

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 08-18384 (MS)
. .
. .
RALPH M. DAY, . M.L.K. Federal Building
. 50 Walnut Street, 3rd Floor
. Newark, NJ 07102
Debtor. .
. December 23, 2008
. 10:19 a.m.
.

TRANSCRIPT OF MOTION HEARING
BEFORE HONORABLE MORRIS STERN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Law Office of Stuart D. Gavzy
By: STUART D. GAVZY, ESQ.
163 East Main Street
Little Falls, NJ 07424

Charles Shaw & Associates
By: CHARLES SHAW, ESQ.
170 Washington Avenue
Dumont, NJ 07628

For Nunzia Mazzoccoli: Okin, Hollander & DeLuca, LLP
By: GREGORY S. KINOIAN, ESQ.
One Parker Plaza
Fort Lee, NJ 07024

Audio Operator: Mariela Primo

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Contd'):

For U.S. Trustee: Office of the United States Trustee
By: SHINING J. HSU, ESQ.
MITCHELL B. HAUSMAN, ESQ.
One Newark Center
Newark, NJ 07102

For Toscano/Anselmo: Hill Wallack, LLP
By: ELIZABETH HOLDREN, ESQ.
202 Carnegie Center
Princeton, NJ 08540

For Liberty Mutual Insurance Company: Podvey Meanor
By: ROBERT SCHEINBAUM, ESQ.
One Riverfront, 8th Floor
Newark, NJ 07102

I N D E X

PAGE

WITNESS

RALPH M. DAY

Direct Examination by Mr. Gavzy	38
Cross Examination by Ms. Hsu	40
Cross Examination by Mr. Kincian	42
Examination by the Court	78
Cross Examination by Mr. Scheinbaum	81
Examination by the Court	87
Cross Examination by Ms. Holdren	89
Recross Examination by Ms. Hsu	90
Examination by the Court	96

1 THE COURT: Appearances, please.

2 MS. HSU: Shining Hsu for the United States Trustee.

3 MR. HAUSMAN: Mitchell Hausman for the Office of the
4 United States Trustee.

5 MR. KINOIAN: Good morning, Your Honor, Gregory
6 Kinoian of Okin, Hollander & DeLuca on behalf Of Nunzia
7 Mazzoccoli, administratrix of the estate of Andrew DiLessio
8 (phonetic).

9 MR. GAVZY: Stuart Gavzy for the debtor in
10 possession. And with me is, also, Mr. Day.

11 MR. SHAW: Your Honor, Charles Shaw, S-h-a-w, on
12 behalf of Mr. Day, also, Judge. Thank you, sir.

13 MS. HOLDREN: Good morning, Your Honor, Elizabeth
14 Holdren from Hill Wallack on behalf of Marguerite Toscano and
15 Joan Anselmo.

16 MR. SCHEINBAUM: Good morning, Your Honor, Robert
17 Scheinbaum from Podvey Meanor on behalf of Liberty Mutual.

18 THE COURT: All right. We have motions to convert or
19 dismiss. We have objections or responses to the motions. I've
20 read the material. I'll take a short statement from the
21 movants. Mr. Hausman or Ms. Hsu, start first.

22 MS. HSU: Thank you, Your Honor. The Office of the
23 United States Trustee filed the instant motion to convert or in
24 the alternative to dismiss the case of Ralph M. Day, Sr.
25 because of several factors which lead the acting United States

1 Trustee to take the position that there is sufficient cause
2 under 11 U.S.C. 1112(b) for a conversion or a dismissal. In
3 exchange for the benefits of the automatic stay, remaining in
4 possession of the bankruptcy estate, and the opportunity to
5 reorganize his affairs, a debtor is required to provide honest
6 and full disclosure to the Court, to the United States Trustee,
7 the creditors and all other parties in interest. Examples of
8 full disclosure are fully describing relationships with
9 proposed professionals, providing information to ascertain that
10 the debtor is solvent and that his financial affairs are in
11 order, and abiding by the bankruptcy codes procedural
12 requirements which promote transparency.

13 However, in this case, the debtor has continuously
14 failed to meet some of the most basic requirements of debtors
15 in possession. These several areas include inconsistencies
16 among the filings with the Court, conflicts of interest which
17 have only come to light by revelations from the creditors,
18 disregarding bankruptcy rules, and withholding information,
19 either intentionally or unintentionally, but certainly all
20 filings with the Court have been under the penalty of perjury.

