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U.S. BANKRUPTCY COURT
W.D. OF WA AT SEATTLE
BY _____ DEP. CLK.

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Case No.: 16-1365
JAYAKRISHNAN K. NAIR,)	Bankruptcy Case No.: 15-12626 CMA
Debtor/Appellant)	APPELLANTS' BRIEF REGARDING
)	APPEAL FROM BANKRUPTCY COURT
)	
)	

1. STATEMENT OF JURISDICTION

This appeal arises from an order of the United Stated Bankruptcy Court for the Western District of Washington converting Debtor's Chapter 11 case to Chapter 7. The Bankruptcy Court had jurisdiction to enter the final order pursuant to 28 U.S.C. §§ 157(a), 157(b)(1) and 1334. This Panel has jurisdiction over this appeal pursuant to 28 U.S.C. § 158.

2. STANDARD OF REVIEW

Generally, "[d]ecisions of the BAP generally are reviewed de novo." Carrillo v. Su (In re Su), 290 F.3d 1140, 1142 (9th Cir.2002). Under the abuse of discretion standard of review, we first determine de novo whether the court identified the correct legal rule to apply to the relief requested. United States v. Hinkson, 585 F.3d. 1247, 1262 (9th Cir 2009)(en banc).

3. STATEMENT OF ISSUES

1
2 **1. Whether the Bankruptcy Court committed an error of law or an abuse of discretion in failing to**
3 **identify the unusual, let alone perhaps the most extraordinarily unusual, circumstances in the case that**
4 **clearly establishes that converting the case is not in the best interests of either the creditors and/or the**
5 **estate, per 11 U.S.C. § 1112(b)(2).**

6
7 **2. Whether the Bankruptcy Court committed an error of law or an abuse of discretion in finding that it is**
8 **in the best interest of a healthy 400% solvent estate with a net worth of \$4.5 Million to go through a**
9 **fatal Chapter 7 liquidation that would decimate its cash positive real estate portfolio and cost millions of**
10 **dollars in losses, including Trustee compensation, listing fees, legal fees, loss of rental income and**
11 **opportunity costs; when all its creditors are fully secured and the unsecured claims (about \$19,000) at**
12 **filing, form less than a diminutive half a percent of the estate's net worth, which the debtor is able to**
13 **directly pay off at any time, per 11 U.S.C. § 1112(b)(1).**

14 **3. Whether the Bankruptcy Court committed an error of law or an abuse of discretion in finding that the**
15 **grounds for converting the case included an act or omission of the debtor that could not be reasonably**
16 **justified per 11 U.S.C. § 1112(b)(2)(i), when the justification was that he was required to be out of state**
17 **for three months attending to a critical family medical emergency of his mother becoming paralyzed**
18 **from a massive cerebellar stroke, one of the most critical and life changing events possible.**

19
20 **4. Whether the Bankruptcy Court committed an error of law or an abuse of discretion in finding that**
21 **cause exists to convert the Debtor's Chapter 11 to a case under Chapter 7, despite the fact that estate**
22 **under the Debtor in Possession had not only increased in net worth by several hundreds of thousands of**
23 **dollars post petition, but also further decreased its debt-to-equity ratio roughly by a highly substantial**
24 **FIVE% to currently less than just 25%, showing a very healthy, prudent and savvy management of**
25 **assets by a highly qualified DIP, a senior management professional and financial expert with an MBA.**

26
27 **5. Whether the Bankruptcy Court committed an error of law or an abuse of discretion in finding that the**
28 **conversion to Chapter 7 was in the best interest of the creditors, when the debtor has shown the**

1 financial ability in his Chapter 11 Monthly Operating Reports to not only maintain all secured
2 obligations current and in good standing, but also even to pay off all the undisputed unsecured claims
3 immediately, rather than let any of those creditors go through a long chapter 7 liquidation process that
4 could take several months before any disbursements.

