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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID GROCHOCINSKI,

Plaintiff,

v.

MAYER BROWN ROWE & MAW, LLP, et al.,

Defendants.

Case No. 1:06-cv-5486

Chicago, Illinois
October 30, 2007
Status Hearing

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE VIRGINIA M. KENDALL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Edward T. Joyce & Associates
By: Edward T. Joyce, and
Robert D. Carroll
11 S. LaSalle St., Ste. 1600
Chicago, IL 60603
(312) 641-2600

For the Defendants: Novack & Macey
By: Stephen Novack, and
Steven J. Ciszewski
100 N. Riverside Plaza, Ste. 1500
Chicago, IL 60606
(312) 419-6900

Court Reporter: April M. Metzler, RPR, CRR
219 South Dearborn St., Rm. 2318-A
Chicago, IL 60604
(312) 408-5154

Proceedings recorded by mechanical stenography; transcript produced by notereading.

(Commenced at 9:13 a.m.)

THE CLERK: 06C5486, Grochocinski versus Mayer, Brown, status hearing.

00:00:09 MR. NOVACK: Good morning, your Honor. Steve Novack for defendants, N-o-v-a-c-k.

00:00:13 THE COURT: Good morning.

00:00:14 MR. NOVACK: Good morning.

00:00:14 MR. JOYCE: And Ed Joyce, J-o-y-c-e, for the plaintiff.

00:00:18 THE COURT: Good morning.

00:00:18 MR. CARROLL: Rob Carroll, C-a-r-r-o-l-l.

00:00:22 THE COURT: Good morning.

00:00:22 All right, gentlemen. I have reviewed this high and low and inside and out, and here's what I'm going to do:

00:00:29 I am denying the motion to reconsider, because I still believe that there are many fact disputes that need to be resolved and that it is not a situation where I can dismiss on a motion to dismiss. But let me tell you where I'm coming from as far as how we're going to move forward.

00:00:48 I find defendant's position extremely persuasive, and I think the issue of unclean hands, for lack of a better term -- he's used the term repeatedly fraud on the court, I think there might be a few other

00:01:03 variations of what that issue is -- but there is a
00:01:06 question lurking about why this was handled in the way
00:01:10 it was and issues as to the trustee's position in coming
00:01:15 forward and being paid by this entity, issues regarding
00:01:20 why the trustee didn't go in and move to vacate the
00:01:23 dismissal, and I think what we need to do is we need to
00:01:27 do discovery solely on that, what I would call, unclean
00:01:32 hands issue first, so that I can have facts in front of
00:01:37 me and decide whether the case should be dismissed based
00:01:40 upon that issue.
00:01:41 It's a fact dispute that I'm having the
00:01:44 problem with. I think there are disputed issues of fact
00:01:47 that I can't get rid of this on a dismissal, but I find
00:01:54 your argument extremely persuasive. It is a very unique
00:01:54 situation. It's a very odd case.
00:02:03 MR. JOYCE: Judge, why is this something
00:02:03 that the District Court resolves as opposed to the
00:02:03 bankruptcy court? Because in the bankruptcy court it's
00:02:03 not the least bit unique. It's a regular -- it happens
00:02:06 all the time.
00:02:06 THE COURT: I don't think it happens all the
00:02:07 time that you have an entity that has a defaulted
00:02:11 judgment that has gone in -- you're coming in on a
00:02:15 malpractice count. How often have you seen a
00:02:18 malpractice claim with the only asset in the estate

being the value of the defaulted judgment?

MR. JOYCE: I'm focusing on -- the creditors very often fund --

THE COURT: Oh, fair enough. That's one issue; that's one issue.

MR. JOYCE: Correct.

THE COURT: In many. Fair enough. That's one issue in many.

But as has been laid out at the motion to reconsider hearing in the motion to dismiss, I think that we need to get to the fact disputes that can aid me in resolving whether it is common, whether it is something that was a normal business strategy. It doesn't sound like it, based upon the unique set of facts here.

