

FRANK L. CHAPIN  
 SYDNEY L. GUTIERREZ-CHAPIN  
 319 Church Street  
 Sandpoint, Idaho 83864  
 Telephone: (208) 263-5131  
 Facsimile: (208) 263-3390  
 E-Mail: sydney@televar.com

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 CLERK OF DISTRICT COURT  
 S. BURKE  
 IDAHO

**UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF IDAHO**

FRANK CHAPIN and	)	Case No. 02-20218
SYDNEY L. GUTIERREZ-CHAPIN	)	
Debtors,	)	<b>OBJECTION TO SALE</b>
	)	
	)	
	)	
	)	

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COMES NOW Debtors, Frank L. Chapin and Sydney L. Gutierrez-Chapin, appearing pro se, hereby object to the sale proposed in the Notice of Sale dated by Trustee on May 14, 2004.

Previously, on March 16, 2004, Debtors filed a Motion for Order To Stay The Sale of Certain Bankruptcy Estate Assets, ("Motion"). The Court denied this Motion as there was no sale in place before the court at the time the Motion was made. At this time, a sale is in place before the court, namely; the estate's interest in real property and improvements which the debtors refer to as Jachetta 20½ acres +/- in their bankruptcy schedules. This property is described as The North half of the Northwest quarter of the Northwest quarter of Section 10, Township 55 North, Range 4 West, Boise Meridian, Bonner County, Idaho; Excepting Therefrom rights of way of FAS-5780 and FAS-5781.

We understand the bid process will take place on June 7, 2004 at

270

11:00 a.m. at the offices of C. Barry Zimmerman, Trustee. There is an opening bid placed by Martin Stacey in the amount of \$62,300.00.

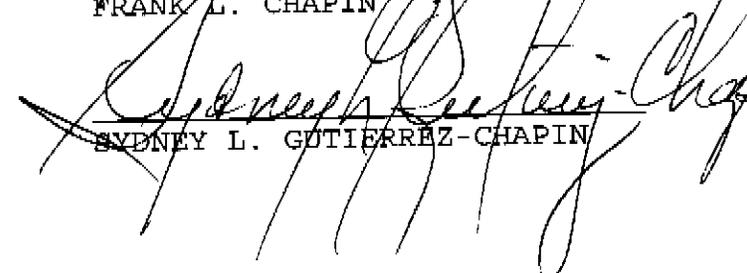
We would ask the court to refer to the Motion to Stay the Sale of Certain Bankruptcy Estate Assets attached as Exhibit A and the Amended Motion To Stay The Sale of Bankruptcy Estate Assets attached at Exhibit B.

We request the court to stay the sale of any further assets.

DATED this 24<sup>th</sup> day of May, 2004.



FRANK L. CHAPIN



SYDNEY L. GUTIERREZ-CHAPIN

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 24 day of May, 2004, I caused to be served a true and correct copy of the foregoing OBJECTION TO SALE by Federal Express, and addressed to the following:

U. S. Trustee  
304 N. 8<sup>th</sup> , Room 347  
Boise, ID 83701

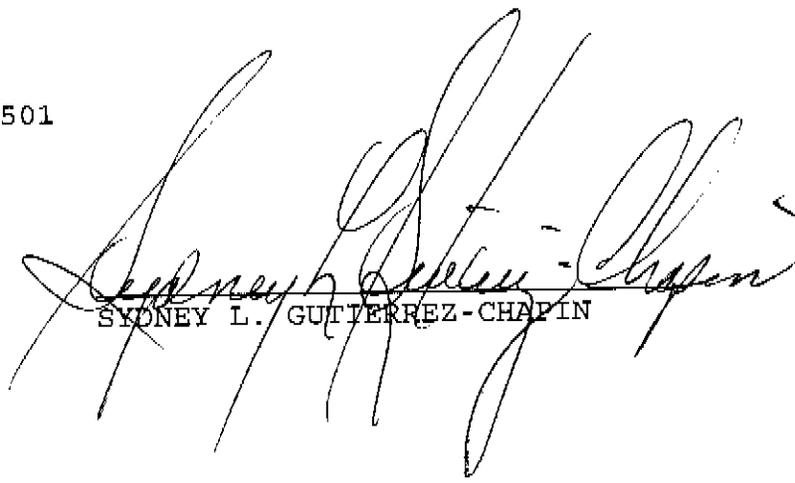
Clerk, Bankruptcy Court  
205 N. Fourth St.  
Coeur d'Alene, ID 83814

I HEREBY CERTIFY that on this 24 day of May, 2004, I caused to be served a true and correct copy of the foregoing OBJECTION TO SALE by Federal Express, and addressed to the following:

C. Barry Zimmerman  
Chapter 7 Trustee  
P.O. Box 1240  
Coeur d'Alene, ID 83814

James H. Magnuson  
Attorney for Chapter 7 Trustee  
P.O. Box 2288  
Coeur d'Alene, ID 83816

Stephen B. McCrea  
P.O. Box 1501  
Coeur d'Alene, ID 83816-1501

  
SYDNEY L. GUTIERREZ-CHAPIN

**EXHIBIT A**

U. S. COURTS

04 MAR 16 PM 12:13

REC'D FILED  
CATHY S. BURKE,  
CLERK. IDAHO

FRANK L. CHAPIN  
SYDNEY L. GUTIERREZ-CHAPIN  
319 Church Street  
Sandpoint, Idaho 83864  
Telephone: (208) 263-5131

Pro Se

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO**

In Re:	)	
	)	
FRANK L. CHAPIN and	)	
SYDNEY L. GUTIERREZ-CHAPIN	)	
	)	Case No. 02-20218
	)	
Debtors	)	MOTION FOR ORDER TO STAY
	)	THE SALE OF CERTAIN
	)	BANKRUPTCY ESTATE ASSETS
	)	
	)	

COMES NOW, Debtors, Frank L. Chapin and Sydney L. Gutierrez-Chapin, appearing pro se, in order to request this court for entry of an order to stay the sale of certain bankruptcy estate assets.

## FACTS

- 1) Debtor's attorney, who has withdrawn, erred in listing all assets as joint assets.
  
- 2) The Leaf claims hinge upon litigation in Spokane County Washington. This action was filed against Frank L. Chapin as Co-Personal Representative of the Wilbur and Christina Leaf Estates. Sydney L. Gutierrez-Chapin is not and was not involved in this case. In fact, all attorneys involved in this case purposely excluded Mrs. Chapin. She was not allowed to attend any depositions or meetings where Spokane County issues were discussed.

- 3) As per Trustee's Statement of Objection RE Stay Relief, Paragraph 2:

"The claim of Frederick Leaf is not fixed and liquidated. See Claim No. 13. The stated basis of the claim is pending litigation subject to final adjudication. The allowance of and amount of claim is a core proceeding. 28 U.S.C. § 157(b)(2)(b). The Bankruptcy Court has exclusive jurisdiction on the allowance and amount of claim."

- 4) The filing of the Chapter 11 Bankruptcy Petition on February 22, 2002 was a joint filing. However, by virtue of Idaho being a community property state does not automatically justify combining separate debt into joint debt.

- 5) As per Idaho Statutes, Title 11, Chapter 2, 11-204 Exemption in Favor of Married Woman, a woman's marital interest in community property is exempt from collection by a creditor of the husband.
- 6) The Bankruptcy Trustee has not acted in the capacity of protecting bankruptcy estate assets and/or maximizing value received for the assets. He conducted a sale of seventeen horses grossing \$4,075.00 less unknown expenses. Mrs. Chapin had an offer to sell the same horses for a gross of \$8,500.00 with no expenses.
- 7) Schedule D creditors holding secured claims filed as \$28,060.14 has been reduced through return of assets to \$6,450.94 of which \$3,255.06 has been converted to an unsecured debt.
- 8) Schedule F, Unsecured Creditors filed the amount of \$1,115,219.80 of which \$1,000,000.00 represents the claim of the American Lutheran Church, et al. Which relates to the Leaf Estate as referenced in Paragraph 2. This claim is against Frank L. Chapin and is not a debt of Sydney L. Gutierrez-Chapin. \$79,330.00 has been settled through mediation with Robert Kovacevich, P.L.L.C. \$6,059.24 has been paid or adjusted leaving \$29,830.56 as community debt subject to disposition or conversion of community assets.
- 9) Sydney L. Gutierrez-Chapin will lose assets and suffer economic loss if assets well in excess of her debt are sold. Her one half of the marital share of the community debt is \$14,915.28.

## REQUEST

BASED UPON the above facts, the Debtors request the following:

- 1) That no real estate or any further assets be sold until the Leaf monetary issue is settled.
- 2) That monies paid by Robert Kovacevich in the amount of \$250,000.00 be credited against what amount may be decided upon.
- 3) That monies paid to Joseph Delay which consist of a check in the amount of \$170,000.00, proceeds from the sale of a car \$3,200.00 and proceeds from the sale of Pend Oreille Bank Stock, \$12,507.00, be credited against what amount may be decided upon.