21 Let me just briefly outline some of the details of
22 each of those categories that I just outlined.
23 Inconsistencies, the debtor stated in his certification in
24 response to the U.S. Trustee's motion to convert that he is
25 only marketing four of nine disclosed properties while the

1 debtor's counsel has been stating in numerous -- in two status
2 conferences that all properties, all nine properties, are being
3 marketed. With regard to conflict of interest, the debtor's
4 certification in response to the United States Trustee's motion
5 to convert or dismiss states that his children reside in at
6 least two, perhaps three, of the properties which he lists on
7 his Schedule A. This inherently must create a conflict of
8 interest if he's to -- if he's collecting rents from his
9 children and part of his goal -- part of the plan is to
10 ultimately sell properties to create dividends for creditors.

11 Second of all, second conflict of interest is that it
12 was not revealed in the retention application for Mr. Bianki
13 (phonetic) as a realtor to the debtor that Mr. Bianki is, in
14 fact, the debtor's son-in-law. Such information was not
15 revealed in the retention application and only came to light
16 when one of the creditors filed a response revealing this
17 information.

18 Second of all -- I'm sorry -- third of all,
19 disregarding bankruptcy rules. The debtor has failed in
20 numerous respects. For example, the sale of 11 Mountain View
21 Court was disclosed only on the monthly operating reports and
22 was addressed only in the last status conference. However, it
23 was clear that the closing of this property was only after the
24 bankruptcy was initiated and there was no sale application
25 pending before this Court. That was, also, brought to the

1 Court's attention from the debtor's certification in response
2 to the United States Trustee's motion to convert.

3 Secondly, with regard to disregarding bankruptcy
4 rules, there was an unauthorized post-petition loan to a
5 related company, Viking Industrial Securities, again, only
6 revealed through a review of the monthly operating reports.
7 This petition -- this post-petition loan was unauthorized and
8 was -- the debtor's counsel has basically stated that there's
9 been no harm, no foul because the debtor has received a
10 repayment from Viking Industrial Securities and he should not
11 be penalized for this transgression. But certainly it is one
12 of the factors that leads the U.S. Trustee to believe that the
13 debtor is being less than forthcoming in all of his affairs.

14 Thirdly, with regarding bankruptcy -- disregarding
15 bankruptcy rules, the debtor's conduct in this case has been
16 particularly troubling because this is not the debtor's first
17 brush with bankruptcy. He was the sole member of the company
18 Viking Industrial Security that filed earlier this year at
19 which time he testified for Viking Industrial Security at the
20 341 and he should have had the opportunity -- Mr. Day should
21 have had the opportunity to review the U.S. Trustee guidelines
22 and reporting requirements and should be well familiar with all
23 of the requirements set forth in those guidelines.

24 The last category is most troubling to the U.S.
25 Trustee, which is withholding information, not only to the U.S.

1 Trustee, this Court, and to the creditors in general. 11
2 Mountain View Court is a prime example of one of the key
3 withholdings that the debtor has engaged in. Neither a
4 contract of sale nor the property itself was listed on the
5 original Schedule A, nor in any of the amendments hence. There
6 have been five -- I'm sorry -- six amendments if you count the
7 one that was filed just last week. And no -- so no listing has
8 ever been disclosed on any of those Schedule As or Schedule B,
9 as well as no post-petition sale was authorized by this Court.

10 In addition, what's particularly troubling
11 connecting -- connected to the Mountain View Court sale was
12 that the debtor stated -- I'm sorry -- debtor's counsel stated
13 in his certification in response to the U.S. Trustee's motion
14 to covert was that \$50,000 in proceeds was received by the
15 debtor. However, a review of the monthly operating reports,
16 even of the last one that was filed just yesterday, indicates
17 that only \$40,000 has been received and \$10,000 is simply
18 missing, either -- perhaps Mr. Gavzy has a response as to
19 whether it's in his escrow accounts, but certainly it is not
20 revealed in the monthly operating reports that the debtor has
21 submitted to the Court.

