

EXHIBIT 14

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

Leo Stoller,) 05 B 64075
) Chicago, Illinois
) 1:30 p.m.
Debtor.) August 31, 2006

EXCERPT (A) OF PROCEEDINGS BEFORE THE
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

For Debtor: Mr. Richard Golding;

For Pure Fishing: Mr. Wm. Factor;
Mr. Lance Johnson;

For Chapter 13 Trustee: Mr. Mark Wheeler;

Court Reporter: Jackleen DeFini, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, Il. 60604.

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**JACK B. SCHMETTERER, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT**

1 THE COURT: I think we are ready for
2 final argument. Are we not? The question is whether
3 we do it tonight or tomorrow morning at 9:30.

4 MR. WHEELER: Judge, I can't be here
5 tomorrow morning.

6 THE COURT: Are you planning to
7 address the court?

8 MR. WHEELER: Yes, Your Honor.

9 THE COURT: How much time do you want
10 to talk?

11 MR. WHEELER: Depends on when the
12 court wants to schedule this. I can't be here
13 tomorrow morning. I went back to my office to get my
14 keys and such --

15 THE COURT: What I'm saying is how
16 much time will you need to address the court?

17 MR. WHEELER: Not much, maybe ten
18 minutes. The court's already pretty much articulated
19 my position.

20 THE COURT: The court just asked a
21 question.

22 MR. WHEELER: To summarize my position
23 to the court --

24 THE COURT: You can do that now. I
25 think that the other lawyers probably want to spend

1 more time in argument. That's why I'm asking. I
2 could hear the Chapter 13 trustee tonight and let him
3 depart. And then I want to ask you folks whether or
4 not you want to argue right now or you would rather
5 argue tomorrow morning at 9:30.

6 MR. JOHNSON: If I may? I did not
7 book a room for today. I suppose I could.

8 THE COURT: Oh, yes, you're from out
9 of town.

10 MR. JOHNSON: Yes, we're here from
11 Washington D.C. I would need probably no more than
12 15 minutes.

13 THE COURT: Would you prefer to do it
14 tonight?

15 MR. JOHNSON: If I could, Your Honor.
16 Most of my closing argument is, as you instructed, in
17 our proposed findings.

18 THE COURT: How much time would you
19 need, counsel?

20 MR. GOLDING: I would say probably 15
21 minutes to a half hour.

22 THE COURT: Okay. Well, would you
23 like me to take a recess before we start? We'll do
24 it now.

25 MR. JOHNSON: That would be fine, Your

1 Honor.

2 MR. GOLDING: Whatever Your Honor --

3 THE COURT: Are you ready to go? Do
4 you want to go first, Trustee?

5 MR. WHEELER: Sure, if the court's
6 prepared to make a decision on my motion. Otherwise,
7 if it's going to hinge on the other arguments --

8 THE COURT: I want to decide the Pure
9 motion first. So maybe you want to reserve your
10 argument?

11 MR. WHEELER: That's fine.

12 THE COURT: All right.

13 Counsel for Pure, you need how long,
14 sir?

15 MR. JOHNSON: No more than 15 minutes.
16 I will attempt to do it in even less time than that.

17 THE COURT: Well, I assume part of
18 your argument is contained in your amended findings
19 of fact, conclusions of law.

20 MR. JOHNSON: Yes, the vast majority
21 of that, Your Honor, 98 plus percent.

22 THE COURT: And apart from that, what
23 do you want to say?

24 MR. JOHNSON: Pure Fishing, we would
25 like to summarize -- not summarize, perhaps -- I note

1 for the court that in connection with today's
2 testimony by the debtor, he has not refuted or
3 explained away the numerous errors and omissions in
4 the petition and schedules that were identified in
5 our proposed findings. Moreover, we heard repeated
6 testimony about a number of d/b/as or assumed name
7 entities that are asserted to be assumed names for
8 his corporate entities, Central, Mfg. Inc. That,
9 however, is not the law. The law for corporations is
10 that an assumed name must be registered with a state
11 entity. For a proprietorship in Illinois, an assumed
12 name can be adopted without registration.

13 THE COURT: To what extent is the
14 record issue and the formality observation in
15 maintaining records and business related to the
16 motion -- the standards on the motion to dismiss --
17 pardon me, convert to Chapter 7?

18 MR. JOHNSON: May I turn that over to
19 co-counsel, Mr. Factor, who is more skilled in those
20 areas, Your Honor, than I?

21 MR. FACTOR: Thank you, Your Honor.
22 On the motion to convert there are a couple of
23 grounds, statutory grounds in 1307(c). There is
24 also, and it's well-established by the Seventh
25 Circuit, a basis for converting or dismissing based

1 on a finding of bad faith. And in connection with
2 the bad faith issue the Seventh Circuit enumerated
3 five or six, maybe seven different factors to
4 consider. One of those is did the debtor file for
5 Chapter 13 to avoid denial of discharge or denial of
6 dischargeability on a specific debt. That's one of
7 the factors from the Seventh Circuit in evaluating
8 the lack of good faith.

9 And it's our contention that if this
10 were in a Chapter 7 case, the debtor clearly would be
11 denied a discharge based on 727(a)(2) and 727(a)(3),
12 failure to keep books and records, destruction of
13 books and records. So in a Chapter 7 the debtor
14 clearly would be denied a general discharge.

15 Moreover, in a Chapter 7, and this
16 doesn't relate to books and records, so I won't go
17 down that path, there are other reasons why the
18 debtor -- bad faith is evidence under section 727.
19 But the books and records issue, Your Honor, I think
20 is relevant because in Chapter 7 he would be denied a
21 general discharge, so he files for Chapter 13 instead
22 to avoid the consequences of his sloppy record
23 keeping, careless record keeping, perhaps intentional
24 destruction of records. That's one reason.

25 The second reason is that the lack of

1 records evidences a general disregard for the
2 requirements of Chapter 13. To be a Chapter 13
3 debtor you have to establish a regular income, and
4 you have to make -- you have to establish your
5 expenses. And you match up your income with your
6 expenses. You have disposable income and that's used
7 to pay back creditors. Without records, we don't
8 know if the debtor is earning two million dollars a
9 year, or if the debtor is earning a dollar a year.

