

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:)	
)	Chapter 7 Case
BEACHCAN, INC.)	
)	Number <u>02-41701</u>
<i>Debtor</i>)	

ORDER ON DEBTOR'S REQUEST FOR DISMISSAL

The above Motion was filed by the Debtor on June 10, 2002. The Chapter 7 Trustee filed an objection on July 1 which was the subject of a hearing before the Court on July 17. The record shows that the Debtor was incorporated by Morris Hutson on June 3, 2002, and on the same day the corporation filed a Chapter 7 proceeding claiming to own fee simple title in certain property known as 218 Silverstream Drive, Richmond Hill, Georgia. The case was filed on the eve of a scheduled foreclosure by the first mortgage holder. The Trustee further showed that Morris Hutson had previously formed a corporation known as Tenants Unlimited, Inc., in November 2001, that Tenants Unlimited, Inc., had, similar to the instant case, been formed solely for the purpose of receiving title to property in order to forestall a foreclosure.

Because the Trustee asserted that Morris Hutson through the two shell corporations has committed multiple instances of abuse to the bankruptcy process, the Trustee requested a hearing. At the hearing Mr. Hutson was placed under oath and

examined by the Trustee. He did not dispute the essential thrust of the Trustee's argument concerning the nature of this filing and the fact that the corporation was formed, that the transfer occurred, and the case was filed solely to frustrate the state law foreclosure remedy of the first mortgage holder. However, Mr. Hutson testified that since the filing of the case the mortgage had been brought current and reinstated and that because there are no creditors of the Debtor corporation, Beachcan, Inc., he instructed counsel to seek dismissal of this proceeding.

While it is true that there are no pre-petition creditors to which Beachcan is obligated that circumstance is occasioned only by the fact that Beachcan's formation was a complete sham and abuse of the bankruptcy process. The corporation was formed so as to prevent the legitimate state law collection efforts of a mortgage holder on real estate through the last minute formation of a shell corporation which could accept title to the premises from an individual, and shield the individual who actually owned the real estate from the consequences of filing a Chapter 7 bankruptcy case.

However, by filing this case Beachcan created a class of creditor - the holders of administrative expense claims. *See* 11 U.S.C. § 503. These claims arise because the bankruptcy case was initiated and include, but may not be limited to, the Chapter 7 Trustee himself who was duly appointed to administer this case, who conducted a creditors' meeting pursuant to 11 U.S.C. § 341, and who responded to the Debtor's Motion for voluntary dismissal through counsel employed to represent the Trustee. Thus, when Mr. Hutson states as a reason for dismissal of this case that all creditors have been paid, he

overlooks an important class of creditor which has, in fact, not been paid, and he winks at the irony that the only reason there are no other creditors in the case is simply because of his abusive creation of a shell corporation and an abusive filing which he initiated.

Recognizing the tenuous position the Debtor is in and the possibility that the Trustee, if the case is not dismissed, would have the duty to sell the house in which the Debtor's president and his wife reside, pay off all mortgage indebtedness on the real estate and return the excess to the Debtor corporation, Hutson offered to consent to the Court placing a limitation on his being permitted to ever file a petition under Title 11 that would have the effect of affecting the rights of any creditor in and to the Silverstream Drive property.

The Court finds that offer partially curative of the Debtor's conduct in this case. However, as previously pointed out, the filing of the case caused the machinery of the bankruptcy laws to be activated, the imposition of the automatic stay, and the appointment of a trustee and an attorney for the trustee. This necessarily caused the accrual of administrative expenses for the Trustee's professional services and perhaps out-of-pocket expenses. Because Debtor contends that the case should be dismissed under the theory that all creditors are satisfied, as sanction for the abusive behavior of the Debtor and the Debtor's principal, and to insure at least partial compensation for the administrative expenses which accrued and will otherwise be unpaid as a result of the Debtor's behavior, IT IS HEREBY ORDERED that Debtor and Debtor's president, Mr. Morris Hutson, remit the sum of \$1,000.00 to the Chapter 7 Trustee, Mr. James B. Wessinger, III. Upon Mr.

Wessinger's certification that said sum has been received, the Court will enter an Order of Dismissal providing that the Debtor and Mr. Hutson are permanently enjoined from filing any proceeding under Title 11 in the future insofar as it would cause the imposition of the automatic stay of 11 U.S.C. § 362 over property located at 218 Silverstream Drive, Richmond Hill, Bryan County, Georgia.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of November, 2002.