22 Secondly, substantial assets in a lawsuit against Mr.
23 Capazzi -- against a Mr. Capazzi in the sum of -- and I don't
24 have the text of the transcript with me -- but a review of the
25 transcript from the November status conference indicates that

1 that amount could be as much as \$500,000 and certainly that was
2 not disclosed until the latest round of amended schedules,
3 again, filed just last week.

4 The third item which we've already touched upon
5 before was the son-in-law's lack of disinterestedness, Mr.
6 Bianki. Not only was -- is Mr. Bianki related to Mr. Day
7 through his daughter, but it appears that from a review of the
8 amended schedules that Mr. Bianki is, also, a co-owner of one
9 of the properties listed on Mr. Day's schedule, 628 Private
10 Pirate Drive, as well as the co-debtor of 11 Christie Street
11 which, I believe, upon information and belief, the son-in-law,
12 Mr. Bianki, owns with his wife, Mr. Day's daughter, and whom
13 both reside at 11 Christie Street.

14 The debtor only amends when, basically, he is faced
15 with incontrovertible evidence and he is forced to amend,
16 essentially. The result is six sets of amendments resulting in
17 any party in interest looking at the docket to have to plow
18 through numerous filings and having to spend laborious amounts
19 of time to organize information that should be laid bare to the
20 Court from the beginning.

21 THE COURT: May I just ask you one question because
22 I'm puzzled? I'm sorry to interrupt, but --

23 MS. HSU: Of course.

24 THE COURT: -- would you just go through 11 Christie
25 one more time?

1 MS. HSU: Mr. Bianki, Chris Bianki, is apparently
2 also the co-debtor of 11 Christie Street. This was revealed
3 upon review of an amended schedule. Let me just grab that for
4 you.

5 THE COURT: No, but am I mistaken?

6 (Attorney/attorney conversation)

7 THE COURT: Eleven is not an estate property.

8 (Attorney/attorney conversation)

9 THE COURT: I don't believe 11 is listed.

10 MS. HSU: You're correct, Your Honor. Your Honor, I
11 apologize. My -- I was referencing the, I guess it would be
12 the fourth set of amendments filed on June 29th of 2008. And
13 if you turn to the Schedule H, the first item listed there is
14 Chris Bianki, who is a co-debtor on 11 Christie Street. 11
15 Christie Street is not listed on the debtor's schedules, but if
16 he's a co-debtor, then it raises questions as to whether or not
17 there are more assets out there that the debtor has failed to
18 reveal.

19 THE COURT: Could I see that for a second?

20 MS. HSU: Of course.

21 THE COURT: Thanks.

22 (Attorney/attorney conversation)

23 THE COURT: No, I think -- yes, I think Mr.

24 Hausman's -- I think what we have is Chris Bianki at 11

25 Christie Street, his address, as being a co-debtor as to a

1 First Horizon mortgage. And that turned out to be Waretown, if
2 I'm --

3 UNIDENTIFIED ATTORNEY: Correct.

4 THE COURT: -- if I've got that right.

5 MS. HSU: Thank you, Your Honor. My mistake. Well,
6 as I was saying, the debtor simply only amends his schedules
7 when he's faced with incontrovertible evidence brought to him
8 by his creditors or by other parties of interest. And, like I
9 said, the amendments have -- are numerous and it requires a lot
10 of attention to the docket and simply a lot of time to get
11 straight his -- the debtor's affairs when simply that is the
12 debtor's burden to carry.

13 All these amendments raise the question of what other
14 information is the debtor withholding and simply not revealing
15 to this Court and how many more sets of amendments would be
16 required before all the parties in interest have a clear handle
17 on what is going on in the debtor's case. The -- obviously,
18 the United States Trustee contends that sufficient cause has
19 been established by the debtor's conduct warranting conversion
20 or dismissal.

21 THE COURT: All right. Thank you. Let me just --
22 again, I don't want to disrupt anyone's order of presentation
23 or what you might want to offer to this Court, but, Mr. Gavzy,
24 let's see if we can go right to this issue of the son-in-law
25 because it is a credibility question. I mean, I looked at the

1 application. What happened here? Mr. Chris Bianki was put
2 forth through your office by Mr. Day to be a broker with
3 respect to the sale of certain New Jersey property. I have the
4 application here. It checks the boxes that one would check if
5 this were an arm's length unrelated party who would be a
6 broker. Not only is it the son-in-law, but it's a co-debtor on
7 the Waretown property. What happened?