10 THE COURT: Whose responsibility is it
11 to monitor the debtor's filings in Chapter 13 when
12 the debtor reports income and expenses? It is partly
13 the creditors and partly the Chapter 13 trustee;
14 right?

15 MR. FACTOR: To monitor? Yes. I
16 think the debtor also has --

17 THE COURT: And the creditors or the
18 Chapter 13 trustee determine his income and expenses
19 from the records that we have learned about.

20 MR. FACTOR: I don't see how that's
21 possible, Your Honor. I don't see how that's
22 possible at all. As I said before, we don't know
23 whether the debtor is taking home two million dollars
24 a year or one dollar a year. There's been no
25 evidence. There's been no paystubs. There's been no

1 testimony from an employer. There's been no checks.
2 There's been nothing produced. So we have no way of
3 knowing whether it's at one end of the scale or the
4 other end of the scale. And I think that that's
5 evidence of bad faith because it's filing a Chapter
6 13 case just to try to take advantage of the super
7 discharge when he's not entitled to it.

8 THE COURT: Thank you.

9 We'll go back to your argument.

10 Thank you very much.

11 MR. JOHNSON: In connection with the
12 assumed name entities, asserting that it is not the
13 law of Illinois that a corporation can assume an
14 assumed name for use in business without prior
15 registration, the state has a very elaborate
16 structure for registration of corporate entity and
17 corporate entity names in order for the express
18 purpose of avoiding fraud and confusion among the
19 public. In the present instance we have a fair
20 amount of assets in terms of bank accounts and cash
21 flowing through that account that are asserted to be
22 in the name of an entity that is registered neither
23 with the state of Delaware or with the state of
24 Illinois.

25 THE COURT: Well, the name you refer

1 to is?

2 MR. JOHNSON: Sentra Manufacturing
3 Company, Inc., as spelled out and attached to the
4 account. We have other evidence in the record,
5 verified pleadings of many number in which the debtor
6 has represented himself to be -- to use the
7 designation Central Mfg., Central Mfg. Co. as a d/b/a
8 for his personal activities, and Central Mfg. Inc. to
9 represent a corporate entity of some sort.

10 I believe that the asset that that
11 entity represents, a proprietorship, should have been
12 disclosed in the petition and schedules.

13 THE COURT: Go ahead.

14 MR. JOHNSON: Moreover, Your Honor, we
15 have identified a number of areas in the schedules
16 where the land trust and the rental income associated
17 with that should have been listed but were not. No
18 adequate explanation at law or in fact has been
19 presented for the failure to so list those assets.
20 And the assets are substantial, Your Honor. Within
21 the last year that was the debtor's largest single
22 asset that if liquidated would return far more to
23 creditors than the \$14,000 proposed by the plan.

24 THE COURT: Repeat that.

25 MR. JOHNSON: The land if liquidated,

1 the land and property --

2 THE COURT: The real estate.

3 MR. JOHNSON: The real estate and the
4 house on it were agreed to be worth about \$340,000,
5 the single largest asset the debtor has, or had.
6 Had.

7 THE COURT: And you are assuming that
8 it could be recouped for a Chapter 7 estate?

9 MR. JOHNSON: Yes, Your Honor.
10 Transferred to a relative for no consideration with
11 retained control over the land and realization of
12 the --

13 THE COURT: How long before the
14 filing?

15 MR. JOHNSON: The transfer occurred
16 March 15, 2005. The petition was filed December 22,
17 2005.

18 THE COURT: A year.

19 MR. JOHNSON: Yes, nine months, Your
20 Honor. And since he was continuing to collect rent
21 associated with that, as he testified, on a monthly
22 basis, it's unlikely that he could have forgotten
23 about it. Accordingly, with the view of the other
24 errors and omissions that's found in the schedules
25 that's unrebutted, we believe it's a strong inference

1 of an actual intent to defraud, and that Chapter 7 is
2 warranted because the creditors would be far better
3 off in a Chapter 7 than a Chapter 13.

4 THE COURT: Well, what vehicle is
5 there in Chapter 13 for that type of inquiry? We can
6 hear from the Chapter 13 trustee, perhaps he'd want
7 to comment on that in a few minutes. But you're
8 assuming that his office is not equipped to do that
9 sort of work.

10 MR. JOHNSON: I believe he testified
11 that was the case, Your Honor.

12 THE COURT: It may be he wants to add
13 something to that.

14 MR. JOHNSON: Yes.

15 THE COURT: So that's the sum of that
16 argument, is that in Chapter 13 there's no one to
17 mount that attack on the real estate problem?

18 MR. JOHNSON: That's correct, Your
19 Honor.

20 THE COURT: Go ahead.

21 MR. JOHNSON: Moreover, the rent, as
22 the debtor testified, the rent checks and checks from
23 a number of other unincorporated associations were
24 all commingled in that Sentra Manufacturing Company
25 Inc. account.

1 THE COURT: Counsel, do we have any
2 evidence of that?

3 MR. JOHNSON: Yes, we do.

4 THE COURT: What is that exhibit,
5 please?

6 MR. JOHNSON: I believe that's Exhibit
7 5, Your Honor. That is the large exhibit of all the
8 checks. And Exhibit 6 is a summary of the checks and
9 amounts, drafted, summarized in connection with that
10 account.

11 THE COURT: Does the summary show his
12 annual gross income?

13 MR. JOHNSON: It shows a sum of cash
14 taken out per year in connection with the account.
15 We do not know, however, whether this is the only
16 account he's ever used.

17 THE COURT: Does it show how much cash
18 flow is taken out?

19 MR. JOHNSON: Yes, it does.

20 THE COURT: What years?

21 MR. JOHNSON: The last three years,
22 Your Honor.

23 THE COURT: What's the latest year?

24 MR. JOHNSON: I believe there is a
25 number to date as of 2006.

1 THE COURT: Does it have '05?

2 MR. JOHNSON: It has '05 and '04. We
3 subpoenaed checks for the last three years.

4 THE COURT: The '05 withdrawals from
5 that account total what? The '04 and '05 withdrawals
6 from that account total what?

