IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID GROCHOCINSKI, not individually, but solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of CMGT, INC.,	)	
Plaintiff,	)	
v	)	No. 06 C 5486
MAYER BROWN ROWE & MAW LLP and RONALD B. GIVEN,	)	Judge Virginia M. Kendall
Defendants.	)	

DECLARATION OF DAVID E. GROCHOCINSKI

I, DAVID E. GROCHOCINSKI, declare pursuant to 28 USC §1746 as follows:

1. I have personal knowledge of all facts stated herein, and I could competently testify to the facts stated in this declaration if called to do so.

2. I am an Illinois attorney and the managing share-holder of Grochocinski, Grochocinski and Lloyd, Ltd., an Orland Park, Illinois law firm. I concentrate my practice in debtors'/creditors' rights and bankruptcy law, and that is my primary area of professional expertise. As a debtors'/creditors' rights and bankruptcy attorney I represent middle-class individuals and small businesses in the southwest suburban Chicago area.

3. I have been a member of the panel of private trustees appointed and maintained by the office of the United States Trustee for Region 11 pursuant to 28 USC § 586 for more than 25 years. Trustees are appointed to bankruptcy estates on a random basis. I do not have any professional expertise in the area of legal malpractice and professional liability or related state law claims.

4. I am the duly appointed trustee of the Chapter 7 bankruptcy estate of CMGT Inc., the plaintiff in the above-captioned case. As such, pursuant to 11 USC § 323, I am the representative of the CMGT bankruptcy estate and have the capacity to sue parties on behalf of the estate. The present litigation was brought by me not individually, but solely in my capacity as trustee of the CMGT Inc. bankruptcy estate.

5. As the Chapter 7 trustee for CMGT, I am responsible for marshaling and liquidating the assets of the CMGT bankruptcy estate. My letter of appointment is dated on September 17, 2004, which I received on September 21, 2004.

6. The CMGT bankruptcy was commenced by an involuntary petition for bankruptcy on August 25, 2004, filed by Spehar Capital, LLC (hereinafter SC), a judgment creditor of CMGT. My appointment as trustee was accompanied by nothing more than the docket number of the bankruptcy proceedings. From the bankruptcy court's computer, I printed the meager documentation that accompanied the involuntary petition. It did little more than identify the debtor, the petitioner, and the address for service of the petitioner, along with the name of counsel for the petitioner.

7. Unlike a voluntary bankruptcy, a Chapter 7 involuntary bankruptcy is not accompanied by schedules of assets and liabilities, nor any other documentation that would enable me, as trustee, to get an immediate sense of what is involved in the bankruptcy. The CMGT bankruptcy was no exception. (In some cases the debtor participates and agrees to prepare schedules and statements of assets but CMGT did not do so in the present case.)

8. I learned from the citation to discover assets testimony of Louis Franco, and later, through documents provided by Mr. Franco, that the CMGT estate had no assets

other than some software of minimal value. It had large debts, primarily a $17,000,000 default judgment.

9. The CMGT estate had no assets with which to pursue litigation, and in cases of estates in which there are no assets, I am not required to advance my own funds for the pursuit of legal remedies.

10. I learned that the default judgment had been entered against CMGT on March 18, 2004 in a California state court. In my long experience as a Chapter 7 trustee, I have handled many no-asset estates in which default judgments had been entered against the debtor. Such a judgment is usually uncollectible, and I have rarely if ever tried to vacate one. When I see that such a judgment has been entered, I operate under the standard belief that it must be given full faith and credit by all other courts and that, under the *Rooker-Feldman* doctrine, it cannot be collaterally attacked.

11. The Chapter 7 petition filed on behalf of SC was filed by attorney Judson Todhunter, of the law firm of Defrees & Fiske. I knew, and still know, Mr. Todhunter as an experienced, honest bankruptcy attorney. Although I have been an acquaintance of him since law school, I have also come to know him on a professional basis because of my professional dealings with him my capacities as a bankruptcy lawyer and a trustee over the years.