8 MR. GAVZY: Your Honor, throughout, there have been
9 missteps and what the U.S. Trustee is characterizing as
10 deliberate withholding of information is actually and more
11 correctly attributable to inefficient and careless work in my
12 office for which I take full responsibility. I did not fully
13 review the application to retain Mr. Bianki before it was
14 filed. I was aware that Mr. Bianki is Mr. Day's son-in-law,
15 and had I reviewed it, I would have caught it, but I did not.
16 So that failure is mine.

17 Mr. Bianki, in fact, had been the broker of record on
18 the sale of another Day owned property, not Mr. Day, Sr., the
19 debtor in the instant case, but Mr. Day's son, so I was fully
20 aware that Mr. Bianki was, in fact, Mr. Day's son-in-law. The
21 answer is nothing more dramatic than my failure to properly
22 review the application before it was submitted. It was not an
23 attempt on Mr. Day's part or anyone else to deliberately
24 withhold information or mislead this Court or any other party
25 and I take full responsibility for it.

1 THE COURT: All right. Let me ask you another
2 question, and if it's got you sort of hopping around, I'll
3 certainly give you time to reflect on it. But I took a look at
4 the petition sort of going back to Day 1 and then the
5 amendments to Schedule A and I don't understand. I don't
6 understand any of the Schedule As. I guess I have to put it
7 that way. Of all the properties listed, there's simply no
8 statement of what the debtor's interest is in those properties.

9 MR. GAVZY: That's correct, Your Honor.

10 THE COURT: Why is that?

11 MR. GAVZY: Again, I take responsibility for it. It
12 was my failure in not fully reviewing and vetting the petition
13 before it was filed and, for that matter, the subsequent
14 amendments.

15 THE COURT: Including the five amendments to the
16 schedules? I mean, this last amendment just filed.

17 THE COURT: Your Honor, as recently as last evening
18 as I was preparing for this hearing, I realized that even now
19 it does not properly state the correct lien holders on the
20 Newark property or on 18 Christie Street. Mr. Holdren's client
21 Toscano and Anselmo is the proper lien holder on 18 Christie
22 Street and the Newark property, while Mr. Kinoian's client is
23 the proper lien holder on the Blazedale, Orangeburg, New York
24 property. I'm sorry, has a mortgage on, I believe, on 18
25 Christie Street and is a one-half owner of the property in

1 Orangeburg. And that is not properly reflected in the
2 schedules and statements either.

3 THE COURT: All right. We're seven and a half months
4 into a Chapter 11 where there are nine properties listed. Do
5 you have title reports on any or all of these nine properties?

6 MR. GAVZY: I have title reports on, I think, four of
7 them, Your Honor. Let me just take a look.

8 (Pause)

9 MR. GAVZY: I have title reports on 107 Overlook in
10 Dumont, the Newark property, 18 Christie Street, 15 Christie
11 Street and 10 Christie Street.

12 THE COURT: All right. Who owns 15 Christie Street?

13 MR. GAVZY: According to the title report and
14 according to the petition, it's owned jointly by Ralph M. Day
15 and his wife Virginia.

16 THE COURT: So this is the residence? And to not
17 have that input that it's jointly owned with the wife seven and
18 a half months into the case is startling. I would have
19 suspected, and looking at this I did suspect, that it was
20 jointly owned with the wife. Is any of this other property
21 jointly owned with the wife or children?

22 MR. GAVZY: 107 Overlook Drive is jointly owned with
23 his wife. That's the Dumont property that's currently under
24 contract of sale. The debtor owns the Newark property --

25 THE COURT: Outright?

1 MR. GAVZY: -- solely or outright totally by himself.
2 He also owns the property at 18 Christie Street solely by
3 himself. He owns the Waretown property jointly with --

4 THE COURT: Who lives at 18 Christie Street?

5 MR. GAVZY: Your daughter and son-in-law?

6 MR. DAY: It's an empty lot.

7 MR. GAVZY: It's an empty lot. 18 Christie Street is
8 an empty lot.

9 THE COURT: It's listed -- and this is owned just by
10 Mr. Day?

11 MR. GAVZY: Yes.

12 THE COURT: It's got a value listed of \$900,000?

13 MR. GAVZY: At the time the petition was prepared,
14 the market was stronger.

15 THE COURT: How big a lot is it?

16 MR. GAVZY: How large is the lot?

17 MR. DAY: Approximately a third of an acre.

18 MR. GAVZY: Approximately one-third of an acre.

19 THE COURT: And at the time of the filing in May,
20 residential lots in Demarest were going for \$2.7 million an
21 acre?

