

U.S. COURTS

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RECEIVED

The Honorable Terry L. Myers
Chapter 7

1 John R. Rizzardi, WSBA No. 9388
2 Admitted Pro Hac Vice
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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF IDAHO

10 In re:

NO. 02-20218

11 FRANK L. CHAPIN and SYDNEY
12 GUTIERREZ-CHAPIN,

DECLARATION OF JOHN R. RIZZARDI IN
SUPPORT OF REPLY OF DR. FREDERICK
A LEAF

13 Debtor.

14 I, John R. Rizzardi, under the penalty of perjury under the laws of the State of Washington,
15 declare as follows:

16 1. My name is John Rizzardi and I make this Declaration in Support of the Reply to
17 the Response to the Motion for Order Clarifying Inapplicability of Automatic Stay filed by Dr.
18 Frederick Leaf.

19 2. I have personally had several telephonic discussions with Jim Magnuson, the
20 attorney for the trustee, Barry Zimmerman. During a discussion on September 15, 2003, Mr.
21 Zimmerman participated in the telephone call. It was during that call that Mr. Magnuson and
22 Mr. Zimmerman indicated they needed "additional time" to evaluate the issues raised by Dr.
23 Leaf as to why the stay would not apply to the Non-Debtor Entities. Thus, by the time of the

{00178516.DOC;1}

DECLARATION OF JOHN R. RIZZARDI IN
SUPPORT OF REPLY OF DR. FREDERICK A
LEAF - 1

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1 hearing on October 29, 2003, they will have had six weeks to conduct their investigation.
2 Neither one of them has sent me any follow up letters or made any telephonic inquiries
3 concerning the issues presented by this Motion.

4 3. As a follow up gesture, I sent Mr. Magnuson a full copy of the document that purports
5 to be the Trust Agreement for the Hoodoo Mountain Ranchette Trust. Since that mailing, Mr.
6 Magnuson has never called me about the document or with questions concerning the Trust.

7 5. Mr. Zimmerman has had the opportunity to question the Debtors at the First
8 Meeting of Creditors on September 18, 2003. Mr. Zimmerman has had the unfettered
9 opportunity to engage in further questioning or investigation. A copy of the understandable
10 portions of the transcript from the First Meeting is attached hereto as Exhibit A, verifying that
11 Mr. Zimmerman did ask questions about the Non-Debtor Entities, presumably to determine the
12 value of the Debtors' interest in those entities.

13 6. As of October 24, 2003, I had received no opposition to Dr. Leaf's Motion from
14 Mr. Magnuson or Mr. Zimmerman.

15 7. During the spring of 2003, I was informed that other actions had been taken by
16 creditors of Non-Debtor Entities Financial Management Services, Inc. and S and F, LLC.
17 Specifically, creditors holding mortgage notes were successful in prosecuting and securing
18 judgments against these Non-Debtor Entities. The Debtors did not assert to this Court that a stay
19 existed to prevent those judgments. A copy of the Judgment and Decree of Foreclosure in one of
20 those actions is attached hereto as Exhibit B.

21 8. There have been no appearances of record or communications to me on behalf of
22 any Non-Debtor Entity in Adversary Proceeding 02-6137.

23 (00178516.DOC:1)

DECLARATION OF JOHN R. RIZZARDI IN
SUPPORT OF REPLY OF DR. FREDERICK A
LEAF - 2

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1 9. On several occasions prior to the date of this Declaration, Bruce Anderson
2 confirmed that his firm did not and could not represent the Non-Debtor Entities. Mr. Anderson
3 did not appear for the Non-Debtor Entities in any proceeding.

4 10. Other than the inquiries from the Chapter 7 trustee, I have never received any
5 form of communication or contact from the Debtors or any attorney for any of the Non-Debtor
6 entities concerning the Idaho action.

7 11. As to the scheduling of this Motion, our firm noted the Motion for hearing on
8 October 29, 2003. This was confirmed with the Court's clerk, and a letter confirming same was
9 sent to Bruce Anderson. No response was received from Mr. Anderson controverting the
10 scheduling.

