

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: Bankruptcy No. 04-27848-MBM
ACR MANAGEMENT, L.L.C., et al.,

Debtors. Chapter 11

ACR MANAGEMENT, L.L.C., et al., (Jointly Administered)

Movants, related to document #144

v.

NO RESPONDENT.

**EQUITY HOLDER OBJECTION TO EMPLOYMENT OF PROFESSIONALS
IDENTIFIED IN DOCUMENT #410**

AND NOW, comes Frank Hanjorgiris, an equity holder, and files the within Objection to the engagement of the professionals identified in document #410, generally, and especially to the employment of Meyer, Unkovic, & Scott, LLP, as follows:

A. GENERAL OBJECTIONS

1. The employment of the identified professionals fails to set forth the anticipated monthly fees or any information as to compensation to be paid. This is in violation of this Court's directive on July 13, 2004 set forth in the transcript filed at document #288 beginning at page 14, line 8 through page 15, line 10.

**B. ESTOPPEL BARS THE DEBTOR FROM PURSUING THE CLAIMS
DESCRIBED IN THE ENGAGEMENT OF MEYER, UNKOVIC, & SCOTT, LLP**

2. Meyer, Unkovic, & Scott, LLP was engaged to pursue litigation against Frank Hanjorgiris in the Court of Common Pleas of Allegheny County, Pennsylvania in 2002 to enforce Notes Receivable Frank Hanjorgiris gave to the Debtor as part of the 1998 recapitalization of the Debtor. The litigation was discontinued in 2003 following Preliminary Objections.

3. In 2004, the litigation was reinitiated as an arbitration proceeding, and Frank Hanjorgiris asserted defenses that the enforcement of the Notes Receivable is not legally permissible under the agreement of the parties to the 1998 recapitalization.

4. Consistent with this defense, the Debtor did not list the Notes Receivable on its schedules of assets.

5. Additionally, this Court should be aware that:

- a. There are other parties to the 1998 recapitalization who also signed Notes.
- b. Some of these others are former executives of the Debtor and some of the others currently are officers, executives and insiders of the Debtor.
- c. None of the other Notes signed were listed as assets of the Debtor's estate.
- d. None of the others have been sued to the knowledge of Frank Hanjorgiris.

6. The Debtors' failure to schedule the Notes Receivable allegedly owed by Frank Hanjorgiris as assets of the Debtors' Estate, and the failure of the Debtor to list any Notes Receivable from its past and current officers, executives and insiders is an admission that there are no claims against Frank Hanjorgiris or the others which may be legally enforced. Hence, the Debtor is barred from engaging attorneys to pursue such claims.

**C. THE SERVICES DESCRIBED FOR MEYER, UNKOVIC, & SCOTT, LLP TO
PERFORM ARE NOT "ORDINARY COURSE" LEGAL SERVICES**

7. The intended engagement of Meyer, Unkovic, & Scott, LLP is not the engagement of a professional in the ordinary course of business.

- a. The identified description of services of "collection matters; Ray Anthony litigation; Frank Hanjorgiris litigation" are not really collection matters in the ordinary course.
- b. If the so called "collection" claims to be pursued were claims in the ordinary course, one would think the collection claims would have been scheduled with other ordinary course receivables, but they were not scheduled at all and are likely not "officially" on the Debtors' books.

- c. Neither the proposed litigation against Ray Anthony nor Frank Hanjorgiris arises from trade receivables from rental transactions, or from damage to equipment rented, as "ordinary course" claims were described at the July 13, 2004 hearing on the related Motion at document #211.
- d. As this Court is aware from prior hearings, the Ray Anthony litigation is not a collection matter but litigation arising from the 1998 recapitalization and/or follow up transactions. Relief from Stay has already been obtained by the Debtor to pursue this litigation so the subject matter of the litigation moving forward is not an issue, but an appropriate application for employment of the professionals is at issue because this is not litigation in the ordinary course.
- e. Likewise, the proposed litigation against Frank Hanjorgiris is not litigation in the ordinary course. This proposed litigation supposedly arises from disputes concerning the terms and conditions of the 1998 recapitalization. If this were litigation in the ordinary course, then in

addition to litigation being commenced against Frank Hanjorgiris, there would also be litigation commenced against a number of other insiders and executives of the Debtor similarly situated. CEO Art Inamorato does not want to sue himself or his fellow officer and executive insiders in the normal course.