The Debtors also request the following:

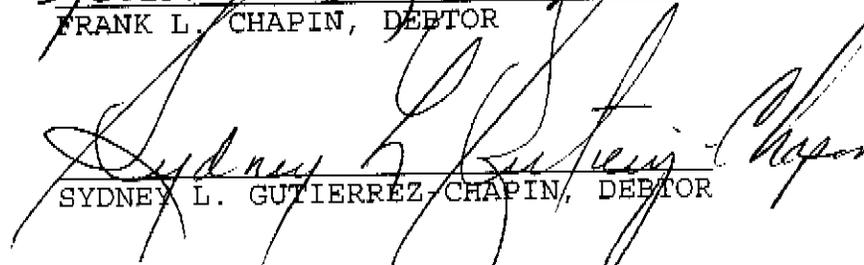
- 1) Sydney L. Gutierrez-Chapin's marital one-half of the community property be exempt from any claim by the American Lutheran Church, et al and Doctor Frederick A. Leaf.
- 2) That if an amount owed to Doctor Leaf is determined, the Bankruptcy Trustee be ordered to demand from heirs of the Wilbur Leaf Estate, who received larger distributions than they should have, to return those funds in order to redistribute to the heirs of

Christina Leaf's Estate. Therefore, the Bankruptcy Trustee should demand the return of \$362,079.66 from the Wilbur Leaf Estate heirs.

WE REQUEST a hearing in order for Judge Terry L. Myers to render a decision on these matters.

DATED this 16<sup>th</sup> day of March, 2004.

  
FRANK L. CHAPIN, DEBTOR

  
SYDNEY L. GUTIERREZ-CHAPIN, DEBTOR

## CERTIFICATE OF MAILING

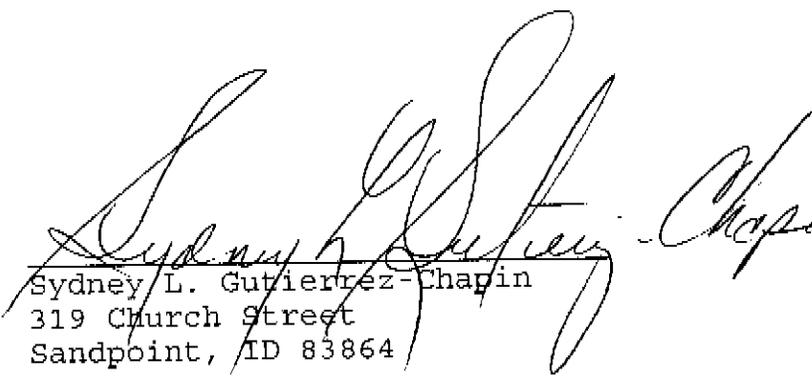
I HEREBY CERTIFY that on this 16<sup>th</sup> day of March, 2004, I caused to be served a true and correct copy of the MOTION FOR ORDER TO STAY THE SALE OF CERTAIN BANKRUPTCY ESTATE ASSETS and addressed to the following:

John R. Rizzardi  
Cairncross & Hempelmann, P.S.  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323

United States Trustee Office  
304 B, 8<sup>th</sup> St., Room 347  
Boise, ID 837012

James H. Magnuson  
Attorney for Chapter 7 Trustee  
P.O. Box 2288  
Coeur d'Alene, ID 83816

C. Barry Zimmerman  
Chapter 7 Trustee  
P.O. Box 1240  
Coeur d'Alene, ID 83814

  
Sydney L. Gutierrez-Chapin  
319 Church Street  
Sandpoint, ID 83864

**EXHIBIT B**

FRANK L. CHAPIN  
SYDNEY L. GUTIERREZ-CHAPIN  
319 Church Street  
Sandpoint, Idaho 83864  
Telephone: (208) 263-5131  
Facsimile: (208) 263-3390  
E-Mail: sydney@televar.com

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO**

FRANK CHAPIN and SYDNEY CHAPIN            )     Case No. 02-0218  
  )     )  
  )     ) AMENDED MOTION TO STAY THE  
  )     ) SALE OF BANKRUPTCY ESTATE  
  )     ) ASSETS  
  )     )  
  )     )  
  )     )

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COMES NOW Debtors, Frank L. Chapin and Sydney L. Gutierrez-Chapin, appearing pro se, in order to request this court for entry of an order to stay the continued sales of bankruptcy estate assets.

**FACTS**

- 1) On June 7, 2004, C. Harry Zimmerman will conduct a sale of two parcels of bankruptcy estate assets; namely, the "Jachetta Property" and "The Home Place". Attached to this amended motion as Exhibit A are the notices of sale.
  
- 2) Attached to this amended motion as Exhibit B is a copy

of the Motion For Order To Stay The Sale Of Certain Bankruptcy Estate Assets which was filed with the court on March 16, 2004.