11 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
12 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

13 Dated this 24th day of October, 2003 at Seattle, Washington.

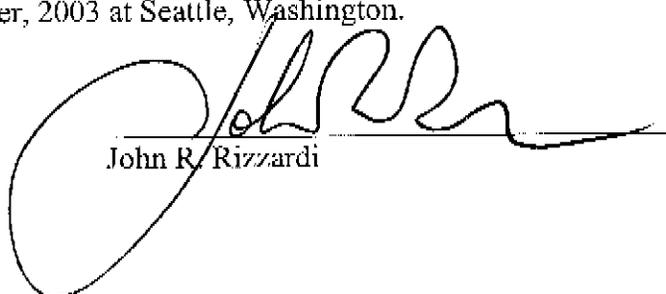
14
15 
16 John R. Rizzardi

EXHIBIT A

TRANSCRIPT OF 341A MEETING

Zimmerman: Good morning. My name is Gary Zimmerman. On behalf of myself and Mr. Elsaesser, we've been appointed trustees by the Office of the United States Trustee, a component of the Department of Justice. The debtors are here today because they're required to be examined under oath with respect to the petitions and schedules required. Just a few things about your Chapter 7. You and your attorney should have gone over an informational sheet provided by the Office of the United States Trustee regarding this meeting, your duties as a debtor and your options of bankruptcy. If you've not done that, be sure and let Mr. Elsaesser and myself know and come forward. In the mail, you have received a tax turn-over order. This tax turn-over order, this tax turn-over order requires that you provide the Trustee's Office with signed, dated copies of your 2003 tax return when you file it. So when you file your tax return, be sure and get the Trustee's Office a copy of it. Your case most likely will remain open until that tax return is filed. So you're to file that tax return or failure to file any prior years' tax returns may jeopardize your ability to get a discharge so be sure and file those timely. This meeting is electronically recorded and we'll have the debtors come to the table on my left. Prior to being seated, you'll need to come to our assistant here in the front and identify yourselves with some type of picture ID and proof of your social security number. Failure to cooperate with the Trustee or the United States Trustee or failure to submit required information to the court constitutes grounds for dismissal and denial of any discharge. Okay.

Assistant: Did you want them to show picture ID?

Zimmerman: Yeah, they need to do that.

Assistant: Okay.

Zimmerman: The case of Frank and Sydney Chapin.

Several: [Sydney and Frank Chapin whispering together] I have to come up. Fine. _____ certificate _____ social security cards _____ said that you could bring these. Social security _____ statements. Does it you're your social security number on it? It just shows the last four digits _____. We need the full social security number. This doesn't do it? Yeah, not with us, but we can have it faxed down to us. _____

Zimmerman: _____ your social security numbers to my office.

F. Chapin: Okay. _____ copy of the tax return.

Assistant?: Right.

F. Chapin: Okay, we can do that.

S. Chapin: Okay. Thanks. _____ No. Thank you.

Assistant?: Gary, this is converted case and I really didn't have any clue to the _____.

Zimmerman?: Okay. _____ This is the case of Frank and Sydney Chapin. Sydney Gutierrez-Chapin. Would you raise your right hands please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

S. Chapin: Yes.

F. Chapin: Yes.

Zimmerman: You want to _____ schedules or anything?

F. Chapin: Well, I just wanted to let you know that we haven't filed the final report with the _____ and we'll be discussing updates _____.

Zimmerman: Okay. _____ what's going to happen. _____ Okay. First of all, are there any creditors appearing in this matter? In your Chapter 11 schedules, there was mention of some livestock? There was horses, cattle. Do you still have any of that?

F. Chapin: The cattle were sold. We provided an accounting prior on that.

Zimmerman: And who did you provide that to?

F. Chapin: To Mr. Anderson. Well, it was required to amend one of the monthly reports that we had done because it had been left the original.

Zimmerman: Are all of the cattle sold?

F. Chapin: All the cattle are sold.

Zimmerman: Okay, how about the horses?

