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Monday, April 10, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

WILLIAM A. SAKS,

No. 99-13419

[Debtor](#) <sup>i</sup>(s).

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### **Memorandum of Decision**

On November 1, 1999, a judge of the Sonoma County Superior Court entered an *ex parte* order appointing Larry J. Taylor as receiver of the assets of debtor William A. Saks. The order provided that a hearing would be held on [confirmation](#) <sup>i</sup> of the receiver on November 15, 1999. This provision violated California Rule of Court 351(a), which provides that the return date for the hearing may not be later than 10 days after the date of the order. On November 9, 1999, Saks filed his [Chapter 11](#) <sup>i</sup> petition commencing this case. The court declined to allow Taylor to remain in possession of the estate's assets pursuant to section 543(d) of the [Bankruptcy Code](#) <sup>i</sup>. However, Taylor alleges that he is entitled to fees and expenses of about \$11,000.00 for the eight days he was in possession, pursuant to § 543(c)(2). Saks and the Creditors' Committee object, both on grounds that the fees are unreasonable and on grounds that the order appointing Taylor was void. Under California law, a receiver should be appointed *ex parte* only in cases of emergency; the remedy is to be exercised with caution. *Hoover v. Galbraith* (1972) 7 Cal.3d 519, 528. The remedy is so drastic that the stringent procedural requirements must be satisfied. *Turner v. Superior Court* (1977) 72 Cal.App.3d 804, 809-10n2. The return date is jurisdictional. "[I]f the return date is beyond that authorized by the statute, the order is void." 6 Witkin, *California Procedure* (4<sup>th</sup>

Ed. 1997), Provisional Remedies § 365, p. 298. A void order appointing a receiver is an absolute nullity, so that Taylor never had any authority to take possession of Saks' property. Bibby v. Dieter (1910) 15 Cal.App. 45, 48. A federal court is not required to extend full faith and credit to a void order. In re Gruntz, 202 F.3d 1074, 1082 (9<sup>th</sup> Cir. 2000). Since the order appointing Taylor was void, this court is not obligated to honor it or award fees based on it. If, as Taylor argues, he is innocent of any part in procuring the void order, then the obligation to compensate him may rest upon those who sought and procured his appointment. Grant v. Los Angeles & P.Ry. Co. (1897) 116 Cal. 71, 75. It does not rest upon Saks or his estate. For the foregoing reasons, the objections will be sustained and Taylor's motion for compensation will be denied. Counsel for Saks shall submit an appropriate form of order.

Dated: April 10, 2000

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Alan Jaroslovsky

U.S. Bankruptcy

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