

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
DANIEL J. MILES,)	CASE NUMBER: 09-92601-PB
)	
Debtor.)	
<hr/>		
ROBERT CLARK,)	
JM MANAGE GROUP, LLC,)	
NANCY DOMBROWSKI,)	
LEONARD PIETREWICZ, JR.,)	
STEPHEN WEBER, and)	
LEONARD PIETREWICZ, SR.,)	
)	
Movants,)	
)	
v.)	
)	
DANIEL J. MILES,)	
)	
Respondent.)	

MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE

COME NOW Robert Clark, JM Manage Group, LLC, Nancy Dombrowski, Leonard Pietrewicz, Jr., Stephen Weber, and Leonard Pietrewicz, Sr. (“Movants”) and pursuant to the provisions of 11 U.S.C. § 1104 move this Court for the appointment of a Chapter 11 trustee. In support of this motion, the Movants show this Court as follows:

1. This case began as an involuntary Chapter 7 Petition filed on December 9, 2009. [Docket No. 1]
2. On December 10, 2009, the Movants filed their Motion for Appointment of Interim Trustee. [Docket No. 5] A hearing on the motion was set for December 17, 2009.

3. On December 16, 2009, the Debtor filed an Answer to the Involuntary Petition [Docket No. 13] admitting that he was eligible to be a debtor in Chapter 7 and consenting to an order for relief.
4. On December 16, 2009, the Debtor filed its Motion to Convert to Chapter 11 [Docket No. 17]. Subsequently, on December 17, 2009, this Court entered its Order for Relief [Docket No. 20] ordering relief under Chapter 11 of Title 11 of the United States Code. Debtor has continued to operate as a debtor in possession since then.
5. According to pleadings filed by the Debtor [Docket No. 16], the Debtor is the founder of Miles Properties, Inc. ("MPI") which in turn controls and/or directs affiliated companies which are the managers of multiple real estate limited liability companies.
6. The Movants assert that there exists sufficient cause for the appointment of a Chapter 11 trustee.
7. The Debtor is the personal guarantor of secured debt relating to the development of real estate projects for which the Debtor may have as much as \$72 million of deficiency liability.
8. In pleadings filed with this Court, the Debtor and the chief restructuring officer for MPI [Docket No. 14] have admitted that Mr. Miles recently personally funded significant retainers estimated to be at least \$500,000 to pay legal expenses and other costs of various related entities. More significantly, these amounts were paid while the Debtor was insolvent. MPI and the Debtor have also acknowledged that

the Debtor, Debtor is negotiating to loan an additional \$1 million of personal funds for debtor in possession financing to these related entities so that they could file bankruptcy petitions for multiple single asset real estate entities.¹ These are funds which could be used to pay the creditors of this estate rather than consumed in a vain quest to save properties which are for the most part hopelessly over leveraged and non reorganizable.

9. Movants believe, upon information and belief, that Mr. Miles has secreted, attempted to secrete and/or otherwise taken action to place his assets beyond the reach of creditors.
10. In addition, Mr. Miles is the principal of a new company formed in March 2009 called Blue Star Residential Properties, LLC. Movants believe such company is actively engaged in the same line of business as MPI and its affiliates and it is unclear how such company was capitalized and whether the Debtor has or will incur substantial additional obligations related to that entity. The ownership of this entity and the commitment of the Debtor's personal funds to it are also unknown and uncertain.
11. In connection with the operation of MPI. and its affiliates, the Movants understand, upon information and belief, that the funds of the various real estate entities were commingled in what was known as a "zero balance account" or

¹ There are presently four single asset real estate Chapter 11 cases pending in this Court for MPI related real estate entities. The cases filed on May 30, 2009 are: MPI Eagles, LLC, Case No. 09-73804-JEM (lead case), MPI Ashley, LLC, Case No. 09-73808-JEM, MPI Hunters, LLC, Case No. 09-73811-JEM and MPI Reserve, LLC, Case No. 09-73813-JEM. The administrative expense applications in those

“ZBA”. This activity occurred with the direct knowledge of the Debtor while he controlled MPI. In essence, all of the income from all of the MPI related properties were pooled in one account and cash diverted to where it was needed. Petitioners understand that substantial amount of such funds were diverted to MPI and related companies controlled by or in some cases owned 100% by the Debtor. Such funds may thereafter have been paid to the Debtor, or for the Debtor’s benefit so as to maintain his life style which includes substantial amounts of jewelry, art and automobiles. This activity shows a distinct lack of concern for maintaining proper financial controls and as such gives significant concern to the Movants as to whether the Debtor is sufficiently responsible to operate as a debtor in possession in Chapter 11.

12. Because of his many competing interests, the Movants assert that the Debtor cannot make independent decisions concerning the operation of this estate for the benefit of its creditors and that decisions could very likely be made more for the purpose of minimizing the Debtor’s liability to his real estate secured creditors and on account of potential liability stemming from the ZBA account.
13. All of the foregoing reasons constitute more than sufficient cause to warrant the appointment of a Chapter 11 trustee.

WHEREFORE, the Movants request this Court to enter an order pursuant to 11 U.S.C. §

consolidated cases filed on October 30, 2009 total over \$308,000. Interestingly, counsel for the lead debtor is also counsel for MPI and the CRO for MPI is also the debtors’ CRO in those cases as well.

1104 appointing a Chapter 11 trustee in this case for the assets and estate of Daniel J. Miles.

This the 17th day of December, 2009.

/s/ John A. Christy
JOHN A. CHRISTY
Georgia Bar No. 125518
Attorneys for Movants

SCHREEDER, WHEELER & FLINT, LLP
1100 Peachtree Street, N.E., Suite 800
Atlanta, Georgia 30309-4516
Telephone: (404) 681-3450
Facsimile: (404) 681-1046

CERTIFICATE OF SERVICE

This is to certify that the undersigned served a copy of the **Motion for Appointment of Chapter 11 Trustee** through the electronic case filing system (ECF) or by placing a copy of the same in the United States Mail, with sufficient postage thereon to ensure delivery upon the parties listed below.

Office of the U.S. Trustee
362 Richard Russell Bldg.
75 Spring Street, SW
Atlanta, GA 30303

Joseph J. Burton, Jr., Esq.
Burton & Armstrong, LLP
Two Ravinia Drive
Suite 1750
Atlanta, Georgia 30346

Frank W. DeBorde, Esq.
Will Tate, Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326

Jimmy C. Luke, II, Esq.
Foltz Martin, LLC
5 Piedmont Center, Suite 750
Atlanta, Georgia 30305

Brian K. Gart, Esq.
Berger Singerman, P.A.
350 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301

Gary W. Farris, Esq.
Bryan T. Glover Esq.
Burr & Forman LLP
Suite 1100, 171 Seventeenth Street, N.W.
Atlanta, Georgia 30363

This 17th day of December, 2009.

/s/ John A. Christy
JOHN A. CHRISTY

SCHREEDER, WHEELER & FLINT, LLP.
1100 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-4516