So I'd like to ask you what you think the discovery would be that would get to the bottom of that issue that we can resolve it first before we go into the malpractice issue? What do you believe would be necessary?

MR. NOVACK: I would imagine, your Honor, that there would be discovery taken of the trustee, probably in the form of a deposition of the trustee; probably deposition of Mr. Spehar, who's the principal of the entity that got the default judgment; and

00:03:25 probably some depositions of the key shareholder, slash,
00:03:31 officers of the debtor.
00:03:33 THE COURT: And --
00:03:34 MR. NOVACK: And those things would be
00:03:36 needed to show --
00:03:37 THE COURT: What would the shareholders show
00:03:40 you?
00:03:41 MR. NOVACK: Well, I think, among other
00:03:42 things, the shareholders are going to show that they
00:03:45 were not contacted by the trustee to even ask them about
00:03:49 the allegations that we think are completely
00:03:53 unsupported. They're on information and belief. But
00:03:56 the people that had the information about this
00:03:59 complaint, I think, will testify that they were never
00:04:02 contacted by the trustee, that they don't believe in
00:04:05 this complaint, and had they been asked by the trustee
00:04:08 they would have so told him.
00:04:09 THE COURT: Okay. And what do you think
00:04:10 would resolve any fact dispute which would justify the
00:04:13 proper procedure of moving forward in the case?
00:04:15 MR. JOYCE: Well, I haven't seen your
00:04:17 opinion, and I'm concerned that --
00:04:18 THE COURT: Well, my opinion -- I don't have
00:04:20 a new opinion on the motion to reconsider. You just
:04:22 heard my opinion.

00:04:23 MR. JOYCE: Okay; okay.

00:04:24 THE COURT: My opinion and order was the one that was issued over a month ago.

00:04:27 MR. JOYCE: Okay. Here's my concern: My concern is that when you give Mr. Novack a limited bite, he's going to get the whole apple. So I'm going to submit for deposition twice --

00:04:41 THE COURT: Well, you may be going on merits of discovery. Who said it's going to be a limited bite?

00:04:46 What's important here is that if it is an unclean hands situation -- and I'm using that term, I'm not so sure that is the -- I think that's a more appropriate term rather than the fraud on the court that you've used, but that's just my analysis of it.

00:05:01 If that's the case, then we're not going to go for full discovery. So it's my coordination of the case, because I find the motion to reconsider very persuasive. But, as I've said, I think there's fact disputes in this case that I can't get to the bottom of. And maybe your fact disputes will show that it needs to go forward for full discovery. And it may be that you will need to have your clients be deposed on other issues other than that later on. But it's my coordination of this issue and this discovery first that I think is the appropriate way to go.

00:05:35 MR. JOYCE: So he's then going to be limited to asking questions that would go to the area of unclean hands?

00:05:40 THE COURT: That's correct; that's absolutely correct.

00:05:42 MR. JOYCE: That's fine.

00:05:43 THE COURT: That's right.

00:05:43 And I -- how long do you think that would be? 60 days?

00:05:46 MR. NOVACK: Judge, I was going to suggest 90 only because 60 gets us bumped up against the end of the year and the holidays.

00:05:52 THE COURT: Fair enough. 90 days.

00:05:54 I am sure you're going to have a dispute as to what is covered, I bet, and you're going to come back to me.

00:05:59 MR. JOYCE: It's a bad bet for me.

00:06:00 THE COURT: Just -- I can see you and I can see that that's where we're headed. But that's okay. I will be here and I will resolve whether it is limited or not. Rather than sending this off to a magistrate judge, let me resolve it.