4. STATEMENT OF CASE AND FACTS.

A. The Curious Case of the "Bankrupt" Multi-Millionaire

9 The sequence of events and interplay of situations that have led an incredibly successful young
10 executive managing a group of 26 engineers at Microsoft Corporation, who had simultaneously also
11 invested sagaciously and worked extremely hard to build a self-sustaining multi-million dollar real
12 estate portfolio, and living the American Dream while having also established a stellar academic and
13 scientific publications record on NASA space applications and robotics, to have been swindled by his
14 legal counsel into filing an illegal, farcical and terribly self-destructive case of bankruptcy when he was
15 in fact one among the richest young entrepreneurs in the nation having amassed a personal NET worth
16 of about four and a half million dollars at the time of filing, and having the financial strength to pay off all
17 his creditors easily not just once but FOUR times over, are of extreme public and political interest. If
18 such an extraordinarily financially savvy and wealthy entrepreneur could be the victim of this scam,
19 then there is nothing to prevent other wealthy and fully solvent estates also from being scammed and
20 betrayed the same way he was. He was not bankrupt, is not bankrupt, has never been bankrupt in his
21 life, and in the contrary was (and still is) among the top 1 percent wealthiest of the population. He never
22 needed any bankruptcy protection for his estate as he always had more than enough liquidity and
23 income to stay current on all obligations to his creditors, and now perhaps better than ever so.

26 Yet he is currently shocked and petrified that his millions of dollars in honest hard-earned assets
27 are now at the whim and mercy of a Chapter 7 trustee and her avaricious lawyer, who have already
28 made it blatantly clear to him at a private meeting they called post this conversion that their agenda is to

1 liquidate assets and loot as much bogus fees and commissions as much as they can get away with from
2 his fully secured and 400% solvent properties, unless he is willing to "negotiate a deal" with them(!).

3 Even though the debtor offered to pay off his all his unsecured debts (which is less than
4 0.2% of his Net Worth) from his pocket on the same day as the meeting and send her proof (as he has
5 several times that amount as liquidity ready in hand), the Trustee Ms. Nancy James declined, for obvious
6 reasons as then there would be no unsecured creditors to pay off and her role becomes inherently moot,
7 adding to the appalling egregiousness and unusualness of not only this presently appealed order to
8 convert to Chapter 7 but also this bankruptcy case in general.

9
10 "Unusual" is the word that recurs unusually much in this docket as many parties have referred
11 as such to this case where a fully solvent & healthy multi-million dollar estate, with very little unsecured
12 debt and/or secured delinquencies, and in good positive cash flow, being in a seemingly suicidal
13 bankruptcy filing, let alone in Chapter 7 wherein the Trustee and her attorney have stated their intent to
14 list and sell all his assets and pulverize his solvent estate only for the sake of maximizing their own
15 commission and fees, even though all secured creditors are 400% over secured and Mr. Nair is willing to
16 immediately pay off all undisputed unsecured claims.

17
18 Mr. Nair is astounded as to the level of corruption in the Bankruptcy system and has decided to
19 proceed pro se to protect his own best interest, i.e. the best interest of HIS personal estate, as some of
20 the legal professionals he came across in this matter has unduly, and sometimes even criminally and
21 fraudulently, put their personal agenda of maximizing their own legal fees on a fully solvent estate that
22 was scammed into filing for a false bankruptcy, ahead of their professional ethics and fiduciary duty.

23 As Mr. Nair believes it is his civic duty to share his experience to help plug the holes in the
24 bankruptcy code, as well as to bring those responsible for his tremendous losses and traumatic
25 sufferings to justice, he wishes to bring this matter not only to the attention of the venerable Bankruptcy
26 Appellate Panel, hoping for case law to protect highly solvent estates from such breach of fiduciary duty
27 and predatory legal malpractice in the future, but also (and as suggested by the Chapter 7 trustee Ms.
28