12. Mr. Todhunter contacted me on and informed me that his client, SC, a secured creditor of CMGT, was willing to undertake post-petition financing and carve out funds for unsecured creditors so that the estate could resolve issues, and investigate potential assets, including a legal malpractice action by CMGT against MBRM I do not

have any professional expertise in the area of legal malpractice and professional liability or related state-law claims, and I was in no position to investigate and to assess the claim advanced by Mr. Todhunter that MBRM had been guilty of legal malpractice that damaged the CMGT estate. A trustee is not required to advance funds for the administration of the estate, and advancing funds could make the trustee a creditor of the estate. In order to make such an assessment, I needed to retain special counsel. It is common practice for a Chapter 7 trustee to retain special counsel to evaluate and, if necessary, prosecute or defend a claim, in a field of law with which the trustee is unfamiliar, on behalf of the debtor.

13. Before retaining special counsel, however, some arrangement had to be made for the payment of expenses involved in the investigation of the claim. Accordingly, there ensued many months of arm's-length negotiations between Mr. Todhunter, Steve Klenda (another attorney for SC) and me, as Chapter 7 Trustee of CMGT. It is common practice, when a creditor advances a claim on behalf of a debtor with no assets to prosecute it, for the creditor to arrange the financing of legal and investigative expenses. SC was presented to me as a secured creditor because it was a citation lien creditor. A trustee owes duties to secured and unsecured creditors, but a secured creditor can often look to its own collateral for payment. My main concern, therefore, was the unsecured creditors of CMGT. Accordingly, I insisted, and obtained, the agreement of SC that if any collection of the proposed claim were ever made, the unsecured creditors would share in the monies recovered. While the agreement with SC granted it the majority of any collection, it proved, after difficult negotiations, to be the best deal I could make that would yield some hope of unsecured creditors' collecting something from the estate of CMGT.

14. Such a financing arrangement must be approved by the bankruptcy court. To that end, I prepared an application to enter into a post-petition secured financing arrangement and for other relief pursuant to 11 U.S.C. 364, which application was presented to the bankruptcy court after notice of hearing to all creditors (including MBRM). The court entered such order on September 7, 2005, almost a year after the order for relief was entered.

15. In order to retain special counsel, an order of the bankruptcy court is required. Accordingly, I made a request to the bankruptcy court to authorize the retention of special counsel to investigate, and if appropriate, to pursue claims against certain of CMGT's former professionals and advisors. The application to employ special counsel was filed pursuant to 11 U.S.C. 327. Pursuant to an order of the bankruptcy court dated November 18, 2005, and attached hereto as Exhibit 1, the estate of CMGT retained Edward T. Joyce and his law firm, Edward T. Joyce and Associates, Ltd., as special counsel.

16. While Mr. Joyce was recommended to me by Mr. Todhunter, I retained Mr. Joyce as special counsel based on his reputation and experience in commercial litigation, and, more specifically, prosecution of legal malpractice claims. Mr. Joyce is a principal of Edward T. Joyce and Associates who concentrates his practice in, among other things, commercial litigation and professional malpractice. Mr. Joyce's cases include the successful prosecution of numerous professional liability claims. I investigated Mr. Joyce's abilities as an attorney, spoke to him on the telephone about his qualifications and found that he had the staff and was well equipped to handle the task to be assigned.

17. I sought appointment of Edward T. Joyce because of my lack of knowledge of the law pertaining to legal malpractice and the ways and means of investigating a legal malpractice claim. Mr. Joyce agreed to represent CMGT Inc. and to prosecute any malpractice claims that might be appropriate.

18. Mr. Joyce investigated, as special counsel, the potential of a legal malpractice claim against MBRM. Other than providing him with information from my file, I took no part in investigating the salient facts pertaining to the legal malpractice claim.

19. On August 10, 2006, I participated in a conference call with Mr. Joyce, attorney Robert Carroll of his firm, Gerry Spehar, Mr. Todhunter and possibly (my memory is unclear) Mr. Klenda.and an attorney representing SC. Mr. Joyce advised all of us that there was sufficient factual and legal basis for bringing a legal malpractice action against MBRM. He recommended that such an action be filed and I approved the filing based on his recommendation.

20. Before the lawsuit was filed, Mr. Joyce's firm sent me a copy of the complaint. Since I was not involved in the events described in the complaint nor did I personally conduct the investigation, nor am I versed in the law of legal professional liability, I had no basis to question the content of the complaint and the advice that the lawsuit be filed.