00:06:11 So 90 days for the limited discovery on unclean hands. And then from the basis of that discovery, you, if you fully believe it's appropriate,

00:06:21 can move for summary judgment on that issue alone. And
00:06:24 if it is denied, we go forward for the rest of the case.
00:06:27 MR. NOVACK: Thank you very much.
00:06:27 THE COURT: And that's the way we're going
00:06:28 to handle this.
00:06:29 MR. JOYCE: Thank you, Judge.
00:06:30 THE COURT: Thank you.
(Concluded at 9:20 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

April M. Metzler, RPR, CRR Date

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Grochocinski, Grochocinski & Lloyd, Ltd.
Attorneys at Law

David E. Grochocinski
Mark S. Grochocinski
David P. Lloyd
Arthur W. Rummler
Thomas B. Sullivan,
Of Counsel

December 16, 2004

Kim G. Quarles
222 Miller Avenue
Portsmouth, NH 03801

Dear Ms. Quarles:

RE: CMGT, INC. - 04 B 31669

Thank you for your letter of December 15, 2004. A bankruptcy trustee is not an appellate court nor do I have the power to set aside judgments. Simply because a trustee in bankruptcy has been appointed does not provide the debtor with rights to ignore a valid state court judgment. In fact the Supreme Court has espoused a statement of the law in a set of cases which is known as the Rooker-Feldman Doctrine which seems to be applicable in this circumstance and the doctrine's effect on the debtor is set forth below according to my reading of the cases and my understanding of the doctrine.

While I appreciate your strong views relative to Spehar Capital LLC and perhaps Mr. Spehar individually, a judgment was entered against CMGT, Inc. and in favor of Spehar Capital, LLC in an amount in excess of $17,000,000.00. No motion to vacate the judgment was filed on behalf of CMGT and in fact the judgment has been executed upon by virtue of a citation to discover assets and the former president of CMGT, Louis Franco, has given testimony at the citation. It is likely that the time period to vacate the judgment has now expired. This means that Spehar Capital is a judgment creditor and it is likely that any counterclaims or affirmative defenses as you indicate in your letter are no longer available to CMGT.

The time to defend CMGT has probably expired because of inaction by CMGT. If such good defenses existed you might want to ask your active officers or their counsel why the defenses were not presented. If it was for a lack of money you and other shareholders might have provided funds for a defense. The fact that you chose not to do so and yet have such strong feelings respecting a potential defense to the suit brought by Spehar is curious to me.

On another matter however, I do have some documents that indicate that a security interest was given to you which is evidenced by a UCC I filing. A copy of that is enclosed. Unless you gave new value for that security interest it is likely an avoidable transfer. Please provide me the information upon which you are relying to perfect your security interest in the assets of the debtor.

If you cannot do so I will be forced to initiate a suit to set aside the interest as a voidable preference or fraudulent transfer.

I look forward to hearing from you.

Sincerely,

David E. Grochocinski

Enclosure (1)

cc: Robert Quarles
Ronald Given

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME: CMGT, INC.

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME,SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
				☐ NONE

12. [X] ADDITIONAL SECURED PARTY'S or [ ] ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
QUARLES	KIM	G.	

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2 S 647 WHITE BIRCH LANE	WHEATON	IL	60187	USA

13. This FINANCING STATEMENT covers [ ] timber to be cut or [ ] as-extracted collateral, or is filed as a [ ] fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a [ ] Trust or [ ] Trustee acting with respect to property held in trust or [ ] Decedent's Estate

18. Check only if applicable and check only one box.

[ ] Debtor is a TRANSMITTING UTILITY

[ ] Filed in connection with a Manufactured-Home Transaction — effective 30 years

[ ] Filed in connection with a Public-Finance Transaction — effective 30 years

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				☐ NONE

12. [X] ADDITIONAL SECURED PARTY'S or [ ] ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
QUARLES	ROB		

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2 S 647 WHITE BIRCH LANE	WHEATON	IL	60187	USA

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTER DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: **CMGT, INC.,** Debtor.	Bankruptcy No. 04 B 31669 Chapter 7
DAVID E. GROCHOCINSKI, Trustee, v. **SPEHAR CAPITAL, L.L.C.,** Defendant.	Honorable John H. Squires (Wheaton) Adversary No. 07 A 838