1 Nancy James herself when I voiced concerns about her lawyer's demands to negotiate with them
2 privately to avoid liquidation of my assets), to the offices of Congressman Mr. Jim McDermott, Senator
3 Patty Murray and also the President-elect Mr. Donald Trump, to protect the citizens from such scams
4 *and to introduce deterring criminal penalties to those that wantonly abuse the standards of the legal*
5 *profession for self enrichment.*

6 Now facing this farcical charade to have proceeded to an extent where it is threatening to
7 entirely destroy his personal estate that he had built and nourished through meticulous financial
8 planning and incredible hard work over decades, and unable to helplessly watch it being rapaciously
9 purloined by certain unscrupulous elements (who can only be called as the scum clogging the justice
10 system) against all professional ethics and strictly for personal enrichment, he has been forced to enter
11 into the completely uncharted territory of representing his estate as a first time pro se litigant, as his
12 traumatic experiences with this case has made him lose trust in the integrity of legal profession itself.
13 Therefore, it is humbly prayed that any errors, delays, omissions or commissions, or procedural
14 variations from standard practice, perhaps bound to happen due to his complete inexperience in legal
15 matters and forced to learn under very tight time constraints of prosecuting an appeal, be leniently
16 sympathized and also viewed in kind consideration of liberal pleading standards set forth by Fed. R. Civ.
17 P. 8(a)(2)) and to 28 U.S.C. § 1654.

21 **A.1. The Meteoric Rise as an Immigrant**

22 The Appellant Mr. Nair always had an innate passion for using science for alleviating human
23 suffering, and by age 19 as an engineering student he had invented and filed for patents on an
24 embedded system device that would help paralyzed patients use electrical appliances in their room only
25 using their speech. He came to the United States in 2001 to pursue a Master's in Electrical and Computer
26 Engineering from University of Massachusetts- Amherst, having already secured a Fellowship to
27 research on the fault tolerance of NASA JPL's space applications, by virtue of his outstanding academic
28

1 merit. Having graduated *summa cum laude* with a full 4.0 GPA, and earned a prestigious publications
2 record that makes him an Erdos #2 Mathematician, he was recruited to Microsoft for optimizing
3 algorithms for SQL Server. While working there for almost seven years, he climbed to managerial
4 positions and also completed an MBA in Tech Management *summa cum laude* from University of
5 Washington- Foster Business School. He also made prudent and savvy real estate investments that
6 netted him a portfolio of five beautiful premium homes in Seattle, and by age 28 he had already scaled
7 enviable peaks of professional, academic and financial success.

8
9 His passion for helping humanity through latest advances in science persisted, and so after
10 becoming a permanent resident in the US he joined a biotech startup named Ratner Biomedical Inc.
11 ("RBI", www.ratnerbio.com) that was co-founded by his manager Mr. Stephen Quinn at Microsoft,
12 initially for some moonlighting, and eventually switched to working on it full-time from 2010. The
13 company has exclusively licensed certain paradigm-shifting technologies in repairing peripheral nerve
14 system trauma, and sutureless anastomosis of wet tissue structures, from the World's premier biotech
15 research institution, the Johns Hopkins University in Baltimore, MD. These technologies are being
16 sought to be commercialized as Innerva™ Nerve Cuffs and BioJoin™ Biodegradable Connectors, for
17 which we have already forged partnerships with leading CROs like NAMSA for the testing required for
18 FDA's 510(k) regulatory clearances. The company is poised to an IPO post the regulatory clearances,
19 and based on historical valuations and biotech business valuation models in the surgical devices
20 industry, its Net Present Value post the FDA approvals of its two lines of surgical products is very
21 conservatively estimated at \$210 Million, which could potentially enhance Mr. Nair's own personal
22 estate from \$4.5 Million perhaps up to over \$100 Million.

