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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – Riverside Division

In re

Paul Richard Cherrett and
Colleen Courtney Cherrett,

Debtors.

Case No. 6:13-bk-24792-SC

Chapter 7

ORDER (1) REFERRING MATTER TO (a) THE OFFICE OF THE INSPECTOR GENERAL FOR THE DEPARTMENT OF JUSTICE AND (b) THE EXECUTIVE OFFICE OF THE UNITED STATES TRUSTEE AND (2) REQUIRING PREPARATION OF HEARING TRANSCRIPT OF THE SEPTEMBER 13, 2016, HEARING AND REQUIRING CLERK TO COLLECT AND TRANSMIT ALL RELEVANT PLEADINGS IN THIS BANKRUPTCY CASE AND THE TRANSCRIPT TO THE OFFICE OF THE INSPECTOR GENERAL FOR THE DEPARTMENT OF JUSTICE AND THE EXECUTIVE OFFICE OF THE UNITED STATES TRUSTEE

Date: 9/13/2016
Time: 11:00 a.m.
Courtroom 5C
411 West Fourth Street
Santa Ana, CA 92701

On September 13, 2016, the Court held a status conference on this case, which was set by its own order (“Order”) [Dk. 119] entered on August 23, 2016. Leslie Kaufman, Esq. (“Mr. Kaufman”) appeared on behalf of the Debtors. Chapter 7 trustee

1 Arturo Cisneros, Esq. (“Chapter 7 Trustee”) appeared on behalf of this chapter 7 estate.
2 Abram S. Feuerstein, Esq. appeared on behalf of the Riverside Division of the Office of
3 the United States Trustee (“U.S. Trustee”). Other appearances, if any, were as noted on
4 the record. As set out in this Order, a full transcript of the September 13, 2016, hearing
5 has been ordered to be produced and transmitted, as well as the relevant pleadings and
6 evidence in this case, to the Inspector General for the United States Department of
7 Justice and the Executive Office of the United States Trustee.

8 This is a very unusual matter before the Court. The Court is concerned that the
9 U.S. Trustee for the Central District of California, Riverside Division, for an unknown
10 and not as of yet validly explained reason and purpose, created an almost one year *de*
11 *facto* stay pending appeal for a contested matter in favor of a party in interest, which
12 resulted in a significant delay in the administration of this estate and at the same time
13 may have unfairly and inappropriately impacted present appellate processes with
14 respect to parties in the pending dispute. This Court also observes that, over a year ago,
15 a motion for stay pending appeal was considered and rejected by the Ninth Circuit Court
16 of Appeals on June 10, 2015 (Case No. 14-60079, docket number 21), which places the
17 actions of the Riverside Division of the Office of the United States Trustee for the
18 Central District of California described in this Order in an even further curious light.

19 The transcript of the September 13, 2016 hearing (the “Status Conference”)
20 provides a full recitation of the procedural aspects of this case, which will not be
21 repeated here. However, the underlying findings of this Court following the Status
22 Conference, as perceived by this Court, are as follows:

23 A complete Trustee’s Final Report was submitted to the Riverside Division of the
24 Office of the United States Trustee for the Central District of California by the Chapter 7
25 Trustee in October, 2015; however, it was not filed at that time. Had the U.S. Trustee
26 filed the Trustee’s Final Report, all parties (including the Riverside Division of the Office
27 of the United States Trustee) would have had an opportunity to file objections and raise
28 any issues relevant to case closing at a hearing before this Court, including seeking

1 another stay pending appeal. Instead of internally processing the Trustee's Final
2 Report, filing it, and setting it for hearing before the Court, the U.S. Trustee seemingly
3 attempted (and succeeded) to stymie the regular order of judicial business by engaging
4 in conduct which appears to have been designed to achieve a withdrawal of the report.
5 This seemed to be accomplished by placing certain undue and unusual barriers and
6 tasks before the Chapter 7 Trustee, combined with inappropriate and entirely untrue
7 suggestions of "trustee bond issues" to the Chapter 7 Trustee.