22 MR. GAVZY: To the best of our knowledge, yes.

23 THE COURT: Any idea of what it's worth now?

24 MR. GAVZY: When I asked that question last week, I
25 was told it probably at this time had a value of roughly

1 \$600,000.

2 THE COURT: Any appraisals for any of these
3 properties?

4 MR. GAVZY: No.

5 THE COURT: Any application for appraisals?

6 MR. GAVZY: I beg your pardon?

7 THE COURT: Any application to have --

8 MR. GAVZY: Not yet, Your Honor.

9 THE COURT: -- appraisers appointed?

10 MR. GAVZY: No.

11 THE COURT: The largest single property is the South
12 Carolina property?

13 MR. GAVZY: Yes.

14 THE COURT: Is that owned solely by Mr. Day?

15 (Attorney/client conversation)

16 MR. GAVZY: It's owned jointly by Mr. Day and his
17 wife.

18 THE COURT: There's purported equity there of
19 \$2.4 million. Whatever it is, if it's half that or two-thirds
20 that or a third of that, it's a substantial part of the equity
21 in this estate and the fact that a non-debtor spouse is a
22 co-owner is a vital fact in assessing all of this. How about
23 the value? Where does that value come from, \$4.2 million?

24 MR. GAVZY: The value arose from the listing
25 agreement with the broker when Mr. Day scheduled it for sale.

1 THE COURT: All right. How long have the Days owned
2 this property?

3 (Attorney/client conversation)

4 MR. GAVZY: Fifteen years, Your Honor.

5 THE COURT: Okay. So, I assume that it was purchased
6 for much, much, much less, is that correct?

7 MR. GAVZY: I believe so.

8 (Attorney/client conversation)

9 MR. GAVZY: Mr. Day built the property when he
10 purchased it with about \$500,000.

11 THE COURT: All right. Please, I'll hear additional
12 argument.

13 MR. KINOIAN: Good morning, Your Honor, Gregory
14 Kinoian of Okin, Hollander & DeLuca on behalf of Nunzia
15 Mazzoccoli, the administratrix of Andrew DiLessio. I believe
16 that Ms. Hsu has established sufficient records that there's
17 sufficient cause for have this case converted a Chapter 7 and
18 have a trustee appointed. You've seen the joinder and
19 responsive papers that we filed on behalf of our client. I'm
20 not going to belabor the record today and repeat things. I
21 just would also point out that adding to, for instance,
22 questions that are still unanswered.

23 If we go back to the transcript of the last status
24 conference which was held on November 18th, 2008, when there
25 was this question about this \$40,000 receipt that appeared on

1 one of Mr. Day's monthly operating reports. And, at that
2 point, it was described as a repayment of a loan from a Louis
3 Capazzi. And then in the course of the description of that
4 transaction, debtor's counsel had represented that
5 pre-petition, the debtor had borrowed, you know, had lent
6 against properties that he -- or had borrowed against property
7 that he owed about \$500,000 and had supposedly lent that money
8 to Mr. Capazzi for various investments and yet there is no
9 disclosure in any of the schedules or anything about a \$500,000
10 loan appearing on Schedule B. And then Schedule B just gets
11 amended and gets filed, again, last week and there's still no
12 reference to it.

13 But now there's suddenly a reference to some claims
14 against Mr. Capazzi and those claims are seemed to be outlined
15 in a certification submitted in opposition to this motion to
16 convert in the name of the attorney Charles Shaw. And Mr.
17 Shaw's certification doesn't make any reference to a \$500,000
18 loan that supposedly was made pre-petition from the debtor to
19 this Louis Capazzi.