TRUSTEE'S AFFIDAVIT IN SUPPORT OF RESPONSE TO MOTION FOR SUMMARY JUDGMENT BY SPEHAR CAPITAL, LLC AND IN SUPPORT OF TRUSTEE'S CROSS MOTION FOR SUMMARY JUDGMENT

I, David E. Grochocinski, having been first duly sworn on oath, state that I am of legal age, competent to testify and under no disability; that I have personal knowledge of the facts stated herein; and that, if called as a witness, would testify as follows:

1. I am the duly appointed and acting chapter 7 trustee of the bankruptcy estate of CMGT, Inc. (the "Debtor" or "CMGT").

2. Since my appointment as a chapter 7 panel trustee for the Northern District of Illinois in 1984, I have acted as case trustee in thousands of chapter 7 bankruptcy cases.

3. On August 24, 2004, Spehar Capital, LLC ("Spehar")[1] brought an involuntary petition under chapter 7 of the Bankruptcy Code against the Debtor. I was appointed case trustee on September 21, 2004.

[1] References to "Spehar" include the attorneys for Spehar.

4. Shortly after my appointment, Spehar approached me and advised me that it believed that the Debtor owned a cause of action for malpractice (the "Malpractice Claim") against Mayer Brown Rowe and Maw, LLP ("MBRM"), the attorneys retained by the Debtor in connection with certain financing efforts, and against certain insiders of the Debtor.

5. Although I cannot remember the exact dates and content of all our conversations, I spoke with Spehar on a number of occasions concerning the Malpractice Claim. From the outset, I was aware that Spehar had been employed by the Debtor on a commission basis to locate potential sources of funding for CMGT, and that the possible cause of action involved a transaction with Spehar.

6. Details related by Spehar and other details that I would learn later are included in the allegations of the complaint in *Grochocinski v. Mayer Brown Rowe & Maw LLP et al.*, 06 C 5486 (the "Malpractice Action"), presently pending in the United States District Court for the Northern District of Illinois.

7. The documentation provided to me indicated that on March 18, 2004, a judgment in the amount of $17,045,780.00 was entered in the California Lawsuit, and a document described as "Judgment and Permanent Injunction against CMGT, Inc." had been served on Louis J. Franco ("Franco") and on "CMGT c/o the Delaware Secretary of State." I believed that the Delaware Secretary of State had been served because Franco had resigned as president and CEO of the Debtor some time before judgment was entered in the California Lawsuit.

8. I also reviewed documentation showing that on or about March 31, 2004, Spehar had domesticated its judgment in Illinois, and that on or about April 7, 2004, the Circuit

Court of the Eighteenth Judicial Circuit (the "Illinois State Court") had issued citations to discover assets (i) to "CMGT, Inc., c/o Louis J. Franco, President/CEO; 2 S. 647White Birch Lane, Wheaton, IL 60187" and (ii) to "Louis J. Franco, President/CEO, c/o CMGT, Inc., 2 S. 647 White Birch Lane, Wheaton, IL 60187." The order domesticating Spehar's judgment and the papers filed in connection with the citation to discover assets are filed in the Illinois State Court under the case number 2003 MR 001209 (the "Post-Judgment Case File").

9. Initially, I did not review the Post-Judgment Case File. However, assuming that service was on the same parties as in the California Lawsuit, I assumed that Spehar had caused the Illinois State Court to issue a third citation to "CMGT, Inc. c/o the Delaware Secretary of State."

10. Where a corporation's officers have resigned, it is my understanding that service on the corporation must be made on the registered agent, and if there is no registered agent, on the Secretary of State. Because I believed that a citation to discover assets had been issued by the Illinois State Court to the Delaware of Secretary of State, I accepted Spehar's assertion that through service of its citation to discover assets, Spehar held a perfected lien on all the Debtor's assets.

11. When Spehar first suggested that I bring an action for professional malpractice on behalf of the Debtor's estate, I pointed out that the estate had no assets. Spehar was aware of that situation and offered to provide some initial funding to pursue the Malpractice Claim.