8 For instance, after Mr. Cisneros emailed the U.S. Trustee, advising that the case
9 had been fully administered and that no stay pending appeal had been obtained, the
10 U.S. Trustee placed additional requirements upon Mr. Cisneros in order for the Trustee
11 Final Report to be filed with the Court by the Office of the United States Trustee for the
12 Central District of California, the Chapter 7 Trustee would be required to:

13 submit a memo explaining why the case is fully administered and the
14 status of the appeal, as well as whether a reversal on appeal could have any
15 potential effect on distributions already made (even though we understand
16 that it is also possible that the effect of making such distributions could
17 enhance the likelihood that a court would rule that effective relief on
18 appeal was no longer feasible rendering the appeal moot).

19 [See Email Dated March 10, 2016, at 9:29 p.m. from Mr. Feuerstein to Mr. Cisneros,
20 Exhibit 4, page 10 of 19]. This demand on the Chapter 7 Trustee seems to this Court as
21 an inappropriate attempt to influence the judicial process at both the Bankruptcy Court
22 and Court of Appeals level. According to the Chapter 7 Trustee, the U.S. Trustee went so
23 far as to suggest that the Chapter 7 Trustee's bond might be at stake if the Chapter 7
24 Trustee filed the Trustee's Final Report and made distributions. [See Cisneros
25 Declaration, Dk. 134, ¶9] ("Earlier in the week of March 25, 2016, I had a telephone
26 conference with the AUST and we discussed potential bond issues with making a
27 disbursement in a dismissed case. In the 23 years that I have served as a panel trustee, I
28 have never had any bond issues, or claims made against my bond.").

This assertion, if true, makes no sense. If the Trustee's Final Report were filed,
the Court would either approve or deny it and either authorize distributions or not. So

1 long as the Trustee's Final Report were to be approved by this Court's order after notice
2 and a hearing, and distributions made pursuant to such order, there is no conceivable
3 possibility that the Chapter 7 Trustee's bond would be affected at all.¹ On its face, this
4 statement seems to be a questionable justification for an inappropriate action. What is
5 perhaps most troubling about these communications between the U.S. Trustee and the
6 Chapter 7 Trustee is that the U.S. Trustee appears to have preempted the Court's ability
7 to review and decide the merits of any objections concerning the Trustee's Final Report
8 and/or the closing of the case. In effect, by stalling the case closure consideration
9 process, the U.S. Trustee's actions placed a thumb on the scale of justice in favor of one
10 party to the appeal.

11 Included within those emails was an email dated March 10, 2016, at 6:15 p.m.
12 from Abram S. Feuerstein to Arturo Cisneros wherein Mr. Feuerstein states that "It was
13 my understanding that you agreed to withdrawal of the TFR. Is that incorrect?" Exhibit
14 4, page 11 of 19. In response, the Chapter 7 Trustee sent an email dated March 10, 2016,
15 at 8:25 p.m. and stated as follows:

16 Good evening, Abe and no, I did not. This case was fully administered
17 when I completed the TFR and I submitted same b/c there was no stay
18 issued pending appeal. I was going to wait until it hit my aged case report
19 to follow up w/ your office and request that it be approved and submitted
20 to the Court. Tim did call me when I filed it to alert me to the appeal and I
21 responded that there was no stay so as far as I was concerned the TFR
22 could be filed w/ the Court. I received calls from Kathleen [McCarthy,
23 Debtor's co-counsel] thereafter and told her it was "out of my hands" and
24 that she needed to discuss same w/ your office. I was unaware of any
25 policy as referenced in the letter and would be happy to set same for
26 hearing upon your approval.

