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7 UNITED STATES BANKRUPTCY COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 SAN FERNANDO DIVISION

11 In re:)
12)
13 SHERMAN MAZUR and)
MICHELLE MAZUR)
14)
15 Debtor(s).)
16)
17)

Case No.: Case No.: SV 93-16885-GM
Case No.: SV 95-17942-GM

[Administratively Consolidated
October 30, 1996]

Chapter 7

NOTICE OF MOTION OF CHAPTER 7
TRUSTEE TO SELL PROPERTY OF
THE ESTATE AND TO APPROVE
OVERBID PROCEDURES (40% of
collections by Realwealth)

Date: September 12, 2007
Time: 10:00 a.m.
Ctrm: 303

20 PLEASE TAKE NOTICE that on September 12, 2007 at 10:00 a.m. in courtroom 303 of the
21 above-entitled court located at 21041 Burbank Boulevard, Woodland Hills, California, Duke Salisbury,
22 Chapter 7 Trustee hereby seeks an order authorizing him to sell the bankruptcy estate's interest in 40%
23 of collections by Realwealth, Inc., ("Realwealth") on judgments against Sherman Mazur.

24 This Motion (the "Motion") will be based on this Motion, the supporting Declarations
25 of Duke Salisbury and Annie Verdries, the pleadings and records on file herein, and any evidence
26 properly before the Court and the arguments of counsel.

27 Pursuant to Local Bankruptcy Rule 9013-1(a)(7) each party wishing to oppose the motion
28 shall, not later than 14 days prior to the hearing date, serve upon Counsel for Chapter 7 Trustee

COPY

1 **and the U.S. Trustee's Office and file with the Clerk of the Bankruptcy Court a brief but**
2 **complete written statement of all reasons in opposition thereto, and answering memorandum of**
3 **points and authorities, declarations and copies of all photographs and documentary evidence on**
4 **which the responding party intends to rely.**

5 The Motion is available for review during regular business hours at the Clerk of the Bankruptcy
6 Court, located at 21041 Burbank Boulevard, Woodland Hills, California, or a copy thereof may be
7 obtained upon written request from Annie Verdries at Lewis Brisbois Bisgaard & Smith LLP, 650 Town
8 Center Drive, Suite 1400, Costa Mesa, California 92626, counsel for Chapter 7 Trustee.

9 The Motion is based on the following:

10 On March 1, 1993, certain creditors of the Debtor Sherman Mazur filed an involuntary Chapter
11 7 petition against the Debtor Sherman Mazur alleging that the Debtor was generally not paying his debts
12 as such debts became due.

13 On May 3, 1994, the Court entered an Order For Relief against Sherman Mazur under Chapter
14 7 of Title 11 of the United States Code, pursuant to 11 U.S.C. §303(h)(1).

15 Shortly thereafter, Duke Salisbury was appointed as the Chapter 7 Trustee of the estate of
16 Sherman Mazur.

17 Christopher Page, as assignee of Jones Day, obtained a Judgment in Page v. Tatco against the
18 Debtor, Sherman Mazur, his wife, Debtor Michelle Mazur, Adele Kaplan as trustee of the Mazur Family
19 Trust, and two Debtor-related or controlled Florida corporations, Tatco Investments, Inc., and Colonial
20 Service Corporation (without Debtors, collectively "Debtor-Related Parties") in the original amount of
21 approximately \$2,668,000; the total amount of Mr. Page's claim, including fees and expenses, was
22 approximately \$3,500,000 ("Claim"). Subsequently, Page obtained a Judgment in Page v. Mazur
23 determining the claim to be non-dischargeable against Sherman Mazur.

24 Jones Day represented to the Trustee that it possessed information concerning the identification
25 of assets that might be recovered by the estate.

