



IT IS ORDERED as set forth below:

Date: January 28, 2008

**Margaret H. Murphy
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	CASE NO. 07-74427-MHM
)	
GEOFFREY A. GISH,)	CHAPTER 7
)	
Debtor.)	

ORDER ON TRUSTEE'S MOTION TO COMPEL DEBTOR TO (1) PERFORM HIS DUTIES AND (2) TURN OVER PROPERTY OF THE ESTATE

This matter came on for hearing January 15, 2008 (the "Hearing"), on Trustee's Motion to Compel Debtor to (1) Perform His Duties and (2) Turn Over Property of the Estate (the "Motion"). Trustee filed the Motion pursuant to 11 U.S.C. §§ 343 and 521 and Rule 4002 of the Federal Rules of Bankruptcy Procedure. Present at the hearing were Neil C. Gordon in his capacity as counsel for Trustee; counsel to Debtor; and the largest purported creditor in the case, Thomas S. Richey, in his capacity as the receiver for the Securities Exchange Commission in an action against Debtor and certain related companies (the "Receiver"). Receiver was accompanied by his counsel. Debtor himself did not appear at the Hearing.

I. FINDINGS OF FACT

At the Hearing, none of the facts set forth by Trustee were controverted by any party. The following findings of fact are derived from those uncontroverted facts set forth by Trustee, supported by the record in this case and a prior case, as well as from the presentation of counsel:

1. Debtor had initially filed a petition for relief under Chapter 7 May 1, 2007, Case No. 07-67092-MHM, which was dismissed July 23, 2007, due to Debtor's failure to file his statements and schedules or attend his meeting of creditors.

2. Debtor commenced this bankruptcy case by filing a petition under Chapter 11 of Title 11, the United States Bankruptcy Code, September 4, 2007 (the "Petition Date").

3. On the Petition Date, Debtor did not file his Credit Counseling Certificate, Statement of Financial Affairs, Schedules "A" through "J", Summary of Schedules, or Attorney Disclosure Statement, (collectively, "Statements and Schedules"), all of which were required to be filed on or before September 19, 2007.¹

4. On October 17, 2007, Debtor filed a *Motion to Convert Case from 11 to Chapter 7* [Docket No. 19] and an order was entered October 23, 2007, granting that motion [Docket No. 20].

5. On October 26, 2007, the United States Trustee filed its *Notice Appointing Neil C. Gordon as the Interim Chapter 7 Trustee* [Docket No. 24].

6. Trustee was unable to conduct the meeting of creditors scheduled for

¹ Bankruptcy Rule 1007(c) provides that, if the Schedules and §1116 documents are not filed with the petition, they must be filed within 15 days thereafter. Debtor may obtain an additional 15 days to file the required documents upon motion and for

November 19, 2007, pursuant to 11 U.S.C. § 341(a) (the "341 Meeting") because Debtor had failed to appear at the 341 Meeting and failed to file his Statements and Schedules. At that time, Trustee reset the 341 Meeting to December 17, 2007.

7. By order entered December 7, 2007, Trustee obtained approval by the bankruptcy court to employ Arnall Golden Gregory LLP ("AGG") as attorneys for Trustee.

8. Debtor had completed his credit counseling requirement April 30, 2007, the certificate for which was filed May 1, 2007 (the "Certificate") in his previous Chapter 7 case, Case No. 07-670952-MHM. Since the Certificate was obtained within one-hundred eighty (180) days of the Petition Date, Trustee filed his *Notice Concerning Credit Counseling and Pay Advices* [Docket No. 41] December 4, 2007, acknowledging that Debtor had technically fulfilled the requirements of §109(h) even though no certificate had been filed in this case; and that Debtor was not required to file pay advices because he is self-employed.

9. Trustee was unable to conduct the 341 Meeting on December 17, 2007, because Debtor again failed to appear at the 341 Meeting and to file his Statements and Schedules.

10. Debtor resides ^{at} 1821 Bromley Way, Roswell, Cobb County, Georgia 30075 (the "Property"). Based upon Trustee's initial title research, the Property appears to be encumbered by a single mortgage in the original amount of \$28,000.00 in favor of The Coca-Cola Company Family Federal Credit Union ("Coke FCU"). At the 341 Meeting, counsel for Coke FCU represented that a mortgage previously held by Citifinancial with an outstanding balance in the approximate amount of \$225,000.00 was paid off by Coke

good cause shown.

FCU on May 1, 2007, to prevent a foreclosure sale by Citifinancial. That payoff occurred before Coke FCU learned of the bankruptcy filing.

11. Trustee obtained a full title examination of the Property October 18, 2007 (the "Title Report"), which confirmed his previous findings. The Title Report showed a Deed to Secure Debt dated February 12, 2003, recorded with the Clerk of Superior Court of Cobb County February 14, 2003, in favor of Coke FCU in the original loan amount of \$28,000.00. The Title Report showed no other uncanceled security deeds on the Property as of the Petition Date.

12. A Security Deed in favor of CitiMortgage (*not* Citifinancial) dated December 18, 2002, was recorded January 9, 2003 (the "CitiMortgage SD"), reflecting an original loan amount of \$227,000.00. The CitiMortgage SD, however, is marked "FOR CANCEL SEE DE Book 14494 Page 5329" which is dated May 22, 2007 and filed of record May 30, 2007 (the "Cancellation"), showing satisfaction of the CitiMortgage SD.

