

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

In Re:) Case No. 12-40164-659
) Honorable Kathy A. Surratt-States
) Chapter 7
BURTON DOUGLAS MORRISS,)
))
) Debtor.)
) Hearing Date: March 19, 2012
) Hearing Time: 10:00 a.m.

**TRUSTEE'S OBJECTION TO APPLICATION FOR ORDER PURSUANT
TO 11 U.S.C. SECTION 327 OF THE BANKRUPTCY CODE AUTHORIZING
EMPLOYMENT AND RETENTION OF THE ASHCROFT LAW FIRM, LLC AS
COUNSEL FOR DEBTOR *NUNC PRO TUNC* TO JANUARY 20, 2012 OR,
ALTERNATIVELY, A RULING THAT THE RETENTION OF THE ASHCROFT LAW
FIRM, LLC IS BEYOND THE SCOPE OF THE DEBTOR'S ESTATE**

COMES NOW Charles W. Riske, Chapter 7 Trustee in bankruptcy ("**Trustee**") for the estate of Burton Douglas Morriss ("**Debtor**"), by his counsel, and for his Objection states to the Court as follows:

1. On January 9, 2012, Debtor filed his voluntary petition in bankruptcy under Chapter 11 of the United States Bankruptcy Code.
2. Thereafter, on or about February 13, 2012, the Court converted this case to one under Chapter 7 of the United States Bankruptcy Code and the Trustee was appointed to serve as the Chapter 7 trustee.
3. On February 21, 2012, the Ashcroft Law Firm, LLC d/b/a Ashcroft Hanaway ("**Ashcroft Hanaway**"), filed its *Application for Order Pursuant to 11 U.S.C. Section 327 of the Bankruptcy Code Authorizing Employment and Retention of the Ashcroft Law Firm, LLC as Counsel for Debtor Nunc Pro Tunc to January 20, 2012 or, Alternatively, a Ruling that the Retention of the Ashcroft Law Firm, LLC is Beyond the Scope of the Debtor's Estate*

("Application"). In the Application, Ashcroft Hanaway seeks, in addition to its employment¹, the use of certain proceeds to pay its fees from a D&O policy of insurance ("**D&O Policy**") allegedly purchased by an affiliate of Debtor, Acartha Group, LLC ("**Acartha**"), written by the Federal Insurance Company ("**Federal**") and proceeds from the sale of a membership interest of an entity known as Malinmor Land Company, LLC. ("**Malinmor**"). Ashcroft Hanaway asserts, on its information and belief, that the Burton Douglas Morriss Irrevocable Trust ("**Trust**"), is a member of Malinmor and that such interest is beyond "the scope of these proceedings."

4. Since the filing of the case, Debtor has failed to a) file the required Bankruptcy Schedules, b) file the Statement of Financial Affairs; c) testify at the 341 meeting of creditors and d) cooperate with the Trustee or comply with any requests for information or documents. Rather, Debtor has invoked or indicated that he will invoke his privilege against self incrimination under federal and state law (referred to herein as the "**5th Amendment Privilege**").

5. In the United States District Court for the Eastern District of Missouri, Claire M. Schenk was appointed as the receiver ("**Receiver**") for various entities controlled or dominated by Debtor, which included Acartha and other entities (the "**Receivership Entities**"). The Receiver objects to the relief requested in the Application (the "**Receiver Objection**").

6. The Trustee also objects to the Application for the following reasons: a) the employment of counsel for a debtor in a Chapter 7 case is unnecessary, is not required or authorized under section 327 of the Bankruptcy Code and serves no benefit to the estate; b) the Application seeks relief beyond the scope of the type of relief that a Court can provide under an

¹ In its Memorandum in Support of the Application, Ashcroft Hanaway identifies that it is seeking an order authorizing the employment of another firm, Graves, Bartle, Marcus and Garrett ("GBMG"). However, there has been no disclosure about the terms of employment nor the source and amount of compensation paid to this firm. As a result, Trustee objects to any such employment as well for this reason and the other reasons described herein.

application to employ counsel; c) if the proceeds of the D&O Policy are not payable to the Receiver, they should be payable to the Trustee and not to Debtor or its counsel; and d) Ashcroft Hanaway and the Debtor have failed to provide sufficient or, in fact, any evidence that Debtor does not have an interest in Malinmor. The Trustee believes that the interest in Malinmor is an asset of this estate, which is not subject to being the source of payment of any post-petition fees of the Debtor.

7. The Trustee incorporates the substance of the Receiver Objection, which addresses the same points raised by the Trustee. As a result, the Trustee does not feel compelled to further address the issues except as set forth herein.

8. Ashcroft Hanaway admits in its Memorandum in Support of the Application that the proceeds of the D&O Policy could be assets of the bankruptcy estate and that there is authority for such a proposition. The Trustee respectfully submits that the facts and circumstances of this matter justify the use of the proceeds of the D&O Policy to be paid to the victims of the alleged misconduct, whether through the Receiver or the Trustee, and not for the payment of attorneys' fees.