26 On or about November 30, 1994, the Trustee and Jones Day entered into a letter agreement
27 ("Jones Day Letter Agreement").
28

1 The Jones Day Letter Agreement provided that the Judgments entered in Page v. Mazur and
2 Page v. Tatco, and any related liens against the Debtors and Debtor-Related Parties, would be assigned
3 to the Trustee (subject to Trustee's right to reconvey the Judgments and Liens to Jones Day), that Jones
4 Day would provide information and assistance in connection with locating assets to execute on, and that
5 the Trustee (subject to the Court's approval of the Jones day Letter Agreement) would pay Jones Day
6 forth percent (40%) from sums realized from cash, cash equivalent or the sale of the assets recovered
7 by the Trustee from such information and assistance to a maximum amount of \$3,500,000, in
8 satisfaction of the Claim.

9 Subsequently, the Court approved the Jones Day Letter Agreement and authorized the Trustee
10 to make payments pursuant to the Jones Day Letter Agreement.

11 On October 13, 1995, Michelle Mazur, the wife of Sherman Mazur, filed for protection under
12 Chapter 7 of the United States Bankruptcy Code.

13 On January 13, 1996, the Trustee was appointed the Chapter 7 Trustee for Michelle Mazur.

14 On October 3, 1996, the Trustee filed a Motion to Consolidate administratively the two
15 bankruptcy cases. By Order entered on October 30, 1996, the bankruptcy estates of Sherman Mazur
16 and Michelle Mazur were administratively consolidated.

17 Realwealth is the successor-in-title to Jones Day as to the Page v. Mazur and Page v. Tatco
18 judgments.

19 The Trustee and Realwealth entered into the Realwealth Letter Agreement dated February 28,
20 2002.

21 The Realwealth Letter Agreement contemplates, among other things, that the judgment entered
22 against the Mazurs in Page v. Mazur, and the non-dischargeable Judgment entered against Sherman
23 Mazur in Page v. Tatco and any related liens against the Debtors and Debtor-Related Parties, will be
24 assigned to Realwealth, that Realwealth will have one year or more to pursue collection of assets at its
25 sole expense, and that Realwealth will pay the Trustee forty percent (40%) from sums realized from
26 cash, cash equivalent or the sale of assets recovered by Realwealth.

27 The amount currently owed by Sherman Mazur to Realwealth on the judgments is
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1 \$5,036,049.55 as of April 16, 2007. Interest continues to accrue thereon. Credit has been given for all
2 payments received by Realwealth.

3 **Pending Appeal Affecting Judgments**

4 There is an appeal pending regarding the validity of the renewal of the judgment in Page v.
5 Tatco pending in the Court of Appeal of the State of California, Second Appellate District as Case No.
6 BC058756. The appeal has recently been fully briefed.

7 Mazur claims the judgment was not timely or not correctly renewed, while Realwealth claims
8 the judgment was renewed for an additional ten (10) years. The appeal is based on the following facts:

9 The Bankruptcy Trustee timely filed his own Application for Renewal of Judgment as of
10 February 28, 2002.

11 The Bankruptcy Trustee assigned the Judgment to Realwealth pursuant to an Acknowledgment
12 of Assignment. That Assignment, dated August 22, 2002, did not have a notarized signature. At the
13 request of Realwealth a subsequent Assignment, dated August 5, 2004, was executed by the Bankruptcy
14 Trustee to Realwealth identical in wording except that it was acknowledged by a notary.

15 The Trustee's initial application to renew the Judgment was either lost or misplaced in the
16 Clerk's office, but in any event was never processed. It was not further pursued on behalf of the Trustee
17 because the Judgment had been assigned to Realwealth. By March 2004 Realwealth submitted to the
18 Clerk its own Application to renew the Judgment under an Application dated March 8, 2004.

19 Realwealth took the issue of the renewal of the Judgment to Judge Person on an *ex parte* basis
20 on July 12, 2004. Judge Person thereupon entered his order directing the Clerk to renew the Judgment,
21 which the Clerk immediately did on the same date, based on the Applications for Renewal which were
22 dated February 28, 2002 and March 8, 2004.

23 A copy of the July 12, 2004 "Notice of Renewal of Judgment and Proof of Service of Renewal"
24 was transmitted by mail to Mazur as well as to his attorneys on August 31, 2004, and a copy of that
25 Notice of Renewal and related Proof of Service was filed with the trial court on October 21, 2005.

