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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re:)	
)	Case No. 09-31932 TEC
ARDEN VAN UPP,)	
)	Chapter 11
Debtor.)	
)	Place: United States Bankruptcy Court
2550 Webster Street)	235 Pine Street, Courtroom 23
San Francisco, CA 94115)	San Francisco, California
)	Judge: The Honorable Thomas E. Carlson
)	

MOTION TO DISMISS ENTIRELY CHAPTER 11 BANKRUPTCY PROCEEDING

Samuel H. Sloan, being duly sworn, deposes and says:

1. I hereby move to dismiss this bankruptcy proceeding. This motion must be granted because the attorney who filed this bankruptcy petition is NOT licensed to Practice Law in the State of California. This attorney has also not moved for leave to appear *Pro Hac Vice*. In addition, were he to make such a motion it would probably not be granted because he does not meet the standards or the qualifications for such a motion to be granted.

2. What is especially shocking that all of the other attorneys in this case have known all along that Mitchell Hadler is not licensed to practice law in the State of California. It is common knowledge. A lawyer casually mentioned this to me yesterday and I looked him up and found that sure enough he is not licensed to practice law in California.

3. Mitchell Hadler apparently is claiming that he is licensed to practice law in Minnesota and, since Bankruptcy is a nationwide federal procedure, he can appear in Bankruptcy Court in San Francisco

or any other jurisdiction of the United States without being licensed in that state. However, THIS IS NOT TRUE. He must be licensed in any state in which he appears or, failing that, he can make a motion for leave to appear *pro hac vice*. Usually the motion for leave to appear *pro hac vice* is made by a local attorney, in this case a San Francisco Lawyer, and is accompanied by a statement by the Bar in the state where he is licensed that he has not been the subject of any disciplinary proceedings.

4. In this case, Mitchell Hadler has a law office in San Francisco and he had been conducting the practice of law in San Francisco for a number of years, all the while never being licensed to practice law here. He advertises his law office at 1450 Sutter Street 508 San Francisco California 94109, tel: 415-626-6897. He is listed in various directories as a California lawyer. A motion for Leave to Appear *pro hac vice* is normally made by a local lawyer on behalf of an out of state lawyer who needs to appear in this state on behalf of a client. Mitchell Hadler is not an out-of-state lawyer. He is right here. For whatever reason, he has for years been using his Minnesota license to appear in California cases.

5. The next question concerns the status of his Minnesota license. The court papers filed here list his license number as MN 39172. He is not a member of the Minnesota State Bar Association. However, it appears that his law license is paid up to date in that state. See:

<http://www.courts.state.mn.us/mars/AttorneyDetail.aspx?id=0039172>

6. Arden Van Upp does not want Mitchell Hadler to be her lawyer. She publicly fired him on September 21, 2009 just before a hearing in federal bankruptcy court on that date. He was replaced by Thomas Swihart. Nevertheless, Mitchell Hadler went up before the court and sat at counsel's table, even though he had just been fired. He later filed a motion to be appointed as counsel in this case, even though he not only had been fired but his interests were directly contrary to the interests of his client. His client, Arden Van Upp, wants to keep the house at 2550 Webster Street where she resides until she dies. She has no wish to sell the house. Moreover, if she did sell the house, she would have to pay Capital Gains Taxes in excess of \$500,000. Thus, it makes no sense for her to sell her house as then she would have to search for a place to live. It is likely that she would be reduced to being a shopping cart lady, living on the street.

7. Mitchell Hadler wants to force her to sell the house so that he can get a cut on the sale price. The trustee and the attorney for the trustee also want to get their cut too. Everybody wants to get their fingers into the pot. The house at 2550 Webster Street has a currently appraised value of \$3.85 million and a mortgage of a maximum of \$1.15 million. Thus, the equity in the house is \$ 2.7

million. If sold, \$500,000 roughly would go to Capital Gains Tax and then Mr. Hadler, Mr. Cooper, Mr. Barnes and the rest of their old boy networks would just divide up the remaining two million among themselves and Arden Van Upp would be left with nothing plus she would have no place to live.

8. Arden Van Upp has already been illegally evicted from her home at 2550 Webster Street. She came home two nights ago only to find that the paddle lock on the gate to her house had been broken off and also the locks to the doors of her house had been drilled open. New locks had been installed to her house and there was also a new lock on the gate. Arden Van Upp has not been allowed to enter her own home since. This was done by the attorney for the trustee, Michael Cooper. This was illegal. There was no authority for Michael Cooper to lock Arden Van Upp out of her own house.