7 MR. JOHNSON: In Exhibit 6, page 2,
8 paragraph F, 2005 checks written to cash totaled
9 \$44,815.26.

10 THE COURT: In '05?

11 MR. JOHNSON: Yes.

12 THE COURT: In '04?

13 MR. JOHNSON: In '04, \$37,341.

14 THE COURT: Now the '04 tax return
15 that this gentleman filed, he showed gross receipts
16 of \$7600, plus some other entries regarding some
17 other business property. How do these sums shown to
18 be withdrawn relate, if they do at all, to the tax
19 returns?

20 MR. JOHNSON: They do not, Your Honor.
21 It's wholly inconsistent. There's far more income,
22 far more cash taken out of the business than is
23 reflected on those income tax returns that were
24 filed.

25 THE COURT: The withdrawals you speak

1 of, they are in the range, are they not, of the
2 annual monies he claims to have available to him in
3 his income in his Chapter 13 filing?

4 MR. JOHNSON: Yes. Yes, in the range.
5 He does not account, however, for, as he testified,
6 checks directed to the rent that were not deposited
7 in any bank account after August of this year. That
8 does not relevant for 2005. (sic)

9 THE COURT: Let's assume arguendo that
10 the house is really his. What would be the
11 consequence in terms of income available to him?

12 MR. JOHNSON: Well --

13 THE COURT: What do we know about the
14 mortgage? Let me just break it out that way. What
15 do we know about the mortgage? Is he liable on the
16 mortgage?

17 MR. JOHNSON: No, Your Honor. This is
18 a land trust. And as such --

19 THE COURT: -- mortgage --

20 MR. JOHNSON: It's an unsecured
21 mortgage, so the trustee of the land trust signed the
22 note and the mortgage, but it's a non-recourse --

23 THE COURT: Was he the trustee at that
24 time?

25 MR. JOHNSON: No, Your Honor, Midwest

1 Bank and Trust was the named trustee.

2 THE COURT: So was he liable on the
3 mortgage?

4 MR. FACTOR: Your Honor, if I can
5 explain here because this is related to Illinois land
6 trust law.

7 The property's held in a land trust.
8 The property is essentially encumbered by a mortgage
9 of about \$100,000. I believe that's in evidence.
10 And we don't know what the monthly mortgage payments
11 are. We asked that question and the debtor indicated
12 he didn't know what the monthly mortgage payments
13 were.

14 THE COURT: Does the evidence show
15 who -- whether any human being is liable on the
16 mortgage?

17 MR. FACTOR: The evidence that we saw
18 indicated that the mortgage was non-recourse except
19 for -- so it was non-recourse. It was just -- the
20 property itself was liable.

21 THE COURT: So no individual is.

22 MR. FACTOR: So there's no --

23 THE COURT: If he's the owner, then
24 he's protecting his ownership by paying the mortgage.
25 If that could be proved.

1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: Thank you. Let's go ahead
3 with the argument, sir.

4 MR. JOHNSON: If the point is that the
5 debtor has testified himself that his income stream
6 is not in fact regular, it depends on whether he can
7 reach a settlement; whether there exists an
8 allegation of an infringement he can make and come to
9 terms. He's testified that his income stream is not
10 regular, which would be inconsistent with the notion
11 of funding a Chapter 13 plan.

12 Lastly, the debtor has not explained
13 how the creditors are better off if we remain in
14 Chapter 13 compared to a Chapter 7.

15 Lastly, Your Honor, the absence of
16 books and records in connection with his expenses do
17 not permit us to determine accurately what his true
18 income is. It is possible that he may have been
19 using some of the cash to pay his independent
20 contractors. We saw no checks directed to them. We
21 saw no checks directed to taxes associated with them
22 or social security or unemployment. We have no idea
23 what his true actual income is because he did not
24 have books and records.

25 With that I close.

1 THE COURT: Thank you.

2 Chapter 13 trustee, do you have any
3 remarks you would like to make?

4 MR. WHEELER: Briefly, Your Honor.
5 Your Honor, the court already recognized, and I have
6 mentioned it a couple of times in past hearings, that
7 the trustee's position in this matter is essentially
8 such that if the debtor concedes, is willing to
9 concede to dismissal of that matter, the position I'm
10 taking I don't see how they could offer an
11 appropriate defense to conversion because the
12 language of the statute is clear that on a request
13 for a party in interest after notice and hearing that
14 the case may be converted. So if they're going to
15 concede to dismissal, why in fact wouldn't they be
16 able to concede to conversion of the case?

17 Just a few minutes ago the court asked
18 Mr. Factor a question about confirmability. And
19 that's important that the court hit on this question
20 because this case, the individual specific facts of
21 this case render it almost impossible to determine
22 the confirmability of the case. Where do we look at
23 confirmation standards? We look at 1325(a). We look
24 at 1325(b). We look at 1326. We look at best
25 efforts. Is the debtor making the best effort to

1 repay their creditors? We look at best interests.
2 Is it in the best interests of the creditors? We
3 look at good faith. We also look at some case law in
4 re: Indiana, or Smith versus Indiana, and Rimgale
5 for our confirmation standards.

6 But if we take the basic confirmation
7 standards and we look at best efforts, how do we know
8 he's making his best efforts when we can't tell what
9 his income is, what his assets are. It's too
10 nebulous right now. This case can go on for years
11 and I don't know that you would ever -- that the
12 court or the trustee would ever get to really learn
13 what's available here. Clearly, the creditors' best
14 interests are not being represented by the proposal
15 of the plan for confirmation. That only pays a
16 little over 10,000, between 10 and \$20,000 when
17 potentially there is a piece of real property --

18 THE COURT: You are talking about
19 payment to the unsecured creditors?

20 MR. WHEELER: That's not even the
21 unsecured creditors, that's the total pot. That's
22 the total pot of money available to everybody that we
23 don't know. When I say everybody, I don't know what
24 the creditors are out there.

25 And perhaps most importantly, the

1 third prong is good faith. I think that there's been
2 a very, very strong case made by the creditor, Pure
3 Fishing, that good faith has not -- the requirements
4 of good faith have not been met. Selective memory
5 demonstrated, there's been little or no evidentiary
6 defenses offered to the volumes and volumes of
7 evidence that has been submitted and probably
8 admitted into evidence by the court. So basically
9 the facts are unique to this case, and render it
10 almost impossible to judge whether it's even in fact
11 confirmable or not.

