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DISTRICT OF IDAHO

1 John R. Rizzardi, WSBA No. 9388
2 Admitted Pro Hac Vice
3 Cairncross & Hempelmann, P.S.
4 524 Second Avenue, Suite 500
5 Seattle, WA 98104-2323
6 Telephone: (206) 587-0700
7 Facsimile: (206) 587-2308

The Honorable Terry L. Myers
Chapter 11
Hearing Date: July 8, 2003
Hearing Time: 9:30 a.m. PDT
10:30 a.m. MDT
Responses Due: June 27, 2003

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF IDAHO

FILED
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In re:

NO. 02-20218

FRANK L. CHAPIN and
SYDNEY L. GUTIERREZ-CHAPIN,
Debtors.

MOTION OF FREDERICK A. LEAF FOR
CONVERSION (11 U.S.C. § 1112 (b))

Frederick A. Leaf, M. D., creditor herein and a plan proponent, ("Leaf"), by and through his attorneys Cairncross & Hempelmann, P.S., herchy moves this Court for the entry of an Order converting this proceedings to a case under Chapter 7.

A. Background.

1. This Motion is brought pursuant to 11 U.S.C. § 1112 (b) (1), (2) and (3) and other applicable sections of the Bankruptcy Code that may be invoked by the Debtors' pre and post petition conduct or failure to act.

2. The basis for requesting relief is set forth in this Motion, and supporting pleadings, and the records and files of this Bankruptcy Proceeding, including any supplemental

1 evidence may be submitted in support of this Motion by the moving party or any other party in
2 interest.

3 3. The Debtors filed this voluntary Chapter 11 proceeding but have not yet obtained
4 confirmation of a plan of reorganization.

5 4. There is no unsecured creditors' committee in this case.

6 5. The Debtors have failed to adhere to their fiduciary responsibilities to their
7 creditors and obligations to this court as shown by at least the following items:
8

9 a. The Debtors have not filed their tax returns for at least the prior eight years.

10 During the course of this proceeding, the Debtors assured Leaf that the tax returns would first be
11 filed by May 31, 2003. The returns were not filed nor was any explanation provided as to the
12 reason for failure to file as promised. The Debtors promised again to file their returns by June 6,
13 2003. Again, without explanation, the Debtors failed to meet their self-imposed obligation. The
14 Debtors now indicate they will file their returns on or before July 8, 2003.

15 b. The Debtors, without an order from this Court, have sold and converted over
16 \$50,000 of cattle to their personal benefit, and have presumably used the funds, depriving their
17 creditors of the value of such assets.

18 c. The Debtors have not accounted for the "Van Schranvendyk" funds being
19 managed by the Debtor, Frank Chapin. On information and belief, these funds may be in the
20 amount of \$400,000, and the Debtors have had over six weeks to voluntarily account for such
21
22
23

1 funds. Again, the Debtors promised to account for such funds on two previous deadlines, yet
2 nothing has been received.

3 d. The Debtors are engaging in actions of unreasonable delay. The filing of tax
4 returns, the accounting for the Van Schravendyk funds, and the need to participate in the process
5 of reorganizing are concepts that are presumably of no meaning to these Debtors. As an
6 example, the Debtors agreed to the May 31 filing of tax returns and the accounting for the Van
7 Schravendyk funds so that such issues would be put to rest before the June 9, 2003
8 confirmation hearing. Then, counsel for the Debtor informed Leaf's counsel the Debtors are
9 "out of town" and could not participate in the June 9 hearing or any negotiations or discussions.
10 As evidenced by their cavalier behavior toward their creditors¹, the Debtors have no serious
11 intention to resolve this case.
12

13 e. The Debtors' pre-petition activities suggest that the Debtor Frank Chapin prefers
14 a life apart from acting responsibly and in the best interests of his creditors and his clients. The
15 Debtors are consistent and predictable in their failure to account, failure to follow court orders
16 and propensity for being contemptuous of the power of courts. The following excerpts are taken
17 from pages 4 to 13 of the court approved Disclosure Statement submitted by Leaf and the
18 Debtors:
19

20 Upon receipt of the (New York Life) check (for \$748,809.14), the **Debtor**
21 **deposited the check into the Estate of Christina Leaf's account at Panhandle**
22 **State Bank. Immediately thereafter, however, the Debtor withdrew the funds**

23 ¹ Nothing in this Motion should be construed to suggest that Debtors' counsel has done anything but make best efforts to efficiently resolve these proceedings.

1 *from the Estate's account and deposited the funds into a pooled bank account* at
2 Panhandle State Bank in the name of the Debtor's wholly owned corporation,
3 Financial Management Services, Inc. ("FMS"). Dr. Leaf alleges he did not have
4 knowledge of the withdrawal and deposit by the Debtor.