20 So, there's -- Your Honor, this is not a complicated
21 case. This is not a big case. The dollars amount that, you
22 know, are -- they are, you know, sizable as far as personal
23 bankruptcies go, but what -- of the assets that have been
24 disclosed, we're not talking about a large number of assets.
25 We're not talking about assets that have, you know, values that

1 cannot be determined. We're not talking about hundreds or
2 thousands of creditors. We're talking about less than 100
3 creditors. You know, it looks like there's probably less than
4 50 creditors in this case. And, yet, you know, if we accept
5 that the petition was filed in haste because of a pending
6 foreclosure, that's all well and good, Your Honor. We've seen
7 that -- I'm sure you've seen it hundreds and hundreds of times
8 when, you know, schedules and petitions are filed in haste just
9 to get the case commenced and get the stay in place.

10 But we've now had amendments and I actually believe
11 there have been five amendments since the originals were filed
12 and it's dribs and drabs. And it's only after creditors like
13 my client have brought to the Court's attention that there's
14 other assets out there. And, you know, you look at the
15 description of the sale of the Mountain View property and, you
16 know, I did a Westlaw search on the Mountain View property and
17 it was never even in the debtor's name to begin with.

18 So the \$40,000 or \$50,000 -- according to the Shaw
19 certification it's \$50,000 -- the -- that came in from the sale
20 of the Mountain View property was evidently payment for an
21 interest that Mr. Day had in that property, but that interest
22 is not -- there's no title interest. It wasn't that he had an
23 interest in the title of the property because his name didn't
24 appear on the title. So, of course, that raises the question,
25 well, what other properties are out there or what other

1 business interests does he have that haven't been disclosed and
2 we just don't know. We just don't know. And it's troubling.

3 This case -- these assets, the assets that have been
4 disclosed, need to be administered in bankruptcy case. So I
5 would oppose to the extent that the debtor seeks, you know, as
6 an alternative for dismissal of this case. I think that would
7 be horrible interest for the creditors if this case were
8 dismissed. But --

9 THE COURT: Let me ask you why. Just let me plumb
10 that for a moment. To the extent that the interest represented
11 here right now and the U.S. Trustee appear to be secured
12 creditors. Is it that you're concerned that the collateral is
13 insufficient? Is that where it is for you? It seemed to me
14 that --

15 MR. KINOIAN: If I -- my client is both secured and
16 unsecured, Your Honor. The mortgage they have my --

17 THE COURT: Is that the hundred and some odd thousand
18 dollars that's deemed to be unsecured, is that the point?

19 MR. KINOIAN: No, Your Honor. My client's claim is
20 in excess of -- I forgot. I think it's in excess of
21 \$600,000 --

22 THE COURT: Yes.

23 MR. KINOIAN: -- but they have -- there's a -- there
24 was settlement in a state court action, an arbitration
25 agreement that had been reached. There was a mortgage that was

1 given to secure early on in that case. So, actually, what
2 happened was the case had been defaulted and in order to get
3 the case reinstated, the state court judge had required Mr. Day
4 to give a mortgage on this 18 Christie Street property. It's a
5 second position mortgage and it's in a limited amount of
6 \$200,000. The settlement, actually, resulted in \$300,000 being
7 owed to my client of which that 200,000 was secured. Plus, my
8 client's deceased husband's name is -- appears as a co-title
9 owner on the property located in Blazedale.

10 So to the extent -- and, also, I think Liberty Mutual
11 is in this case as an unsecured creditor and if you looked at
12 their papers, their claims are up in excess of about \$500,000.
13 We have --

14 THE COURT: But they're seeking dismissal.

15 MR. KINOIAN: Yes, Your Honor, I believe they are,
16 but, you know, again, I think that it would be -- I personally
17 believe that it's in the best interest of the creditors for
18 these assets to be administered in the bankruptcy case. That
19 way --

20 THE COURT: Do you have any -- and, again, if you
21 don't, I understand it. But do you have any sense of sort of
22 overall solvency? In other words, if this were a seven, I'm
23 just trying to imagine this as a seven, the -- there are
24 unknowns and some of the unknowns go to the government, New
25 Jersey, federal taxes. But is it worth the candle in a seven.

