

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:)
)
Burton Douglas Morriss) Case No. 12-40164-659
) Chapter 11
Debtor.)
) Judge Kathy A. Surratt-States
)
) Hearing Date: March 5, 2012
) Hearing Time: 10:00 a.m.

**MOTION OF THE UNITED STATES TRUSTEE TO
CONVERT DEBTOR'S CHAPTER 11 PROCEEDING TO A CHAPTER 7 PROCEEDING
OR DISMISS CHAPTER 11 CASE**

Comes Now Nancy J. Gargula, the United States Trustee for the Eastern District of Missouri (hereinafter referred to as the "U.S. Trustee"), by her attorney Martha M. Dahm, and, pursuant to Section 1112 of the Bankruptcy Code, 11 U.S.C. §§101 et. seq. (hereinafter referred to as the "Code"), moves this Court for entry of an order converting the Chapter 11 case of Burton Douglas Morriss, (hereinafter referred to as the "Debtor") to a case under Chapter 7 of the Code, or, Dismiss the Chapter 11 Case. In support thereof, the U.S. Trustee states as follows:

1. This is a core proceeding concerning the administration of the estate pursuant to 28 U.S.C. § 157(b)(2)(A) which this Court may hear and determine pursuant to Rule 9.01(B)(1) of the United States District Court for the Eastern District of Missouri.
2. The Debtor commenced this case on January 9, 2012, by filing his voluntary petition for relief under Chapter 11 of the Code, and has remained in possession and control of his assets pursuant to Sections 1107 and 1108 as debtor-in-possession.
3. On January 23, 2012, Debtor filed a Motion for Extension of time to File Schedules, Statement of Financial Affairs, Statement of Current Monthly Income and Statistical Summary of Certain

Liabilities(hereinafter referred to as the “Schedules and Statements”).

4. On January 26, 2012, an order was entered granting the Debtor’s Motion for Extension of Time granting the Debtor until January 27, 2012, to file the Schedules and Statements.

5. On January 27, 2012, Debtor filed his Second Motion for Extension of time to file the Schedules and Statements. Debtor’s Second Motion requests an additional thirty-one days (until February 27, 2012) in which to file the Schedules and Statements. Debtor alleges in this Motion that the Securities and Exchange Commission commenced litigation against the Debtor and other entities in the United States District Court for the Eastern District of Missouri (Securities and Exchange Commission vs. Burton Douglas Morriss, Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, L.P. and Gryphon Investments III, LLC) (the “SEC Litigation”) on or about January 17, 2012; and that on January 20, 2012, the Ashcroft Law Firm was engaged to represent the Debtor in the SEC Litigation.

6. The first meeting of creditors in this case is scheduled for February 7, 2012. Notice has been issued to all creditors. Debtor has failed to file the required Schedules and Statements. The Debtor is required pursuant to Section 521(1) of the Code, to file a schedule of assets and liabilities; a schedule of current income and current expenditures; and statement of financial affairs. Further, *Fed. R. Bankr. P. 1007(c)* requires these documents to be filed with the petition or within 14 days of the order of relief unless an extension of time is granted by the Court. Without these documents it is impossible to monitor the Debtor’s bankruptcy case. *Tradex Corp. V. Morse*, 339 B.R. 823 (D. Mass. 2006).

7. Debtor’s counsel in this case, Mr. Leslie L. Lane, has failed to file his application for employment in this matter pursuant to Section 327 of the Bankruptcy Code.

8. Pursuant to the affidavit of Catherine Hanaway submitted in this matter and attached to the Debtor’s Second Request for Extension of Time to File Schedules and Statements she and her firm was engaged to represent the Debtor in SEC Litigation and related matters on or about January 20, 2012.

Counsel has not been properly employed by the Bankruptcy Court under Section 327 of the Code.

9. On January 13, 2012, the U.S. Trustee's Office held an initial debtor interview. At the meeting the Debtor appeared and Mr. Lane appeared on behalf of the Debtor. At the meeting the Debtor stated that he has a controlling interest in several entities. Debtor has failed to provide further information regarding these entities. Debtor also stated that his major assets are a contract list; a 401(k) plan; and an oil painting. The painting is apparently at Conrad Gallery and the Gallery is attempting to sell the painting. Debtor has not requested Court authority to sell this painting in violation of Section 363 of the Bankruptcy Code.

10. It further appears that a home located at 3 Saint Andrew Drive, St. Louis, Mo. 63124, owned by BDM, an irrevocable trust created by the Debtor in 2000 in currently listed for sale at \$4,345,000. Again, without further information regarding the Debtor's interest in this entity it is impossible to determine the estate's obligations and responsibilities regarding this real estate listing.

11. The Debtor has sought to avail himself of the benefits conferred by the Code, but has failed to fulfill the duties required by the Code. Continuation of this case under Chapter 11 will only serve to delay and prejudice the creditors. The U.S. Trustee's Office has little information regarding this case to properly monitor and supervise the administration of this case.

12. Based on the foregoing the U.S. Trustee believes that due cause exists to convert this case to a Chapter 7 or in the alternative dismiss this case pursuant to Section 1112(b) of the Code.

WHEREFORE, the United States Trustee prays for an order converting this case to a Chapter 7 of the Code, or, in the alternative, dismissing this case, for cause and for such other relief as this Court deems just.

Respectfully submitted,

Nancy J. Gargula
UNITED STATES TRUSTEE

By: /s/Martha M. Dahm
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Martha Dahm