5 In 1998, the pooled account was transferred to Horizon Credit Union, at
6 which time the Debtor established a series of pooled bank accounts to which over
7 \$748,809.14 in cash was transferred from the Estates of Wilbur A. Leaf and
8 Christina Leaf.

9 For a period of years beginning on or about 1996, Leaf alleges the *Debtor loaned,*
10 *transferred or otherwise made the funds of the Estates available to various third*
11 *parties*, including but not limited to the Debtor's wholly owned businesses and
12 irrevocable trust, FMS, S and F, LLC, Frank L. Chapin, P.A., and Hoodoo
13 Mountain Ranchette Trust. The Debtor executed various promissory notes on
14 behalf of FMS evidencing some of these loans.

15 *The Estates' funds were used to purchase and/or maintain various real*
16 *properties, machinery, equipment, vehicles and supplies in the name of the*
17 *Debtor's businesses and trust.* The funds paid down-payments, mortgage
18 obligations, lease payments, taxes, costs of maintenance and improvements,
19 supplies and other expenses incurred in the operations of the businesses and trust.
20 Under the Plan, these properties are designated as Constructive Trust or CT
21 Properties, and are segregated from the Debtors' own assets.

22 On or about November 1998, the Debtor formed S and F, LLC ("S and F")
23 for the primary purpose of holding the real estate and equipment. In April 2000,
the Debtor began transferring certain CT Properties and other assets, consisting of
real estate and equipment to S and F. S and F is currently in possession and
control of the majority of the real properties, machinery, equipment and vehicles.
The Hoodoo Mountain Ranchette Trust is currently in possession and control of a
commercial building and real estate located in Sandpoint, Idaho.

It is estimated that the combined fair market values of the Debtor's
property and the CT Properties (which may consist of real properties, machinery,
equipment, vehicles, and supplies purchased with the Estates' funds) may exceed
two million dollars and generate over \$150,000 of gross income annually.

Only \$170,000 of Estate funds were accounted for and transferred from
Defendant FMS to the current personal representative of the Estate of
Christina Leaf, Joseph Delay. Of the original \$748,809.14 of New York Life
funds transferred from the Estate of Christina Leaf to FMS, \$578,809.14 is
unaccounted for and remains in the possession and control of FMS, S and F,
Frank L. Chapin, P.A., and/or Hoodoo Mountain Ranchette Trust, subject to
the rights of the Beneficiaries who assert that a constructive trust should be
imposed by this Plan upon such assets or proceeds of such assets. It should be

1 noted that the Debtors, Dr. Leaf and the Beneficiaries have not yet agreed on what
2 properties and assets should belong to the Constructive Trust. Under the Plan, a
3 procedure will be implemented for deciding what properties should belong to the
4 Constructive Trust.

5 Substantial litigation, as detailed below, has been commenced. The
6 primary and distinct issues alleged in the various litigation cases can be generally
7 described as (1) Whether the personal representative(s) were or were not
8 negligent in their treatment of the disbursements from the Wilbur Leaf estate, and
9 (2) whether or not the Debtor came into possession of properties or funds
10 rightfully belonging to third parties.

11 In April 2001, in an attempt to recover the Estate's funds, attorney William
12 Schroeder, on behalf of the Beneficiaries of the Estate of Christina Leaf, began
13 filing various petitions *In the Matter of Christina Leaf*, Cause No. 96 4 00617-5.

14 ***On May 4, 2001, the Debtor entered into a Stipulation and an Agreed
15 Order was filed, whereby the Debtor agreed to provide Estate documents to the
16 Beneficiaries by May 15, 2001. The documents were not produced, and on
17 June 27, 2001, the Court entered an Order which, in part, revoked the Order of
18 September 3, 1996 permitting the co-personal representatives to serve without
19 bond, required the co-personal representatives to post security in the amount of
20 \$1,250,000 and held the Debtor in contempt of Court.***

21 The Debtor did not comply with the terms of the Order dated June 27,
22 2001, and on November 16, 2001, the Court ordered the Debtor to: (1) provide to
23 the Beneficiaries a detailed and complete affidavit of his assets; and (2) pay back
to the Estate all assets loaned to the Debtor's service company, FMS.

On October 29, 2001, the Beneficiaries filed a civil complaint against the
Debtor and Dr. Leaf to recover the Estate's funds taken by the Debtor. This
matter, currently pending in the Spokane County Superior Court, is entitled
American Lutheran Church, et al., v. Chapin, et al., Cause No. 01 2 06413-9.
Leaf filed cross-claims in this action against the Debtor, but the adjudication of
those claims were stayed by this Chapter 11 proceeding.