8. So that this Court is aware of the Debtor's shenanigans with respect to Frank Hanjorgiris:

- a. The pre-petition litigation history is described above against Frank Hanjorgiris is incorporated herein.
- b. The pre-petition and post-petition failure of the Debtors to initiate similar so-called collection litigation against its own past and current officers, directors and insiders is incorporated herein.
- c. Additionally, the Court should be aware that after the 1998 recapitalization, which included the buy out of Ray Anthony, Frank Hanjorgiris saw a series of managers who were incompetent (clueless) in managing the Debtors' core business of equipment rental. Frank Hanjorgiris then left

the Debtors to work in the same industry elsewhere, performing job duties which he believes are non-competitive.

- d. After time passed, and the Debtors were hurting financially, President Art Innamorato invited Frank Hanjorgiris to rejoin the Debtors in an effort reverse the financial decline. Frank Hanjorgiris knew that President Art Innamorato was a lawyer, not an equipment lessor, and declined to return.
- e. In response, President Art Innamorato stated in sum and substance that he would "destroy" Frank Hanjorgiris. Thereafter, President Art Innamorato singled out Frank Hanjorgiris for litigation to collect on Notes which President Art Innamorato, as general counsel to the Debtor, in 1998, specifically advised Frank Hanjorgiris that the Notes would not be the subject of collection.
- f. Frank Hanjorgiris has information that the Debtors forgave Notes signed by at least two other executives of the Debtor as a part of the 1998 recapitalization.

9. Only professionals performing services in the "ordinary course" may be engaged through a Notice related to Document #144. Meyer, Unkovic, & Scott, LLP, or any other professional, must submit a normal application for employment to be engaged to perform services not related to providing services in the ordinary course of the Debtors' business.

10. If there is to be a collection effort of unpaid Notes Receivable arising from the 1998 recapitalization, a law firm independent of the influence of the Debtors' insiders should be engaged to conduct the collection because the prosecution of such collection should include collection against all current officers and executives, and consideration should be given to the use of the Fraudulent Conveyances Act to void any transaction in which a Note Receivable was cancelled without consideration at a time when the debtor was insolvent.

WHEREFORE, it is requested that this Honorable Court issue an Order requiring the disclosure of information agreed to be provided and information supporting the existence of claims of the Debtor against insiders as set forth above.

D. THE ENGAGEMENT OF LAWYERS TO PURSUE THE CLAIMS DESCRIBED AGAINST FRANK HANJORGIRIS IS PREMATURE BECAUSE RELIEF FROM STAY MUST BE GRANTED FOR THE ARBITRATION PROCEEDING TO MOVE FORWARD

11. The American Arbitration Association halted the proceedings against Frank Hajorgiris upon receiving the Notice of Bankruptcy from Meyer, Unkovic, & Scott, LLP.

12. Relief from Stay is required, inasmuch as the policy of the American Arbitration Association appears to be that it halts consideration of any proceeding before it when there is a bankruptcy.

13. Moreover, Relief from Stay is really required because there is a potential award of attorney fees to the prevailing party. The litigation should not proceed piecemeal or disjointed.

Wherefore, it is requested that the retention of the professionals in Document #410 be denied.

Respectfully submitted,

/s/ John M. Silvestri
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CERTIFICATE OF MAILING OF NOTICE
OR OTHER DOCUMENT TO PARTIES IN INTEREST

I, John M. Silvestri, Esq., certify under penalty of perjury that I mailed a copy of the **EQUITY HOLDER OBJECTION TO EMPLOYMENT OF PROFESSIONALS IDENTIFIED IN DOCUMENT #410**, to the parties at the addresses below on August 31, 2004.

The total number of copies sent was 5.

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