23
24 In short, he has lived a life that is literally a testament to what makes the United States the
25 greatest Nation in the world for an extremely hardworking, smart and super ambitious entrepreneur.
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A.2. Housing Downturn and a Charged Off Debt

Mr. Nair had moved to the East Coast in 2011 for trying to raise investments for his startup, and while visiting him his mother required an emergency triple bypass surgery. This required him to tend to his mother (as her only surviving relative) as her full-time caregiver until she had recuperated and rehabilitated. Coupled with the Great Recession and an unfavorable economic/investment climate for biotech startups, which meant he was working without drawing a salary from Ratner Biomedical that was still in clinical & regulatory phase awaiting FDA 510(k) certifications to be able to market their products, Mr. Nair did not have any taxable net income during the period from 2010-2015.

Mr. Nair believes in giving back to this wonderful nation that has helped him succeed so much so young, and so he believes his best chance to do that is his fulfill his entrepreneurial dreams, as this country has been built on the shoulders of the success of dedicated entrepreneurs. Despite being exceedingly qualified for a corporate senior managerial position, he has dedicated his time and focus to the success of this company, and remains committed to its success after having had to take on a much bigger role for himself following the unfortunate untimely passing away of his mentor and colleague Mr. Quinn. In other words, Mr. Nair has since eschewed short-term income for the long-term entrepreneurship efforts, as his real estate portfolio is fully NET cash positive after paying all secure creditors' monthly obligations, and he is able to support himself through his savings. This is very common among high net worth individuals pursuing a private long term project from their considerable savings while temporarily withdrawing themselves from a salaried job. Based on the belief that he was not required to file taxes when he did not make any taxable income, Mr. Nair did not file his zero dollar tax returns for those years.

His efforts finally bore fruit in May 5th 2016 when he executed an investment contract with an accredited investor that would give Ratner Biomedical access to \$187,500 in operational funds every quarter, which enables Mr. Nair to finally start drawing a salary (of \$10,000 per month) again while still

1 working on the regulatory approvals, evangelization and the commercialization of the technologies that
2 could save lives and reduce sufferings for millions of people.

3 One of Mr. Nair's investment properties (13506 34th AVE SE Mill Creek WA 98012) had been
4 financed with a Home Equity Loan of \$100,000 from First Tech Credit Union ("FTCU") with a lien
5 secondary to the primary mortgage with Wells Fargo. Due to the well known housing market crisis in
6 the early decade, the housing prices in the area were severely affected and fell to its lowest values in late
7 2012, which resulted it in this property being severely 'underwater', making it an untenable
8 investment asset. FTCU then sent Mr. Nair a notice stating the debt was charged off as bad debt.
9

10 Mr. Nair heard no further from FTCU until in October 2014 when his tenant at the property
11 called him to say there was a Foreclosure Sale Notice stuck on the door. As Mr. Nair had hitherto been
12 keeping up on payments with all his known creditors, he was very surprised at this and had to call "TD
13 Services" to find out FTCU had filed a foreclosure on their charged off debt without ever attempting any
14 contact with Mr. Nair, as the property prices had risen back up. He then contacted FTCU and spoke with
15 their Senior Assets Management officer one Mr. Thomas Hill, and subsequent to negotiations for a loan
16 modification, Mr. Hill offered Mr. Nair via email a payment plan to pay off the charged off balance of
17 \$71,792 as equal monthly installments of \$915, which Mr. Nair readily accepted. However, with only
18 two weeks remaining to the foreclosure sale date, FTCU then reneged on the offer and refused to accept
19 Mr. Nair's scheduled payments, instead insisting on full lump sum payment of the charged off debt. This
20 put Mr. Nair in a huge predicament, as he believed he had a right to enforce the payment plan through
21 specific performance, and also as much of his immense wealth was distributed in home equities and
22 privately held shares that require some window of time to liquidate.
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25 **A.3. A Spurious Bankruptcy Filing**