F. Chapin: We have somewhere around 18 or 20 horses.

Zimmerman: What kind of, kind of horses are they? What breed?

F. Chapin: Quarter horses mainly. There's some grade horses also.

Zimmerman: What, what I need to have you do is we, you know, we can't describe it just as 18 horses. I'd like you to give me a specific breed, sex, ...

F. Chapin: I can, because most of them are registered _____

Zimmerman: Okay, if you'd do that, and then a value that you would place on those registered horses. The cattle were sold _____ livestock?

F. Chapin: Yes, they were.

Zimmerman: Okay. Now, all of the cattle were sold then?

F. Chapin: They were sold at three different times, but they're all gone, yes.

Zimmerman: And do you know what the total amount was that you received for that?

F. Chapin: _____ 30, it's 30 some thousand I believe.

Zimmerman: Thirty something ...

F. Chapin: I don't have that number in front of me.

Zimmerman: Okay. _____ What did you do with that money?

F. Chapin: There's a breakdown of where it was used.

Zimmerman: Do you have any funds that you're holding in either, personally or in your professional association in trust for anybody at this time?

F. Chapin: No. I say "no", I'm a trustee on a couple of estates, but I don't know if that's what you're asking.

Zimmerman: Okay, do you have, okay, now what estates are they?

F. Chapin: It's the estate of Gladys Harry.

Zimmerman: And approximately how much do you have in that?

F. Chapin: That's, I think, it was like \$141,000, \$140,000, something like that.

Zimmerman: And the other one?

F. Chapin: It's the estate of Paul Van Schravendyk.

Zimmerman: And how much is in that?

F. Chapin: I think that's somewhere around \$50,000, but _____ be eighty, it's about \$81,000 because there's a contract.

Zimmerman: And what banks would those be in?

F. Chapin: Well, on Gladys Harry, they're in an annuity and two _____ bonds so they're not with banks, they're with the individual companies.

Zimmerman: How about Mr. Van Schravendyk?

F. Chapin: There's a real estate contract and then there's some monies that's in an annuity that's used to take care of his wife.

Zimmerman: Were those, was that real estate contract in existence before, before you became trustee of that estate?

F. Chapin: No.

Zimmerman: Is that something you with estate funds purchased?

F. Chapin: Yes. That was listed on our Chapter 11 petition.

Zimmerman: How did you come to the value of your professional association? How did you value that? You have an estimated value of \$37,000.

F. Chapin: Oh, that would have just been the machines and equipment, furniture.

Zimmerman: Any receivables?

F. Chapin: Probably at this time there is very little.

Zimmerman: Do you still have a New York Life high-yield bond valued at \$8,000?

F. Chapin: I never did. Oh, that must be my wife's.

Zimmerman: Do you still have that?

S. Chapin: We had to cash some of it in order to pay attorney fees.

Zimmerman: Do you have any of it left?

F. Chapin: I believe there is somewhere between two and three thousand left in that high-yield bond as an IRA.

Zimmerman: You have, you've listed ownership in Financial Management Services valued at \$400,000. How did you arrive at that value?

F. Chapin: That was the real estate contracts. Financial Management Services sold to S and F, LLC some real estate and that figure would comprise the contract _____ mortgage balances on those pieces of real estate.

Zimmerman: Okay, is there anything left in Financial Management Services at this time?

F. Chapin: Well, the real estate is still there.

Zimmerman: Okay, now you just said you transferred it to S and F. Did you transfer from S and F to Financial Management.

F. Chapin: No. Financial Management Services had bought certain real estate and then we created a limited liability company and then Financial Management Services sold to S and F, the limited liability company, these properties.

Zimmerman: Okay, so the physical deeds are in S and F, but the contracts are in ...

F. Chapin: That's correct.

Zimmerman: Okay.

F. Chapin: That, that value is something that we're going to look at. I'm substantially over

Zimmerman: Do you own a company called Moment LLC?

F. Chapin: My wife does.

Zimmerman: And what is that?