12 Now, there's no question that
13 confirmation would in fact -- or, excuse me, that
14 conversion would in fact render a better dividend to
15 the creditors than leaving it in Chapter 13.

16 THE COURT: I think the plan probably
17 calls for more payment to the creditors than you have
18 --

19 MR. WHEELER: I don't think so. I
20 think it's \$683.

21 Does anybody have a calculator?

22 I think it's a \$683 payment -- \$693
23 payment over 36 months.

24 THE COURT: Well, this is a
25 mathematical thing we're going to look at later. Go

1 ahead with the argument.

2 MR. WHEELER: Now a couple of other
3 requirements I would like to point out.

4 Section 109(e) talks about who is
5 eligible to file in the first place. Only an
6 individual with regular income that owes on the date
7 of filing the petition non-contingent, liquidated,
8 unsecured debts of less than \$307,675 in
9 non-contingent, liquid (sic) or unsecured debts less
10 than \$922,975, or an individual with regular income
11 and such individual's spouse, except a stockbroker or
12 commodity broker that owe on the date of filing the
13 petition non-contingent, liquidated, unsecured debts
14 that aggregate less than \$307,675, and
15 non-contingent, liquidated secured debts of less than
16 \$922,975 may be a debtor under this title. We don't
17 know what the regular income is. It's based on
18 fluctuating income and there are no records. There
19 are no books. So we don't even know if he's eligible
20 because we don't know the stream of income. There is
21 no way we could probably ever tell. I could never in
22 my representation of a Chapter 13 trustee represent
23 to this court I have any faith whatsoever in the
24 debtor making the plan payments.

25 THE COURT: We do have some evidence

1 of how he lives. That is he dips into this account;
2 isn't that right? That's a stream of income -- a
3 stream of cash.

4 MR. WHEELER: It's some stream of
5 cash.

6 THE COURT: And it seems to me he's
7 dipping about the same amount as his annual payments
8 that he proposes under the plan. What have you to
9 say to that form of evidence?

10 MR. WHEELER: There's an
11 independent -- it's not enough just to show there is
12 income. There is an independent duty of the trustee
13 to verify where the money comes from. In other
14 words, if somebody was a drug dealer and they said,
15 well, hey, they've got a bank account that \$10,000
16 goes into a month, and they're making their payments
17 each and every month, they're making the trustee
18 payments each and every month. Should we not
19 investigate where the money is coming from?

20 THE COURT: Can you as an assistant
21 Chapter 13 trustee, or can the Chapter 13 trustee
22 with the aid of assistants such as yourself do that
23 verification process?

24 MR. WHEELER: I would like to say that
25 I would be able to do that, but I think it's

1 impractical if not impossible in this matter. Am I
2 supposed to subpoena -- take -- manage this one case
3 and subpoena every bank record? Who's really
4 benefiting when in fact the case can be converted to
5 a Chapter 7 and administered faster, counsel can be
6 employed, so that somebody's actually getting paid on
7 this. It would turn the system on its ear if you had
8 every small business case, quote, unquote, like this
9 one if the trustee were required to administer and go
10 into an investigation.

11 THE COURT: Have you ever had any
12 experience where your office has actually done this
13 type of investigation on a case of this extent?

14 MR. WHEELER: This case is -- no. No.
15 This case is beyond anything I have ever seen.

16 THE COURT: With regard to this
17 possibility, or let's say facts that indicate at
18 least there should be some inquiry as to whether
19 there was a transfer, fraud of creditors, of the real
20 estate, has your office ever taken any sort of
21 litigation steps to recover property for the estate
22 in Chapter 13?

23 MR. WHEELER: Not in the nine years
24 that I have been representing a trustee.

25 THE COURT: Would your office be

1 staffed and equipped to do that?

2 MR. WHEELER: Not necessarily, no. I
3 mean, I don't want to make it sound like it would
4 never happen, but if the court directed us to do
5 something, of course we're going to listen to what
6 the court has to say. It's not an impossibility,
7 certainly. But, again, the trustee would be in a
8 much -- Chapter 7 interim panel trustee, or whatever
9 the court chooses to call them, would be in a much
10 better position to employ a broker, to get the
11 property administered and get a dividend back to
12 creditors much faster.

13 The other thing we have to keep in
14 mind here is the court can ascertain from a Chapter 7
15 trustee's motions on whether to employ a broker and
16 so forth, make an independent finding of the
17 appropriateness of the action they're taking. We
18 have a budget, an annual budget that we have to
19 submit to the executive office of the U.S. Trustee
20 system, and it's tight. There are not a lot of
21 exceptions made for -- you can't all of a sudden have
22 one case that's going to cost \$50,000 extra to
23 administer.

24 THE COURT: In a Chapter 7 a trustee
25 is funded by the estate. Hopefully. He or she hopes

1 to be funded by the estate. In a Chapter 13 the
2 trustee is funded out of fees from collecting and
3 disbursing monies to the creditors in all the
4 estates. Is that right?

5 MR. WHEELER: That's correct.

6 THE COURT: If you had an added
7 addition to your budget, let's call it a bubble of
8 expense in handling a special case which ran up fees,
9 ran up ordinary and reasonable fees of \$50,000, would
10 that mean that you have to ask the U.S. Trustee to
11 raise the rates that are going to be paid by all the
12 creditors on your cases?

13 MR. WHEELER: Quite possibly. The
14 court recognizes that quite possibly that could
15 happen. That's typically frowned upon because it's
16 difficult enough to run a business.

17 One of the idiosyncrasies of a Chapter
18 13 business that I was astonished to learn is that we
19 can keep no more than two months of operating
20 reserves at any given time in our budget. As crazy
21 as that sounds, we are required to keep no more, no
22 less, than two months' operating reserves for a
23 business that distributes \$60 million a year. That's
24 not an easy thing. And, thank goodness, I'm mainly
25 in the courtroom, I don't deal with that. But it's a

1 difficult matter. And taking over a case, two or
2 three like this, I think cases of this nature are
3 going to become more commonplace under the new law.
4 Cases that get bounced from a 7 under a 727 motion to
5 a Chapter 13 are going to become more commonplace.
6 And it's going to be very, very difficult from an
7 accounting standpoint to maintain the integrity of
8 that two-month cushion.