9. Prior to that time, only three people had the keys to the house at 2550 Webster Street. These were: Myself, who has lived there since the early 1990s, plus Arden Van Upp and her daughter Tammy Van Upp. Now, none of us can get in the house. Instead, there is a mentally ill and obviously schizophrenic man named Jeff who has found a way to break into the house, probably by climbing the wall next to the gate, and, upon finding him inside the house, the trustee gave him the keys. So, now Arden Van Upp cannot get into her own house and a mentally ill man named Jeff who had broken in has been made in effect the custodian of the house.

10. To make matters even worse, Arden Van Upp hired an attorney to replace Mitchell Hadler named Thomas Swihart. Thomas Swihart appeared in bankruptcy court at a hearing on September 21, 2009 and went up and sat at the counsel's table, identifying himself as attorney for Arden Van Upp. However, since then he has never filed a notice of appearance nor filed any papers at all in this case. His name is nowhere in the court pleadings. Opposing counsel have not included him on the service list. Arden Van Upp heard that he was sick, in the hospital. However, I have found out that this was not true.

11. Arden Van Upp paid \$5,000 to Thomas Swihart in September with the understanding that he was taking over the case and that Mitchell Hadler would no longer be her attorney. Arden Van Upp did not realize that she is not allowed to pay money to a lawyer without permission of the court while she is in bankruptcy. However, Thomas Swihart certainly should have realized that, since he regularly practices in the bankruptcy courts. Now, Thomas Swihart should be ordered to pay back that \$5,000 (although I doubt he still has it). Thomas Swihart called me yesterday, knowing that I have some influence with Arden Van Upp, and said that he has been trying to call her for a week and does not understand why she does not call back.

12. I replied that she is not calling back because he has flaked out on her. She paid him \$5,000 thinking that he would represent her. Instead, he never appeared in the case other than physically appearing on September 21 and he has left her high and dry. Now, she is trying to find another attorney to represent her. Furthermore, she has another big problem. Several attorneys have refused to take her case because they look at PACER and see that she is represented by Mitchell Hadler. They are reluctant to go into court and fight a court battle with Mitchell Hadler, just to be acknowledged as the attorney for Arden Van Upp. They can see that Mitchell Hadler is not relinquishing his role in this case, plus he has now been appointed by the court as counsel for Arden Van Upp.

13. The current situation is that Arden Van Upp has obtained a commitment from a major financial institution to refinance all three of her properties. They have the money. The money is ready. This is NOT "Dr. Carroll". However, they cannot give her the money without approval of this court while this bankruptcy proceeding is pending. Therefore, she wants this bankruptcy proceeding dismissed. However, she faces another problem. Mr. Barnes has repeatedly listed this property for foreclosure sale, week after week. Therefore she fears that if the bankruptcy proceeding is dismissed, Mr. Barnes will complete foreclosure and take the property right away before the refinancing by the major financial institution is completed. It is clear that Mr. Barnes wants literally to steal this property. In fact, there was an article in the San Francisco Examiner dated September 20, 2009 entitled "A Steal" about how the financial predators in this case were trying to steal the house of an elderly lady. My name was mentioned in the article in the *San Francisco Examiner*.

14. I recognize the serious fears and concerns that Arden Van Upp has about what will happen if this bankruptcy proceeding is dismissed. What we have here are vultures flying around overhead ready to dive in and eat the dead carcass. Mr. Barnes, who forced Arden Van Upp into Bankruptcy by putting her house into foreclosure, does not really have a valid case. Mr. Barnes never loaned her anything. He bought the loan from the original lender. The original amount of the loan was only \$650,000. Now, Mr. Barnes claims that Arden Van Upp owes \$1.2 million. He has provided no financial figures showing what his figures are or where they come from. He has resisted all efforts to force him to file a proof of claim. In short, he wants to grab this property cheaply and make millions for himself by flipping and selling it. The appraised values for these properties are \$3.85 million for the Webster Street house, \$3.15 million for Steiner Street and \$2.75 million for Ashbury Street. Thus, the total appraised value of the three properties combined is \$9.75 million. Mr. Barnes obviously is not worried about recovering on his \$1.2 million loan, even assuming there is a valid obligation to him in

this amount. He simply wants to steal the properties.