- 3) Attached to this amended motion as Exhibit C is a copy of Amended Schedule F, Creditors Holding Unsecured Nonpriority Claims.
- 4) Discarding the \$1,000,000.00 figure claimed by Doctor Frederick Leaf on Schedule F, the debtors owe an amount of \$9,830.56 in miscellaneous debt and \$20,000.00 as an unsecured personal loan.
- 3) On June 22, 2004, the debtors will deliver to C. Barry Zimmerman copies of income tax returns from 1994 through 2003. This information will provide the total amount owed to the Internal Revenue Service and the Idaho State Tax Commission who are in the position of Priority Creditors.
- 4) Attached to this amended motion as Exhibit D is a copy of Title 11, Enforcement of Judgements in Civil Actions, Chapter 2, 11-204. Exemption in Favor of Married Woman.
- 5) It is the debtors' understanding one parcel of property identified as "Dunromin" has sold for \$142,500.00.
- 6) Attached to this amended motion as Exhibit E is a copy of this court's order filed January 7, 2004 which struck the moving creditor's Motion for Relief From

Stay, without prejudice. This included the real property owned by F.M.S., Inc., S and F, LLC and Frank L. Chapin, P.A.

### **ARGUMENT**

It is the contention of the Debtors we will be irreparably harmed by the continued sale of assets.

It appears the order issued by Your Honor on December 19, 2003 prevents the Trustee from selling any property of the entities other than Hoodoo Mountain Ranchette Trust for which the stay was lifted in order to allow the Bonner County Action to proceed.

At this time, the Bonner County Action consists of the same claim which was filed in an Adversary Petition against Hoodoo Mountain Ranchette Trust by Doctor Leaf. This matter still awaits final adjudication and is scheduled for trial October 27 and 28, 2004.

No determination has been made as to our total liability to creditors. The claim of Doctor Frederick Leaf is not fixed. The basis for the claim is pending litigation which will be adjudicated October 27 and 28, 2004 before your Honor.

The Bankruptcy Trustee has collected enough funds to pay the majority of our outstanding debt.

It should not be necessary to continue to market properties with no idea as to exactly how much money is required to pay all listed creditors. I will again reiterate. Doctor Leaf is not a

creditor. Also, as Your Honor may be aware, Doctor Leaf is pursuing a civil action in Bonner County in an attempt to claim a debt and receive a monetary settlement from the irrevocable trust of which Mr. Chapin is a Trustee.

Shriners Hospital is not a creditor. The closest description the debtors can give is they are "parties of interest".

We would also broach the argument, which Your Honor alluded to on May 11, 2004 when discussing our Requests for Re-Affirmation, that we should come out of the bankruptcy process with less debt and not be buried with a large amount of debt and excessive monthly payments. The manner in which the sales are taking place, without regard for total debt owed, means the debtors who wish to preserve some of these properties have been placed in a position of borrowing additional funds to re-purchase property which we owned free and clear. This does not make fiscal sense. Why continue selling property when there is an unknown amount of debt owed? Why not wait until after the October trial to determine if any debt is levied against the debtor's bankruptcy estate and then determine what real property needs to be sold in order to satisfy any adjudicated debt?

It is the contention of Sydney G. Gutierrez-Chapin that I am being irreparably damaged. My marital one-half of community property is being sold to satisfy debtors of my husband, not joint and/or community debt. I realize I have filed a joint petition in bankruptcy with my husband. However, by this action, I have not accepted any share of separate debt.

## REQUEST OF DEBTORS

1. We request the court to order an immediate stay on all real property sales, including the sale which is scheduled to take place on June 7, 2004 at 10:00 a.m. and 11:00 a.m.
2. We request the court to stay all future sales of real property until after the October Trial in the Adversary Cases.
3. We request the court to stay all future sales of real property until a determination has been made as to Mrs. Chapin's marital one-half interest in the community estate.

I REQUEST A HEARING in order for Judge Terry L. Myers to render a decision in these matters.

DATED this \_\_\_\_ day of May, 2004.

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SYDNEY L. GUTIERREZ-CHAPIN

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of May, 2004, I caused to be served a true and correct copy of the foregoing AMENDED MOTION TO STAY THE SALE OF BANKRUPTCY ESTATE ASSETS by U.S. Mail, and addressed to the following:

U.S. Trustee  
304 N. 8<sup>th</sup> Street, Ste. 347  
Boise, ID 83702-5835

C. Barry Zimmerman  
Chapter 7 Trustee  
P.O. Box 1240  
Coeur d'Alene, ID 83814

James H. Magnuson  
Attorney for Chapter 7 Trustee  
P.O. Box 2288  
Coeur d'Alene, ID 83816

Stephen B. McCrea  
P.O. Box 1501  
Coeur d'Alene ID 83816-1501

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SYDNEY L. GUTIERREZ-CHAPIN