

**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.)	
)	
)	
)	

**EMERGENCY MOTION FOR ORDER DIRECTING EXAMINATION OF
DEBTOR BURTON DOUGLAS MORRISS PURSUANT TO BANKRUPTCY RULE 2004 AND
COMMANDING THE PRODUCTION OF CERTAIN DOCUMENTS IN CONNECTION
THEREWITH**

COMES 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”), with the assistance of counsel Thompson Coburn LLP, and files this *Emergency Motion For Order Directing Examination Of Debtor Burton Douglas Morriss Pursuant To Bankruptcy Rule 2004 And Commanding The Production Of Certain Documents In Connection Therewith* (the “Motion”) pursuant to Federal Rule of Bankruptcy Procedure 2004 and E.D. Mo. L.B.R. 2004-1, requesting that this Court enter an order requiring Debtor Burton Douglas Morriss to appear for and produce certain things for examination. In support of this Motion, the Receivership Entities state as follows:

1. On January 9, 2012 (the “Petition Date”), 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.
2. 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”).

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.

6. The SEC additionally sought to immediately freeze the assets of the Receivership Entities and for certain other emergency relief.

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.

Debtor's Bankruptcy Case

11. Debtor currently is acting as the debtor-in-possession in this Case. Debtor, by action and inaction, however, has not fulfilled his duties as debtor-in-possession required by the Bankruptcy Code.

12. Among other things, Debtor:

- Has not filed his Schedules and Statements;

- 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. The Receivership Entities are deeply concerned that Debtor is transferring, selling or otherwise disposing of assets in contravention of the Bankruptcy Code and against the best interests of Debtor's creditors.

14. Other parties in interest in this case hold similar concerns, as evidenced by the U.S. Trustee's 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 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. Debtor's response to the Motion to Convert evidences Debtor's blatant attempt to achieve dismissal of this case and avoid filing any papers or answering the questions of creditors and parties-in-interest at the first meeting of creditors. Debtor sought out the bankruptcy forum by voluntarily filing for

Chapter 11, and now seeks to evade the bankruptcy forum by ignoring his duties as a debtor under the Bankruptcy Code.

18. Given Debtor's actions and inactions thus far in this Case, coupled with Debtor's attempt to dismiss his case without filing any papers or appearing at the first meeting of creditors, the Receivership Entities request the relief set forth below -- examination of Debtor under Bankruptcy Rule 2004 -- on an expedited basis.

Relief Requested

19. 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. § 343 and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). 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).

20. The Receivership Entities desire to examine Debtor concerning:

- a. Debtor's assets, including but not limited to the location of such assets and Debtor's actions with respect to such assets prior to bankruptcy and during the pendency of this Case;
- b. The acts and conduct of Debtor;
- c. Debtor's liabilities;
- d. Debtor's financial condition;
- e. The operation of any business and the desirability of its continuance;
- f. The source(s) of any money or property acquired or to be acquired by Debtor for purposes of consummating a plan and the consideration given or offered therefor; and
- g. Any other matter relevant to the case, to the formulation of a plan, or which might affect administration of the estate (collectively, the "Examination Topics").

21. The need for and importance of examining Debtor is that the Receivership Entities must ascertain the true facts surrounding Debtor's intentions in these proceedings. Debtor chose the bankruptcy forum by voluntarily filing this case, but now seeks to evade all his responsibilities as a debtor. It may be in the best interests of creditors for Debtor to remain in bankruptcy. Without schedules,

statements and Debtor's testimony at a first meeting of creditors, however, no one is in no position to evaluate the merits of Debtor's request for dismissal, as opposed to continuing in Chapter 11 with the appointment of a trustee or converting Debtor's case to one under Chapter 7 of the Code.

22. As such, the Receivership Entities request that the Court compel Debtor to submit to examination under Fed. R. Bankr. P. 2004 at the offices of Thompson Coburn LLP, One U.S. Bank Plaza, 35th Floor, St. Louis, Missouri 63101, (314) 552-6000, on **February 16, 2012 beginning at 9:30 a.m.**, or at such other place and time as is agreed upon among the parties, **but in no event no later than February 17, 2012.**

23. The Receivership Entities further request that the Court compel Debtor to produce at his examination any and all documents in his custody or control related to the Examination Topics, including, but not limited to, any correspondence.

24. Undersigned counsel reached out to counsel for Debtor last week via telephone regarding the scheduling of the 2004 examination and received a reply via electronic mail indicating that Debtor filed his consent to the Trustee's request for dismissal of the case. Debtor's counsel now has filed a motion seeking withdrawal from representation of Debtor. Undersigned counsel will work with Debtor's current or new counsel to arrange for a mutually agreeable time and place for the Receivership Entities to conduct the 2004 examination of Debtor prior to February 17, 2012.

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

A. Compelling Debtor to submit to an examination under Fed. R. Bankr. P. 2004 at the offices of Thompson Coburn LLP, One U.S. Bank Plaza, 35th Floor, St. Louis, Missouri 63101, (314) 552-6000, on **February 16, 2012 beginning at 9:30 a.m.**, or at such other place and time as is agreed upon among the parties, **but in no event no later than February 17, 2012;**

B. Commanding Debtor to produce at his examination any and all documents in his custody or control related to the Examination Topics, including, but not limited to, any correspondence related thereto; and

C. Providing for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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through Claire M. Schenk, Receiver