

AS COURTS

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The Honorable Terry L. Myers
Chapter 7

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

FAX FILED

8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF IDAHO

10 In re:

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

13 Debtor.

NO. 02-20218

REPLY OF DR. FREDERICK A. LEAF TO
CHAPTER 7 TRUSTEE'S OBJECTION TO
MOTION FOR ORDER CLARIFYING
INAPPLICABILITY OF AUTOMATIC STAY

14 COMES NOW, Dr. Frederick A. Leaf ("Leaf"), by and through his attorneys of record,
15 John R. Rizzardi and Cairncross & Hempelmann, P.S., and submits this reply to the Chapter 7
16 Trustee's Objection to the Motion for Order Clarifying Inapplicability of Automatic Stay (the
17 "Motion").

18 1. The Trustee's Objection was not filed in a timely fashion and should be stricken.
19 The deadline for objections to Leaf's Motion was October 20, 2003. The Objection was received
20 by Leaf's counsel on October 27, 2003, less than 48 hours before the hearing on the Motion.

21 2. The Trustee has not objected to the relief requested in the Leaf Motion. Leaf has
22 asked that this Court enter an Order determining the stay is inapplicable to the Non-Debtor
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REPLY TO CHAPTER 7 TRUSTEE'S OBJECTION
TO MOTION - 1

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Law Offices
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Seattle, Washington 98104-2323

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1 Entities so that Leaf can proceed with the entry of a judgment against the Non-Debtor Entities.
2 The Trustee's Objection is strictly focused on the fact that certain real property, which is now
3 alleged to be property of the estate, should not be subject to Leaf's proposed constructive trust.
4 The Trustee is not objecting to the relief requested by Leaf. Leaf is not requesting the imposition
5 of a constructive trust against any property of the bankruptcy estate. Assuming for argument
6 purposes that the Warranty Deed dated October 23, 2003 is valid, the stay cannot be extended to
7 provide protection to the Non-Debtor entities from the claims of the Non-Debtors' creditors.
8 Thus, this Court can grant the relief sought by Leaf without affecting the assets of this
9 bankruptcy estate.

10 Contrary to the unsupported allegations in the Debtors' Response to this Motion, the
11 Trustee has had adequate time to conduct its investigation into the facts pertaining to the Non-
12 Debtor Entities. The Trustee does not present any facts to the contrary. The Trustee does not
13 raise any other reason whatsoever for this Court to deny or delay the relief sought by Leaf.

14 3. The Warranty Deed ("Deed") is, on its face, invalid. The Deed signed by the
15 Debtors is facially invalid for several reasons:

16 a. The Grantor, S and F, LLC ("S and F"), was listed by the Debtors in their
17 schedules as a separate entity, and the Trustee is now the sole owner of the Debtors' interest in
18 that entity. The Debtors always maintained the separate status of this entity and confirmed the
19 separate entity status in the Disclosure Statement they filed with Leaf. Mortgage creditors
20 having obligations owed by S and F have commenced and concluded foreclosure proceedings
21 against S and F. There is no proof before this court that S and F is not a valid separate entity.

22 As a separate entity, it is the Trustee who now holds legal title to the Debtors' interest in
23 S and F, yet the Trustee, in presenting the Deed to this Court, appears to be supporting or

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REPLY TO CHAPTER 7 TRUSTEE'S OBJECTION
TO MOTION - 2

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1 authorizing *the Debtors* to manage the affairs of S and F. It certainly cannot be the intention of
2 the Trustee to allow or authorize the Debtors to act in such a capacity. The Trustee submits no
3 evidence to this Court that he has authorized the Debtors to manage S and F on his behalf.¹

4 b. There is no consideration supporting this transfer. There was no
5 transaction authorized by this Court for the estate to "purchase" the assets. As such, the creditors
6 of S and F, especially Leaf, will now be required to look behind the transaction and, if
7 appropriate, pursue fraudulent transfer claims against the Trustee, as surely this transaction was
8 made while S and F was insolvent or has made S and F insolvent. In addition, the many
9 mortgage creditors of the various properties will now be required to bring relief from stay
10 motions before this court. The Trustee may next be taking the position that the foreclosures that
11 occurred against S and F during the Chapter 11 were void, thus creating an additional layer of
12 litigation that will erode any recovery that could be enjoyed by the Debtors' creditors. For the
13 Trustee to not reject this Deed² is to provoke unneeded litigation, and this Court should
14 immediately save the parties to this proceeding unnecessary cost, expense and aggravation by a
15 determination that the purported transfer is invalid and of no effect.

