

1 **5**
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Darrell A. Fruth (SBN 213529)
**BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.**
2000 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27410
Tel: (336) 271-3199; Fax: (336) 232-9199
Attorney for Lauranell Burch

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In Re:
COUNCIL FOR REFRACTIVE
SURGERY QUALITY ASSURANCE
D/B/A USAEYES.ORG

Debtor and Debtor in Possession

**Case No. 10-39240
DC No. DF - 1**

**REPLY TO DEBTOR'S OPPOSITION TO
MOTION FOR RELIEF FROM
AUTOMATIC STAY**

Date: January 18, 2011
Time: 9:31 a.m.
Courtroom: 32 Sacramento Division
Judge: Thomas C. Holman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REPLY IN RESPONSE TO OPPOSITION

This matter is before the Court on the Motion for Relief from Automatic Stay [Doc. # 49] (the “Motion”) filed by Movant Lauranell Burch. The Motion showed that this Case was brought in bad faith, with the transparent goal of thwarting litigation pending in North Carolina. The commencement of this Case was shown to be the latest in a long history of intimidation, harassment, and vexatious litigation perpetuated against Movant for the benefit of Debtor – including the hiring of a person with a criminal record to surreptitiously and unlawfully intercept electronic communications sent and received by Movant.

The “Opposition” [Doc. # 58] filed by Debtor confirms that the automatic stay should be lifted. While Debtor quibbles with how expenses in its monthly operating reports should be read (i.e. averaged over some longer time than as reported), the Opposition does not dispute any of the factors showing that the petition was filed in bad faith. Nor does the Opposition show that judicial efficiency would be served by moving the North Carolina litigation to this Court.

I. The Petition was not a legitimate bankruptcy filing.

Nothing contained in the Opposition contradicts the obvious: that this petition was filed for tactical reasons unrelated to reorganization. The basic facts about cash flow are undisputed. Member LASIK surgeons pay Debtor in exchange for prominent website exposure (Oppo. ¶¶ 8, 10). The money for these listings goes primarily to pay (1) “rent” for “space” within Mr. Hagele’s personal residence, (2) utilities for this “space;” and (3) medical, dental, and life insurance for Mr. Hagele, who is Debtor’s sole “volunteer” employee (Oppo. ¶31). The December Operating Report [Doc. # 53] even has a line item, upon information and belief, for expenses paid by Mr. Hagele which were or will be reimbursed by Debtor.¹ These are not expenses reasonably necessary to run a website; they simply provide a direct, personal, and tax-free benefit to Mr. Hagele. With so few bona fide expenses compared to tens of thousands of dollars of projected quarterly income, Debtor does not need Chapter 11 reorganization to pay the non-contingent liquidated debts.

¹ The amounts lent by Mr. Hagele to Debtor are arguably outside of the usual course of business and therefore prohibited without approval of this Court pursuant to 11 U.S.C. § 364.

1 Considering the dearth of other creditors and lack of assets, the true reason for filing this
2 petition appears to be forestalling litigation against Movant that was going badly for Debtor and Mr.
3 Hagele. More specifically, Debtor and Mr. Hagele appear to be using the bankruptcy as a tactic to
4 thwart discovery into their criminal conduct directed toward Movant and Mr. Hanson. As explained
5 in the Motion, this purpose is improper: “Bankruptcy Courts may reasonably find that bad faith
6 exists where the purpose of the bankruptcy filing is to defeat state court litigation without a
7 reorganization purpose.” *In re Myers*, 491 F.3d 120, 125 (3d Cir. 2007). The essence of Chapter 11
8 is business reorganization, not a forum to resolve disputes between a few parties. Movant,
9 therefore, respectfully requests relief from the automatic stay to liquidate her claims against Debtor.