13. Coke FCU filed a stay relief motion with respect to the Property December 3, 2007 (see Docket entry Nos. 35-37). In that motion, Coke FCU states that the "amount of the indebtedness is \$231,242.07 with a per diem of \$55.29 from November 26, 2007."

14. Trustee has represented that, in his capacity as a bona fide purchaser pursuant to 11 U.S.C. § 544, he intends to seek to avoid the purported transfer. If successful, such avoidance would preserve the avoided interest for the benefit of the bankruptcy estate under 11 U.S.C. § 551. In accordance ^{with} that intent, Trustee has sought to employ a realtor to sell the Property pursuant to his authority under 11 U.S.C. 363(b) and (f)(4).

15. Neither Trustee nor his realtor have had access to the Property and are

presently unable to show the Property to any interested buyers or provide access to other agents.

16. Due to the restricted access to the Property, Trustee cannot determine an appropriate listing price for the Property.

17. As of the date of entry of this Order, Debtor has failed to attend the 341 Meeting initially scheduled for November 19, 2007 and ^{the} reset 341 Meeting scheduled for December 17, 2007, or ^{to} file his Statements and Schedules..

18. Due to Debtor's failure to perform the statutory duties required of him under 11 U.S.C. §§ 343 and 521, Trustee has been unable to perform the duties required of him under 11 U.S.C. § 704.

19. If Trustee is able to avoid the CitiMortgage security deed position or otherwise realize on its value, doing so will greatly benefit the estate and its unsecured creditors.

II. CONCLUSIONS OF LAW

1. Pursuant to 11 U.S.C. 343 and Bankruptcy Rule 4002(a)(1), Debtor is required to appear and submit to an examination under oath at the § 341 Meeting. Debtor has twice failed to appear ^{for} scheduled §341 Meetings.

2. Pursuant to 11 U.S.C. § 521 (a)(1)(B) and Bankruptcy Rule 1007, Debtor is required to file Statements and Schedules. Debtor has failed to file his Statements and Schedules.

3. Pursuant to 11 U.S.C. § 521(a)(3) and Bankruptcy Rule 4002(a)(3) and (4), Debtor must cooperate with Trustee as necessary to enable him to perform the duties required of him, pursuant to 11 U.S.C. § 704.

4. As required by 11 U.S.C. § 521(a)(4), Debtor must surrender to Trustee all property of the estate.

5. Pursuant to 11 U.S.C. § 541(a)(1), property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case."

6. Pursuant to 11 U.S.C. § 542(a), Debtor is required to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate."

9. Pursuant to 11 U.S.C. § 704(a)(1), Trustee is required to "collect and reduce to money the property of the estate for which such trustee serves."

Debtor has failed to perform his required duties under the applicable statutes and rules cited above; as a result, Trustee been unable to perform his duties. Trustee seeks an Order of the Court compelling Debtor to perform his duties and requiring Debtor to immediately turn over the Property for administration by Trustee. Accordingly, it is hereby

ORDERED that Debtor shall file his Statements and Schedules on or before five o'clock p.m. February 4, 2008. It is further

ORDERED that Debtor shall attend his 341 Meeting February 6, 2008, at 5:00 o'clock p.m. in Room 368 of the Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303. **Debtor shall bring to his 341 Meeting his U.S. passport.** It is further

ORDERED that if Debtor fails to timely file the Statements and Schedules on or before February 4, 2008, or fails to attend his §341 Meeting on February 6, 2008, said failure shall constitute a default hereunder, whereupon Trustee may seek a further Order directing the assistance of the United States Marshal to apprehend Debtor and to escort

Debtor to the United States Courthouse for attendance at a 341 meeting. It is further

ORDERED that, although Trustee has established the merits of his request for immediate turnover of the Property, a final ruling thereon is deferred until hearing February 12, 2008, at 11:00 a.m., at which time Debtor will be allowed one more opportunity to appear and be heard and to satisfy the other directives set forth in this order. It is further

ORDERED that if Debtor vacates the Property prior to the hearing scheduled for February 12, 2008, Debtor shall leave the Property in a clean, broom-swept condition and leave all appliances and fixtures at the premises as required by law.

[END OF DOCUMENT]

PREPARED AND SUBMITTED BY:

/s/ Neil C. Gordon
State Bar No. 302387
ARNALL GOLDEN GREGORY LLP
171 17TH Street, N.W., Suite 2100
Atlanta, GA 30343-1031
(404) 873-8596 / neil.gordon@agg.com
Attorneys for Chapter 7 Trustee

DISTRIBUTION LIST

Neil C. Gordon, Esq.
Arnall Golden Gregory LLP
171 17th Street, N.W..

United States Trustee
362 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

Thomas S. Richey, Esq.
Powell Goldstein LLP
1201 W. Peachtree Street, N.W.
14th Floor
Atlanta, GA 30309

David C. Whitridge, Esq.
415 Wentworth Downs Court
Duluth, Georgia 30097

Mathew A. Schuh, Esq.
Taylor-Busch, LLP
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339

Geoffrey A. Gish
1821 Bromley Way
Roswell. Georgia 30075