

T-5

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

IN RE: . Case No. 89-11051
.
CUMBERLAND INVESTMENT .
CORP., . 380 Westminster Street
.
Debtor. . Providence, RI 02903
.
July 6, 2000
10:20 a.m.

TRANSCRIPT OF MOTION
OF HAROLD CHORNEY FOR EXEMPTION
FROM LEVY AND SUPPLEMENTAL PROCEEDINGS
BEFORE HONORABLE ARTHUR N. VOTOLATO
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

Debtor/Pro Se: HAROLD CHORNEY
5 Cathedral Square
Apartment 106
Providence, RI 02903

For the Trustee: Kirshenbaum & Kirshenbaum
By: JASON MONZACK, ESQ.
888 Reservoir Avenue
Cranston, RI 02910

Audio Operator: Martha Saucier

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Hamilton, New Jersey 08619

(609) 586-2311 Fax No. (609) 587-3599

1 THE COURT: In the matter of Cumberland Investment
2 Corporation on the motion of Harold Chorney for an exemption
3 from levy and supplemental proceedings and Mr. Chorney's motion
4 for a continuance.

5 MR. CHORNEY: Harold Chorney, pro se. I filed a
6 motion to continue this hearing, Your Honor. And I haven't
7 received any notification that this hearing was in progress.
8 When we ended the hearing on June 12th, the Court had ordered
9 the Trustee to supply some written information to myself two
10 weeks prior to any hearing being held and that information was
11 not supplied.

12 MR. MONZACK: If Your Honor please, after the
13 supplementary proceedings, Mr. Chorney filed a motion for a
14 continuance in which he asked that the hearing not proceed
15 orally in the future and that written interrogatories be
16 propounded to him and that in any event that he not take part
17 in a hearing within the next three to four weeks due to his
18 doctor's recommendation over the next three or four weeks due
19 to a change in medication. The doctor says in his report Mr.
20 Chorney may not function well over this time. It is my
21 professional opinion that any court proceeding be postponed
22 during this treatment. Pursuant to court order I did file my
23 position which essentially is certainly I'm in no position to
24 dispute the doctor's opinion that Mr. Chorney should not
25 participate while he's undergoing a change in medication over

1 the next three to four weeks. However, I would oppose the
2 continuation of a supplementary proceeding by written
3 interrogatories. Mr. Chorney has a long history in this case.
4 In my opinion the opportunity to obtain truthful and candid
5 answers is greater in a supplementary proceeding which Mr.
6 Chorney is present rather than via written interrogatories in
7 which the answering party has, pursuant to Mr. Chorney's
8 request, 30 days to frame an answer to the written
9 interrogatories.

10 I did include in my response to Mr. Chorney's for
11 continuance a detailed listing of certain documents that I
12 would request Mr. Chorney to provide. I believe there are 12
13 separate enumerated categories of documents. One area of
14 concern is that Mr. Chorney did testify at a supplementary
15 proceeding that he had a lawsuit pending against the United
16 States which he was seeking a substantial sum of money. He
17 didn't have a very clear recollection of exactly what was
18 happening in that case. I did go down to the District Court
19 Clerk's Office and examine the file. The file is pretty bare
20 because as best as I could tell there was a motion to dismiss
21 either a portion of the complaint or the entire complaint.
22 That was granted by the Court and that was appealed up to the
23 1st Circuit and the entire file has been sent to the 1st
24 Circuit with the exception of a few documents. All the
25 documents that were in that file have appended to my response.

1 THE COURT: When was that appeal taken? How old is
2 the appeal?

3 MR. MONZACK: The Notice of Appeal was filed on May
4 25 of this year. But I guess my short answer to Mr. Chorney's
5 request, I certainly would not insist on him taking part in an
6 oral supplementary proceeding during the next three to four
7 weeks, which appears to be contrary to his doctor's
8 recommendation, while he's undergoing a change in medication.
9 I would oppose that the continuation of the supplementary
10 proceeding take place via written interrogatories rather than
11 orally before the Court.

