

HEARING DATE: September 8, 2011
HEARING TIME: 9:00 a.m.

David E. Wishney, Esq. (ISB No. 1993)
Attorney at Law
988 S. Longmont, Suite 100
Boise, Idaho 83702
Tel: (208) 336-5955
Fax: (208) 336-5956
david@wishneylaw.com

John P. Schafer, Esq. (*Pro Hac Vice Application Pending*)
Brendt C. Butler, Esq. (*Pro Hac Vice Application Pending*)
MANDERSON, SCHAFER & MCKINLAY LLP
4675 MacArthur Court, Suite 1200
Newport Beach, CA, 92660
Tel: (949) 389-8300
E-Mail: jschafer@mandersonllp.com
bbutler@mandersonllp.com

Counsel to Debtors Kerry Randall Angelos and
Jacqueline Lee Angelos

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO**

In re:)	Chapter 7
)	
ANGELOS, KERRY RANDALL)	Case No. 11-01289-JDP
ANGELOS, JACQUELINE LEE,)	
)	
Debtors.)	
)	
_____)	

**DEBTORS' CONSOLIDATED OBJECTION TO THE MOTIONS
OF THE CHAPTER 7 TRUSTEE AND THE UNITED STATES
TRUSTEE TO EXTEND THE DEADLINE TO OBJECT TO THE
DEBTORS' DISCHARGE UNDER 11 U.S.C. § 727**

Kerry Randall Angelos and Jacqueline Lee Angelos, the debtors in the above-captioned chapter 7 case ("Debtors"), by and through their newly retained counsel, Manderson, Schafer & McKinlay LLP, hereby file this consolidated objection to the chapter 7 trustee's *Motion to Extend Time to Object to Discharge* ("Trustee Motion") and the *United States Trustee's Motion for Enlargement of Time to Seek Denial of Discharge Under 11 U.S.C. § 727* ("UST Motion"). By the Trustee Motion, the chapter 7 trustee seeks to extend the deadline to object to discharge from August 1, 2011 to November 1, 2011. By the UST Motion, the UST seeks an extension to September 30, 2011.

I.

PRELIMINARY STATEMENT

1. Federal Rule of Bankruptcy Procedure 4004(b)¹ provides that the Court may "for cause" extend the time to file a complaint objecting to the Debtors' discharge under Bankruptcy Code section 727(a). A party objecting to the Debtors' discharge has the evidentiary and legal burden of proving the objection by a preponderance of the evidence. See Peterson v. Scott (In re Scott), 172 F.3d 959 (7th Cir. 1999). Here, neither the chapter 7 trustee nor the United States Trustee ("UST") provide any cause to extend the filing deadline. In short, the chapter 7 trustee's argument seems to be: the Debtors schedule nominal assets, approximately \$170 million in debts, and \$0.00 in income, therefore, there "may be good grounds to object to the Debtors' discharge." (Trustee Motion, ¶¶ 4 & 12.) There is nothing nefarious about this, as the chapter 7 trustee seems to insinuate.

2. Like many people heavily involved in real estate development, the Debtors' were completely wiped-out by the nationwide collapse in the real estate market beginning in 2007. The District Court for the Southern District of Florida aptly describes the real estate implosion in

1 Unless otherwise indicated, all chapter, section, and rule references are to 11 U.S.C. §§ 101 through 1532 ("Bankruptcy Code"), to the Federal Rules of Bankruptcy Procedure, Rules 101 through 9037 ("Bankruptcy Rules"), and to the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Idaho, Rules 1001.1 through 9037.1 ("Local Bankruptcy Rules").

its recent opinion concerning homebuilder TOUSA, Inc.:

TOUSA's eventual collapse was caused in large part by the *catastrophic economic events* that independently doomed the housing market shortly after the July 31 Transaction. According to company management, nobody within TOUSA predicted that the housing market would get anywhere near as bad as it did after July 31, 2007. . . . Media reports in the record referred to August 2007 as a "*once in a century credit tsunami, a "Black Swan" event, and an "economic Pearl Harbor"*. . . . Real estate valuation experts . . . confirmed that homebuilders like TOUSA were *devastated* by the tightening of credit markets in August 2007. [Bankr. Hr'g Tr. 2142:8-2146:10; Trial Exh. 3002 ¶¶ 7-54 ("Like many homebuilders, TOUSA was hit hard by the August 2007 credit-market freeze and the consequent collapse of the mortgage market, which dried up the pool of home buyers.")].]

