

JUN 08 2006

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

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4	In re:)	Chapter 7
5	LEASCO, INC.,)	No. 2:03-bk-21422-JMM
6	Debtor.)	Adversary No. 2:06-ap-00121-JMM
7	LOUIS A. MOVITZ, TRUSTEE,)	
8	Plaintiff,)	MEMORANDUM DECISION RE: MOTION
9	vs.)	FOR SUMMARY JUDGMENT
10	WILFREDO NOVOA,)	(Opinion to Post)
11	Defendant.)	

On March 4, 2006, Trustee Louis Movitz filed a Motion for Summary Judgment. A hearing was held on May 10, 2006. Trustee was represented by Terry Dake and Mansfield Collins appeared on behalf of Defendant Wilfredo Novoa. After considering the entire record in this adversary proceeding, the law, and arguments of counsel, the court now rules.

PROCEDURE

Pursuant to FED. R. CIV. P. 56, made applicable to bankruptcy proceedings by FED. R. BANKR. P. 7056, a party must, in order to prevail on summary judgment, demonstrate that there are no genuine issues of material fact which are in dispute. If there are, then a trial is required to hear such disputed issues, and to determine which version of the story is more likely than not to be the truth.

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1 debtor's estate. See *In re Interstate Restaurant Sys., Inc.*, 61 B.R. 945, 949 (S.D. Fla. 1986); *United*
2 *States Trustee v. McQuaide (In re CNH, Inc.)*, 304 B.R. 177, 181 (Bankr. M.D. Pa. 2004); *In re*
3 *Napoleon*, 233 B.R. 910 (Bankr. D.N.J. 1999); *In re Bicoastal Corp.*, 149 B.R. 216 (Bankr. M.D. Fla
4 1993); *In re Lowry Graphics, Inc.*, 86 B.R. 74 (Bankr. S.D. Tex. 1988); *In re Seatrain Lines, Inc.*, 4
5 C.B.C.2d 1558, 13 B.R. 980 (Bankr. S.D.N.Y. 1981).

6 For purposes of interpreting § 327, the term "professional persons," is a "term of art reserved
7 for those persons who play an intimate role in the reorganization of debtor's estate." *In re Johns-*
8 *Mansville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986). See also *Matter of D'Lites of America,*
9 *Inc.*, 108 B.R. 352 (Bankr. N.D. Ga. 1989) (under § 327(a), a "professional person is one who takes a
10 central role in the administration of the bankruptcy estate and in the bankruptcy proceedings"). A
11 person's status as a "professional" is not determinative; the inquiry focuses on that person's duties.
12 "If the duties involved are central to the administration of the estate, such duties are professional in
13 nature." *In re Sieling Associates, Ltd. Partnership*, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991).

14 Courts have recognized various duties to be central to the administration of the estate,
15 including assisting in the negotiation of debtor's plan, assisting in the adjustment of the
16 debtor/creditor relationship, disposing of the assets of the estate and acquiring assets on behalf of the
17 estate. *Id.* at 723; *Johns-Mansville*, 60 B.R. at 621. While accountants are commonly considered
18 professionals, it is their role in the bankruptcy, rather than their status as accountants, which controls.

19 While Novoa admits that he is a general accountant, this court must look to the duties he
20 performed for Leasco in determining whether Novoa was employed as a "professional." Novoa
21 claims he was given the following responsibilities when he was hired: (1) billing; (2) data entry; (3)
22 writing checks to pay the bills authorized by Piskulich; (4) reconcile bank account; (5) make bank
23 deposits of checks received at office; (6) filing of documents; (7) answer telephone when needed; (8)
24 prepare the monthly operating report; (9) assist in the production of documents; (10) prepare any
25 schedule that Leasco attorneys required; (11) assist in the collection of money owed to Leasco; and
26 (12) work on any project as needed or instructed. However, Trustee asserts that Novoa was hired by

1 Leasco to do its post-petition accounting work, including trying to “conform to the Court’s ruling,”
2 and providing litigation support and services. Trustee claims that the services Novoa was retained to
3 perform were the critical financial accounting functions upon which the decisions of this court and
4 the parties would be based throughout this case.

5 The moving party has the burden to prove that there are no genuine issues of material fact.
6 However, Trustee submitted no affidavit to prove his allegations that Novoa was employed as an
7 accountant requiring court approval prior to payment. Trustee relies on a transcript of Novoa’s
8 deposition, in which Novoa states he was hired as an accountant to provide accounting services to
9 Leasco, including the preparation of the debtor’s interim monthly financial reports. Yet the law
10 clearly states that while accountants are commonly considered professionals, it is their role in the
11 bankruptcy, rather than their status as accountants, which controls. Novoa submitted affidavits from
12 himself and Ivania Piskulich stating he was hired to essentially perform routine bookkeeping tasks for
13 Leasco.

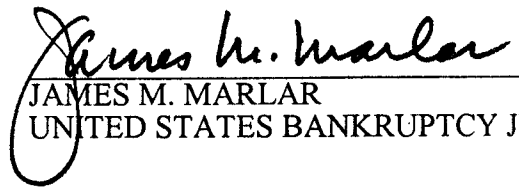
14 Based on the affidavits presented by Novoa and the assertions made by Trustee, combined
15 with the law, there clearly exist genuine issues of material fact as to the duties of Novoa and whether
16 his duties rise to the level of a professional.

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18 **CONCLUSION**
19

20 Because Trustee was unable to prove that there are no genuine issues of material fact, this
21 court must deny Trustee’s Motion for Summary Judgment. There was no cross-motion for summary
22 judgment filed by Novoa. This matter will therefore be set for trial. A separate order will be entered.
23 *Bankr. R. 9021.*
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DATED: JUNE 7, 2006



JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

COPIES served as indicated below this 8
day of June, 2006, upon:

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