27 Exhibit 4, page 11 of 19. In reply, on March 10, 2016, at 9:29 p.m., Mr. Feuerstein sent
28 an email to Mr. Cisneros stating as follows:

It appears that you want the office to move forward and process the report.
We are prepared to reconsider the matter if that is what you are

¹ The U.S. Trustee's Handbook for Chapter 7 Trustees states that the chapter 7 trustee's bond is conditioned upon "the trustee's faithful performance of his or her official duties." Handbook for Chapter 7 Trustees, U.S. Dept. of Justice, Effective 10/1/2012 available at https://www.justice.gov/ust/file/handbook_for_chapter_7_trustees.pdf/download (citing 11 U.S.C. § 322(a)).

1 requesting. If so, please submit a memo explaining why the case is fully
2 administered and the status of the appeal, as well as whether a reversal on
3 appeal could have any potential effect on distributions already made (even
4 though we understand that it is also possible that the effect of making such
5 distributions could enhance the likelihood that a court would rule that
6 effective relief on appeal was no longer feasible rendering the appeal
7 moot).

8 Exhibit 4, page 10 of 19.

9 At the hearing, the Court discussed with Mr. Kaufman and the Chapter 7 Trustee,
10 the facts and circumstances surrounding these emails in relation to the Chapter 7
11 Trustee's decision to withdraw his Trustee's Final Report. Prior to Mr. Feuerstein
12 appearing at the lectern in the Court, the Court advised Mr. Feuerstein that it was
13 possible that the Court would be referring this matter to the Inspector General of the
14 United States Department of Justice. Mr. Feuerstein requested that the Court take a
15 brief recess in order to permit him to seek legal counsel. Upon reconvening, Mr.
16 Feuerstein declined to make a statement to the Court, and the Court was not inclined to
17 ask Mr. Feuerstein any questions at that time.

18 The Court is also concerned about the fact that the Chapter 7 Trustee originally
19 submitted the Trustee's Final Report on October 26, 2015, and that the Trustee's Final
20 Report disclosed the existence of the appeal as well as the fact that no stay pending
21 appeal was "in place." [See Trustee's Final Report, Dk. 135, pg. 5 ("03/31/15
22 QUARTERLY STATUS: Assets fully administered; Appeal re: dismissal of case pending.
23 To proceed with TFR as no stay pending appeal on distribution in place. . . .")]. Mr.
24 Cisneros states that shortly thereafter, "I received a call from Timothy J. Farris . . . of the
25 OUST in response to the submission of my TFR. Farris inquired as to whether I was
26 aware of the pending appeal filed by Aspen Skiing Company" Cisneros Declaration
27 [Dk. 134, ¶5]. The Court does wonder about the genesis, motivation and purpose of this
28 initial call, since the Trustee's Final Report reflected that Mr. Cisneros did know of the
pending appeal, and that there was no stay in place. Why was Mr. Ferris calling the
Trustee about the appeal, and asking the specific question which he, by reading the
Trustee's Final Report, already knew the answer? That is, of course, unless Mr. Ferris

1 had not read the Trustee's Final Report and was inquiring because of another source of
2 information not disclosed to this Court.

3 In the end, the process of administration of this estate, and the delay of
4 consideration of closing of this estate by the Court, may have been improperly inhibited.
5 It was not the role of the U.S. Trustee, which is not a party to the appeal, to provide a *de*
6 *facto* stay pending appeal. By its affirmative actions, the U.S. Trustee may have
7 intentionally favored one party to the possible detriment of another party, which if true,
8 this Court finds unjustified and offensive.

9 Based upon the record as a whole and for the reasons set forth on the record,

10 IT IS ORDERED AS FOLLOWS:

11 1. The Court hereby refers this matter to the Office of the Inspector General
12 for the Department of Justice ("OIG") for the purpose of investigating any and all
13 matters discussed at length during the September 13, 2016 hearing and as set forth in
14 the Court's Order. This referral includes a request that the OIG investigate and
15 determine whether the U.S. Trustee behaved improperly or engaged in any impropriety
16 with respect to the U.S. Trustee's influence with the Chapter 7 Trustee resulting in the
17 withdrawal of the Trustee's Final Report. The Court refers this matter to the OIG for
18 any appropriate actions, as deemed appropriate by the OIG after a full review. The
19 Court further refers this matter to the Executive Office of the United States Trustee for
20 whatever internal actions it may desire to take.