12 THE COURT: Okay. Who was the doctor?

13 MR. CHORNEY: It's Dr. Zakai. But, Your Honor, it's
14 difficult for me to argue when I haven't received Mr. Monzack's
15 motions. I don't know when he sent them --

16 THE COURT: You haven't received --

17 MR. CHORNEY: Excuse me?

18 THE COURT: You haven't received his motions?

19 MR. CHORNEY: His response to my motion, no.

20 MR. MONZACK: My response was mailed on July 3, the
21 same day that it was submitted to the Court.

22 THE COURT: Okay. I'm going to give you copies
23 before you leave court today, okay? So there won't be any
24 question about what you have in your possession.

25 MR. CHORNEY: I think it would only be right that I

1 be supplied with that information, yes.

2 THE COURT: You're going to get it this morning if
3 you haven't got it already. I frankly doubt that Mr. Monzack
4 is certifying that he sent you things that you're not getting.
5 But I'm not going to get into that, okay? We're going to
6 repeat the process and give you those papers this morning.

7 MR. CHORNEY: That would be wonderful.

8 THE COURT: Okay?

9 MR. CHORNEY: That would be wonderful.

10 THE COURT: Now, what's this change of medication?
11 When will you be available to be in court in person? You're
12 not going to be allowed to do the supplementary proceedings on
13 paper. So --

14 MR. CHORNEY: All right. So you're denying my motion
15 to receive in a written form the questions that Mr. Monzack --

16 THE COURT: Yes. That's denied. You have an
17 objection to that ruling.

18 MR. CHORNEY: Then I would certainly like time to
19 respond in writing to your denial.

20 THE COURT: No, you can take an appeal from that if
21 it's an appealable issue. I don't know. I kind of doubt it
22 but...

23 MR. CHORNEY: Well, I plan on objecting to it, Your
24 Honor.

25 THE COURT: I noted your objection on the record,

1 okay?

2 MR. CHORNEY: Okay.

3 THE COURT: I know you disagree. I may be wrong but
4 that's the ruling.

5 MR. CHORNEY: All right. And for the record, I would
6 just state that I don't feel that a fair and unbiased Judge
7 would allow that to occur.

8 THE COURT: Okay. I'm going to ask you again about
9 your medication specifically. If you're going to be looking
10 for continuances based on medical issues, we may need to hear
11 from the doctor the next time.

12 MR. CHORNEY: I believe he already sent a letter but
13 if you need further information from him, I think perhaps you
14 should contact him.

15 THE COURT: I don't think so. I don't think that's
16 the way the system works.

17 MR. CHORNEY: Okay. Well, let me know what you need
18 because I don't know.

19 MR. MONZACK: If Your Honor please, if I could just
20 point out that during the last supplementary proceeding Mr.
21 Chorney made reference to Dr. Zakai's treatment. It was
22 requested at that time that Mr. Chorney would authorize the
23 release of his entire medical file from Dr. Zakai. Mr. Chorney
24 at that time indicated that he would do that. It's also one of
25 the sets of items that I'm requesting in my response to Mr.

1 Chorney's motion for continuance and that may aid all the
2 parties in a better understanding of Mr. Chorney's medical
3 condition if he would release those records in addition to
4 other records that have been requested.

5 MR. CHORNEY: I believe the request was for a medical
6 report, Your Honor, which I said I would supply to the Court,
7 not what Mr. Monzack is stating now.

8 THE COURT: Can you be specific, Mr. Monzack, what
9 you think Mr. Chorney owes you in the way of documentation?

10 MR. MONZACK: Well, if Your Honor, please, in my
11 response to Mr. Chorney's motion I do make a request in writing
12 of 12 different categories of items. If the Court would give
13 me a moment, I could find in the transcript, which I also
14 appended to my response, exactly what Mr. Chorney's testimony
15 was at the supplementary proceedings. But I do request Dr.
16 Zakai's entire medical file.

17 THE COURT: Well, I guess you don't remember that.

18 MR. CHORNEY: Your Honor, I don't remember exactly
19 what was said at that hearing, no.

20 THE COURT: Did you send Mr. Chorney a copy of those
21 requests, Mr. Monzack? These are the things he said he didn't
22 get from you.