9 THE COURT: Any final remarks you want
10 to make?

11 MR. WHEELER: No, Judge. I think it
12 should absolutely be converted to a Chapter 7. I
13 don't think it's a close call based on the evidence.
14 And I really don't know, I really haven't heard any
15 objections from the debtor as to why the case should
16 or shouldn't be converted. I guess that bothers me
17 even more that they haven't said strenuously or a
18 reason why it shouldn't be converted. They just said
19 they will consent to a dismissal. But they haven't
20 set forth any evidence, reasons, or general argument
21 as to why it shouldn't be converted.

22 Thank you.

23 THE COURT: Counsel.

24 MR. GOLDING: Well, at the outset
25 first I will make some reply to the counsels'

1 observations, I'll call them.

2 With regard to the suggestion that
3 perhaps because we conceded that we would agree to a
4 dismissal, that that's the equivalent of conversion,
5 that's a new wrinkle that I've never heard of.

6 THE COURT: I'm interested in that
7 argument, but I do not accept it. Okay?

8 MR. GOLDING: Well, I don't either. I
9 won't spend any time on it.

10 First, I think we have to review, if I
11 may --

12 THE COURT: I think the gist of the
13 argument is that some of the same things that would
14 justify dismissal would justify conversion. And
15 since you have stipulated or agreed to dismissal,
16 that is tantamount to agreeing to conversion. I
17 don't think that is correct.

18 MR. GOLDING: I don't either. That's
19 a suggestion that anytime somebody comes in to
20 dismiss a case, if Your Honor denies the dismissal on
21 an 11 or 7, would say -- well, on a 7 you wouldn't
22 convert, but on a 13 or an 11 and they come in for a
23 dismissal and you say I'm not going to grant a
24 dismissal, so therefore I must convert the case.
25 That's just not the law; that's just not what

1 happens.

2 THE COURT: So we're both on the same
3 page. Now let's go on to the other argument.

4 MR. GOLDING: First, I think it's
5 important that we perhaps review the bidding as to
6 why and what we're here on. We are here on Pure
7 Fishing's motion to convert or dismiss. We are not
8 here on confirmation hearing. I think that much of
9 the evidence that was put in was deduced the other
10 day and today is relevant to confirmation perhaps,
11 but that's not before the court today. The trustee
12 has filed no objection to confirmation. He stands
13 before you today and says it's not a confirmable case
14 for this, that or the other reason. But no objection
15 has been filed to confirmation. So that's not why we
16 are before Your Honor.

17 We are here under 1307. I think the
18 court therefore has to rule on this case based on
19 1307 and not other sections of the Code which have
20 not been addressed by motion before the court. And
21 certainly the arguments, with the exception of one,
22 all -- none of them fall under the ambit of 1307(c).

23 There's been no showing of
24 unreasonable delay by the debtor that is prejudicial
25 to creditors. There's been no showing of non-payment

1 of any fees or charges required under Chapter 123 of
2 Title 120 -- 28. There's been no failure to file a
3 plan timely under 1231. There's been no failure to
4 commence making timely payments under Section 1326.
5 There's been no denial of confirmation of a plan.
6 There's been no material default by the debtor with
7 respect to the term of a confirmed plan. There's
8 been no revocation of the order of confirmation, of
9 course. There's been no termination of a confirmed
10 plan. None of those.

11 And sub (9) and (10) are also not
12 relevant here. This is only on the request of the
13 U.S. Trustee, failure to file within 15 days
14 additional time as the court may allow after filing
15 of a petition of commencement of a case, information
16 required by paragraph one.

17 THE COURT: Counsel, 1307(c) provides
18 conversion may come for cause, including and then it
19 includes a number of subparagraphs that you can read.

20 MR. GOLDING: Correct.

21 THE COURT: So the question is whether
22 there's cause. Even though there may or there may
23 not be some specified cause within those paragraphs.

24 MR. GOLDING: That's correct.

25 THE COURT: That's sometimes called a

1 good faith/bad faith analysis. But cause is a --

2 MR. GOLDING: I'll get back to --

3 THE COURT: There have been a number
4 of arguments as to why there are causes in this case.

5 MR. GOLDING: I don't think there have
6 been arguments as to confirmation. There have not
7 been arguments made to the court I believe.

8 THE COURT: Sir, what if I find there
9 have not been sufficient records to enable a Chapter
10 13 trustee readily to administer a Chapter 13 case
11 and verify income and expenses of the debtor?

12 "Readily." Is that cause?

13 MR. GOLDING: Cause for what?

14 THE COURT: Conversion.

15 MR. GOLDING: I don't think it's
16 necessarily cause for conversion. It might be cause
17 for dismissal.

18 THE COURT: If the Chapter 13 trustee
19 cannot readily administer the case among the many
20 thousands of cases that the trustee has to
21 administer --

22 MR. GOLDING: If the court were to
23 find that, but the trustee has not -- other than the
24 remarks made in his closing, has not suggested that.
25 The trustee asked the debtor, I can tell the court,

1 for additional information at the 341 meeting. That
2 meeting I have been advised by both the debtor and
3 Mr. Kaplan's office that the documents, additional
4 information requested was supplied to the trustee.

5 THE COURT: There is not enough
6 records to determine his income.

7 MR. GOLDING: But the trustee hadn't
8 said that. The trustee hadn't come before the court.

9 THE COURT: Pure has certainly argued
10 that.

11 MR. GOLDING: But not the trustee.

12 THE COURT: Well --

13 MR. GOLDING: The trustee is the one
14 who has to administer the case and they didn't make
15 that argument. They made the argument after Pure
16 Fishing has made their motion, but they didn't make
17 the argument they're the ones that have to
18 administer.

19 THE COURT: If Pure has proved that
20 there is not sufficient documentation to enable
21 ascertainment of the income of the debtor, if that is
22 proved, you do not accept that as cause for
23 conversion?

24 MR. GOLDING: I would say it's cause
25 for dismissal. I'm not going to stand here and

1 consent that that is automatically somehow grounds
2 for conversion, no.

3 THE COURT: Well, just assume for the
4 moment that at least it's a possibility, and tell me
5 whether you think there are sufficient records to
6 inform us of his income.