26 He then approached a real estate lawyer he found through his legal insurance, Mr. Richard
27 Symmes, and retained his counsel to deal with the situation. Mr. Symmes sent FTCU a letter demanding
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1 specific performance and to postpone the foreclosure sale. However FTCU refused to change the
2 foreclosure sale date. Mr. Nair told Mr. Symmes that in addition to about six million dollars in real estate
3 investments and privately held shares for RBI, he also had liquid savings of about \$120,000 with which
4 to pay FTCU off and prevent the sale (as about \$20,000 in his Checking Accounts and \$100,000 in
5 retirement funds). He also told Mr. Symmes that he could easily raise \$71,000 in less than a month
6 through refinancing any of his real properties that have a combined net equity of close to two million
7 dollars, or through a personal loan with his real estate equity as collateral thereof.
8

9 However, Mr. Symmes advised him against withdrawing from the retirement funds as it could
10 entail a 10% early withdrawal penalty and other tax implications, and instead advised him to file for a
11 Chapter 13 bankruptcy to stop the pending foreclosure sale AND save about \$5000 in fees and penalties.
12 He suggested that paying off FTCU is a bad idea and the best strategy would be delaying the sale with a
13 bankruptcy filing so he can persuade FTCU to settle for a lesser amount than the pay-off amount
14 required to prevent the sale. He also said that he had very recently worked with FTCU on behalf of
15 another client, and by having them go through bankruptcy he was able to get FTCU to settle for 50% less
16 than what was owed, and therefore he could try to do the same for Mr. Nair's estate and save him a
17 substantial amount of money, perhaps up to \$30,000, from what would be required to stop the sale. He
18 advised that once the bankruptcy was filed, it could be dismissed at any point once he could negotiate a
19 settlement with First Tech or be able to buy the time to sue them for specific performance, so it would
20 be a win-win decision to file.
21

22 Mr. Nair was extremely disgusted at the idea of filing a bankruptcy when he is indeed a very
23 successful senior management executive who has made many millions from meticulous financial
24 planning and owned an extremely solvent estate with a NET worth of about \$4.5 million. In his mind,
25 Bankruptcy was for broke individuals (paupers) who could not repay their creditors as their assets are
26 lesser than their liabilities, and did not know any intricacies as he had no prior legal exposure. He had
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28

1 only \$1.6 Million in secured debts and a mere \$19,000 in unsecured debt, while his estate had a total
2 worth of about FOUR TIMES the total liabilities owed against it.

3 He had a cash-positive real estate portfolio and private equity in a biotech startup poised to take
4 off and potentially IPO in the near future. Moreover, with the exception of FTCU and a couple of HOAs
5 whose exorbitant collection charges (for some of the monthly HOA dues accidentally missed during the
6 months he was in living in the east coast, though he was always ready and willing to pay off the missed
7 dues in full) he had earlier disputed, he was in mostly good standing with almost all his bona fide
8 creditors, as can be seen from the fact he was not facing any other foreclosures or adversary
9 proceedings brought by any other creditor. So it felt unethical, immoral and somehow just plain wrong,
10 but Mr. Symmes insisted it as the best option and eased his concerns saying it Mr. Nair could dismiss the
11 case at any time he wanted and that once dismissed it would no longer affect his credit score after just a
12 few days. He counseled that a temporary hit to the credit score would be a small price to pay for a
13 chance to save up to \$30,000 through negotiating a settlement amount for the charged off debt with
14 FTCU and to retain the retirement savings accounts untouched and thus save on the penalties.
15

16 Therefore Mr. Nair reluctantly trusted his professional counsel and allowed Mr. Symmes to file a
17 chapter 13 bankruptcy on his behalf in May 2015. It turned out to be by FAR the worst decision of his
18 life, and the start of a terrible Jeremiad that has left him emotionally devastated and facing complete
19 financial ruin unless the conversion to Chapter 7 is reversed on appeal and the case is dismissed.
20

21 **B. The First Conversion and the Chapter 11 "Black Hole"**

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23
24 Once the bankruptcy was filed, Mr. Nair was forced to helplessly witness a complete charade
25 unravel and his estate getting pushed into a financial quagmire deeper and deeper. Mr. Nair lost his
26 ability to refinance and take cash from his over \$2 Million in real estate equity as no lender would
27 refinance a debtor in active bankruptcy. His liquidity further declined as tons of available credit
28 disappeared overnight as all his credit cards were closed.