12. I did not immediately respond to Spehar's proposal. It appeared to me that if Spehar's judgment could be vacated, the estate could not claim to have suffered injury from

entry of the default judgment. On investigation, several factors persuaded me that even if the time for bringing such a motion had not run, I would not be able to vacate the default judgment. First, it was not economically feasible to retain an attorney in California, since the estate had no assets. Even assuming that the estate could find funds to bring a motion in the California Lawsuit, I concluded that such a motion would be futile. Under California law, a default judgment may be vacated upon an application supported by an attorney's sworn affidavit attesting the judgment was entered as a result of the attorney's "mistake, inadvertence, surprise or neglect. . ." *See* Cal. Civ. Proc. Code § 473(b). In my estimation, that issue would have to be resolved as part of the proposed malpractice litigation, since MBRM likely would not admit neglect on its own part.

13. I told Spehar that as a first step in my investigation, I would have to obtain documents from the Debtor's legal files.

14. In November 2004, I contacted MBRM, advised it that I waived the Debtor's attorney-client privilege, and requested copies of the Debtor's legal files.

15. Shortly thereafter, Louis J. Franco ("Franco") also contacted me, informed me that he was the former president/CEO of the Debtor, and asked to turn over corporate records in his possession.

16. The fact of my communications with Franco and MBRM apparently became known to other individuals who had made loans or investments in CMGT (the "Investors"). These Investors complained that they had suffered injury from the Debtor's demise. I forwarded copies of letters from the Investors to Spehar.

17. Over the course of several months, Spehar and I negotiated the conditions under which Spehar would advance funds to move the potential malpractice litigation forward.

Spehar was represented in these negotiations L. Judson Todhunter and Steven Klenda ("Klenda"), who are both experienced bankruptcy attorneys.

18. One issue that arose during the period of our negotiations was whether the alleged security interests held by the Investors would be prior to Spehar's liens. Although I was aware that Spehar was concerned that the alleged security interests of Investors should not be prior to his claim, Spehar and I did not discuss whether 11 U.S.C. § 551 would apply upon the avoidance of any liens.

19. One of my main concerns was that Spehar's proposed monetary advance would not cover the expenses of case administration, including the costs of the proposed avoidance actions. In connection with those discussions, I refused to agree that estate administrative costs would be subordinated to costs that Spehar had incurred in connection with the California Litigation and the involuntary bankruptcy filing. At Spehar's request, I made an estimate that administrative expenses would not exceed $20,000.00.

20. Consistent with the practices I have followed in other post-petition financing arrangements, I took special care to ensure that Spehar's advances were to be given a superpriority in any distribution from the estate after a recovery on the Malpractice Claim. Thus, even if Spehar's prepetition claim was unsecured, all its post-petition advances were secured.

21. In my experience, where a post-petition lender wants assurance that its prepetition claim will not be challenged, the parties specifically address the issue, and any understanding that protects the prepetition claim from challenge is explicitly set forth in the post-petition financing agreement. Spehar did not request that I provide such a guarantee.

Given the relatively small amount of Spehar's advances and the risk inherent in the proposed litigation, I would not have been willing to provide a guarantee, either.

22. My discussions with Spehar also addressed the carve-out for unsecured creditors from any recovery on the Malpractice Claim. I insisted that there be a carve-out, so that unsecured creditors would share on a dollar-for-dollar basis with Spehar after the costs of the malpractice litigation and my trustee commission had been paid.

23. In the course of our discussions, Spehar submitted several proposed "sharing agreements" in the form of spreadsheets detailing a projected division of proceeds between Spehar and unsecured creditors in the event of any recovery on the Malpractice Claim. I believed that the proposals were subject to adjustment in the event that the underlying estimates proved to be incorrect. Spehar never questioned my right to a trustee's commission under 11 U.S.C. § 326, and I believed that although there was no reference to the commission in the proposed sharing agreement, I would receive a commission based on all moneys disbursed in the case. When reviewing Spehar's proposals, I also assumed that Spehar had a valid secured claim and that administrative costs would not exceed $20,000.00.

