

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)	Case No. 12-40164-659
)	Chapter 11
BURTON DOUGLAS MORRISS,)	
)	Judge Kathy A. Surratt-States
)	
Debtor.)	
)	
)	

**MOTION FOR APPOINTMENT OF TRUSTEE, OR
ALTERNATIVELY, FOR CONVERSION OF CASE**

COME NOW Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, and Gryphon Investments III, LLC (collectively, the “Receivership Entities”), by and through Claire M. Schenk as Receiver (“Receiver”), a creditor and party in interest, and with the assistance of counsel Thompson Coburn LLP, move this Court for an order pursuant to 11 U.S.C. §§ 1104(a), 1112(b) and Federal Rule of Bankruptcy Procedure 2007.1, appointing a trustee in this case, preferably in Debtor’s Chapter 11 proceeding, or alternatively, converting this case so that a trustee may assume responsibility for this case under Chapter 7 of the Code. In support of this Motion For Appointment of Trustee, or Alternatively for Conversion of Case (the “Motion”), the Receivership Entities state:

1. On January 9, 2012 (the “Petition Date”), only days before the filing of the SEC Case more particularly described below, Burton Douglas Morriss, debtor and debtor-in-possession in the above captioned case (“Debtor”), filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Missouri, thereby securing the shelter of this forum accordingly.

2. Prior to the relief being granted in the SEC Case as more particularly described below, Debtor served as the chief executive officer and chairman of Acartha Group, LLC’s board of directors, the managing member of MIC VII. Debtor also served as a manager of Gryphon Investments III, LLC, the general partner of Acartha Technology Partners, L.P. Debtor also served as the chairman and controlling member of Morriss Holdings, LLC and a member of its board of directors.

The SEC Receivership Proceeding

3. On January 17, 2012, the United States Securities and Exchange Commission (the “SEC”) filed its *Complaint for Injunctive and Other Relief* (the “Complaint”) against Debtor, Acartha Group, LLC, Acartha Technology Partners, L.P., MIC VII, LLC, Gryphon Investments III, LLC and Morriss Holdings, LLC (collectively, the “SEC Defendants”) in the United States District Court for the Eastern District of Missouri (the “Missouri District Court”), Case No. 4:12-cv-00080-CEJ (the “SEC Case”). *See* Complaint (SEC Case, Dkt. No. 1).

4. Papers filed by the SEC in the SEC Case allege, among other things, that:

- From 2005 until the present, Debtor, through the Receivership Entities, defrauded investors by transferring more than \$9 million in investor funds to himself and a related company, Morriss Holdings, LLC.
- Debtor and the Receivership Entities made these transfers without disclosing to or seeking approval of investors.
- The transfers resulted not only in the misappropriation of investors’ money, but the dilution of their shares of the Receivership Entities’ investments.
- Approximately 97 investors invested at least \$88 million in Acartha Group, a private equity fund management company Debtor controlled, and the funds and other entities it managed, namely MIC VII, Acartha Technology Partners, and Gryphon Investments.
- Those investments are now at risk as both Acartha Group and the investment entities controlled by Debtor are facing a financial shortfall.

5. Relief sought in the SEC Case included the immediate appointment of a receiver for the Receivership Entities to: (a) administer and manage the business affairs, funds, assets, choses in action and other property of the Receivership Entities, (b) act as sole and exclusive managing member or partner of the Receivership Entities, (c) maintain sole authority to administer any and all bankruptcy cases in the manner determined to be in the best interests of the Receivership Entities’ estate, (d) marshal and safeguard all of the assets of the Receivership Entities, and (e) take whatever actions are necessary for the protection of investors. *See* Emergency Motion for Appointment of Receiver and Memorandum of Law in Support (SEC Case, Dkt. No. 3), attached hereto as **Group Exhibit A** and incorporated herein, and Exhibits to Motion (SEC Case, Dkt. No. 4).

6. The SEC additionally sought to immediately freeze the assets of the Receivership Entities and for certain other emergency relief. *See Ex Parte* Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support (SEC Case, Dkt. No. 6), attached hereto as **Group Exhibit B** and incorporated herein, and other declarations and exhibits filed in support thereof (SEC Case, Dkt. No. 18).

7. On January 17, 2012, the Missouri District Court granted (a) the SEC's emergency motion for the appointment of a receiver pursuant to its Order Appointing Receiver (the "Receivership Order"); and (b) the SEC's emergency motion to freeze assets, pursuant to a certain Asset Freeze Order and Other Emergency Relief (as modified by the Missouri District Court's supplemental Order entered January 19, 2012, the "Initial Asset Freeze Order").