S. Chapin: I formed this company because some day I wanted to sell my photography and make prints and that kind of thing so I formed this company with my daughter and it at this point is not active. It's been in existence approximately two years and it's filed zero amounts on tax returns.

Zimmerman: Okay, this company have any assets?

F. Chapin: No, it doesn't.

Zimmerman: You list a life interest in Hoodoo Mountain Ranchette at, estimated at \$20,000?

F. Chapin: Yes.

Zimmerman: Can I get copies of that documentation?

F. Chapin: A copy of the trust?

Zimmerman: Yes, yes. Now, your, your home, who has the title to your home?

F. Chapin: It's paid off.

Zimmerman: Okay, but is it fee simple ownership in ...

F. Chapin: Oh no, it was mine before we married.

Zimmerman: So you are the fee simple owner of your home.

F. Chapin: The deed is in my name, yes.

Zimmerman: Do you have, have you got that listed or have you made arrangements to sell that?

F. Chapin: No.

Zimmerman: How many acres is that?

F. Chapin: Eight.

Zimmerman: And you estimated the value at, I think it was \$150,000? How did you value that?

F. Chapin: Well, we went off the county assessment sheet.

Zimmerman: How about your tax returns? What, what do you have outstanding in the way of unfiled tax returns?

F. Chapin: On the Chapin, P.A. and FMS, I think that we have to file '94, 5 and 6, I think it's '97 through 2002. And on our personal it would be '94 through 2002. The reason for that is that we have been involved with ongoing IRS litigation and we were supposed to have a U.S. Tax Court trial in April, I believe, of 2002, but it's been set aside because of these proceedings.

Zimmerman: Okay, it's been set aside, but you mean it's been stayed?

F. Chapin: I think that, yes. It's stayed back in mid-August _____ relief from stay to those proceeding. We have been working on them and we feel that we can have them completed up through 2002.

Zimmerman: Can you give me a ballpark date, you know, when _____

F. Chapin: I think, by next month, by the end of October. Some of them will be sooner than that, but all of it should be by then.

Zimmerman: Okay. You want to be sure and file those with Mr. Anderson so they are sent to the proper departments and then give me copies of whatever you file.

F. Chapin: Yes.

Zimmerman: Can I get a list of your receivables that you have? You said you didn't have many?

F. Chapin: Yeah, there's two _____

Zimmerman: _____ aging

F. Chapin: Sure. You want them aged?

Zimmerman: Probably, but _____

F. Chapin: This is easy to do.

Zimmerman: Okay. One other question I need to refer back to, the previous, on these trusts that you have for, for Gladys Harris ...

F. Chapin: Harry.

Zimmerman: Harry and for Mr. Van ...

F. Chapin: Van Schravendyk.

Zimmerman: Are those in separate trust accounts? Are they in the accounts that you have other funds in?

F. Chapin: No. They're separate.

Zimmerman: Okay. On your report of May 31, you indicated that there was approximately \$97,000 owed you. Do you know what that would have consisted of?

F. Chapin: Not off the top of my head. Where is it listed? In May of when?

Zimmerman: Apparently, it's an annual report that you filed?

F. Chapin: Oh, I know what it is. It's, we have, we had rents that we paid and we had rents that we collected and this was between the ranch and the Financial Management-S&M _____. It's kind of hard to explain, but I can give you a breakdown.

Zimmerman: Okay, if you would do that.

F. Chapin: Yes.

Zimmerman: When you were in the Chapter 11, you had a debtor-in-possession account?

F. Chapin: Yes.

Zimmerman: Do you have a print..., do you have that, a computer or some way of printing out the activity in that account for me?

F. Chapin: I can do it, yes.

Zimmerman: And then if I need checks, I'll ask you for the checks.

F. Chapin: Ah, we don't get our checks back.

Zimmerman: They're truncated?

F. Chapin: I'm sorry?

Zimmerman: Their truncated with the bank, the bank keeps them?

F. Chapin: The Bank of America, yes. But the statement makes reference to the check number.

Zimmerman: Okay, then you probably have them registered somewhere on the computer someplace.