26 On September 16, 2005, in a separate "Creditor's Suit" which had been brought by Realwealth
27 against Mazur and others (*Realwealth Corp., Inc. v. Sherman Mazur, et al.*, Case No. SC 07769) (the
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1 “Creditor’s Suit”), the Los Angeles Superior Court in Santa Monica entered a judgment against the two
2 defendants in that action other than Mazur.

3 Mazur was a nominal defendant in that action but he actively participated both as a party/witness
4 and through his counsel, as reflected in that court’s Statement of Decision of August 23, 2005.

5 In the course of the Creditor’s Suit Mazur on November 15, 2004 filed his “Sherman Mazur’s
6 List of Affirmative Defenses that [He] Intends to Proceed with at Trial.” That list included as an alleged
7 affirmative defense the contention that “The Plaintiff [Realwealth] lacks standing to sue in this action
8 because Plaintiff has no right, title, or interest in the judgment upon which this action is based.”

9 The trial court in the Creditor’s Suit heard sworn testimony from Mazur on this specific issue
10 as to the assignment and renewal issues.

11 That court held in its August 23, 2005 Statement of Decision that Realwealth was in fact the
12 holder of the Judgment.

13 The judgment in that case has become final.

14 On October 24, 2005 Realwealth in this *Page v. Tatco* case commenced post-judgment debtor
15 examinations of both Mazur and his wife, Michelle Mazur.

16 Those discovery efforts were resisted by both Mazurs, who finally sought and obtained a
17 temporary restraining order entered on May 25, 2006 staying document production pending the hearing
18 on Mazur’s Motion to Vacate Renewal of Judgment and Quash Enforcement Proceedings, which had
19 been filed on May 18, 2005. The Motion to Vacate Renewal of Judgment and Quash Enforcement
20 Proceedings was denied on July 24, 2006. The appeal was taken by Mazur from the July 26, 2006
21 Order, claiming that the judgment against him is unenforceable because it was not timely renewed.

22 If Mazur is successful on appeal, the judgment against Mazur may no longer be enforceable and
23 therefore no proceeds may be recovered by Realwealth.

24 **Proposed Sale**

25 Trustee seeks approval for the sale of the bankruptcy estates’ 40% interest of collections by
26 Realwealth on the judgments in Page v. Tatco and Page v. Mazur to Realwealth for \$100,000 or to any
27 qualified overbidder. Because Realwealth’s collections are on a non-dischargeable judgment from post-
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1 petition acquired assets and because both Debtors claim that their assets are community property,
2 Trustee will credit each of the administratively consolidated cases with one-half of the sales proceeds.

3 **Terms of Sale and Overbid Procedures.**

4 All property is being sold as is, where is, without any guaranty or warranty.

5 Trustee suggests that the initial overbid is at least \$105,000, with further bids in increments of
6 \$5,000 or more.

7 In order to qualify for bidding, a prospective overbidder must bring to court at the time of the
8 hearing a cashiers check made payable to Duke Salisbury, Chapter 7 Trustee in the amount of \$105,000.

9 The successful overbidder must make a non-refundable deposit of \$105,000 of a bidder's
10 successful bid by cashiers check at the time of sale, and pay the balance by cashiers check, or money
11 order within 48 hours of the sale.

12 In view of the compelling business reasons for the sale of the proposed liquidation sales'
13 satisfaction of the procedural and substantive requirements of Section 363(b), the Trustee submits that
14 the proposed overbid procedures should be approved and that the Court approve Trustee's Motion to
15 Sell Property of the Estate pursuant to Section 363(b) of the Bankruptcy Code to Realwealth or to a
16 successful overbidder, which the proceeds of the sale to be equally divided between the two bankruptcy
17 estates.

18
19 Dated: August 4, 2007

LEWIS BRISBOIS BISGAARD & SMITH LLP

20
21
22 By 

ANNIE VERDRIES

Attorneys for Chapter 7 Trustee, Duke Salisbury