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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 In re:) Bankruptcy Case
12) No. 99-3-4016-BTC
13 RAYMOND L. DOBARD,) Chapter 13
14)
15) Debtor.) **MEMORANDUM RE TRUSTEE'S**
16) **MOTION TO CONVERT OR DISMISS**
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17 The chapter 13 trustee's motion to dismiss or convert came for
18 hearing on July 10, 2000. Adam N. Barasch appeared for the chapter
19 13 trustee David Burchard (Trustee). Debtor Raymond L. Dobard
20 appeared in pro per. Upon due consideration, and for the reasons
21 set forth below, I determine that the case should be converted to
22 one under chapter 7, that Debtor should be ordered to show cause
23 why certain restrictions should not be imposed upon future motions
24 of Debtor, that this order be stayed until July 24, 2000, and that
25 any voluntary dismissal of this case by Debtor during that stay
26 shall bar refiling under chapter 13 for two years.

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28 **MEMORANDUM RE TRUSTEE'S MOTION
TO CONVERT OR DISMISS**

1 I. CONVERSION TO CHAPTER 7

2 Trustee moves to dismiss this case or convert it to one under
3 chapter 7 on the basis that Debtor interfered with a court-ordered
4 valuation of Debtor's assets.

5 Four creditors and Trustee filed objections to confirmation of
6 Debtor's chapter 13 plan. The court held a prehearing conference
7 regarding these objections on March 15, 2000. It became apparent
8 at that conference that a major issue regarding confirmation is
9 whether Debtor's plan provides creditors as much as they would
10 receive in a chapter 7 liquidation, the "best-interest-of-creditors
11 test." See 11 U.S.C. § 1325(a)(4).

12 Debtor's schedules and chapter 13 plan show total liabilities
13 of \$51,027. This consists of priority debts of \$0, general
14 unsecured debts of \$30,293, and arrears on secured debts of
15 \$20,734. Debtor did not list any of these liabilities as
16 unliquidated, contingent, or disputed.

17 Debtor's schedules show assets with realizable equity of at
18 least \$86,450. Debtor owns thousands of antique phonograph
19 records. He first listed the value as unknown, then as \$2,000,
20 then as \$27,000. After costs of sale and income tax, the
21 recordings would yield \$13,770^{1/}. Debtor owns five real properties.
22 Four of these properties have at least some equity. Debtor's real

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26 ^{1/} I assume a sale price of \$27,000, costs of sale of
27 \$4,050 (15 percent), and income tax on the gain of \$9,180 (40
28 percent of the proceeds after costs of sale). The net proceeds
would be greater if the property has a positive tax basis or if
the estate's marginal tax rate is less than 40 percent.

1 property in New Orleans appears to have equity after costs of sale
2 and income tax of at least \$72,680.^{2/}

3 Debtor's chapter 13 plan provides for monthly payments
4 totalling \$27,120. The plan provides for payments of \$100 per
5 month for the first 12 months and payments of \$540 per month for
6 the next 48 months. The plan also provides for the creditors to
7 be paid through the sale or refinance of Debtor's real properties,
8 but there is every reason to doubt whether Debtor will carry
9 through on that provision. Six months into the case, Debtor has
10 undertaken no steps to sell any property, and Debtor has asserted
11 adamantly on several occasions that he cannot be required to
12 liquidate any property in a chapter 13 case. It will be difficult
13 for Debtor to refinance any of the real property because Debtor
14 states he receives income of only \$3,030 per month from all of the
15 properties. See Debtor's Declaration Following Court Order,
16 filed April 28, 2000, at 6. It is doubtful Debtor can increase
17 the amount paid through the plan without selling property, as his
18 schedules show disposable income of only \$137 per month.^{3/}

19 Because there is a serious question whether Debtor's plan is
20 consistent with the best-interest-of-creditors test, the court
21 authorized the chapter 13 trustee to conduct an investigation

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23 ^{2/} Debtor lists the fair market value of the New Orleans
24 property as \$140,000, subject to a lien of \$4,600. I assume
25 costs of sale of \$11,200 (8 percent) and income tax on the gain
26 of \$51,520 (40 percent of the proceeds after costs of sale). The
net proceeds would be greater if the property has a positive tax
basis or if the estate's marginal tax bracket is less than
40 percent.

27 ^{3/} The lack of disposable income also casts doubt on
28 Debtor's ability to make the scheduled payments of \$540 per
month over the last 48 months of the plan.