23 MR. MONZACK: That's what I mailed out on July 3.

24 MR. CHORNEY: Your Honor, the filing took place at
25 4:00 p.m. on July the 3rd by Mr. Monzack. I had people trying

1 to get copies of the motions here yesterday and they weren't in
2 the file yet. And I have not received a copy of the motion.
3 It's that simple.

4 THE COURT: I'm going to put this case on second
5 call. During the break, Mr. Monzack, you can, if you have
6 extra copies, deliver those. If not, you can use the court
7 copying facilities to furnish Mr. Chorney with these things
8 that he's denying receipt of and perhaps it will refresh Mr.
9 Chorney's memory about the things that you're looking for.
10 And so we'll do second call.

11 MR. MONZACK: Thank you, Your Honor.

12 * * * * *

13 THE COURT: We'll do Cumberland Investment.

14 MR. MONZACK: If Your Honor, please, I had copies
15 made of the Trustee's written response regarding Mr. Chorney's
16 motion for continuance and all the exhibits that were attached
17 thereto. I also had copies made of a motion to strike. It was
18 filed at the same time though it's not before the Court today.
19 Both complete sets of documents were handed to Mr. Chorney a
20 while ago. I guess only Mr. --

21 THE COURT: Okay. Do you acknowledge getting these
22 documents now, Mr. Chorney?

23 MR. CHORNEY: Yes, I do.

24 THE COURT: Okay. Thank you.

25 MR. MONZACK: Included in the written response were

1 12 specified categories of documents that I was requesting.
2 The supplementary proceedings of Mr. Chorney near the end of it
3 the Court had requested of me -- or the Court said "I'm going
4 to ask you to put in writing what you want Mr. Chorney to
5 furnish so that we won't have any questions the next time about
6 what you were looking for." That was the reason why I included
7 in my response to Mr. Chorney's motion a written request for
8 certain documents.

9 I did take the time after Mr. Chorney had the
10 opportunity to examine these documents to go over each of these
11 12 categories of documents that I was requesting to see what
12 there would be agreement on. And there really isn't a lot of
13 what I'm requesting. I believe, Mr. Chorney can speak for
14 himself, that Mr. Chorney did agree that he would supply Dr.
15 Franick and Dr. Zakai's medical report. I'm not exactly sure
16 what report that is but apparently there are medical reports
17 existing of Dr. Franick and Dr. Zakai. Mr. Chorney would not
18 agree to furnish any other documents that might be contained in
19 Dr. Zakai and Dr. Franick's files.

20 With regard to an itemized listing of Mr. Chorney's
21 income and expenses. You know, he wasn't sure if he could
22 provide that to me. He had testified at the prior hearing that
23 Brian Pletcher had in his file itemized listing of income and
24 expenses that he had previously provided to him. As I
25 understand Mr. Chorney's position, though again he can clarify

1 it, he's telling me that I can approach Mr. Fletcher and ask
2 him for those documents, though I'm not sure if Mr. Chorney
3 would authorize the release of those documents from Mr.
4 Fletcher.

5 I had requested an itemized listing of all assets of
6 Mr. Chorney and Mr. Chorney is not sure if he can provide me
7 with that as I understand his response to me.

8 I asked him about providing me with an itemized
9 listing of all gifts that he's received within the last 12
10 months. He's not sure if he can provide that to me.

11 I asked Mr. Chorney for the residence and business
12 address and telephone number of his son. As I understand Mr.
13 Chorney's response to me, he said he could provide me with a
14 telephone number where he can reach his son, but he wasn't sure
15 he could provide me with the rest of the information I was
16 requesting with regard to his son.

17 Mr. Chorney did say he would supply me with the
18 residence address and telephone number of his brother, which I
19 also requested.

20 I asked for a copy of the last state and federal tax
21 returns that Mr. Chorney had filed. If you recall, at the
22 supplementary proceeding Mr. Chorney remembered that he hadn't
23 filed one for 1999 because he believes he wasn't required to
24 but wasn't sure whether he filed it for '98 and '97. I'm
25 asking for a copy of the last one actually filed. Mr. Chorney

1 is not sure if he can comply with that request.

2 I asked him for copies of documents regarding West
3 Cap Enterprises, Limited. Mr. Chorney believes that Mr. Cullen
4 had some of the documents. He's not sure what he has. I'm not
5 really sure what Mr. Chorney will provide me on that item or
6 even really what his position is specifically on that one.