F. Chapin: Yes, yes.

Zimmerman: Also, could you give me check registers and print-outs on Financial Management Services, your P.A. and the S&M company?

F. Chapin: Yes.

Zimmerman: Okay.

F. Chapin: For what period of time?

Zimmerman: Let's go back one year.

F. Chapin: Okay.

Zimmerman: Who is Wendy Cataras?

F. Chapin: My daughter.

Zimmerman: Do you have any whole life insurance? Either of you?

F. Chapin: Yes, I think that it has lapsed. I was talking to the agent this week to see the status of it _____.

Zimmerman: Okay. Did you borrow against it?

F. Chapin: Yes.

Zimmerman: When you find out about that, could you let me know?

F. Chapin: Yes.

Zimmerman: Does Financial Management Services have an account with Wells Fargo Bank?

F. Chapin: Yes.

Zimmerman: Now, when you give me the printouts on that, I would need it of all the banks that you bank with for the various entities so if you have more than one account for the entities that would be ...

F. Chapin: Well, like Wells Fargo, we have an account for Financial Management Services, and we also have an account that's called Payroll Systems where we do computerized payroll for clients. It's like a trust account. I would assume that one isn't, what happens is when we do payroll, the client brings in one check, we give them checks for their employees. The check they give us covers the payroll taxes, the employees' payroll and then we make the deposits and we pay the quarterly reports when they're due and that type of thing, like a trust account.

Zimmerman: Do you pay yourself out of that for your services? _____

F. Chapin: Not from payroll.

Zimmerman: Okay. You charge the client separately for that.

F. Chapin: That's just, that's just for dealing with money that comes in from clients on the payrolls that we do for them.

Zimmerman: Who is Carl Chapin?

F. Chapin: My brother.

Zimmerman: Do you have any, you indicate that there a, I guess, it's a partnership called the Eagle's Nest Ranch?

F. Chapin: No.

Zimmerman: Is that his separate property?

F. Chapin: That's not his at all. That was the name of our ranch. It was Sydney's and myself. The only association Carl has with me business-wise is he's the agent with New York Life Insurance and he's the one that handled all my insurance policies over the years. He's also a trustee on Hoodoo Mountain Ranchette Trust. Other than that, he's my brother.

Zimmerman: Okay. Do you have an ownership in a pole barn out on Duffer Road? Or off of Duffer Road like the main road? Or do you have any equipment there?

F. Chapin: There's some equipment stored there, yes.

Zimmerman: Okay. Who are the people that own the building?

F. Chapin: Jay and Nancy Whitson.

Zimmerman: Okay. Are they any relation to you?

F. Chapin: No. Just good friends.

Zimmerman: And all of that equipment is listed?

F. Chapin: If it's under S and F so it's not listed in the petition, no.

Zimmerman: What kind of equipment is it?

F. Chapin: It was some of the farm equipment that we had to move off when we had to give the farm back.

Zimmerman: I believe that's all the questions I have for now. If I have anything else, I will be in touch. I'll probably, _____.

EXHIBIT B

CATHERINE L. DULLEA, CHTD.
 Attorney at Law
 101 N. Fourth Avenue, Suite 204
 Sandpoint, ID 83864
 Phone: (208) 265-2276
 Fax: (208) 265-1556
 State Bar #5309
 Attorney for Virginia C. Glabb

STATE OF IDAHO)
 County of Bonner)
 FILED 02/18/03
 AT 4:01 O'Clock P M
 CLERK, DISTRICT COURT

 Deputy

619174

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

VIRGINIA C. GLABB, a widow,)
)
 Plaintiff,)
)
 vs.)
)
 FINANCIAL MANAGEMENT)
 SERVICES, INC., an Idaho,)
 corporation, and S AND F, LLC,)
 an Idaho limited liability company,)
)
 Defendants.)