Id. at * 55 (emphasis added). The Debtors' lost everything in this economic Waterloo, and now the chapter 7 trustee seeks to unfairly color them as "fraudsters" not entitled to discharge without providing the Court an iota of supporting evidence to that effect.

3. The UST's argument for the requested extension is less strident: the UST asserts that because of the amendments to the Debtors' Schedules and Statement of Financial Affairs (SOFA) and the complicated nature of the case, the UST requires additional time to review the documentation and determine whether there are grounds to oppose dischargeability. (UST Motion, ¶ 6.) While the Debtors do appreciate the less strident tone of the UST, the Debtors submit that the UST and the chapter 7 trustee have had more than sufficient time to review the facts and determine whether there is cause to file a complaint objecting to the Debtors' discharge.

II.

OBJECTIONS

4. This case has been pending for nearly four months since April 29, 2011. Despite the chapter 7 trustee's insinuations to the contrary, the Debtors have been diligent in doing everything possible to satisfy all of the bankruptcy requirements and obligations and earn a discharge and "fresh start".

5. The chapter 7 trustee makes much—too much—of the fact that the Debtors initially incorrectly completed their Schedules and SOFAs. (Trustee Motion, ¶¶ 5-8.) The Debtors were proceeding *pro se*. And as with many *pro se* debtors, they simply did not understand exactly how to complete their Schedules and SOFAs. That alone is not indicia of bankruptcy fraud or an attempt to conceal assets.

6. At the Bankruptcy Code section 341(a) meeting of creditors on June 2, 2011, the chapter 7 trustee inquired as to why the Debtors did not have counsel. The answer was simple: they could not afford counsel. He gave the Debtors the choice of continuing the meeting to retain counsel or proceeding with the meeting. The Debtors chose to go forward. The Debtors answered all of the questions to the best of their knowledge, and there is no evidence presented by the chapter 7 trustee or any other party in interest that they were anything but completely truthful. The chapter 7 trustee then asked whether the Debtors had sold anything in the last year and the Debtors replied that they had conducted an "estate sale" in July 2010 and netted around \$9,000. He asked why it was not listed on the SOFAs and Schedules and the Debtors replied that they did not know they were required to do so. The chapter 7 trustee informed the Debtors they would need to amend their Schedules and SOFA, which they agreed to do so.

7. The chapter 7 trustee then asked whether the Debtors wished to continue or stop and hire counsel. At that point, the Debtors decided they needed to stop and hire competent counsel to assist them with their case. The chapter 7 trustee requested a couple items from the Debtors, including two (2) years of personal tax returns and six (6) months of personal bank statements. At the end of the meeting, the chapter 7 trustee asked if there were any creditors present. Two creditors were present and asked questions. One was concerned that the Debtors did not disclose numerous rental properties as well as LLC's on the SOFAs and the Schedules. The Debtors informed the creditor, as well as the chapter 7 trustee, that those LLC's and properties were not owned by the Debtors themselves, but rather were owned by the LLC's that the Debtors did, in fact, list on their Schedules and SOFAs. The Debtors were not hiding

anything, they did not know they needed to list entities they did not directly own. And, in fact, the Debtors did make an effort to list the creditors of those sub-entities on their creditor matrix out of an abundance of caution. Thus, there is no indicia of any intent to conceal anything. The chapter 7 trustee reiterated the need to amend the Schedules and SOFAs to include these entities. The section 341(a) meeting was continued to June 17, 2011.

8. By letter dated June 9, 2011, the chapter 7 trustee thereafter requested additional items, including two (2) years of all personal and business bank statements, four (4) years of all personal and business tax returns, a list of all entities the Debtors had in interest in over the previous two (2) years, and a complete list of all property that the Debtors own, have owned, or have had an interest in through the entities over the previous four (4) years, as well as an explanation as to the status or disposition of the properties.