21 2. The bankruptcy court shall request and pay for a hearing transcript of the
22 September 13, 2016 hearing, which is to be prepared on a non-expedited basis.

23 3. The bankruptcy court clerk's office shall print all documents and pleadings
24 filed in this case relevant to this matter and send them, together with the transcript, by
25 U.S. mail to the OIG and the Executive Office of the United States Trustee, at the
26 following addresses:

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1 U.S. Department of Justice
2 Office of the Inspector General
3 950 Pennsylvania Avenue, N.W.
4 Suite 4706
5 Washington, D.C. 20530-0001

6 and the Los Angeles Field Office, located at:

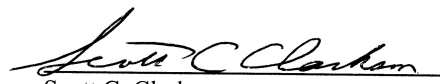
7 U.S. Department of Justice
8 Office of the Inspector General
9 Los Angeles Field Office
10 330 North Brand Blvd., Suite 1000
11 Glendale, CA 91203

12 Romona D. Elliott, Esq.
13 Deputy Director/General Counsel
14 Executive Office of the United States Trustee
15 441 G. Street, N.W., Suite 6150
16 Washington, DC 20530

17 IT IS SO ORDERED.

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27 Date: September 14, 2016

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Scott C. Clarkson
United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

1 Notice is given by the court that a judgment or order entitled (*specify*) **ORDER (1) REFERRING**
2 **MATTER TO (a) THE OFFICE OF THE INSPECTOR GENERAL FOR THE**
3 **DEPARTMENT OF JUSTICE AND (b) THE EXECUTIVE OFFICE OF THE UNITED**
4 **STATES TRUSTEE AND (2) REQUIRING PREPARATION OF HEARING**
5 **TRANSCRIPT OF THE SEPTEMBER 13, 2016, HEARING AND REQUIRING CLERK**
6 **TO COLLECT AND TRANSMIT ALL RELEVANT PLEADINGS IN THIS**
7 **BANKRUPTCY CASE AND THE TRANSCRIPT TO THE OFFICE OF THE**
8 **INSPECTOR GENERAL FOR THE DEPARTMENT OF JUSTICE AND THE**
9 **EXECUTIVE OFFICE OF THE UNITED STATES TRUSTEE** was entered on the date indicated
10 as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

11 **I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling
12 General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the
13 court via NEF and hyperlink to the judgment or order. As of **9/14/2016**, the following person(s) are currently on the
14 Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email
15 address(es) indicated below:

- 16 • **Arturo Cisneros (TR)** amctrustee@mclaw.org, acisneros@iq7technology.com
- 17 • **Abram Feuerstein** abram.s.feuerstein@usdoj.gov
- 18 • **Leslie K Kaufman** kaufman_kaufman.bankruptcy@yahoo.com
- 19 • **Gina J Kim** gjkim@piteduncan.com, efcacb@piteduncan.com;GJK@ecf.inforruptcy.com
- 20 • **Jennifer R Musial** jennifer.r.musial@salliemae.com
- 21 • **Scott Talkov** stalkov@rhlaw.com
- 22 • **United States Trustee (RS)** ustpregion16.rs.ecf@usdoj.gov
- 23 • **Robert P Zahradka** efcacb@aldridgepите.com, RPZ@ecf.inforruptcy.com;rzahradka@aldridgepите.com

24 Service information continued on attached page

25 **II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was
26 sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es)
27 indicated below:

28 U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, N.W.
Suite 4706
Washington, D.C. 20530-0001

U.S. Department of Justice
Office of the Inspector General
Los Angeles Field Office
330 North Brand Blvd., Suite 1000
Glendale, CA 91203

Romona D. Elliott, Esq.
Deputy Director/General Counsel
Executive Office of the United States Trustee
441 G. Street, N.W., Suite 6150
Washington, DC 20530

Service information continued on attached page