24. Although Spehar asked that he be consulted concerning litigation decisions, I gave no assurances in that regard. I also refused to agree that Spehar's approval would be required in connection with any settlement of the proposed malpractice litigation.

25. In connection with our discussions, I agreed that the Debtor's estate would sell rights to certain of the Debtor's computer codes and software to Spehar for $1,500.00.

26. My agreement with Spehar was memorialized in the draft Application of the Trustee to Enter Into Post-Petition Secured Financing that I sent to Klenda on April 5, 2005.

A copy of the draft motion is attached hereto as Ex. 1. We discussed that draft, and I inserted certain changes requested by Klenda. A copy of my second draft of the motion is attached hereto as Exhibit 2. My revised draft, along with a copy of a June 14, 2005 letter agreement drafted by Klenda, constitute the motion filed with the Court on July 15, 2005 (the "Financing Motion"). A copy of the Financing Motion is attached hereto as Exhibit 3.

27. The Financing Motion and the drafts that preceded it all contain a recital in paragraph 2 that "[t]o the extent that assets are available in this matter, Spehar Capital, LLC by virtue of the citation to discover assets which was served upon the debtor more than 90 days prior to the filing of the petition has a valid perfected lien." To the best of my knowledge at the time the Financing Motion was filed, I believed that Spehar's lien was perfected. However, I interpreted that language as a recital and not as a term of my agreement with Spehar. I believed that in the exercise of my duties as case trustee, I could move to avoid Spehar's lien if I were to learn later that Spehar was not entitled to status as a secured creditor.

28. The sole reference to avoidance of the Investors' alleged security interests was in the letter agreement attached to the Financing Motion. Paragraph 2(b) of that agreement stated that I would "take all necessary or appropriate actions to void the UCC-1 financing statements or other liens that CMGT's shareholders or persons otherwise affiliated filed with the IL Secretary of State on or about 12/18/2003." As I interpreted the term "void" in our agreement, there was nothing that would preclude me from following my customary procedures as trustee and preserving voided liens for the benefit of the estate pursuant to 11 U.S.C. § 551.

29. I did not draft the Financing Order that was filed with the Financing Motion. At Klenda's request, I sent a Word document with a caption for his use in drafting the order. Copies of e-mail messages discussing the draft order are attached hereto as Exhibit 4.

30. In his draft of the Financing Order, Klenda inserted the language in paragraph 6 that "[b]y virtue of its Citation to Discover Assets, Spehar has a valid and perfected lien on the proceeds of any such recovery." Klenda also drafted the language in paragraph 8 that "[t]he Trustee shall take all reasonable and appropriate actions to avoid all liens that are asserted to be superior to Spehar's valid and perfected lien in CMGT's assets . . ." A copy of Klenda's draft of the Financing Order, with the handwritten comments and changes that I faxed back to him, is attached hereto as Exhibit 5. I interpreted the references to Spehar's lien rights as recitals and believed that I was not precluded from moving to avoid Spehar's lien if I were to learn later that Spehar was not entitled to status as a secured creditor.

31. As indicated in my handwritten comments, I insisted that Klenda revise language in paragraph 4 of his draft order which specified the order in which I would use the funds that Spehar would advance to the estate. I demanded the change because I believed the provision was inconsistent with my duties as trustee.

32. Shortly after I filed the Financing Motion, the Office of the United States Trustee (the "UST") forwarded to me a letter the UST had received from Franco. Among other matters, Franco's letter questioned whether the proposed financing arrangement ignored legitimate claimants of the Debtor. A copy of that letter is attached hereto as Exhibit 6.

33. In my response to the UST, I expressed my belief that the Financing Motion and Financing Order merely provide a means for funding the estate and sharing funds that might

become available to the estate through litigation against insiders or professionals. Nothing in the order precluded me from challenging Spehar's judgment if additional information came into my possession that warranted such action. A copy of my response to the UST is attached hereto as Exhibit 7.