1 Now, perhaps your client is most exposed. But I'm not sure.

2 MR. KINCIAN: Well, and I think, also, the --

3 THE COURT: Because the seven is not a cheap program
4 either.

5 MR. KINCIAN: No, Your Honor, but a seven will result
6 in an orderly liquidation of the assets because what we have
7 here is if you have the creditors, whether they're secured or
8 unsecured, scrambling to try to force the various properties
9 into foreclosure or try to collect, you know, try to collect,
10 you know, try to get judgments and force judgments. What I've
11 heard anecdotally, Your Honor -- and I apologize if this
12 anecdotally because this wasn't an anticipated question -- but
13 in a conversation I had recently with Jim DeLuca of my office
14 that he had contacted Trenton on trying to get a status as to
15 when a judgment of foreclosure was going to be entered. And he
16 was told point blank that they are probably about 11 months out
17 in -- down in Trenton right now and backed up and trying to get
18 judgments of foreclosure entered.

19 So, I think rather than going that route, I think
20 what we have here is a case that really calls for an orderly
21 liquidation of the debtor's assets. There are, you know, there
22 are substantial properties here. I don't think the valuations
23 are anywhere near realistic. Look, take, for instance, the 107
24 Overlook property. The debtor has submitted, you know, while
25 on his schedules, he lists on Schedule A the Overlook property

1 as having a value of \$550,000. According to the certification
2 submitted in opposition --

3 THE COURT: It's 450 in --

4 MR. KINOIAN: -- it was 450.

5 THE COURT: All right.

6 MR. KINOIAN: You know, so that's an 18 percent, you
7 know, difference. And, you know, if we --

8 THE COURT: No, but I read your -- you know, you
9 picked at the numbers, but you really didn't knock the numbers
10 down too much. The real issue is the joint ownership and how
11 much equity that eats up and that's why I started with the
12 ultimate Schedule A, not knowing precisely what the property
13 interests of the debtor were.

14 MR. KINOIAN: Your Honor, if you look back to even
15 the debtor at one point had submitted an application which they
16 later withdrew to get authority -- it's essentially to get
17 authority to sell the South Carolina property, but it was
18 really more in the nature of authority to retain someone to
19 market the South Carolina property. And if my recollection --
20 I don't have the application in front of -- my recollection was
21 they were talking about listing it at that point at like 3.8
22 million. So, I mean, you know, the --

23 THE COURT: No, and I'm not saying that your point
24 isn't well taken, but it's if you take all of your numbers as
25 the reductions, there's still a lot of equity here. Again, I

1 can't say that so authoritatively because (a) the markets are
2 falling apart and (b) the precise ownership interests would
3 have to be analyzed. We've got, besides the residence, you
4 know, South Carolina sticks out like a sore thumb. Does the
5 estate currently have even at \$3.6 million, a million eight
6 halved because there's a million eight mortgage on it, \$900,000
7 worth of equity?

8 Now, if that's all illusory, if the property is worth
9 \$2 million so that it -- the half interest and the equity is
10 worth \$100,000, you know, then I understand a seven. It's just
11 hard for me to understand the economics if these numbers hold
12 anything close to reality, but I can't tell.

13 MR. KINOIAN: Your Honor, we had in our -- in my
14 office years ago we had an individual 11 that also there were
15 substantial real estate holdings. The real estate holdings
16 were related to the debtor's company, which was a trucking
17 business. And we were able to actually -- we were actually
18 able to confirm a successful plan of reorganization.
19 Unsecureds did not get 100 cents, but they did get something.
20 And, essentially, what we were able to do there was restructure
21 some of the mortgages. We were able to sell some of the
22 properties and we were able to get a distribution to creditors.

23 And, I guess, my point is I think based on the
24 current conditions, rather than, again, having creditors having
25 to scramble to try to enforce, you know, obtain judgments and

1 enforce judgments and try to force foreclosures or whatever on
2 the -- against these -- the debtor's properties is that if the
3 debtor does have equity, substantial equity, to be able to pay
4 his creditors in full, then that's fine. I think then what it
5 really -- the bankruptcy process properly administered with
6 proper oversight is really the better way to go.

7 I said -- you know, I think whether it's a conversion
8 or just having a Chapter 11 Trustee, frankly, it doesn't matter
9 to me, but I would rather -- I mean, I think in a Chapter -- if
10 it were a Chapter 11 Trustee that were appointed rather than a
11 Chapter 7, you know, rather than a conversion to seven and
12 having a Chapter 7 Trustee, the one difference would be that a
13 Chapter 11 Trustee actually would have to put in some sort of
14 plan of reorganization. Well, maybe that's what this is going
15 to require. But I think kind of setting --

16 THE COURT: I just -- I can't tell because I don't
17 know -- I don't have enough here.

18 MR. KINOIAN: Right, but, Your Honor, I think it
19 would be a disservice to the creditors. Because of the fact
20 that the debtor has not been compliant doesn't mean that the
21 debtor doesn't -- shouldn't be in bankruptcy.