1 Mr. Symmes advised Mr. Nair that since his estate was worth over \$1.1 Million (something Mr.
2 Symmes knew all throughout), the case was originally filed in the wrong chapter and had to be
3 converted to a Chapter 11, making things far worse for Mr. Nair's estate and his own personal life. The
4 new chapter's requirements are typically designed for large corporations trying to reorganize, but Mr.
5 Nair was an already cash positive individual who did not need to "reorganize" as he always had more
6 than enough money to pay all his creditors any time he wished. Now there were new monthly reporting
7 requirements, trustee fees and other expenses, very detailed questionnaires from the Chapter 11
8 Trustee's office on all his accounts etc., that were suffocating to a multi-millionaire like Mr. Nair who
9 was never expecting such new restrictions (such as spending on leisure or even enjoying a game of
10 poker) on how he could spend HIS money HE earned or the new heavy workload on his time. Thus the
11 bankruptcy filing was soon becoming a financial and emotional nightmare that was severely affecting
12 his ability to focus on his entrepreneurship. Therefore he expressed his desire many times to dismiss
13 the case to Mr. Symmes, and deal with FTCU directly, to cut his losses and attorney fees. However, the
14 latter who was keen on keeping it open, advised that as a chapter 11, it cannot be dismissed at Mr. Nair's
15 discretion as was originally promised to him. He said that if he were to file a motion to dismiss, the
16 creditors and the US Trustee may fight him on it and force him into a Chapter 7, whereby a Trustee
17 could take control of and sell off all his assets.
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20 This was devastating news to him that he was now tied to the Chapter 11 without being able to
21 get out of it without going through a rigmarole of plan confirmation, and showing proof of income, filing
22 zero-dollar returns for the years he made no taxable income etc., and eventually going through a long
23 cumbersome process just to get out of it, while all the while helplessly witnessing the costs from the
24 filing was escalating exponentially. He felt cheated as he would have never agreed to put himself or his
25 estate on this situation if Mr. Symmes had explained or educated him about any of these detrimental
26 contingencies, requirements, restrictions or expenses or to him *a priori*.
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B.1. The HOA Circus

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2 However, perhaps the worst and most pathetic part of it all was specifically when couple of
3 young attorneys with plenty of free time and representing the HOAs at Redmond Ridge East ("RRE-
4 HOA", \$75/ month dues) and Snoqualmie Ridge ("SR-HOA", \$25/month) communities, with whom Mr.
5 Nair had prior disputes on their collection charges, got wind of a highly cash-positive and solvent estate
6 that was in "bankruptcy". They have since conspired to collaborate and extract the maximum collection
7 costs as they wished for no rhyme or reason, despite Mr. Nair writing repeatedly to the property
8 managers of these associations and to these lawyers to stop their collection efforts on their disputed
9 claims and cease escalating bogus collection fees by exploiting the circumstances of his solvent estate
10 somehow being trapped into a spurious bankruptcy, and have tried everything humanly possible
11 including paying off all the missed dues and even paying dues for many years in advance.

12
13 However, they have instead proceeded to file multiple absolutely frivolous, absurd and
14 nonsensical motions, and continues to charge ridiculously exorbitant attorney fees under the pretext to
15 collect on the disputed collection costs, abusing the secured creditor status of these HOAs on his homes
16 with hundreds of thousands of dollars in equity. It is worth mentioning here that these attorneys are
17 strictly only representing their own interest in this matter as Mr. Nair has either offered to pay off (RRE-
18 HOA) or has already paid off in full (SR-HOA) all the dues and late fees for the months he missed while
19 being out of state. However, as the CC&Rs also include "reasonable attorney fees" to collect, these two
20 attorneys have taken it up on themselves to act as quasi-secured creditors and charge tens of thousands
21 of dollars as legal fees for collecting the thousands of dollars in their own prior collection fees that Mr.
22 Nair had disputed with them pre-petition, which was for collecting some missed dues at just \$25 (or
23 \$75)/month and amounting to a total debt of just a few hundred dollars, which Mr. Nair has either
24 already paid off in full or has offered to pay off in full.
25

