in a divorce and sold their residence during those proceedings. On October 2, 2002, the Family Court ordered that the homestead amount of $75,000 be placed into the attorney trust account of Karen Heffron ("Heffron"), attorney for the Debtor's ex-wife.

The Family Court authorized several payments out of the funds, and these were made by Heffron. The Debtor's ex-wife then changed counsel and hired the defendant, the law firm of James Hennenhoefer, a Professional Corporation ("Law Corporation"). The amount of $41,026.27 was transferred by Heffron to the Law Corporation to be held in the Law Corporation's trust account.

The Debtor filed for relief under Chapter 7 of the Code on April 23, 2003. The Law Corporation made four postpetition disbursements from the funds it received from Heffron, and did so without bankruptcy court approval. The four transfers totaled $16,156.36. The Law Corporation turned over the remaining funds to the Trustee, so the amount in controversy is limited to the $16,156.36 disbursed by Law Corporation.

Pursuant to Code Section 543:

> (a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
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> (b) A custodian shall--
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> (1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product,

> offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and
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> (2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

Pursuant to Code Section 101(11)(c), a custodian is defined as

> a trustee, receiver, or agent under applicable law, or under a contract, 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.

The "categories of custodians are descriptive rather than exhaustive. Congress defined the term broadly to include third parties who have taken charge of the debtor's assets for the general benefit of creditors." Matter of Cash Currency Exchange, Inc., 762 F.2d 542, 553 (7th Cir. 1985). The Court notes that the Trustee asserted in his Statement of Undisputed Facts that Heffron was a custodian over the $75,000 held in her attorney trust account, and in response, the Law Corporation admitted this was an undisputed fact.

The Court is satisfied that there is no genuine dispute as to the following material facts: the Law Corporation was a custodian of the funds under Section 543 because, like Heffron, it was authorized to take charge of the debtor's property for the purpose of administration of such property for the benefit of the debtor's creditors, including potentially his ex-wife; at the time of the four disbursements, defendant Frederick Hale ("Hale")[1] had knowledge of the Debtor's

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[1] Hale was named as a defendant by the Trustee, but at the hearing on the Motion the Trustee stated on the record that he was no longer pursuing a recovery from Hale, and would only seek a recovery, if any, from the Law Corporation.

bankruptcy filing; at that time, Hale was an associate attorney for the Law Corporation and since Hale was the Law Corporation's associate, the Law Corporation had knowledge of the commencement of the bankruptcy case; the Law Corporation made the disbursements while having knowledge of the commencement of the bankruptcy case.

Based on these facts the Trustee is entitled to a judgment against the Law Corporation pursuant to Section 543. The Trustee's Motion is GRANTED.

Counsel for the Trustee is directed to submit a form of order consistent with this Memorandum Decision within 14 days of the entry of this decision.

Date: DEC 19 2005

Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE