

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

IN RE:

Michael E. Gargas,	)	
	)	
Debtor.	)	CASE NO. 6:20-bk-01276-LVV
_____ /	)	CHAPTER 7
	)	
Richard B. Webber II, Trustee	)	
	)	
Plaintiff,	)	ADV. NO. <u>6:20-ap-_____</u> .
vs.	)	
	)	
Maria Mincey, and	)	
4URSAFETY-GIM&C LLC,	)	
	)	
Defendants.	)	
_____ /	)	

ADVERSARY PROCEEDING COMPLAINT FOR TURNOVER OF PROPERTY OF THE  
ESTATE PURSUANT TO §541 AND 542 OF THE BANKRUPTCY CODE

Comes Now Plaintiff, Richard B. Webber II, as Trustee of the Estate of the above-named Debtor (“Plaintiff” or “Trustee”) and sues Defendants, Maria Mincey and 4URSAFETY GIM&C LLC (collectively “Defendants”), for Turnover of Property of the Estate under Section 541 and Section 542 of the Bankruptcy Code and in support thereof states as follows:

1. On February 29, 2020, Michael E. Gargas (“Debtor”) filed petition for Chapter 7 Bankruptcy.
2. Plaintiff was appointed by the Court to act as Chapter 7 Trustee of the Estate, and in so acting has authority to, and does, bring this action.
3. The Defendant, Maria Mincey (“Mincey”), is a resident of Volusia County, FL.
4. The Defendant, 4URSAFETY GIM&C LLC (“LLC”), conducts business and is located in Volusia County, FL.

JURISDICTION

5. Debtor's Chapter 7 case is pending in the United States Bankruptcy Court in the Middle District of Florida, Orlando Division, Case 6:20-bk-01276-LVV.

6. This proceeding is a "core proceeding" pursuant to 11 U.S.C. §157(b)(2)(E).

7. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157.

8. To the extent that this action, or any portion thereof, is not a core proceeding, Plaintiff consents to the entry of final orders or judgment by the Bankruptcy Judge.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS

10. Debtor, Michael E. Gargas ("Debtor"), was President and owner of GIM&C, LLC.

11. On February 27, 2017, Maria Mincey, as President of 4URSAFETY-GIM&C, LLC, Debtor, entered into an Asset Purchase Agreement with Debtor as President of GIM&C, LLC. A copy of the Asset Purchase Agreement is attached hereto as Exhibit "A" and incorporated by reference herein.

12. To date, Maria Mincey and 4URSAFETY-GIM&C have failed to pay the \$6,750.00 due pursuant to the Asset Purchase Agreement.

13. On February 27, 2017, Debtor, as an individual, Maria Mincey, as an individual, and 4URSAFETY-GIM&C, LLC, a Florida limited liability company, entered into a Sale of Customer Accounts/Non-Compete Agreement. A copy of the Sale of Customer Accounts/Non-Compete Agreement is attached hereto as Exhibit "B" and incorporated by reference herein.

14. To date, Maria Mincey and 4URSAFETY-GIM&C have failed to provide the Sales Reports showing the gross sale amounts for March 2017 through February 2020 (including a list of customer invoices).

15. The amount due from the Sale of Customer Accounts/Non-Compete Agreement is unknown at this time.

16. The amount due will be calculated based on the above Gross Sale Reports as follows:

- a. 7.5% of gross sales (based upon gross invoice) for the first 18 months period March 2017 – August 2018; and
- b. 10% of gross sales (based upon gross invoice) for the back 18 month period of September 2018 – February 2020.

COUNT I:  
TURNOVER OF PROPERTY PURSUANT TO SECTIONS 541 AND 542

17. Paragraphs 1 through 16 inclusive are alleged and incorporated herein by reference.

18. This is a Count against Defendants, Maria Mincey and 4URSAFETY-GIM&C, LLC, for Turnover of \$6,750.00 pursuant to the Asset Purchase Agreement.

19. The \$6,750.00 is Property of the Estate pursuant to Section 541 of the Bankruptcy Code.

20. The Defendants have failed to turn over the \$6,750.00 Property of the Estate to the Trustee.

WHEREFORE, Trustee prays that this Honorable Court will Order the Defendants turnover the Property of the Estate in the amount of \$6,750.00 pursuant to Sections 541 and 542 of the Bankruptcy Code, enter Final Judgment against the Defendants in the amount of \$6,750.00 plus Attorney's Fees and Expenses, and for such other relief as is just and proper under the circumstances of this Adversary Proceeding.

COUNT II:  
TURNOVER OF PROPERTY PURSUANT TO SECTIONS 541 AND 542

21. Paragraphs 1 through 16 inclusive are alleged and incorporated herein by reference.

22. This is a Count against Defendants, Maria Mincey and 4URSAFETY-GIM&C, LLC, for Turnover of 4URSAFETY-GIM&C, LLC monthly accounts, including a list of customer invoices with gross sales amounts, for March 2017 through February 2020 pursuant to the Sale of Customer Accounts/Non-Compete Agreement.

23. The amount due from the Sale of Customer Accounts/Non-Compete Agreement is currently unknown and will be determined from the monthly sales reports.

24. The amount due under the Sale of Customer Accounts/Non-Compete Agreement is Property of the Estate under Section 541 of the Bankruptcy Code.

WHEREFORE, Trustee prays this Honorable Court will Order the Defendants turnover the Monthly Sales Reports which is Property to the Estate pursuant to Sections 541 and 542 of the Bankruptcy Code, enter Final Judgment against the Defendants for the amounts owed plus Attorney's Fees and Expenses, and for such other relief as is just and proper under the circumstances of this Adversary Proceeding.

DATED: May 13, 2020

/s/ Richard B Webber II  
Richard B Webber II, Trustee  
PO Box 3000  
Orlando, FL 32802-3000  
Phone: (407)563-4328  
E-mail: rwebber@zkslawfirm.com

**"A"****ASSET PURCHASE AGREEMENT**

This agreement between GIM&C, LLC (a Florida limited liability company) ("Seller") and 4URSAFETY-GIM&C, LLC (a Florida limited liability company) ("Buyer") is intended to be the complete, final, whole, and legally binding Agreement for the purchase of specific inventory, furniture & equipment and supplies by 4URSAFETY-GIM&C, LLC from GIM&C, LLC. The descriptions and purchase price of the assets being transferred are outlined in Exhibit A. The aggregate purchase price of these assets is \$6,750.


This Agreement does not include transfer of cash, accounts receivable or any intellectual property rights. GIM&C, LLC retains the cash and accounts receivable assets along with exclusive rights to all intellectual properties including, web sites, catalogs, logos, artwork, trademarks, etc. along with the financial and accounting records and systems.

This Agreement shall be effective in conjunction with the Sale of Customer Accounts/Non-Compete Agreement between Michael E. Gargas, as an individual, and 4URSAFETY-GIM&C, LLC and shall go into effect at 12:01 AM on February 27, 2017.

The aggregate purchase price of transferred assets totaling \$6,750 shall commence on September 1, 2017 and be paid by 4URSAFETY-GIM&C, LLC to GIM&C, LLC between September 1, 2017 and February 1, 2018 in 6 equal monthly payments due by the first day of each month in the monthly amount of \$1,125.

Legal title shall not transfer until the aggregate purchase price is paid in full. If payment is not made in full, the GIM&C shall have full legal rights to repossess and/or otherwise sell such assets to a third party.

By signature below, each party acknowledges their acceptance of the above terms.

  
Michael, E. Gargas, President  
GIM&C, LLC

2/27/17  
Date

  
Maria Mincey, President  
4URSAFETY-GIM&C, LLC

2/27/2017  
Date

## Exhibit A

## Assets Purchased

Item Description	Category	Serial Number	Value
SHANKLIN MACHINE	N/A	N/A	\$4,500.00
COMPUTER	N/A	N/A	\$100.00
COMPUTER	N/A	N/A	\$100.00
LABEL PRINTER	N/A	N/A	\$1,800.00
DESK	N/A	N/A	\$85.00
FILE CABINET	N/A	N/A	\$30.00
OFFICE CHAIR	N/A	N/A	\$30.00
REAMS OF PAPER	N/A	N/A	\$25.00
ELECTRIC STAPLER	N/A	N/A	\$10.00
ELECTRIC PENCIL SHARP	N/A	N/A	\$5.00
CABLE CORDS	N/A	N/A	\$5.00
INTERNET SWITCH	N/A	N/A	\$40.00
PENS	N/A	N/A	\$5.00
TRASH CAN	N/A	N/A	\$10.00
SMALL SIDE TABLE	N/A	N/A	\$5.00
<b>Total</b>			<b>\$6,750.00</b>



### Sale of Customer Accounts/Non-Compete Agreement

This Agreement between Michael E. Gargas, as an individual, 4URSAFETY-GIM&C, LLC (a Florida limited liability company) and Maria Mincey, as an individual, is intended to be the complete, final, whole, and legally binding Agreement for the sale accounts with Office Depot, Land & Sea, Ad-Merica, Ebsco and ITC that Mr. Gargas has personally developed and maintained over his business career. This Agreement shall be effective in conjunction with the Asset Purchase Agreement dated February 27, 2017 between 4URSAFETY- GIM&C, LLC and GIM&G, LLC (a Florida limited liability company).

4URSAFETY- GIM&C, LLC and Maria Mincey desire to enter various markets to sell first aid and other safety products.

Mr. Gargas has agreed to transfer his customer relationships with Office Depot, Land 'N' Sea, Ad-Merica, Ebsco and ITC to 4URSAFETY- GIM&C, LLC.

This Agreement does not include transfer of accounts receivable from currently open invoices from GIM&C LLC or any intellectual property rights. Mr. Gargas and his companies retain the exclusive rights to all intellectual properties including, web sites, catalogs, logos, artwork, trademarks, etc. and to the financial and accounting records and systems of his companies.

4URSAFETY- GIM&C, LLC and Maria Mincey agree to make every reasonable and timely effort, including engaging in discussions with Office Depot personnel and gathering any requested documentation necessary to collect the outstanding Accounts Receivable due to GIM&C, LLC as of February 27, 2017.

4URSAFETY- GIM&C, LLC and Maria Mincey agree that Mr. Gargas is not liable for any nonpayment of invoices or any other short payments by Office Depot or Land 'N' Sea or any other customers of 4URSAFETY- GIM&C, LLC.

4URSAFETY- GIM&C, LLC and Maria Mincey agree that any accounts they establish with TAB bank are separate and distinct from GIM&C's account with TAB bank and that Mr. Gargas has zero liability to TAB bank for any loan advances made to 4URSAFETY- GIM&C, LLC.

Should any Office Depot payments to GIM&G, LLC end up in the TAB bank account of 4URSAFETY- GIM&C, LLC or vice versa, each party agrees to transfer such funds, so the appropriate Company receives their proper payment.

Mr. Gargas will not solicit business from any of the accounts listed above, moving forward after 12:01 a.m. February 27, 2017, as long as 4URSAFETY- GIM&C, LLC and any successors continue to actively generate sales of first aid and other safety products from each account and pay the financial consideration to Mr. Gargas, as outlined below.

The consideration for the non-compete covenant outlined above is 7.5% of gross sales (based upon gross invoice) for the first 18 month period March 2017 – August 2018 and 10.0% of gross sales (based upon gross invoice) for the back 18 month period September 2018- February 2020 for a total term of 36 months. Monthly payments shall begin on April 30, 2017 and shall be paid on or before the 30<sup>th</sup> day of every month thereafter to Michael E. Gargas, based upon gross sales from the prior month. The last of the 36 monthly payments shall be due on March 30,


2020. 4URSAFETY- GIM&C, LLC shall provide Mr. Gargas a complete monthly accounting, including a listing of customer invoices with gross sales amounts.

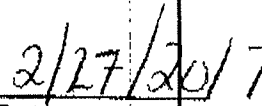
This Agreement shall go into effect at 12:01 AM on February 27, 2017.

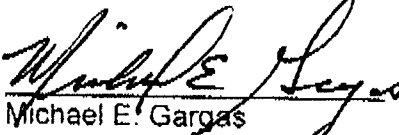
Accounts to be covered by this Agreement are as follows:

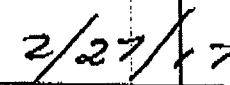
Office Depot  
Land 'N' Sea  
Ad- Merica  
Ebsco  
ITC

By signature below, each party acknowledges their acceptance of the above terms.

  
Maria Mincey, President  
4URSAFETY- GIM&C, LLC

  
Date

  
Michael E. Gargas

  
Date