26
27 For example, Mr. Nair has already paid off four times the dues owed to the Snoqualmie Ridge
28 association for the post-petition period more than he owed, but their attorney one Mr. Dainen Penta

1 wants to charge another \$10,000 for representing the association in the chapter 11 matter, such as
2 attending the frivolous motions and hearings, all for sake of "protecting the interests" of his client's \$25
3 per month HOA dues for an estate with net worth \$4.5 million, even when they have already paid them
4 off for past arrears as well as for several years in advance through over payments.

5 In another horrific and shocking display of absolute contempt for the Bankruptcy Court's ability
6 to protect the interests of the Fully Solvent Estate of a Debtor in Possession, Mr. Douglas Cameron
7 representing the Redmond Ridge East HOA where Mr. Nair holds his primary residence, is seeking
8 \$30,000 in bogus post-petition legal fees for representing his client's claim of \$75/month, when all he
9 really had to do is file a claim, like a dozen other bona fide creditors had done for little to no legal fee.
10

11 Mr. Symmes has in fact admitted that Mr. Cameron had in fact privately contacted him and other
12 attorneys, for persuading to filing and responding to as many frivolous motions as they could in unison
13 and exponentially blow up the legal fees against a solvent estate that had absolutely no reason really to
14 be in bankruptcy in the first place, but for Mr. Symmes' own devious intent to rack up \$17,000 in legal
15 bills of his own- when the whole reason this case started was so a \$5,000 early withdrawal penalty
16 could be avoided and to buy time for Mr. Symmes to negotiate a better settlement with FTCU. A criminal
17 complaint documenting the activities of these so-called "legal professionals" and the losses suffered to
18 the estate due to their fraud, is being brought to the attention of the Washington State Bar Association,
19 the Secretary of State for Washington, and Mr. Nair is also considering a legal malpractice suit against
20 Mr. Symmes for recovery of his immense losses caused due to Mr. Symmes' breach of Fiduciary duty to
21 Mr. Nair's estate.
22

23 The legal fees alone claimed in this case post petition has far exceeded \$71,000 that was the
24 principal of FTCU's charged off debt in the first place that they were ready to settle for and avoid the sale
25 or bankruptcy filing, and FTCU has filed a latest claim with their own attorney fees totaling about
26 \$14,000, and ballooning their total claim to about \$105,000 (despite Mr. Nair making regular monthly
27 post-petition payments to FTCU that paid down the principal balance of the previously charged off debt
28

1 to about \$61,000) and almost 50% higher than their settlement offer just prior to the filing. This is in
2 addition to Trustee Fees, Court Fees and other traveling expenses Mr. Nair had to incur due to this
3 matter, and above all, the losses, emotional trauma and opportunity costs he suffered due to Mr.
4 Symmes' complete failure in anticipating and/or properly disclosing the risks and costs of a bankruptcy
5 filing to his client's estate.

6 7 **B.2. Mother's Stroke and the forced Hiatus Out of State**

8
9 The bad luck with his mother's health returned when, in August 04 2016, she had a sudden acute
10 cerebellar stroke that has since paralyzed her and made her unable to speak or swallow. Fearing for her
11 life, Mr. Nair was bound to be by her bedside almost entirely during her hospital stay in Nevada for the
12 next couple of months, forcing him to be out of state without access to his home office or financial
13 records, and thereby delaying in the timely filing of some of the monthly reports due per Chapter 11
14 reporting requirements, and the completion of the zero-dollar tax returns for the previous years when
15 he received no taxable income as an entrepreneur working without a salary. Taking advantage of
16 knowing his personal situation through his home's HOA, Mr. Cameron again brought a motion to
17 dismiss, in which he argued that Mr. Nair is in noncompliance with the timely reporting requirements,
18 and again raised irrelevant and non sequitur issues such as Mr. Nair's hobby of playing poker (which is a
19 harmless pastime that has never had any substantial effect on his estate).
20