7 MR. GOLDING: I think there are
8 sufficient records to inform the court of his income
9 because he testified that the income, his sole income
10 comes from out of this corporation. And the records
11 before you that, as the court noted, the checks over
12 the last three years are in line with what he
13 suggests his current income is. He testified that
14 it's somewhat irregular; that occasionally he makes a
15 settlement that may increase it or not make a
16 settlement that won't increase it. But that his
17 income is ascertainable from those records. Rightly
18 or wrongly, it's ascertainable from those records.
19 Your Honor asked Pure Fishing that and they answered
20 your question, yes, you know, that's what he gets.

21 THE COURT: Anything you would like to
22 say about the standards of the need to preserve books
23 and records from which his financial condition could
24 be ascertained?

25 MR. GOLDING: Again, this is a Chapter

1 13 proceeding and I think that with regard to the
2 books and records of the corporation, detailed books
3 and records, I don't think there's been a showing
4 that anything but his -- the money that he takes out
5 of that corporation exists. I think that's a
6 sufficient showing of what he gets. And the fact
7 that he doesn't have books and records other than the
8 checking account and what he takes out that he
9 testified is cash, checks made out to cash, is not --
10 is -- is -- that's what he gets.

11 THE COURT: Was that income to him?
12 He doesn't report that much income.

13 MR. GOLDING: That's income to him.

14 THE COURT: He doesn't report it. We
15 don't have his '05 return. We have his '04 return.
16 But he didn't report all of the money he took out of
17 the --

18 MR. GOLDING: He may not have.

19 THE COURT: So what does that mean?

20 MR. GOLDING: I'm not sure. But I
21 don't believe that it means that it's not
22 ascertainable what he's getting for under a Chapter
23 13. And I don't know whether that's grounds to --

24 THE COURT: Is an IRS audit the way to
25 ascertain that?

1 MR. GOLDING: No. I think that there
2 is sufficient ascertainment by knowing what he's
3 taking out of the checking account. And the fact
4 that he may not have recorded that all on taxes,
5 under 1307 that's not grounds.

6 THE COURT: All right. Next point.

7 MR. GOLDING: One of the arguments
8 made again of course is the creditors would be better
9 off in a Chapter 7. Certainly, clearly where
10 Congress has set forth what some of the grounds ought
11 to be for 1307 this one is glaringly missing, that
12 creditors are better off in a Chapter 7. I would
13 think if Congress wanted that to be a measure, it
14 would have been in that list.

15 THE COURT: Well, the question is
16 whether or not that argument falls within the word
17 cause. And the specific argument they made was that
18 there's suspicious circumstances surrounding the real
19 estate and somebody ought to take a look at that.
20 What do you say about that subject?

21 MR. GOLDING: Well, I can say the same
22 thing today which I said about that the other day,
23 which was that if there is a cause there, those are
24 the grounds that the debtor would amend the plan,
25 with the consent of his daughter; put that property

1 into the estate and sell it and pay the creditors.
2 But there's been no finding that it's a fraudulent
3 conveyance. We haven't tried that case.

4 THE COURT: What you're saying is if
5 there was such a case and it was tried and it was
6 found there was a fraudulent conveyance, then he
7 would put the case into his plan and distribute it to
8 his creditors. Is that what you just said?

9 MR. GOLDING: Yes. Not exactly what I
10 said the way I said it, but I think that the result
11 is the same, and Your Honor's assessment is correct.

12 THE COURT: Yes. And how do you ever
13 get to the analysis? Who's going to make the
14 analysis? Do you figure the Chapter 13 trustee is
15 going to make the analysis and file a lawsuit?

16 MR. GOLDING: The Chapter 13 trustee
17 hasn't even made the allegation. If he objected to
18 confirmation on the basis that there was a fraudulent
19 conveyance, we could address that and we could deal
20 with that. We are prepared to do that, but that's
21 not --

22 THE COURT: Pure argues that's one of
23 the causes, so you can argue it.

24 MR. GOLDING: Yeah, they argue that
25 it's a cause, but I don't see it as a cause. And I

1 just argued why. That if it is a cause, if the court
2 were found to find that, we are prepared to address
3 that issue and have the property sold and put the
4 those monies in the plan.

5 I want to point out to Your Honor that
6 the Pure has a contingent --

7 THE COURT: Pardon me just a second
8 before you -- can you hold the thought --

9 MR. GOLDING: Try to.

10 THE COURT: I want to find out what
11 you just meant by --

12 You seem to assume your client has
13 control over the title of this property, the real
14 estate, and if he wanted to could put it into the
15 plan.

16 MR. GOLDING: He does not. He has
17 spoken with his daughter, who is the title holder of
18 this property, about the issues. His daughter lives
19 in Arizona and has allowed mortgages to be put on
20 here to lend money to Mr. Stoller, which is
21 scheduled. And she -- he tells me he's spoken to her
22 about it and she has consented that if that is an
23 issue, that it could be done. But she would only do
24 it if the 13 goes on. Otherwise she'll probably
25 defend a fraudulent conveyance action.

1 THE COURT: Do we have any evidence as
2 to when the mortgages were put on and how much?

3 MR. GOLDING: I believe the mortgages
4 -- copies of the mortgages are in the record, Your
5 Honor.

6 THE COURT: Then when were they put on
7 and how much?

8 (No response.)

9 THE COURT: Were they put on within
10 the last year, Counsel?

11 MR. GOLDING: Yes, Your Honor.

12 MR. JOHNSON: Your Honor, two
13 mortgages, one is dated April 5, 2005, that is
14 Exhibit 3, page 18. There was another mortgage for
15 99,000, that was directed and realized on December 6,
16 2005.

17 THE COURT: Just before the filing?

18 MR. JOHNSON: Yes, 16 days before the
19 filing. That's Exhibit 3, page 35.

20 THE COURT: How much?

21 MR. JOHNSON: That was for \$99,000,
22 Your Honor.

23 THE COURT: What was the first one?

24 MR. JOHNSON: For 30,000.

25 MR. GOLDING: Roughly \$130,000 in

1 mortgages.

2 MR. JOHNSON: I believe the second one
3 subsumed the first, which is why the check issued for
4 the second was for a lesser amount.