8. On January 27, 2012, after a hearing, the Missouri District Court entered a final asset freeze order, by which the SEC obtained an order freezing the Receivership Entities' and Morriss Holdings, LLC's assets, an order requiring sworn accountings, and an order prohibiting the destruction of documents (the "Final Asset Freeze Order"). **Debtor is not subject to the asset freeze imposed under the Final Asset Freeze Order.**

9. Pursuant to the Receivership Order, the Missouri District Court appointed the Receiver as receiver for the Receivership Entities. **However, the Receiver was not appointed as receiver for Debtor.**

10. Among other things, the Receivership Order authorizes the Receiver to operate and manage the businesses and financial affairs of the Receivership Entities and directs that the Receiver succeeds to all rights and powers of managing member and/or managing partner of the Receivership Entities, with sole and exclusive authority to take all actions necessary in such capacity. *See* Receivership Order (SEC Case, Dkt. No. 16), attached hereto as **Exhibit C** and incorporated herein.

Debtor's Bankruptcy Case

11. Debtor elected to be a debtor-in-possession in this Case and to thereby be shielded from recourse by his creditors while nevertheless continuing to enjoy the opportunity to operate his affairs in the "ordinary course". In exchange for the privileges afforded to him at the expense of creditors and other parties in interest, Debtor has numerous obligations as a debtor-in-possession, which he is failing to fulfill in accordance with Bankruptcy Code

12. Among other things, Debtor:

- Has not filed his Schedules and Statements, although having delayed revealing his ultimate intention not to provide these disclosure papers by seeking multiple extensions of the deadline to do so;
- Has not sought to have his counsel approved by the Court pursuant to Section 327 of the Bankruptcy Code;
- Upon information and belief, has listed for sale, or has caused to be listed for sale, a home located at 3 Saint Andrews Drive, Saint Louis, Missouri 63124 (at a sales price of \$4.345 million) that is owned by BDM, an irrevocable trust created by Debtor in 2000;
- Upon information and belief, owns one or more valuable paintings, one of which is listed for sale at Conrad Gallery;
- Upon information and belief, has not, himself or through his attorney, responded to reasonable requests from the U.S. Trustee's office;
- Upon information and belief, sold his gun collection, worth more than \$200,000, for substantially less than fair market value; and
- Upon information and belief, may be depleting bank accounts and otherwise moving assets in contravention of the Bankruptcy Code.

13. That Debtor may be transferring, selling or otherwise disposing of assets in contravention of the Bankruptcy Code and against the best interests of Debtor's creditors is a serious and legitimate concern.

14. The Office of the U.S. Trustee has similarly voiced concern respecting Debtor's course of dealing in this Case as noted in its Motion to Convert Debtor's Chapter 11 Proceeding to a Chapter 7 Proceeding or Dismiss Chapter 11 Case (the "Motion to Convert"), filed January 31, 2012.

15. The first meeting of creditors in this Case is set for Tuesday, February 7, 2012, at 1:30 p.m.

16. On February 3, 2012, Debtor filed a response to the Motion to Convert, requesting that the Court immediately dismiss his Chapter 11 case for his calculated failure to file schedules and statements, or alternatively, suspend all proceedings in the case, including the first meeting of creditors, until the Court considers the relief requested in the Motion to Convert.

17. During the week of January 30, 2012, undersigned counsel placed a call to Debtor's counsel to discuss the status of the case. Debtor's counsel did not return the phone call, but sent an e-mail indicating that Debtor filed his consent to the U.S. Trustee's request for dismissal of the Case. Since that time, Debtor's counsel has filed a pleading with the Court requesting to withdraw from representation of Debtor. Upon information and belief, neither Debtor nor his counsel plan to appear at the first meeting of creditors, despite filing pleadings suggesting an intention to file schedules and statements and to ultimately present at the first meeting.

18. Debtor's actions in this case evidence a blatant disregard for and an abuse of the system. Debtor sought refuge in bankruptcy by voluntarily filing for Chapter 11, and now seeks to exit it by manufacturing a basis for dismissal to avoid making a full disclosure of assets and liabilities and to otherwise avoid acting in the best interest of creditors in accordance with his fiduciary duties as a debtor in possession.

19. Debtor is not currently subject to the terms of the asset freeze or the receivership in place in the SEC Case and thus a dismissal of this case permits Debtor to buy more time to render himself and his assets out of the reach of creditors.

20. Under the circumstances, it is appropriate that a trustee be appointed to assume Debtor's duties in this case. Movants' position is that the appointment of a trustee in this chapter 11 proceeding is the proper course at this early stage of the case to enable greater flexibility in responding to matters as they may develop. However, conversion of this case so that a trustee may assume responsibility for this case under Chapter 7 of the Code is an alternative also proposed for consideration. The relief requested is necessary to enable the identification, and to prevent the dissipation, of assets and assure an adequate and orderly administration of this case. Under no circumstances should this case be dismissed so that Debtor

is permitted to conveniently breeze in and out of this forum with abandon at the expense of those who allege significant wrongdoing and injury as outlined in the SEC Case pleadings.

