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ATTORNEYS FOR DEBTOR

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: § Case No. 08-35206  
§  
JOHN NICHOLAS SHEETS § (Chapter 11)  
§  
Debtor. § PRELIMINARY HEARING:  
§ NOVEMBER 6, 2008 AT 1:30 p.m.

DEBTOR'S RESPONSE IN OPPOSITION TO  
THE UNITED STATES OF AMERICA'S  
MOTION FOR RELIEF FROM AUTOMATIC STAY

Comes now the Debtor and for his RESPONSE IN OPPOSITION TO THE UNITED STATES OF AMERICA'S MOTION FOR RELIEF FROM AUTOMATIC STAY (the "Motion") states and alleges:

1. Debtor objects to the form of the Motion as not being clear statements of fact contained in discrete paragraphs. Further, Debtor Objects to the Motion as not being supported by any evidence. Debtor objects to all Exhibits attached to the Motion as not having any foundation or authentication and as being hearsay and mostly irrelevant.

Paragraph 1

2. Debtor objects to the Movant's Exhibit 1 as having no foundation. Debtor admits the filing history but objects to agree with the characterizations contained in the Disposition/Status and Disposition columns as being heresay, mis-leading summaries and irrelevant. Debtor further objects to all references to the bankruptcy of Eleanor Mowery Sheets for all the reasons stated

above and especially because that history has absolutely no relevance to the Debtor's present bankruptcy.

3. Debtor denies the accusation of paragraph 1, sentence 3 of the Motion that no creditors were paid through the Debtor's three prior bankruptcies. Debtor denies the implication of the accusation of paragraph 1, sentence 4 of the Motion that he delayed in his attempts to confirm a plan of reorganization. In point of fact, the Chapter 11 Trustee was always capable of proposing his own plan of reorganization but more importantly Debtor reached an agreement with all Creditors including the Chapter 11 Trustee but the IRS objected to both approval of disclosure and indicated that it would also oppose confirmation of the proposed plan. Debtor believes that except for the opposition of the IRS (which was being paid in full on terms that they had accept) a consensual plan would have been disclosed and approved.

Paragraph 2

4. For the purpose of this Motion, Debtor will acknowledge that the IRS claims to be a secured creditor with a claim exceeding \$537,000. Debtor does not at this time admit either the amount of that claim (neither in total nor for the specific years listed) or the secured status. The Debtor does admit that substantial tax disputes were litigated in Tax Court and resolved by agreement but he has not yet been able to confirm the exact claims stated in paragraph 2 of the Motion and therefore at this time they are denied. However, the Debtor does acknowledge that the IRS is the holder of a large claim.

5. Debtor denies the allegation that he told the Movant that he

had not filed his 2007 tax return in a timely manner. In point of fact, he did file it on October 15, 2007. He also objects to the Government's Exhibit 2 on the grounds that no foundation has been laid and that it is hearsay. Specifically, Debtor denies that he caused the add or article contained in Exhibit 2 to be placed; denies that he approved the content or knew of the content of the add or article prior to publication; and, denies that either he or his wife or his wife's company individually or combined sold \$200 million of real estate in 2007. He does admit that some taxes are owed. However, because the IRS levied all of his income for more than the last 60 days, he was prevented from both paying those taxes with the return and from having funds to hire a tax professional to prepare his return as should have been done to ensure that the Debtor was given credit for all deductions to which he was entitled.

6. Debtor denies that he has failed to file any relevant federal tax return timely. To the extent they were not filed timely, the Motion was the first time that he knew they were not filed timely.

7. Debtor denies that he has ever failed to disclose all of his income. At times in the past, based on the advice of tax professionals, he filed returns the IRS disagreed with and some of those disagreements were resolved in the favor of the IRS. But, until the IRS prevented him from hiring a tax professional this year, all prior relevant tax returns were prepared by paid CPA's.