9. The Debtors retained Blair Clark from Boise, Idaho to represent them, paid a retainer, and on June 7, 2011, provided Blair Clark their SOFAs and Schedules for review. The Debtors were scheduled to meet with Blair Clark on June 15, 2011 to prepare for the continued section 341 meeting, but on that date received a call informing them that Blair Clark would not be able to represent them due to a conflict. This left the Debtors in a difficult position, not being able to retain counsel prior to the continued meeting. The Debtors attempted unsuccessfully to retain other counsel. All of the potential counsel the Debtors spoke to informed them not to provide the chapter 7 trustee any information until the counsel had a chance to first review, which advice caused some delay in the Debtors providing the chapter 7 trustee information.

10. On June 16, 2011, the Debtors provided the requested for tax returns to the chapter 7 trustee. On June 17, 2011, the Debtors appeared at the continued section 341(a) meeting without counsel. The chapter 7 trustee permitted the sole creditor to ask a few questions and then he continued the meeting to July 15, 2011.

11. The Debtors then sought to retain Manderson, Schafer & McKinlay LLP, but when the financial assistance of a family member could not be attained, the Debtors were

ultimately again left without the assistance of counsel

12. On July 13, 2011, the Debtors amended their Schedules and SOFAs to satisfy fully the issues raised by the chapter 7 trustee. The next day the Debtors provided the chapter 7 trustee the remainder of the requested for information, including all of the bank statements.

13. On July 15, 2011, the Debtors appeared at the continued section 341(a) meeting. The chapter 7 trustee stated he would have to continue the meeting to July 29, 2011 to give him sufficient time to review the information provided by the Debtors and the amended Schedules and SOFAs. There were no creditors in attendance. The chapter 7 trustee also made it clear to the Debtors that the continued section 341(a) meeting would be comprehensive and would take several hours.

14. On July 29, 2011, the chapter 7 trustee began the continued meeting by informing the Debtors they were essentially starting from the beginning and many of the same questions previously asked would be asked again. No creditors attended the meeting. The Debtors were fine with that, at all times in this process being polite and cooperative. The meeting lasted approximately three and one-half hours. The chapter 7 trustee devoted a significant amount of his questioning to the bank statements and the LLC's listed on the amended Schedules and SOFAs. The Debtors answered all of the questions to the best of their knowledge, which the chapter 7 trustee does not dispute in the Trustee Motion.

15. The chapter 7 trustee also devoted quite a lot of time to the Debtors' receiving unemployment checks, and questioned whether the Debtors were entitled to such checks. The Debtors fully explained the basis and their right to receive such checks based on their financial situation. There is no evidence they are not entitled to such unemployment.

16. The chapter 7 trustee proceeded to ask questions regarding the Michael Mastro bankruptcy case pending in Seattle, which has received considerable press regarding hiding of assets and potential fraud. The Debtors borrowed money from Michael Mastro several years ago in arms-length business transactions, but have no other personal or business relationship with Mr.

Mastro and no knowledge of his personal bankruptcy case. Any attempt to link the Debtors' bankruptcy case with the alleged fraud in Mr. Mastro's bankruptcy case is unfounded and unwarranted.

17. Finally, the chapter 7 trustee asked certain questions regarding transfers from the Debtors' son during the summer of 2010 and when the Debtors adequately explained the situation regarding those transfers, the chapter 7 trustee seemed satisfied with the answers. The chapter 7 trustee took no issue with the Debtors' amended Schedules and SOFAs. There is no indication they require further amendment.

18. After several continued section 341(a) meetings in which the Debtors answered every question posed to them, amended Schedules and SOFAs, the Debtors' production of all of the documents requested, including personal and business bank statements and tax returns, the chapter 7 trustee cannot point to a single instance of potential fraud justifying the "for cause" standard for a continuance under Bankruptcy Rule 4004(b). Instead the chapter 7 trustee relies on the hackneyed, "there may be good grounds to object to the Debtors' discharge." (Trustee Motion, ¶ 12.) If there may be grounds to object to discharge, the chapter 7 trustee should have stated those grounds in his motion. By this time, the chapter 7 trustee should be in a position to provide at least some basis for potentially denying discharge. Notably, he did not. The "for cause" standard has not been satisfied here.

19. The UST likewise requests an extension to September 30, 2011, stating it needs additional time to review all of the information. The Debtors submit that the UST has had sufficient time to review the information and no further time is warranted. Again, the UST Motion fails to identify sufficient cause for the extension.