Bases for Relief Requested

21. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. §§ 157(a) and 157(b)(1), 11 U.S.C. §§ 1104(a), 1112(b), and Federal Rule of Bankruptcy Procedure 2007.1. This is a “core” proceeding which this Court has jurisdiction to hear and determine pursuant to 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(A).

22. Section 1104(a) provides:

At any time after the commencement of a case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee--

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104(a).

23. Grounds exist for appointment of a trustee under both Section 1104(a)(1) and (a)(2).

24. As more fully described in the SEC Case, Debtor is alleged to have committed, and may continue to commit, various acts of fraud. As alleged in the SEC Case, between 2005 and 2011, Debtor, using the Receivership Entities, fraudulently transferred approximately \$9.1 million of investor funds to himself and his family’s holding company, Morriss Holdings, LLC, for his personal use.

25. Among other things alleged, Debtor used the fraudulently obtained investor funds to satisfy personal loans, pay alimony, and take expensive vacations.

26. Since filing for bankruptcy, Debtor’s actions and inactions indicate that he is not capable to act as debtor-in-possession in this case. Among other things, Debtor (i) has not filed his statements and schedules, (ii) has indicated that he will not appear for his first meeting of creditors, (iii) is, upon information and belief, attempting to sell assets and dissipate funds, which actions are questionably

outside of the ordinary course of business, and (iv) has even consented to the dismissal of this case, thereby affording creditors and parties-in-interest no opportunity to examine Debtor's assets and liabilities or question Debtor at a meeting of creditors. Debtor's actions thus far give the Receivership Entities no confidence that Debtor will manage his case adequately and appropriately.

27. Debtor's actions in and out of bankruptcy constitute good cause for appointing a trustee in this case.

28. Moreover, for the reasons stated above, appointment of a trustee will be in the best interests of creditors. With a trustee in place, creditors can obtain information about Debtor's assets and liabilities and feel confident that Debtor's assets will not be further mismanaged or dissipated.

29. Alternatively, the Receivership Entities request that the Court convert this case to one under Chapter 7 of the Code pursuant to 11 U.S.C. § 1112(b).

30. Section 1112 provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 ... unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

31. For the same reasons, conversion to Chapter 7 may be necessary in this case and "cause" exists for such relief. Among other things, (i) Debtor has given no indication that he will be able to manage his estate adequately, fairly and with the best interests of his creditors in mind, *see* 11 U.S.C. § 1112(b)(4)(B); (ii) if Debtor is dissipating assets, there exists the real possibility of a substantial or continuing loss to or diminution of the estate, *see* 11 U.S.C. § 1112(b)(4)(A); and (iii) Debtor has failed to observe his obligations under the Code, including the filing of his schedules and statements, *see* 11 U.S.C. §§ 1112(b)(4)(F), (G), and (H).

32. For all the reasons stated above, the Receivership Entities submit that presently, a dismissal of Debtor's bankruptcy case would do harm to creditors and other parties in interest. At this time, bankruptcy is the best forum to maintain the status quo and enable creditors and parties in interest to investigate and determine what assets exist to satisfy the Debtor's liabilities.

33. It is, however, imperative that this Court remove Debtor from control over his assets and their administration and place a trustee at the helm. The Receivership Entities' first preference is the appointment of a Chapter 11 trustee, as the Receivership Entities and other creditors and parties in interest do not have enough information at this time to determine how best to approach Debtor's case and desire to retain flexibility to respond appropriately as more information becomes available. The Receivership Entities request that the Court give a Chapter 11 trustee and the Receivership Entities a chance to determine whether Debtor's affairs are best administered via a Chapter 11, a Chapter 7 or some other proceeding.

WHEREFORE, the Receivership Entities respectfully request the Court enter an Order:

- A. Appointing a trustee to assume control and management of this case pursuant to 11 U.S.C. § 1104(a); or alternatively, converting this case to a case under Chapter 7 of the Bankruptcy Code pursuant to 11 U.S.C. § 1112(b) so that a trustee may assume management of the estate;
- B. Rejecting Debtor's request to dismiss the case; and
- C. Providing for such other and further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By/s/ Cheryl A. Kelly

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Debtor.)
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EXHIBIT SUMMARY

Pursuant to Local Rules 9040, the following exhibits are referenced in support of the **MOTION FOR APPOINTMENT OF TRUSTEE, OR ALTERNATIVELY, FOR CONVERSION OF CASE.** Copies of these exhibits will be provided as required by the Local Rules:

1. Emergency Motion for Appointment of Receiver and Memorandum of Law in Support (SEC Case, Dkt. No. 3) (**Group Exhibit A**)
2. *Ex Parte* Emergency Motion for Asset Freeze and Other Relief and Memorandum of Law in Support (SEC Case, Dkt. No. 6) (**Group Exhibit B**)
3. Receivership Order (SEC Case, Dkt. No. 16) (**Exhibit C**)

Respectfully submitted,

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