8. Debtor objects to Movant's Exhibit 3 as having no foundation, as hearsay and as not being relevant. Debtor denies the summarized "Non-dischargeable amount" as to both the dischargeability, the

amount claimed and the pejorative characterization ascribed in that column. The Debtor is still reviewing the claimed amounts and has not yet confirmed exactly what taxes are owed or for what years. The basis for terminating the stay can never be simply that the Debtor owes money.

Paragraph 3

9. Debtor Objects to Movant's Exhibit 4 as having no foundation, being an improper summary based on hearsay, as being pejoratively summarized and as being wrong. Debtor denies that Exhibit 4 is a list of "\$3 million in unscheduled assets in which the Debtor had an interest as of his 2001 bankruptcy petition date".

Paragraph 4

10. Debtor denies that he is employed by Coldwell Banker and denies that he and his wife are "business partner[s]" and denies that he has any ownership interest in his wife's real estate business. He has been employed by that company as a manager at times and he is a real estate agent who has sold real estate as an agent through that company in the past. The Debtor denies that he has any ownership interest in his Wife's Residence, where he resides.

11. Debtor denies that he and his wife "contractually share their real estate commissions".

12. Debtor objects to the statement of appraised value of his Wife's Residence as being hearsay and further objects to the implication that he has an ownership interest in that home when he does not. Debtor and his wife executed an ante-nuptial agreement before their marriage in 1992 and then further executed a partition

agreement in 2002 both of which negated the creation and existence of a community estate or separated specific property into the separate estates of each.

13. Debtor objects to Movant's Exhibit 5 as having no foundation, as not being the best evidence of the allegations in that it is comprised mostly of unsigned un-dated copies many of which are not legible and that have not been authenticated and are hearsay.

14. Debtor denies the values alleged by the Movant for his Wife's Residence in that there is no foundation for the values alleged and that they are based on hearsay as is the allegation of the encumbering debt, to which he also objects. Debtor objects to the allegation that the IRS has a lien for taxes owed by him that encumbers his wife's residence.

15. In point of fact, the IRS stated in the Debtor's presence that it believed his wife's residence was worth more than \$1.7 million. Further, Debtor denies that his residence is not necessary for a reorganization in that he does have to have some place to live. However, at the insistence of the IRS, Debtor's Wife's Residence has been listed for sale for \$1.75 million, a value that he believes, as a real estate expert in this area to be accurate. But, Debtor does admit that he has no equity in his Wife's Residence because he has no ownership interest in it.

PARAGRAPH 5

16. Debtor denies that he has a "bogus trust". The Debtor admits that the scheduling order has not been entered and in fact that the Federal District Court Case (the "Federal Case") has been administratively closed pending resolution of bankruptcy issues.

17. However, Debtor objects to the mis-characterization of the Federal Case as just being to foreclose the Wife's Residence. Since the Debtor has no ownership interest in the Wife's Residence the automatic stay would not prohibit an action to foreclose the Wife's Residence. And, in point of fact, there was no conference call on that issue. Instead, the conference call dealt with reducing the Debtor's tax liability to judgment which the Debtor believes can be more quickly and economically resolved in Bankruptcy Court and to which the Debtor may actually agree. He continues to review the alleged \$537,000 claim of the IRS and may admit the correct claim amount shortly and much cheaper than being embroiled in the multi-issue / multi-party Federal Case.

18. Additionally, bankruptcy would afford the Debtor the chance to pay all creditors in full while the Federal Court case would result in payments only to the IRS.

19. Debtor admits that there was a prior federal court case (the "First Lawsuit" as defined in the Motion) that was resolved by agreement and by the payment of all taxes in full. In fact, the Debtor asserts that the First Lawsuit was not necessary and prompted by a non-financial default declared by the Movant while Debtor was paying the taxes pursuant to a prior agreement approved in his 2001 Bankruptcy. Further, Debtor has made several offers to pay his outstanding taxes.