21. During the course of my administration of the case and in particular, the matters concerning the financing agreement entered into between the estate and SC, I discovered that the citation to discover assets which Spehar had alleged to be properly served upon CMGT did not appear to be properly served upon the Delaware Secretary of State and that therefore the "lien" which Spehar alleged to be valid may not in fact have

been perfected pre-bankruptcy. I personally reviewed the state court file in DuPage County which had been filed to register the judgment from California.

22. I did this because of matters which occurred during the hearings on the settlement of the adversary complaints that I filed against CMGT shareholders to avoid preferences. The CMGT shareholders had filed UCC 1's with the Illinois Secretary of State just prior to the SC California judgment in an attempt to secure liens against the assets of CMGT for themselves. They did not have and to the best of my continuing investigation do not have any security agreements or other documents that would have given rise to a valid security interest in the assets of CMGT. I was forced to file avoidance actions against the shareholders because they had refused to voluntarily release the alleged liens. During the settlement of the adversary complaints, I sought and obtained orders which preserved the liens that were avoided for the benefit of the estate.

23. Because I determined that the citation was likely not served correctly I filed an adversary complaint against SC to avoid the lien allegedly obtained by the citation. It was a four-count complaint.

24. That matter went to trial before the bankruptcy court and Judge Squires ruled that the citation was in fact not properly served and that the security interest of SC was set aside and determined to be void. That meant that the financing agreement was also voided and Spehar was to be treated as an unsecured creditor just as other unsecured creditors, including Louis Franco, who had filed a claim for more than $14 million.

25. Spehar filed an appeal to the district court and Judge Gettleman eventually reversed Judge Squires, saying that despite the bankruptcy court's finding that it did not

make findings of fact in the financing order as required under local rule (local bankruptcy rule 4001-2) it believed that the financing order was clear and that regardless of the findings by the bankruptcy court, SC was determined to be a secured creditor.

26. By filing the complaint against Spehar I sought to have him treated just as any other unsecured creditor, which means that any recovery in the malpractice case would have been shared equally, on a pro rate basis, by SC and all the other unsecured creditors.

27. I monitored the progress of the litigation with Mayer Brown and regularly consulted with Mr. Joyce regarding all major aspects of the case. Based on my supervision of the case, including my discussions with my retained professionals and my independent review of selected pleadings and other relevant information, I believed that the claims asserted against Mayer Brown were meritorious. I was informed of a motion to dismiss the case and a motion for summary judgment. The advice of Mr. Joyce was to oppose the motions; I had no basis upon which to disagree with him in that regard. On or about May 29, 2008, I met with Mr. Joyce and other attorneys from his firm at his office. While not the major topic of the meeting, we discussed the recent 7th Circuit decision in *Maxwell v.* KPMG, 520 F.3d 713. Mr. Joyce advised me that that case was distinguishable from the legal malpractice action against MBRM and that it was not an impediment to continued prosecution of that case. I followed his advice, and the case proceeded.

28. I acknowledge that I was contacted by CMGT shareholders during the first year of the bankruptcy. When I received such letters at the end of 2004, I had little or no information to either verify the accuracy of the allegations nor dispute the assertions that

Gerry Spehar was alleging as well. A trustee often has competing parties who point fingers at one another and blame the other of financial misdeeds. This was the type of case that required lengthy investigation because of the serious assertions made against MBRM and Mr. Spehar. Since I did not believe that the judgment of SC was anything but valid, I tried to approach the claims or assertions of shareholders as evenhandedly as possible by responding to the shareholders in writing and asking them to show good faith by resolving some issues that the estate would have against them (avoidance of liens). The last six paragraphs of my letter to Ira Bodenstein of August 10, 2005, set forth my beliefs as to the Spehar claims , my interpretation of the Spehar post-petition financing arrangement and my belief that I was treating the shareholders correctly and that I had retained rights versus SC if an when the time arose or the need arose to assert them.

29. I have no personal animosity against MBRM, and my pursuit of claims against MBRM on behalf of CMGT's bankruptcy state was motivated solely by my duty as Chapter 7 Trustee of CMGT to maximize the value of CMGT's assets for the benefit of all interested parties. In exercising my judgment as trustee for the CMGT bankruptcy estate to prosecute the claims against MBRM, I relied upon the advice of Edward T. Joyce. Based upon the advice of Edward T. Joyce, I understood that the prosecution of claims against MBRM on behalf of the bankruptcy estate was in the best interest of creditors.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 3/14/11.

David. E. Grochocinski