34. The Court entered the Financing Order on September 2, 2005. A copy of the Financing Order is attached hereto as Exhibit 8. Klenda drafted the order, revising the original language to reflect that I would move to employ Edward T. Joyce & Associates, P.C. ("Joyce") as special counsel for purposes of bringing the proposed malpractice litigation. A copy of Klenda's August 31, 2005 e-mail letter transmitting the final draft order is attached hereto as Exhibit 9.

35. On August 22, 2006, I caused 24 adversary proceedings to be filed against the Investors (the "Adversary Proceedings").

36. On October 10, 2006, Joyce filed the Malpractice Action. A copy of the docket in the Malpractice Action is attached hereto as Exhibit 10.

37. The chain of events giving rise to this dispute began when I moved for approval of settlement agreements with Franco and certain Investors in the Adversary Proceedings. My agreement with Franco provided that the purported security interest granted to him was avoided, with the lien, if any, preserved for the benefit of the estate pursuant to 11 U.S.C. § 551. Under the terms of the settlement agreements with other Investors, the adversary proceedings against them were dismissed, and the Investors' claims were to be allowed as general unsecured claims upon compliance with the terms of the order. The Court's order approving the settlements preserved the right of any party in interest to seek subordination

of the Investors' claims. A copy of the Court's order approving the settlements is attached hereto as Exhibit 11.

38. The rationale for my decision to settle the Adversary Proceedings was that there were no assets in the estate to fund the litigation.

39. At the time I moved for approval of the settlements in the Adversary Proceedings, Spehar had not yet made the additional advance of $13,500.00 required under the Financing Order. Because Spehar had not provided the promised consideration, I filed a Motion to Vacate the Financing Order (the "Motion to Vacate").

40. Around this time, I also checked the Post-Judgment Case File and found that the Clerk of the Illinois State Court had not issued a citation to discover assets directed to the Secretary of State of Delaware. Legal research conducted around this time also indicated that as a matter of law, a citation lien does not attach to a potential chose of action for professional malpractice.

41. My reply brief (the "Reply Brief") on the Motion to Vacate states at page 7 that "Spehar bargained for . . . a security interest in any proceeds from the Malpractice Action . . ." and it Kendall's recital in paragraph 6 of the Financing Order that "[b]y virtue of its Citation to Discover Assets, Spehar has a valid and perfected lien on any such recovery." However, the brief went on to argue alternatively that Spehar does not have a perfected security interest in the Debtor's assets or in the proceeds of any recovery in the Malpractice Action. A copy of the Reply Brief is attached hereto as Exhibit 12.

42. I did not draft the Reply Brief and I failed to change the language when I reviewed the brief.

43. I believe that I have substantially fulfilled my obligations under the Financing Order. I have caused the Malpractice Action to be filed, I have voided liens asserted to be prior to any lien rights held by Spehar pursuant to 11 U.S.C. § 551, and I have transferred the estate's rights, title and interest in the software and intangible assets provided for in the Financing Order.

44. Although Spehar paid the initial advance of $5,000.00 provided for in the Financing Order, it stopped payment on its check for the additional advance of $13,500.00. A copy of Spehar's e-mail message notifying me of that fact is attached hereto as Exhibit 13.

45. During our negotiations preceding entry of the Financing Order, Spehar was aware that I had received complaints from Franco and the Investors that they, too, had valid claims in the case.

46. Spehar never requested a guarantee that I would not challenge the priority of its claim.

47. I never agreed that § 551 of the Bankruptcy Code would not apply in this case.

48. Even if Spehar's claim is found to be unsecured, the amount of the claim is so large that Spehar will receive most of the funds distributed to unsecured creditors in this case.

49. Unless and until there is a recovery in the Malpractice Action, I consider this bankruptcy case to be administratively insolvent.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: August 8, 2008

David E. Grochocinski, Trustee

Subscribed and sworn before me
this 8 day of August, 2008

Notary Public

OFFICIAL SEAL
GINA A. BONK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10-29-2010

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December 15, 2004

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VIA FACSIMILE: 708.226-9030

Dear Mr. Grochocinski

As a shareholder of CMGT, we have recently received your correspondence directed to Ron Given of Mayer, Brown, Rowe & Maw, LLP, requesting Ron's files to determine potential assets of CMGT.

