

January 6, 2005: Daniel Jape files an answer in Adversary Proceeding; fails to raise the issue of the legitimacy of bankruptcy filing.

July 7, 2005: Jape files proof of claim and fails to raise the issue of the legitimacy of bankruptcy filing.

October 12, 2006: Jape files a Motion to Dismiss the Chapter 11 alleging the bankruptcy filing is unauthorized.

January 29, 2007: Hearing on Jape Motion to Dismiss.

There have been numerous orders during the case affecting the rights of creditors. Mingleorff's entered into a consent settlement with the Debtor and released its guaranty against both of the Japes in order to obtain the agreement approved by the Court on December 13, 2006.

II. Memorandum of Law

Daniel Jape's Motion to Dismiss should be denied because it is barred by the passage of time, by laches and because a dismissal of the case would prejudice the rights of the creditors.

Debtor filed its petition in this case on November 22, 2005. Debtor then filed an adversary petition against Jape on December 7, 2005. Jape entered into a Consent Restraining Order with the Debtor in the Adversary proceeding on December 12, 2005, failing to raise any issue as to the legitimacy of the bankruptcy filing. Jape filed an answer in the adversary proceeding on January 6, 2005, again failing to raise any issue as to the legitimacy of the bankruptcy filing. Jape filed a proof of claim in July, 2005,

again failing to raise any issue as to the legitimacy of the bankruptcy filing. Jape has been aware of this case clearly since December 12, 2005 when the Consent Restraining Order was entered if not sooner. Jape then filed his Motion to Dismiss on October 12, 2006, nearly one year from the date of filing and raising for the first time the issue of authorization for the filing. Jape's Motion to Dismiss should be denied.

A dismissal of this case at this point would severely prejudice the rights of the creditors and should be denied. *In re Atlas Supply Corporation*, 857 F. 2nd 1061 (5th Cir.). A dismissal would delay payment to the creditors. A delay in payment of the creditors is sufficient grounds to deny the Motion to Dismiss. *Matter of Williams*, 15 B.R. 655 (E.D. Mo. 1981). No one has asserted that the Debtor could have paid its creditors outside bankruptcy. The creditors have been barred for fourteen months from satisfying their claims and a dismissal would only lengthen the delay. The main asset (real property) of the business has been sold and all debts for which Jape was personally liable have been satisfied or settled. Jape has no interest at this time in seeing that unsecured creditors are paid.

Jape's Motion to Dismiss should be denied as the Motion is time barred because Jape waited almost eleven (11) months after the case was filed to raise his objection to the authorization for the filing. *In re Atlas Supply Corporation*, 857 F. 2nd 1061 (5th Cir.); *Alexander v. Farmers Supply Co.*, 275 F. 2nd 824 (5th Cir 1921). An officer or director with notice of an alleged deficient filing cannot participate in the case without raising the issue of a defective filing or his claim is barred. *In re Atlas Supply Corporation*, 857 F. 2nd 1061 (5th Cir.); *Alexander v. Farmers Supply Co.*, 275 F. 2nd 824 (5th Cir 1921). In *Atlas*, the court held that a challenge filed one year after the filing of the bankruptcy

petition is time barred, barred by laches and would be prejudicial to the rights of the creditors. In *Alexander*, the court held that an officer who waited four months after the bankruptcy filing was time barred from filing a dismissal because he acted as a witness in the intervening time period and failed to raise any objection to the validity of the case at that time. Here Jape entered into a Consent Order within one month of filing, filed an answer in an adversary proceeding within two months of the bankruptcy filing and filed a proof of claim eight months after the bankruptcy filing all without challenging the validity of the bankruptcy proceeding. Jape's Motion to Dismiss is barred both by the passage of time and laches. *In re Atlas Supply Corporation*, 857 F. 2nd 1061 (5th Cir.); *Alexander v. Farmers Supply Co.*, 275 F. 2nd 824 (5th Cir 1921).

Wherefore, the Jape's Motion to Dismiss should be denied on the basis that it is time barred, barred by laches and is prejudicial to the rights of the creditors.

This 26th day of January, 2007.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing pleading upon opposing counsel in the above-stated matter by depositing same in the United States Mail, in a properly addressed envelope, with adequate postage thereon, to-wit:

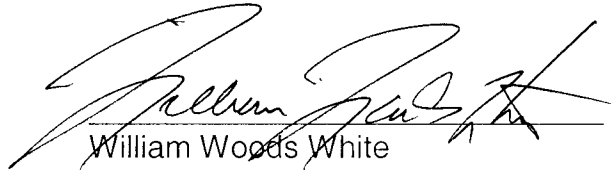
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7

This 26th day of January, 2007.


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