21 As Mr. Nair was extremely concerned with the exponentially escalating and unanticipated (to
22 him) costs and losses due to the spurious bankruptcy filing, he had decided enough was enough, and he
23 firmly asked Mr. Symmes to propose in his response to the Court that dismissing the case is appropriate
24 unless the motion is denied. Mr. Nair himself wanted this case just to be over with and dismissed, to cut
25 his losses and then deal his disputes with FTCU and the two HOAs directly in state court.
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B.3. Order for Conversion and the Aftermath

Mr. Nair was then painfully forced to fly back for a week from his mother's hospital while she was still in critical condition, to appear in Court for the hearing for a bankruptcy he neither needed nor benefited from in any way. After returning to Seattle, he completed and sent over all the three prior months' missing Chapter 11 monthly reports for the Trustee (fully redacted and ready to file) to Mr. Symmes prior to the hearing date, but Mr. Symmes somehow failed to upload into the ECF until after the hearing was over.

Though RRE-HOA's motion and proposed order only called for a dismissal that Mr. Nair also wanted, the Bankruptcy Court decided that cause existed to convert the case to a Chapter 7. Though the Court was presented with medical records [ECF: 184] from her hospital and even her Doctor's statement that Mr. Nair was present at her bedside since the stroke, the Court the medical emergency as insufficient justification for the debtor's omissions in filing the documents. However, pursuant to 11 U.S. Code § 1112(b)(2), the debtor only did have a temporary issue with this family emergency, that could be cured in a reasonable time, as has happened following his mother's recent discharge from hospital. Furthermore, the primary reason Debtor was hitherto unable to show enough monthly income for a plan confirmation had been his lack of salary from his startup, which changed in May 05 2016 when RBI entered into an investment agreement that would allow Mr. Nair to draw a \$10,000 salary.

This was a completely unanticipated development for Mr. Nair and has thrown his strong & stable finances, cash positive & highly successful rental & AirBnB business and overly solvent estate into turmoil. Adding to the absurdity of the case, it would be anticipated that RRE-HOA would file an Appellee's brief opposing this appeal to overturn the conversion and to dismiss the case, when they have also already filed a motion for relief from automatic stay, which would be self contradictory in intent in that they want the Debtor to be in Chapter 7 (by opposing the appeal) while they also want a relief from the automatic stay from the same Chapter 7 (as moved) for their over secured and disputed claim for collection costs.

1 **5. CONCLUSION**

2 The conversion to Chapter 7 is so egregious in that the Chapter 7 Trustee's proposed liquidation
3 *plan of the estate will result in hundreds of thousands, if not millions of dollars in Trustee's own*
4 *compensation, legal fees, listing fees, loss of rental income and other opportunity costs inherently*
5 *unnecessary, which destroys a healthy estate worth four times more than all the claims in the register,*
6 *including even disputed claims. The conversion to Chapter 7 will cost the estate losses orders of*
7 *magnitude higher than the total unsecured debt claimed herein. Neither does it benefit any creditor, as*
8 *the Debtor has the financial wherewithal to maintain all his secured loans in good standing as well as*
9 *pay off all unsecured credit immediately if needed with his available liquidity. Unfortunately, the only*
10 *real beneficiaries of this conversion are the same corrupt and unscrupulous legal professionals who*
11 *have attempted to make a complete mockery of the bankruptcy system through defrauding a solvent*
12 *estate that should have never been in this situation in the first place but for legal malpractice and*
13 *atrocious breach of fiduciary duty.*

14
15 For the foregoing reasons, the Appellant humbly requests the Order of the Bankruptcy Court
16 converting to Chapter 7 be reversed, and the case be dismissed.
17

18
19 DATED this 17th day of November, 2016.

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21 *J. Kinman*
22 *Jay Kinman owner*
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