10 Debtor’s amended Schedule F provides additional evidence of Debtor’s bad faith. On the
11 eve of its request to file a Chapter 11 Plan of Reorganization, Debtor added, for the first time, its
12 accountant as a creditor based, presumably, on pre-petition work done by the accountant – i.e. work
13 done over six months ago. Regardless of why this creditor was added so late and after the schedules
14 previously had been amended,² the failure of Debtor in its initial petition to accurately identify all
15 four of its creditors is evidence that Debtor has not been forthcoming with this Court and the
16 creditors. *See In re Myers*, 491 F.3d 120, 125 (3d Cir. 2007).

17 **II. The acts of Hagele are relevant to Movant’s Motion.**

18 Debtor does not dispute the accuracy of the documentary evidence proving Mr. Hagele’s
19 efforts to criticize, harass, and intimidate Movant for speaking publicly about the risks of LASIK.
20 Instead, Debtor repeats more than ten times its claim that these acts of Mr. Hagele are not relevant
21 (Oppo. ¶¶ 57, 58, 59, 60, 61, 63, 64, 65, 66, 67). This mantra is incorrect, no matter how many
22 times it is repeated.

23 To be clear, Movant seeks relief from the automatic stay so she can pursue her claims in the
24 North Carolina Action, where she has asserted claims against both Debtor and Mr. Hagele
25 individually. In that action, Debtor has taken the position that the automatic stay precludes Movant
26 from continuing with her claims against either Debtor or Mr. Hagele, because the claims are

27 ² The most likely explanation is that Mr. Beil was strategically added to aid Debtor’s effort
28 to confirm a plan of reorganization over Movant’s objections.

1 inextricably intertwined. See Notice of Automatic Stay filed in the North Carolina Action, attached
2 as Exhibit 1 (exhibits to the Notice are omitted). Debtor has not even attempted to reconcile the
3 inconsistency between this position stated to the court in North Carolina with the representation to
4 this Court (Oppo. ¶ 45) that Movant’s claims against Mr. Hagele are not related to her claims
5 against Debtor.

6 At a minimum, the conduct outlined in the Motion is relevant to show that this bankruptcy
7 petition was filed in bad faith, as part of a pattern vexatious litigation and dilatory practices. Those
8 dilatory tactics are also relevant to explain the current state of the North Carolina litigation, which is
9 relevant to this Court’s consideration of judicial efficiency. In addition, the unlawful conduct of
10 Mr. Hagele documented in the Motion is relevant because it appears to have been conducted for the
11 benefit of Debtor. Mr. Hagele’s pattern of illegal harassment against Movant was part of his and
12 Debtor’s effort to silence Movant’s public criticism of the LASIK procedure, such criticism being
13 contrary to Debtor’s purpose of “educating” the public that LASIK is efficacious. See
14 <http://www.usaeyes.org/lasik/faq/about.htm> (explaining “the purpose of CRSQA is to educate the
15 United States public on the efficacy of refractive surgery and the availability of qualified refractive
16 surgeons.”).

17 Assuming, *arguendo*, that there is some distinction between Debtor and Mr. Hagele
18 (Opposition ¶ 64),³ Mr. Hagele is Debtor’s only employee. Consequently, Debtor can only act
19 through Mr. Hagele. Mr. Hagele sought to benefit Debtor by silencing Movant, a critic of the
20 industry Debtor desires to promote. Debtor is therefore responsible for Mr. Hagele’s acts, taken for
21 and on behalf of Debtor and in the scope of his employment, under the doctrine of *respondeat*
22 *superior*. Debtor’s unsupportable contentions to the contrary should be disregarded.

23 **III. Judicial efficiency will be enhanced if relief from stay is granted.**

24 Finally, as explained in the Motion, judicial efficiency will be enhanced if Movant is
25 allowed to liquidate her claims in North Carolina. Denying the Motion on the grounds suggested by
26 Debtor – that only minimal discovery has been conducted – would effectively reward Debtor for

27 ³ There are significant “veil piercing” facts present such that an inquiry into the corporate
28 separateness of Debtor is warranted.