7 I asked for an itemized listing of all loans received
8 by Mr. Chorney over the last five years, listing the date the
9 monies were received, the name, address and telephone number of
10 each lender. Mr. Chorney is not sure if he'd be able to comply
11 with that request.

12 The last request of documents was since the file in
13 the District Court in Rhode Island regarding Mr. Chorney vs.
14 The United States. All he has are those documents that I
15 furnished to the Court which essentially is a complaint, Notice
16 of Appeal and some other documents.

17 I asked Mr. Chorney to supply me with copies of the
18 rest of the documents filed in that lawsuit that he might have.
19 Mr. Chorney has to think about -- I told him if he would take
20 his documents to a copy house, I'd pay the bill for the copies,
21 and Mr. Chorney wants some time to think about whether or not
22 he wants to accede to that sort of an arrangement.

23 That's I think where we are in terms of the requests
24 I have made.

25 THE COURT: Okay. On your request for a continuance,

1 Mr. Chorney --

2 MR. CHORNEY: Yes, Your Honor.

3 THE COURT: Do we have anything in writing from a
4 physician?

5 MR. MONZACK: We only have that letter that was
6 attached to Mr. Chorney's motion, Dr. Zakai's just a to whom it
7 may concern letter dated June 19th.

8 THE COURT: Okay. Okay. I'm going to with respect
9 to this morning the opinion of Dr. Zakai who says, and I'm
10 relying on this language, that Mr. Chorney is presently being
11 evaluated with the introduction of new medication. These
12 medications may take up to three or four weeks before they
13 reach therapeutic levels. Mr. Chorney may not function well
14 over this time. It is his professional opinion that any court
15 proceeding is postponed during the treatment.

16 I don't read or consider this to be any statement of
17 permanency of any disabling condition that would prevent Mr.
18 Chorney from testifying in these matters. So I'm going to
19 continue this hearing. I'm going to grant your request for
20 continuance, Mr. Chorney until -- let's make it August 17th.

21 MR. CHORNEY: What day of the week is that, Your
22 Honor?

23 THE COURT: It's a Thursday.

24 MR. CHORNEY: I meet on Thursdays at the VA at ten
25 o'clock every Thursday.

1 THE COURT: How about the 16th?

2 MR. CHORNEY: That's fine.

3 THE COURT: August 16, Wednesday, 9:30. And as a
4 condition of this continuance, I'm going to ask you to -- order
5 you to furnish by August 11 the things that Mr. Monzack is
6 looking for.

7 MR. CHORNEY: I'd like to get that in writing, Your
8 Honor, because I don't know what you're really asking for. I
9 have --

10 THE COURT: The things that Mr. Monzack gave you this
11 morning.

12 MR. CHORNEY: I haven't had time to digest his --

13 THE COURT: But you will by August 11th.

14 MR. CHORNEY: But I haven't agreed to everything
15 that's on there.

16 THE COURT: I'm not asking you to agree to anything,
17 you're being ordered, okay?

18 MR. CHORNEY: Please put your order in writing to me,
19 Your Honor.

20 THE COURT: Yes, sir.

21 MR. CHORNEY: Thank you.

22 THE COURT: You'll prepare the order, Mr. Monzack?

23 MR. MONZACK: Yes, Your Honor.

24 THE COURT: Thanks.

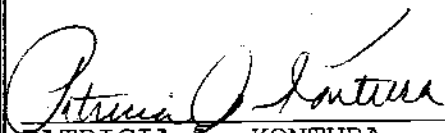
25 And I would certainly make whatever effort you can,

1 Mr. Monzack, and get some kind of a return receipt on your
2 service to Mr. Chorney.

3 * * * * *

4 CERTIFICATION

5 I, PATRICIA A. KONTURA, certify that the foregoing is a
6 correct transcript to the best of my ability, from the
7 electronic sound recording of the proceedings in the above-
8 entitled matter.

9 
10 _____
11 PATRICIA A. KONTURA
12 J&J COURT TRANSCRIBERS, INC.

Date: July 19, 2000