22 THE COURT: I'm not faulting you.

23 MR. KINOIAN: No, I understand.

24 THE COURT: I'm just saying I don't have enough
25 information.

1 MR. KINOIAN: Well, what we -- but of the information
2 that we do have, what we do have is that the debtor does have
3 some substantial amount of liabilities from creditors. The
4 debtor --

5 THE COURT: Well, let me turn -- let me just, if I
6 may --

7 MR. KINOIAN: Okay.

8 THE COURT: -- because the great unknowns are the
9 powerful creditors. Mr. Gavzy, if I may just ask you and
10 perhaps you can confer with your client, but I'm looking at
11 this. Has the debtor filed personal tax returns --

12 MR. GAVZY: Yes.

13 THE COURT: -- for 2005, 6 and 7?

14 MR. GAVZY: Yes, he has, Your Honor.

15 THE COURT: When were those filed?

16 MR. GAVZY: Thirty or forty days ago after the
17 recently retained accountants prepared them. They were filed
18 as soon as they were finished.

19 THE COURT: Okay. That's 2005, 6 and 7?

20 MR. GAVZY: Yes.

21 THE COURT: So -- and what did they indicate in terms
22 of any tax liability?

23 MR. GAVZY: The '05 liability to the IRS was 30,460.
24 No liability to the State of New Jersey. The '06 liability to
25 the IRS was 11,553. To the State of New Jersey, the liability

1 was 4,328. The '07 liability to the IRS was \$360 with zero
2 liability to the State of New Jersey.

3 THE COURT: All right. And during this case, have
4 quarterly payments been made to IRS or the State of New Jersey?

5 MR. GAVZY: For Mr. Day individually?

6 THE COURT: Yes.

7 MR. GAVZY: I don't believe so.

8 (Attorney/client conversation)

9 THE COURT: Well, by my calculation, he's got \$96,000
10 worth of rent received through the end of November. He's got
11 other receipts which I'm going to ask you about, what the
12 source of those funds is. He's got income from somewhere. If
13 he's not subject to withholding, he's got to pay quarterly
14 income taxes. This is a debtor who apparently didn't like to
15 pay income taxes and didn't until forced to in this case. And
16 so it's not exactly an endorsement for a reorganization.

17 Now, I will ask you about source of income. If we
18 have \$96,000 received in seven and a half months or seven
19 months as rent, how does that break down? I think the U.S.
20 Trustee has a point. And I've read the accountant's purported
21 rebuttal, but you can't say on the one hand my kids are in the
22 houses and they're paying the freight, collect \$96,000 and not
23 say who paid what over seven months in a Chapter 11. I don't
24 understand how that works. So if we got to Sarah, how much
25 money did Sarah pay as rent since the filing date of May 6 of

1 this year? Shouldn't we know that?

2 (Attorney/client conversation)

3 MR. GAVZY: Mr. Day indicates that he's provided that
4 information to the accountants, but he doesn't happen to
5 recall --

6 (Attorney/client conversation)

7 THE COURT: And did the checks go from Sarah to the
8 debtor?

9 MR. GAVZY: Were the checks payable to you or to the
10 mortgagee?

11 MR. DAY: To me and then I paid the --

12 THE COURT: Did they pass through an account?

13 MR. DAY: Yeah, my DIP account.

14 MR. GAVZY: Yes.

15 THE COURT: Okay. And so were the payments simply
16 carriage? By that I mean mortgage payments, tax payments, that
17 is, real estate tax payments, and insurance payments, was it
18 only that?

19 (Attorney/client conversation)

20 MR. GAVZY: That was all they were, Your Honor.

21 THE COURT: Okay. And so that's one house. That's
22 Sarah, and that would, I assume, relate to 10 Christie, am I
23 correct?

24 MR. GAVZY: Yes, Your Honor.

25 THE COURT: Okay. Who's paying the freight on 18 --