9. With regard to Malinmor, the Trustee requested that Ashcroft Hanaway and Debtor make various disclosures with regard to the ownership interest in Malinmor. This request is set forth in a letter of Trustee's counsel and is attached hereto as Exhibit 1. By seeking payment from the proceeds of a prospective sale of the membership interest in Malinmor, Ashcroft Hanaway placed this ownership interest and the Trust directly in issue. The Debtor and its counsel cannot now hide behind the 5th Amendment Privilege for the matters they put in play. As of the date of this Objection, the Trustee has not received the documents and

information he has requested.² As a result, it is premature for this Court to make any determination with regard to the ownership of the Malinmor interest or the payment of fees from the proposed sale. This case is in its early stages and much needs to be done and evaluated as the case progresses, whether through formal or informal discovery or through contested or adversary proceedings.

WHEREFORE, the Trustee prays that the Application be denied and requests such other relief as is consistent with this Objection.

Respectfully Submitted,
SUMMERS COMPTON WELLS PC

Date: March 12, 2012

By: /s/ David A. Sosne
David A. Sosne, #28365MO
Attorney for Trustee
8909 Ladue Road
St. Louis, Missouri 63124
(314)991-4999/(314)991-2413/FAX
dasattymo@summerscomptonwells.com

² In fact, Ashcroft Hanaway made its assertion about the interest in Malinmor on information and belief. Ms. Hanaway has admitted that she has been unable to locate any documents reflecting that the interest in Malinmor is owned by the Trust.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic filing in the CM/ECF system of the United States Bankruptcy Court for the Eastern District of Missouri to the parties requesting service by electronic filing. I hereby also certify that a copy of the foregoing was served via United States Mail, first class postage prepaid, on the date of the electronic filing of this document to those individuals and entities not requesting service by electronic filing. The individuals and entities being served electronically or by mail are:

United States Department of Justice
U.S. Trustee's Office
111 S. 10th Street, Ste. 6353
St. Louis, MO 63102

Charles W. Riske
231 S. Bemiston, Suite 1220
St. Louis, MO 63105

Leslie L. Lane
208 N. Rolla St.
Rolla, MO 65401

Catherine Hanaway
222 S. Central Ave, Suite 110
St. Louis, MO 63105

Robert E. Eggmann
7733 Forsyth Blvd, Suite 2075
St. Louis, MO 63105

Cheryl A. Kelly
Thompson Coburn
One US Bank Plaza
St. Louis, MO 63101

Jay Samuels
120 Albany Street Plaza, 6th Floor
New Brunswick, NJ 08901

March 12, 2012

/s/ Christina L. Thayer

SUMMERS COMPTON WELLS

PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

WWW.SUMMERSCOMPTONWELLS.COM

MAIN OFFICE:
8909 LADUE ROAD
ST. LOUIS, MISSOURI 63124
(314)991-4999
FAX: (314)991-2413



*ILLINOIS OFFICE:
2220 S. STATE HWY 157, STE. 200
GLEN CARBON, ILLINOIS 62034
(618)288-9800
FAX: (618)288-9850

February 24, 2012

*OFFICE HOURS BY APPOINTMENT ONLY

VIA E-MAIL chanaway@ashcroftlawfirm.com
AND REGULAR MAIL
Catherine Hanaway
The Ashcroft Law Firm, LLC
222 South Central Avenue, Suite 110
St. Louis, MO 63105

Re: Burton Douglas Morriss/Application to Employ and for Other Relief

Dear Ms. Hanaway:

The undersigned is attorney for Charles W. Riske, the trustee in bankruptcy for the above referenced bankruptcy estate. I understand that you have filed an Application seeking relief relating to your firm's employment. In the Application, you identify that you intend to obtain payment from assets in an irrevocable trust. Your application and memorandum in support do not provide copies of documents referenced in the pleadings.

In order for the trustee to evaluate this matter further, please provide the following: 1) a complete copy of the trust and any amendments thereto; 2) all documents relating to the ownership of any membership interest in Malinmor Land Company, LLC by the trust, including, without limitation, any documents relating to the transfer of the membership interest into the trust; 3) all documents relating to the proposed sale of the membership interest in Malinmor by the trust, including, without limitation, any contracts for sale and any communications relating thereto; 4) information and documents pertaining to any distributions made to or for the benefit of Mr. Morriss from the trust since the date of the filing of bankruptcy case; 5) information and documents pertaining to the evaluation of the membership interest as referenced in your pleading; and 6) the address and contact information for Dixon Brown, the trustee identified in your memorandum. Please provide this information no later than March 2, 2012. Please note that the bankruptcy trustee reserves the right to request and review other documentation and information.

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "David A. Sosne".

David A. Sosne

DAS/clt
cc: Charles W. Riske (by e-mail)
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