20. Debtor denies that the Wife's Residence was transferred to a trust after any tax court decisions were entered against him or his wife but also believes that the transfer was not relevant in that IRS tax liens encumbered the Wife's Residence at the time.

Paragraph 6

21. Debtor denies that the First Lawsuit was filed after he failed to pay his taxes following the 2001 Bankruptcy agreement. In fact, the IRS declared a non-monetary default of the 2001 Bankruptcy agreement at a time that the Debtor was making payments according to that agreement. But, he admits that an agreed judgment was entered in the First Lawsuit and that he and his wife paid the agreed judgment in full.

Paragraph 7

22. Debtor generally admits the allegations of levy and of the wrongful levy lawsuits alleged in Paragraph 7. However, Debtor objects to the mis-association of his tax issues with those of his wife or of any entity. He denies that he has any ownership interest in E-Residential and asserts that E-Residential was actually created to comply with the concerns of IRS Auditor Rose Simmons that rather than have all revenues from Coldwell written directly to the Debtor's wife there should be an entity that could receive the commissions and then deduct the expenses.

23. But more importantly, on information and belief, the Commission Express lawsuit has been dismissed and the automatic stay did not prohibit the prosecution of the E-Residential lawsuit. By agreement suggested by the IRS, E-Residential has agreed to have its wrongful levy suit administratively closed. But certainly the automatic stay does not preclude the IRS from suing Coldwell Banker.

Second Paragraph 7

24. Debtor denies all allegations contained in the second paragraph 7 and objects to the statements as not being based on any evidence offered with the Motion.

ADEQUATE PROTECTION

25. Movant is adequately protected by the Debtor's proposal to prosecute a plan to pay all creditors, including the Movant, as described in the attached affidavit. In addition, Debtor proposes that deadlines for approval of disclosure and confirmation be shortened so that this case may be resolved quickly. But, more importantly, the standard of adequate protection does not apply since the Movant seeks relief based on cause.

ARGUMENT

26. Debtor Denies all allegations contained in the Argument Section of the Motion from the top of page 6 of the Motion to the end as well as all allegations contained in the prayer and in the introductory paragraphs.

27. Contrary to the assertions of the Movant, the Debtor has not steadfastly ignored or even ignored the duties imposed by Title 26 and does not seek the special and equitable benefits other than a chance to pay all of his creditors including the IRS. The Debtor does not seek a discharge, he seeks to pay all of his debt in full.

28. The Debtor has filed bankruptcy before but the last filing was more than seven and a half years ago and the Debtor paid his debts in that case. The practical result of the IRS motion for relief is that it will only benefit the IRS. All other creditors will be left without any remedy.

29. The Movant argues in paragraph 11 of page 7 of the Motion that the only asset of the Debtor is his residence. First this paragraph contradicts paragraph 4 on page 3 where the Movant argues that there is no equity because the value is somewhere between \$1 million and \$1.4 million. But more importantly, the Debtor owns no interest in his Wife's Residence and the IRS is free to proceed with its foreclosure of that property without regard to the bankruptcy. The asset the Debtor has to offer the estate is his ability to earn money which has been presently prevented by the IRS.

WHEREFORE, Debtor prays that the Motion be in all things denied and that the Court further confirm that the IRS levies do not encumber commissions that should be paid to the Debtor post petition.

Respectfully submitted,

/s/Martin K. Thomas

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ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served electronically on all parties who have entered their appearance electronically in this case, including the parties listed below on this October 24, 2008

Ramona Notinger  
U.S. Trustee  
Lauri Spendler

/s/ martin thomas  
Martin Thomas

VERIFICATION

I John Nicholas Sheets hereby swear and affirm under penalty of perjury that I have read the forgoing document and that the statements contained therein are true and accurate.

/s/ John Nicholas Sheets

Subscribed and sworn to before me, on this the 10/24/08 to certify which witnessed my hand and official seal.

/s/ Gail L Klaveness  
Notary Public in and for the State of Texas

Printed name of Notary

My Commission expires on 7/18/2011