1 regarding the value of Debtor's real properties and phonograph
2 recordings. The court issued an order on March 17, 2000 that
3 provides in relevant part:

4 (1) Debtor shall by April 14, 2000 file and serve
5 a declaration under penalty of perjury stating the number
6 and location of all musical recordings in which Debtor
7 has an interest, and stating whether he has transferred
8 any such recordings after the petition date. Trustee
and/or any evaluator retained by Trustee shall be
permitted to inspect the recordings on 48 hours notice.

8 . . .

9 (3) On 48 hours notice, Debtor shall grant Trustee
10 and any broker or appraiser retained by Trustee access
11 to all real properties in which Debtor has an interest
to permit Trustee to assess the fair market value of such
properties.

12 Trustee gave timely notice to Debtor that he intended to inspect
13 the recordings and all of Debtor's Bay Area real properties on
14 May 24, 2000.

15 Debtor actively interfered with Trustee's inspection of the
16 properties. Trustee's counsel appeared at Debtor's residence on
17 May 24th with two evaluators: a real estate broker to evaluate the
18 real properties; and a record dealer to evaluate the collection of
19 phonograph records. I credit fully the testimony of Trustee's
20 counsel, Adam Barasch, regarding what transpired on the date of the
21 scheduled inspection. Barasch testified that Debtor immediately
22 challenged the right of Trustee to conduct the investigation,
23 threatened to sue the evaluators and their employers, and demanded
24 to know the evaluators' names and qualifications. Neither of the
25 evaluators was willing to give Debtor his card or perform an
26 inspection after receiving these threats. It would not have been
27 unreasonable for Debtor to ask in a polite manner for the names of
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1 Trustee's experts. The manner in which Debtor acted was completely
2 unreasonable. Debtor's conduct effectively prevented Trustee from
3 conducting the property inspection expressly authorized by the
4 court.

5 I find that Debtor acted as he did with the intent to prevent
6 Trustee from performing any valuation of Debtor's properties. In
7 so finding, I rely upon the following considerations. First, the
8 very nature of Debtor's conduct suggests an intent to intimidate.
9 Second, Debtor has previously attempted to exclude from participa-
10 tion in this case all other persons who dare to disagree with any
11 position he takes by filing frivolous motions to disqualify such
12 persons. These prior motions provide insight to Debtor's motives
13 in acting as he did regarding the inspection.^{4/} Third, Debtor's own
14 testimony regarding the incident is entirely consistent with an
15 intent to stop the court-authorized inspection. The substance of
16 Debtor's testimony is that the inspection was improper because
17 Trustee did not provide for a realtime translator during the
18 inspection, and because any inquiry related to liquidation is
19 improper in a chapter 13 case.

20 Debtor, who is hearing impaired, contends that he was not
21 obligated to allow Trustee's counsel to inspect his property
22 because Trustee did not provide him a realtime interpreter to
23 assist Debtor during the inspection. This argument is
24 unpersuasive. First, Debtor relies upon 29 U.S.C. § 794 and
25 28 C.F.R. §§ 35.104 and 35.160, which address discrimination on
26 the basis of disability in state and local government proceedings,

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28 ^{4/} These motions are discussed more fully in Part II, below.

1 entities receiving federal financial assistance, and Executive
2 agencies. These regulations and statute do not govern the federal
3 courts. Second, and more important, Debtor was not required to
4 participate in the property inspection to preserve his rights.
5 Any binding determination of value would be made by this court at
6 a hearing at which Debtor could challenge Trustee's evidence of
7 value and at which the court would provide Debtor with appropriate
8 interpretive services. See Memmer v. Marin County Courts, 169 F.3d
9 630, 633 (9th Cir. 1999) (court did not have a duty to provide
10 interpretive services for a visually impaired litigant in pre-trial
11 matters where the disabled litigant was not disadvantaged by lack
12 of such services). Debtor knew from a prior written notice that
13 Trustee's counsel was there only to inspect his property.

14 I determine that Trustee has established cause to convert this
15 case to one under chapter 7. Debtor actively and intentionally
16 interfered with Trustee's conduct of his duties and failed to obey
17 an order of this court. By interfering with Trustee's efforts to
18 determine whether Debtor's plan satisfies the best-interest-of-
19 creditors test, Debtor has caused unreasonable delay that is
20 prejudicial to creditors. Debtor's failure to obey a court order
21 and efforts to intimidate officers of the court also indicate that
22 Debtor is not prosecuting this chapter 13 case in good faith.