5 THE COURT: Counsel, were those
6 scheduled?

7 MR. GOLDING: Were the mortgages
8 scheduled?

9 THE COURT: Yes.

10 MR. GOLDING: It's not your debt. You
11 are not on the --

12 THE COURT: Were those mortgages
13 scheduled?

14 MR. GOLDING: No.

15 THE COURT: Go ahead with your
16 argument.

17 MR. GOLDING: You asked me to hold
18 that point that I was about to make -- okay, I recall
19 what it was now.

20 The Pure Fishing movant has a
21 disputed, contingent and unliquidated claim. They
22 have filed now a claim, although the numbers that
23 have been disputed here are \$240,000, but they filed
24 a claim in excess of \$700,000. But mind you, Your
25 Honor, that's unliquidated.

1 THE COURT: No one has asserted that
2 your client is disqualified by the amount of debt.
3 Why are you raising that?

4 MR. GOLDING: I'm not going to. The
5 amount is -- I'm not raising it in that regard. And
6 of course that wouldn't be applicable as -- in the
7 court because it is disputed and unliquidated. I
8 don't think that anybody could argue about that.

9 The point I'm trying to make is that
10 the court, this court has modified the stay so that
11 the district court can liquidate that amount. It may
12 very well be that the amount of their claim would be
13 well below what the value of this piece of real
14 estate is and they could be paid a hundred cents on
15 the dollar. We don't know that. The court may come
16 back and say, you know, one dollar, no dollars.
17 That's not -- there'd be no relief. We don't know
18 that. That has not been determined. The court
19 clearly did not determine any damages and held that
20 in abeyance.

21 So we are dealing with an objection of
22 one creditor who is nonetheless a disputed and a
23 contingent creditor who ultimately may be paid a
24 hundred cents on the dollar. I don't know what they
25 should be objecting to at this point if that were the

1 case.

2 The last and perhaps -- as it relates
3 to items that the court has briefly pointed out is
4 the bad faith argument. An argument -- and it is
5 often made in some of the cases you'll find in which
6 I kind of personally fail to understand often, is
7 that creditors -- when creditors file cases in this
8 court or in the bankruptcy court generally, when they
9 are faced with sale of assets, a judgment, or tax
10 liens and levies and the like, that's when they file
11 bankruptcies. The fact that this debtor filed a
12 bankruptcy when he was otherwise out of money and
13 really couldn't afford to defend this suit anymore,
14 he had paid a lot in attorneys' fees apparently over
15 the years on this and a couple of other matters and
16 he was out of money and he filed this case. Now the
17 argument is being made, well, he shouldn't have filed
18 the case because he was doing that to avoid a
19 judgment.

20 THE COURT: Sir, since we heard about
21 those mortgages which gave him some cash flow, can we
22 hear what he did with the money from the mortgages?
23 Do we have any evidence that shows that?

24 MR. GOLDING: What he did with the
25 money? No.

1 THE COURT: Does that suggest --

2 MR. GOLDING: We can put him on the
3 stand. He can address that.

4 THE COURT: I don't remember any
5 evidence on that subject.

6 MR. GOLDING: No, there wasn't, but he
7 could address that. I know what the answer is.

8 THE COURT: Does that suggest that he
9 is spending more money than he shows on his expenses?

10 MR. GOLDING: I don't think so. That
11 was a loan from his daughter which is scheduled. And
12 I know he tried to pay some attorneys' fees also and
13 that he could continue to have counsel. But I guess
14 it didn't work out. But that was not income to him,
15 it's a loan and it's duly scheduled.

16 THE COURT: The mortgage?

17 MR. GOLDING: No, the loan from his
18 daughter is scheduled.

19 THE COURT: What was that?

20 MR. GOLDING: \$130,000.

21 THE COURT: So he treats the mortgages
22 as a loan from his daughter is your point.

23 MR. GOLDING: Well, she did, yes.

24 THE COURT: So does he on his
25 schedules.

1 MR. GOLDING: Yes, sir.

2 THE COURT: So he does not show a lot
3 of cash on hand when he filed this; right?

4 MR. GOLDING: He does not. And he
5 claims he doesn't have a lot now. I know that. I
6 tried to get paid.

7 THE COURT: It looks like he ran
8 through a big loan in a short time; doesn't it?

9 MR. GOLDING: I don't think he ran --
10 well, he expended the money, yes.

11 THE COURT: Does that suggest that
12 he's spending more than his expenses show?

13 MR. GOLDING: Well, he was. There's
14 no question that he was -- it would appear to me over
15 the years of his business that very often -- I mean
16 his single biggest expense were attorneys' fees
17 defending or prosecuting these cases. Some were
18 where he was the plaintiff to enforce his rights, and
19 some were where he was a defendant. And that was
20 probably the biggest single cost. I know it was from
21 conversations with him, the biggest single cost of
22 his operation. But that's his stock and trade you
23 might say, are enforcement of those rights. And,
24 again, as the court has acknowledged before, there is
25 his character or the nature of his business, which is

1 not illegal, is simply not an issue, or should not be
2 one considered by the court.

3 THE COURT: I have said that, and I
4 believe that.

5 MR. GOLDING: Okay. Me, too.

6 THE COURT: Anything else?

7 MR. GOLDING: I have nothing else.

8 THE COURT: Rebuttal?

9 MR. JOHNSON: Two points, Your Honor.
10 Just two.

11 First is, Mr. Golding argued that the
12 loan money from Julia Bishop was scheduled. There's
13 nowhere in the schedules that the, either a gift from
14 Julia Bishop in the form of the \$99,000 in mortgages,
15 nor a loan in that amount is found in the schedules.
16 Moreover, we note that to the extent that debtor's
17 business incurs legal expenses, so stated with its
18 continued operation, we have a stipulation on the
19 basis of his business, trial stipulation number 47,
20 is that the income of debtor's business is based on
21 false assertions of trademark infringement and/or
22 harm due to registration of the challenged party's
23 trademark application.

24 Yes, that such a business would incur
25 substantial legal expenses, Your Honor. They are

1 not, however, reflected on the schedule of his
2 expenses. We factored those expenses in. If they
3 are to continue, debtor does not have a viable
4 business. He cannot continue to return income to
5 himself by continuing to operate an illegal business
6 with legal expenses that far outstrip his income.