16 4. The Debtors should not be allowed to continue their malicious use of the legal
17 system. With this last stunt, the Debtors have finally exceeded the bounds of any type of
18 appropriate conduct. By their recitals in the Deed, the Debtors are affirmatively stating that the
19 schedules they filed in this case are patently false, that any tax returns they may have filed for S
20 and F were false, and, on countless occasions, they have caused their counsel to misrepresent
21 their financial situation to their creditors, this Court, taxing authorities and the United States

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23 ¹ Leaf's counsel has determined that the woman who notarized the signatures on the Deed, Phyllis D. Williams, is an
employee of Frank Chapin, P.A.

² In a call to the Bonner County Recorder's Office, the Deed was not recorded as of October 27, 2003.
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1 Trustee. This does not imply their existing counsel had any hand in their recent stunt. It appears
 2 the Debtors did not present this Deed to their counsel, as the Deed was not referenced in the
 3 Objection filed by their current counsel.

4 This last ditch effort by the Debtors is an effort to manipulate and misuse the bankruptcy
 5 system, forcing Leaf to continue to expend significant cost and expense. Leaf would respectfully
 6 ask the Court to consider Leaf's request for the assessment of punitive damages against not only
 7 the Debtors, but against any entity or individual who may have participated or encouraged this
 8 action.

9 **CONCLUSION**

10 As set forth in Leaf's reply to the Debtors' Objection, these are not honest Debtors. They
 11 have now exacerbated their quantum of dishonesty by the execution and delivery of the Warranty
 12 Deed. As has been their pattern of behavior, they choose to take a course of action that is outside
 13 the realm of good faith, forcing Leaf, this Court and others to figure out how to appropriately
 14 deal with their efforts to manipulate the system. They are arsonists in our judicial system,
 15 casting a match into the dry brush, and the Court should snuff it out. Dr. Leaf implores this
 16 Court to intervene, striking or overruling the Trustee's objection, ruling that the purported Deed
 17 is void and of no effect and setting a hearing for the determination of an award to Leaf of an
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REPLY TO CHAPTER 7 TRUSTEE'S OBJECTION
 TO MOTION - 4

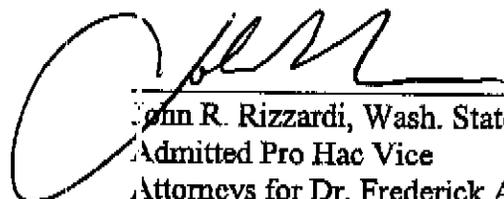
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 Law Offices
 524 Second Avenue, Suite 500
 Seattle, Washington 98104-2323

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appropriate level of punitive and compensatory damages against the Debtors and any other individual or entity that participated in this scheme.

DATED this 28th day of October, 2003.

CAIRNCROSS & HEMPELMANN, P.S.



John R. Rizzardi, Wash. State Bar No. 9388
Admitted Pro Hac Vice
Attorneys for Dr. Frederick A. Leaf

Certificate of Service

I, Alex D. Brown, hereby certify under penalty of perjury under the laws of the State of Washington that on October 28, 2003, I caused copies of the Reply of Dr. Frederick A. Leaf to Chapter 7 Trustee's Objection to Motion for Order Clarifying Inapplicability of Automatic Stay (the "Reply") and this Certificate of Service to be served, via facsimile, on the following parties:

H. James Magnuson
1250 Northwood Ctr. Ct.
Coeur d'Alene, ID 83814
Facsimile: (208) 666-1596

Bruce Anderson
1400 Northwood Center Court, Suite C
Coeur d'Alene, ID 83814
Facsimile: (208) 667-2150

Dated this 28th day of October, 2003.


Alex D. Brown

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