***The Debtor failed to comply with the terms of the Order dated November
16, 2001. On February 15, 2002, the Court found that the Debtor failed to
comply with the Court's orders and set a contempt hearing for February 22,
2002. The Debtor failed to appear at the contempt hearing before the
Honorable Neal Q. Rielly and a Bench Warrant was issued for his arrest.
(Emphasis added)***

f. The Debtors have not filed a monthly financial report with this court since
February 2003, and the reports they have filed have been incomplete. They did not answer

1 questions 4, 5 or 6 in their January/February combined report, and did not report the sale of the
2 significant assets (the cattle). The Debtors are now delinquent for the months of March, April
3 and May, 2003. Furthermore, the Debtors have not disclosed that their interest in "S and F,
4 LLC" may have been substantially diminished due to the judicial foreclosure sales of two
5 valuable parcels of real estate, the "Glabb ranch" and the "Linden" properties. While the owner
6 of these parcels presumable has a right of redemption as to these properties, the Debtors, as the
7 owners of the membership interest in S and F, could reasonably assume such significant events
8 should be disclosed to their creditors.
9

10 B. Conversion of Case.

11 g. A chapter 11 case can be converted to a case under chapter 7 for "cause". 11
12 U.S.C. § 1112(b). "Cause" can take many forms and in considering what constitutes cause under
13 section 1112 the Court has the discretion to consider case-specific factors as they arise, and to
14 use its equitable powers to reach an appropriate result in individual cases. *In Re Albany Partners,*
15 *Ltd.*, 749 F. 2d 670, 674 (11th Cir. 1984)(citing the legislative history of § 1112(b)).

16 h. In this case cause exist to convert the case for multiple reasons, including (a) the
17 failure of the Debtors to file tax returns, (b) the failure of the Debtors to preserve and account for
18 their estate and claims against the estate , (c) the failure to act in a responsible fashion for the
19 best interests of their creditors,(d) the failure to file monthly financial statements and the filing of
20 financial statements that may have been misleading (depending upon the date of the sale of
21 cattle). The Debtors' failure is only exacerbated by the fact that Frank Chapin is an accountant.²

22 ² The Debtor Frank Chapin should disclose his current licensing status with the State of Idaho. Leaf is informed that
23 his status has been materially downgraded during 2003, but this significant event has also not been disclosed to the Court.

PROPOSED ORDER

1 John R. Rizzardi, WSBA No. 9388
Admitted Pro Hac Vice
2 Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
3 Seattle, WA 98104-2323
4 Telephone: (206) 587-0700
Facsimile: (206) 587-2308
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8 UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF IDAHO

9 In re:

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

NO. 02-20218

[PROPOSED]

ORDER CONVERTING CHAPTER 11 CASE
TO CHAPTER 7

13
14 On the 8th day of July, 2003, this Court heard the Motion of Frederick A. Leaf, M.D. for
15 the conversion of this proceeding to chapter 7 (the "Motion"), and after considering the Motion,
16 the supporting Declaration, any responses thereto and the arguments of counsel, and the Court
17 finding that notice of the Motion was adequate, and that the Debtors' omissions and actions
18 during this Chapter 11 proceeding constitute "cause" under 11 U.S.C. § 1112(b) to convert the
19 case, the Court will grant the relief requested in the Motion. It is therefore,
20

21 1. ORDERED that the Motion is GRANTED; and it is further
22
23

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ORDER CONVERTING CHAPTER 11 CASE - 1

Cairncross & Hempelmann, P.S.
Law Offices
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
Phone: 206-587-0700 • Fax: 206-587-2308

1 2. ORDERED that this Chapter 11 case is hereby converted to chapter 7; and it is
2 further

3 3. ORDERED that the Debtors shall do the following:

4 a. Immediately turn over to the duly appointed chapter 7 trustee all records
5 and property of the estate under the Debtors' custody and control, as required by Bankruptcy
6 Rule 1019(4);

7 b. Not later than 15 days after the date of this Order, file a schedule of unpaid
8 debts incurred after the filing of their chapter 11 petition and before conversion of the case as
9 required by Bankruptcy Rule 1019(5)(A)(i);

10 c. Not later than 30 days of the date of this Order, file with the Court and
11 transmit to the Office of the U.S. Trustee a final report and accounting of all receipts and
12 distributions made in the chapter 11 case, as required by Bankruptcy Rule 1019(5)(A)(ii).

13 d. Within 15 days of the date of this Order, file the statements and schedules
14 required by Bankruptcy Rules 1019(1)(A) and 1007(b), if such documents have not already been
15 filed; and if is further
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