23 Other considerations support conversion. For the reasons
24 described above, it is likely that Debtor's current chapter 13 plan
25 cannot be confirmed, because it does not appear to be consistent
26 with the best-interest-of-creditors test. In light of Debtor's
27 adamant opposition to even evaluating any of his property for
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1 liquidation, and his uniform habit of attacking anyone who raises a
2 legitimate question about his plan rather than responding construc-
3 tively to those questions, there is every reason to doubt that
4 Debtor would faithfully perform any plan that requires him to sell
5 any property. Successful conclusion of a chapter 7 case is not so
6 completely dependent upon the good faith of the debtor.

7 **II. ORDER TO SHOW CAUSE**

8 Even after this case is converted, it is essential that Debtor
9 not be permitted to harass other parties, particularly the
10 chapter 7 trustee and his professionals, with frivolous motions.
11 Debtor's prior conduct in this case requires this court to consider
12 whether certain restraints be placed upon future motions filed by
13 Debtor.

14 Debtor has repeatedly filed motions for an improper purpose
15 and without a basis in law and fact. Most troubling is Debtor's
16 motion to remove Trustee. Debtor asserted that Trustee should be
17 removed for filing the instant motion to dismiss or convert.
18 Debtor describes Trustee's motion as a breach of Trustee's
19 fiduciary duty to the estate. See Declaration of Debtor re Removal
20 of Trustee, filed May 3, 2000, at 2-3. In substance, Debtor seeks
21 to remove Trustee for doing his job. I find that this motion was
22 frivolous and was filed for the improper purpose of intimidating
23 Trustee and attempting to dissuade him from performing his
24 statutory duties. Following a similar approach, Debtor moved to
25 disqualify me after I declined to remove Trustee or to strike
26 Trustee's motion to dismiss or convert. Debtor's motion stated
27 no cognizable basis for disqualification. See Affidavit for
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1 Disqualification of Judge, filed June 30, 2000, at 2-3.^{5/} I also
2 note that virtually every paper Debtor has filed in this case
3 accuses someone of racial discrimination. When secured creditor
4 Washington Mutual objected to Debtor's unauthorized use of cash
5 collateral, for instance, Debtor alleged without supporting
6 evidence that the creditor's objection was filed out of racial
7 bias. See Debtor's Reply to Washington Mutual's Objection to
8 Confirmation, filed March 10, 2000, at 4-5.

9 Because Debtor accuses others of racial discrimination so
10 aggressively and systematically, and without any supporting
11 evidence, I am forced to conclude that Debtor has filed many papers
12 in bad faith and for an improper purpose, and that this court must
13 consider imposing restrictions on the motions Debtor is permitted
14 to file in the future. See DeLong v. Hennessey, 912 F.2d 1144
15 (9th Cir.), cert. denied sub nom. DeLong v. American Protective
16 Services, 498 U.S. 1001 (1990).

17 Debtor is therefore ordered to appear on August 18, 2000 at
18 9:30 a.m. to show cause why the following restrictions should not
19 be imposed.

20 (1) No response need be filed to any motion filed by Debtor
21 until the court reviews the motion to determine whether it has been
22 filed for a proper purpose and states a valid basis for the relief
23 sought.

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25 ^{5/} It is interesting to note that Debtor had filed a
26 previous chapter 13 case in the Oakland division of this court.
27 When Judge Jellen made a ruling Debtor did not like, Debtor
28 dismissed that case and filed the present case in the
San Francisco division. In so doing, he stated that he believed
Judge Jellen had a personal bias against him. See Debtor's
Affidavit re Disqualification, filed March 10, 2000, at 2.

1 (2) The court will review promptly each motion filed by
2 Debtor and either deny the motion or call for a response to the
3 motion and set a schedule for hearing.

4 (3) No motion filed by Debtor may be set for hearing except
5 under the procedures described in the previous paragraph.

6 (4) If Debtor believes that any motion requires expedited
7 consideration, an explanation of the need for expedited treatment
8 and a proposed schedule should be included in the motion.

9 Any response to this order to show cause shall be in writing
10 and shall be filed by August 11, 2000.

11 **III. STAY OF CONVERSION OF CASE**

12 Conversion of this case to one under chapter 7 is stayed until
13 July 24, 2000. Before that time, Debtor may exercise his right to
14 dismiss this chapter 13 case voluntarily pursuant to section
15 1307(b) of the Bankruptcy Code. In light of the findings set forth
16 above, however, I determine that if Debtor does dismiss
17 voluntarily, he should be barred from filing a new chapter 7 case
18 for one year after such dismissal, and from filing a chapter 11 or
19 chapter 13 case for two years after such dismissal. No response
20 to the order to show cause is required if Debtor files a timely
21 voluntary dismissal.

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24 Dated: July 14, 2000

Thomas E. Carlson
United States Bankruptcy Judge

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