7 With that, I close.

8 THE COURT: Is that it?

9 MR. JOHNSON: Yes, Your Honor.

10 THE COURT: Anything else you want to
11 say, Mr. Golding?

12 MR. GOLDING: Surrebuttal?

13 Well, just again, we're mixing the
14 expenses of the business with his personal income.
15 And the money that he's been getting out of the
16 business net of those expenses over the years, that's
17 all. And his daughter was scheduled as a creditor.

18 THE COURT: Thank you very much.

19 MR. GOLDING: Thank you, Your Honor.

20 THE COURT: I intend to write -- I
21 intend to enter findings of fact, conclusions of law
22 in detail which will fully explain my reasons. But I
23 can tell you my ruling now. And I'm going to enter
24 the order tomorrow morning, if you will get it to me,
25 and make it nunc pro tunc today as I announce it.

1 I am converting to Chapter 7. There
2 are a number of reasons, but I'm convinced that the
3 lack of adequate documentation prevents an orderly
4 administration by the Chapter 13 trustee in a Chapter
5 13. And it is a definite failure, demonstrates
6 definite failure to keep and preserve books and
7 records from which the debtor's financial condition
8 can be ascertained within the standards required in
9 bankruptcy.

10 Secondly, there are suspicious
11 circumstances concerning the real estate. A Chapter
12 13 trustee is not equipped to do heavy litigation.
13 And indeed if they tried to do that, it would impose
14 a burden upon the debtors who would have to pay more
15 in commissions for the Chapter 13 trustee to fund
16 that litigation. That is one of the reasons that
17 they have not staffed themselves for litigation.

18 There is a serious problem that has to
19 be investigated and is certainly best done by a
20 Chapter 7 trustee. That's the second major ground.
21 There are other detailed grounds which I will set
22 forth in findings of fact, conclusions of law. But I
23 know enough to decide today that I will convert to a
24 7. As I said, the order will show it as nunc pro
25 tunc today.

1 Mr. Stoller, as of now, sir, the bad
2 news is you're no longer in control of your property.
3 As far as I'm concerned, the Chapter 7 trustee is now
4 in control of your property. And I will confirm that
5 by an order which will be nunc pro tunc effective
6 today.

7 May I have that tomorrow morning?

8 MR. FACTOR: Certainly, Your Honor.
9 If we are just talking about an order of that nature,
10 I could perhaps do a minute order right now for
11 reasons stated on the record the case is converted to
12 a Chapter 7.

13 THE COURT: Well, it doesn't matter
14 since it's nunc pro tunc. And we can't docket it
15 today anyway.

16 MR. FACTOR: Okay. I will submit it
17 tomorrow.

18 THE COURT: So we'll docket it
19 tomorrow. Also provide in there that the rule on 10
20 days is waived. It will be immediately effective.

21 MR. FACTOR: Yes, Your Honor.

22 THE COURT: Nunc pro tunc today. This
23 moots the Chapter 13 trustee's motion. We now go to
24 Google.

25 MR. BARRETT: Yes, Your Honor.

1 THE COURT: I'm going to put this in
2 the hands of a Chapter 7 trustee. We'll do our best
3 to get things moving, see if we can get an
4 appointment on Monday. I would certainly like to
5 have a Chapter 7 trustee now take a look at your
6 position and what you want to do. So what I'm going
7 to do I think is set a status on that and try to get
8 a Chapter 7 trustee in there by about a week from
9 tomorrow.

10 What do you think about that?

11 MR. BARRETT: Well, Your Honor, I do
12 understand why the court feels it has to do that.
13 And certainly we'll accept that. We ask, though, as
14 we go forward I think what we'll probably do, because
15 I suppose the debtor will still have standing to
16 oppose this motion since it's seeking --

17 THE COURT: Absolutely.

18 MR. BARRETT: -- relief against the
19 debtor.

20 THE COURT: Except that the trustee
21 has to have more responsibility than the debtor at
22 this point.

23 MR. BARRETT: Especially as a trustee
24 may feel it concerns the estate, obviously.

25 THE COURT: What?

1 MR. BARRETT: That the motion may
2 concern the estate, which we don't believe it does.
3 But I understand a trustee might want to look at it.

4 THE COURT: Well, I don't want to make
5 that decision until I get some input.

6 MR. BARRETT: What I suggest, Your
7 Honor, if we can have a status. I presume a trustee
8 would be appointed tomorrow or early next week.

9 THE COURT: We will get the ball
10 rolling tomorrow when I get the order entered. We'll
11 have it docketed tomorrow. And I will ask my staff
12 to try and find out who the trustee is as soon as
13 possible. I don't know how long it takes. Sometimes
14 it takes several days. Sometimes not. So I will
15 just set this a week from tomorrow for status, status
16 and position of Chapter 7 trustee.

17 Once the Chapter 7 trustee is
18 appointed, would you be good enough to send him a
19 copy of your motion and maybe have a talk with him
20 and see what --

21 MR. BARRETT: Your Honor, we would do
22 that. In fact, I have a bound copy of the entire
23 motion. I don't know if the Court has pulled it off
24 the internet, but I can give the court as well an
25 easier, more accessible copy.

1 THE COURT: I have your motion. What
2 more do we need?

3 MR. BARRETT: All the exhibits.

4 THE COURT: We have your exhibits
5 here.

6 What about September 14th at 11:00
7 a.m., status and position of the Chapter 7 trustee?

8 MR. BARRETT: Thank you, Your Honor.
9 We will contact the trustee.

10 THE COURT: Tomorrow morning for that
11 order. Would 11:00 o'clock be convenient?

12 MR. FACTOR: Yes, Your Honor.

13 THE COURT: That order -- back on the
14 record. The order will say pursuant to remarks from
15 the bench, to be amplified by detailed findings of
16 fact, conclusions of law at the conclusion of this
17 hearing which will be made and entered by the
18 court --

19 At the conclusion of the hearing,
20 pursuant to the remarks from the bench, as will be
21 amplified by more detailed findings of fact,
22 conclusions of law.

23 Then go ahead and prepare the order.

24 Okay, counsel?

25 MR. FACTOR: Yes, Your Honor.

1 (Which were all the proceedings had in
2 the above-entitled cause, August 31,
3 2006, 1:30 p.m.)

4 I, JACKLEEN DE FINI, CSR, RPR, DO HEREBY CERTIFY
5 THAT THE FOREGOING IS A TRUE AND ACCURATE
6 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
7 ENTITLED CAUSE.

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