Case No. CV-02-01051

JUDGMENT AND DECREE
OF FORECLOSURE

FILED BY
 2007 FEB 24 11 P 4: 02
 MARIE SCOTT
 BONNER COUNTY RECORDER
 DEPUTY

WHEREAS, it appears and the Court finds:

In this action, personal service on the above-named Defendants, having been duly made, and said Defendants having failed to appear and answer Plaintiffs' Complaint, and the Default of said Defendants having been duly and regularly entered,

NOW, THEREFORE, on application of Plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiff takes a money judgment against Defendants FINANCIAL MANAGEMENT SERVICES, INC., an Idaho corporation, in the sum of \$276,399.12 (Two Hundred Seventy Six Thousand Three Hundred Ninety Nine and 12/100 Dollars), plus interest from February 10, 2003, which includes:

Principal balance	\$244,681.96
Interest 8/30/01-2/10/03	28,423.51
Title Report	1,025.00
Default Fees	150.00
Filing Fees	77.00
Payment of 1999 real property taxes (paid 8/16/02)	1,055.00
Interest on tax payment, 8/16/02-2/10/03 @ 12%	62.65
Recording Fees, Lis Pendens	6.00
Service of Process	25.00
Certification & Recording Judgmt.	15.00
Writ	2.00
Attorneys fees	876.00

PLUS interest on the principal balance in the sum of \$53.98 per day (\$53.63 for interest on the principal balance plus \$.35 for interest on the payment of the 1999 real property taxes) for each day after February 10, 2003, until the date of judgment, for a total judgment amount of \$ 276,830.96, PLUS interest at the legal judgment rate in Idaho from the date of judgment until paid in full or until Sheriff's sale.

2. The Bonner County Sheriff is ordered to conduct a sale of the following described real property:

The East half of the Southwest quarter, Government Lots 5 and 6 and the Northwest quarter of the Southeast quarter, all in Section 34, Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho. LESS the Spokane International Railroad right-of-way. ALSO excepting therefrom a 40 foot strip of land deeded to Drainage District #7 by Quitclaim Deed recorded April 29, 1925 as Instrument No. 61034.

and to apply the proceeds of the sale to the payment of the costs of the suit, expenses of sale, and the amount due to Plaintiff as set forth above.

3. If it appears from the Sheriff's Return that the proceeds are insufficient, and a balance remains due, then judgment shall be docketed for such balance against Defendants FINANCIAL MANAGEMENT SERVICES, INC. and S & F, LLC, as being personally liable for the debt.
4. All Defendants in this action, to wit, FINANCIAL MANAGEMENT SERVICES, INC., AND S & F, LLC, and every person whose conveyance or encumbrance is recorded subsequent to the filing of the Lis Pendens in this action, are forever barred and foreclosed of all right, title and interest, claim or lien, excepting any redemption rights provided by law, in and to the real property described above.
5. Plaintiff may become a purchaser of the real property at the Sheriff's Sale.

- 6. The Bonner County Sheriff shall execute a Sheriff's Certificate to the purchaser of the real property at the Sheriff's Sale, and a Sheriff's Deed upon expiration of the redemption period.
- 7. The purchaser of the real property at the Sheriff's Sale shall be let into possession of the real property upon production of the Sheriff's Certificate to the real property.

DATED this 18 day of February, 2003.

JOHN T. MITCHELL

JS
JOHN MITCHELL, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 24 day of Feb., 2003, as follows:

CATHERINE L. DULLEA
Attorney at Law
101 N. 4th Ave., Ste. 204
Sandpoint, ID 83864

FINANCIAL MANAGEMENT SERVICES, INC.
P.O. Box 1997
Sandpoint, ID 83864

S AND F LLC
2872 Hoodoo Mountain Road
Priest River, ID 83856

JOHN A. FINNEY
Attorney at Law
Finney and Finney, P.A.
120 E. Lake Street, Suite 317
Sandpoint, ID 83864

STATE OF IDAHO
County of Bonner

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof now on file in this office. Witness my hand and seal of said Court on this,

the 24 day of February 2003

MARIE SCOTT, Clerk

By Josann Mullenhoff Deputy



Josann Mullenhoff
DEPUTY CLERK