15. Attached as an Exhibit is an affirmation filed by Mitchell Hadler on October 2, 2009 in which he asks this court to appoint him as counsel in this case. This was filed 11 days after Arden Van Upp had fired him as her attorney on September 21. It fails to disclose that Mitchell Hadler is not licensed to practice law in California. This is filed as document number 39 on PACER. This affirmation contains the statement that he has been licensed to practice law in the Northern District of California since 1986. This statement is false. Mitchell Hadler is not licensed to practice law in California at all. On October 6, 2009, the judge approved this motion thereby making Mitchell Hadler officially the attorney for Arden Van Upp. I know that Mitchell Hadler knew that he had been fired because he called me previously asking me if Arden would ever take him back as her attorney. I told him that Arden was not going to take him back. I also told Thomas Swihart that Arden was not taking him back either, because he was a flake who had disappeared after being paid \$5,000.

16. Speaking of flakes, "Dr. Ted Carroll" who appeared in bankruptcy court before the judge and stated that he has the \$3 million either to buy or refinance the property, turns out not to have any money. "Dr. Carroll" also turns out to be not the medical doctor he implied that he was. We have so many flakes in this case including the trustee and his attorneys and accountants and who knows who else. The only person in this case who has any money at all is Arden Van Upp, who could buy and sell all of them combined if only she could get out of this bankruptcy trap she has fallen into.

WHEREFORE, for all of the reasons set forth above, this Chapter 11 Bankruptcy Proceeding must be dismissed.

Samuel H. Sloan
2550 Webster Street
San Francisco CA 94115

Tel. 917-507-7226
samhsloan@gmail.com

Sworn to before me this 22nd
Day of October 2009

1 Mitchell R. Hadler, Esq.
MN 39172
2 attorney at law
1450 Sutter Street 508
3 San Francisco, California 94109
4 415.626.6897 (voice)

5
6 IN UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 In re: Chapter 11
8 Arden Van Upp
9 Case no. 09 31932 TC
10 Debtor.

11 DECLARATION OF MITCHELL R. HADLER, ESQ., RE APPLICATION TO EMPLOY
12 ATTORNEY FOR DEBTOR AND DEBTOR IN POSSESSION

13 I, Mitchell R. Hadler, Esq., declare as follows:

14 1. I am an attorney duly admitted and qualified to practice before this
15 court and make this Declaration in support of the Application to Employ Attorney for
16 Debtor and Debtor In Possession filed herein;

17 2. My office address is 1450 Sutter Street 508, San Francisco, CA 94109.

18 3. To the best of my knowledge, neither I nor any member of my office
19 represents any interest adverse to the Debtor or to Debtor's estate; I do not have
20 any connections with the debtor, debtor's principles, creditors, or any other party in
21 interest in this case, their respective attorneys or accountants; further, to the best
22 of my knowledge neither I nor any member of my office has any connection with
23 the United States Trustee or any person employed in the office of the United States
24 Trustee.
25

1 4. Debtor in possession requires the advice of experienced legal
2 bankruptcy counsel in order to perform her duties in this case.

3 5. I have been a member of the bar of the Northern District of California
4 since 1986, have represented chapter 11 debtors before this court and that
5 experience qualifies me to represent the debtor in possession in this chapter 11
6 case.

7 6. I have agreed to represent debtor in possession and will charge
8 \$350.00 per hour for legal services that are necessary and appropriate in this case
9 including the preparation of a disclosure statement and plan of reorganization if
10 necessary; that a copy of the Representation Agreement accompanies this
11 Declaration and is made a part hereof by reference.

12 I declare under penalty of perjury that the foregoing is true and
13 correct to the best of my knowledge.

14 Date: July 10, 2009

/s/ Mitchell R. Hadler

Mitchell R. Hadler, Esq.

Affidavit of Service

Samuel H. Sloan does hereby swear and affirm that on October 22, 2009 he served the within "MOTION TO DISMISS CHAPTER 11 BANKRUPTCY PROCEEDING" by mailing by electronic and postal mail a true copy of the same to the following persons:

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/s/ _____
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Sworn to before me this 22nd
Day of October 2009

NOTARY PUBLIC