

MHW

August 20, 2010

By MESSENGER

The Honorable Virginia Kendall
United States District Court
Northern District of Illinois
Eastern Division
219 South Dearborn Street
Room 2319
Chicago, IL 60604

FILED

8-20-2010

AUG 20 2010 WH

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

**Re: *David Grochocinski v. Mayer Brown
Rowe & Maw LLP, et al. - Case No. 06 C 5486***

Dear Judge Kendall:

As with the 7th Circuit's grant of authority for this Court to decide the intervention motion, Mr. Novack once again deems the evidence that logic and experience suggest matters most "irrelevant." His August 18, 2010 letter suggests that "Judge Squires' comment...has nothing to do with this Court's findings and ruling." But the opinion of a bankruptcy judge who has viewed the relationship between Grochocinski and me since its inception is significant, especially since Judge Squires felt compelled to comment on this Court's findings in an opinion on which they have no bearing.

In fact, the record before the Bankruptcy Court in the Adversary Action showed that the Grochocinski/Spehar relationship has been extremely adversarial from the early 2005 negotiation of our September 2, 2005 Financing Order forward. For example, Spehar Capital counsel Steve Klenda ("Klenda") averred in his May 20, 2008 Affidavit:

"The negotiations between Spehar and Trustee were extended and contentious. The negotiations nearly broke down over the exact portion of Litigation Proceeds that Spehar would have to share with the Estate".¹

And Grochocinski's February 25, 2005 memo emphatically warned Klenda:

¹ *In re CMGT, Inc.*, No. 09 C 2822, 2010 WL 432276, at *5 (N.D.Ill. Feb. 2, 2010) (Gettleman, J.), Rcrd. of Apl. Doc. 3-6 at 88, ¶10. Klenda's Affidavit was Exhibit 4 to Spehar Capital's May 21, 2008 Mo. Sum. J. in the Adversary Action and Defendant's Ex. 66 at the Nov. 2008 trial in the Adversary Action.

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"...unless there is some very good incentive for unsecured creditors I will file a no asset report and close my file. I am not obligated to pursue assets that benefit secured creditors."²

Judge Squires' comment in his August 11, 2010 opinion was informed by this extensive record, as well as his own first hand experience. This Court may take judicial notice of such public records.

Mr. Novack also states that "Judge Squires noted the irony of the current litigation between Mr. Spehar and the Trustee *given their past history of teaming together to pursue the malpractice action...*" In fact, Judge Squires noted only the irony in the "marked contrast [of this Court's findings] to the bitter and hard fought dispute between the Trustee and Spehar in [his] Court."

Finally, the "bitter dispute" that Judge Squires noted began in August 2007, and it continues to this day. This is almost exactly coincident with this Court's adjudication of Defendants' unclean hands allegations against me in this malpractice action, supporting my Motion to Intervene's contention that Grochocinski did not adequately represent/protect me in this matter.

Respectfully submitted,



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² Spehar Mo. to Alt. or Amd. at 25, ¶34. See also Spehar Mo. to Alter or Amend at 35, FN 50.

Spehar's Mo. to Intervene which is now before this Court expressly incorporates its Motion to Alter or Amend. See Spehar June 10, 2010 Reply at 2, FN 2.

CERTIFICATE OF SERVICE

I, Gerry Spehar, certify that I caused a copy of the attached *Letter to Judge Kendall* to be served on the parties listed below, by fax or by depositing with the United States Post Office in Glendale, California, postage prepaid, prior to 6:00 p.m. this 20th day of August, 2010.

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