Please be advised that as a shareholder, we are owed $25,000 from CMGT. Other shareholders are owed significantly more. If, as Trustee in Bankruptcy, you are searching for assets, I suggest you take some time to evaluate the circumstances that led to CMGT being forced into bankruptcy by Gary Spehar, Spehar Capital, and the attorneys for these entities.

You may not be aware that CMGT had an agreement for funding that had been agreed to by all Shareholders. Gary Spehar, knowingly and egregiously caused the funding to be withdrawn. But for his negligent and intentional actions and those of his attorneys, CMGT would have been fully funded and operational, obviating the need for bankruptcy proceedings.

There are a number of factors that need to be addressed immediately:

1. Spehar was not entitled to any fee from CMGT. Spehar never produced any investment capital for CMGT under his performance-based contract and, consequently, there could not have been a breach of said contract. Without breach, litigation against CMGT was unwarranted;

2. Assuming for the sake of argument that he was entitled to a fee, that fee would not have ripened or been subject to being paid until after funding had been finalized. Consequently, the damage, if any, to Spehar was caused solely by his own actions and the actions of his attorneys in prematurely filing litigation.

3. Contrary to Spehar's contentions that he was harmed by CMGT, Spehar's lawsuit was the sole, direct and proximate, cause of irreparable damage to CMGT and its shareholders.

The facts are:

i. CMGT had a bona fide offer of funding;

ii. Those investors immediately withdrew all offers of funding as a result of the Spehar filed litigation;

iii. CMGT was rendered unfundable as a direct and proximate result of the actions of Spehar and his lawyers.

iv. Spehar's filed affidavits that were at best, erroneous and contained numerous misstatements of fact. Assuming the worst case scenario, Spehar's actions and the actions of his attorneys constituted negligence, abuse of the legal system and fraud committed against the shareholders of CMGT, the Courts in California and Illinois, and CMGT's debtors.

v. Spehar's litigation was without merit. His attorneys pursued litigation with full knowledge that there was no cause of action against CMGT.

vi. Because of Spehar's egregious conduct, CMGT was left unfunded and without the financial means to battle the spurious allegations of the lawsuit. CMGT was not able to pay the corporate taxes owed in the state of its incorporation and was thus, precluded from responding to any litigation filed against it. Clearly, Spehar's actions and those of his attorneys were not only negligent, but deliberate and intended to cause and did cause irreparable harm to CMGT, its shareholders and its debtors.

4. Spehar and his attorneys not only violated their responsibilities to CMGT, its shareholders and debtors, Spehar breached his fiduciary duties as a Certified Financial Planner and his fiduciary obligation to CMGT, as its investment banking representative by taking unwarranted and unjustified legal action against CMGT, which actions were the sole and proximate cause of CMGT's demise.

5. As a result of Spehar's fiduciary obligation to CMGT, he and his attorneys knew better than anyone how irreparably destructive his lawsuit would be. He and his attorneys knew that the litigation would render CMGT unfundable and force it into bankruptcy.

6. Because CMGT was irreparably damaged, it was unable to pay the corporate taxes and fees in the state of incorporation. Consequently, CMGT was precluded from contesting the spurious allegations brought by Spehar that resulted in a default judgment in California, which is the genesis of this bankruptcy proceeding.

As a shareholder of CMGT, we strongly urge you to investigate the facts leading to the bankruptcy of CMGT. The only realistic assets available to pay creditors, claimants and trustee fees, are those of Gary Spehar and Spehar Capital. Additionally, Spehar's attorneys, by their negligent and intentional conduct have exposed their malpractice policies to claims by CMGT, Shareholders, Creditors and the Trustee.

Please keep us advised of the progress of your investigation.

Sincerely,

Kim G. Quarles
Robert W. Quarles