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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERWIN SINGH BRAICH,)
)
 Plaintiff,)
)
 vs.)
)
 STEVE MITTELSTAEDT, ET AL.,)
)
 Defendants.)

NO. CV7-0177C

DECLARATION OF
ALEX PENNER IN SUPPORT
OF PLAINTIFF'S RESPONSE TO THE
KPMG DEFENDANTS' MOTION TO
DISMISS

I Alex Penner declare as follows:

1. My date of birth is February 2, 1955.
2. I am employed as the Deputy Registrar of the College of Dental Surgeons of British Columbia. I am also a practicing Dentist in British Columbia, Canada. I make this declaration upon personal knowledge and, if called to testify, could and would testify to the facts set forth herein.
3. I am a creditor of Mr. Erwin S. Braich.

Declaration of Alex Penner in Support of Plaintiff's
Response to the KPMG Defendant's Motion to Dismiss
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- 1 4. I have reviewed the declaration of Mr. Robert Rusko executed on the 19th day of April
2 2007, in support of the KPMG defendants' motion to dismiss.
- 3 5. It is my understanding that on or about September 12, 2000, that in addition to ordering
4 Mr. Braich to comply with certain aspects of the Bankruptcy and Insolvency Act the
5 court ordered KPMG to hold a first meeting of creditors. As a creditor I have never been
6 notified that such a meeting has ever been scheduled by KPMG, or that they intend to
7 have such a meeting of creditors take place.
- 8 6. In my opinion this is a huge omission in paragraph 4 of Mr. Rusko's declaration, because
9 the creditor's meeting is an essential aspect in order for the bankruptcy proceedings to
10 move forward.
- 11 7. Mr. Rusko suggests in his declaration that he and his firm diligently handled matters in
12 the Braich bankruptcy. However, when I spoke with Mr. Rusko on the telephone in
13 November of 2006, he stated clearly that Erwin Braich was not likely to return to Canada
14 due an outstanding arrest warrant. I took his indication to mean that nothing could
15 proceed involving the bankruptcy matter, because Mr. Braich was not at liberty to enter
16 Canada without fear of arrest. I have personal knowledge that at the time that statement
17 was made to me by Mr. Rusko, both of the two (2) arrest warrants against Mr. Braich in
18 regards to the bankruptcy had been vacated, and that Mr. Braich had already returned to
19 Canada after that time.
- 20 8. In the same conversation, Mr. Rusko stated to me that KPMG had absolved themselves of
21 all matters involving the Braich bankruptcy and the responsibilities had been assumed by
22 Mr. Graham Mackenzie. Mr. Mackenzie is known to me as an attorney in Canada, who
23 to my knowledge has not been designated a trustee in the Braich bankruptcy. I was



1 perplexed at hearing this information because as a creditor I had never been informed of
2 this and felt as a creditor that if in fact such a substantial change had occurred it would
3 warrant notification to the creditors.

4 9. Furthermore, I was aware Mr. MacKenzie had lent money in business ventures to Mr.
5 Braich, through his children's trust Clock Holdings, and was involved as a lawyer in Mr.
6 Braich's late father's estate. It therefore appeared to me that it was unlikely that he would
7 be ethically able to take over any of the responsibilities in regards to the bankruptcy as a
8 trustee.

9 10. As a party with a vested interest in the bankruptcy this raised questions in my mind as to
10 the potential for conflict of interest concerns and why KPMG, as the present trustee,
11 would allow such a change which would not appear to be in the best interest of the
12 creditors as a whole.

13 11. Since the statement, mentioned above, to me by Mr. Rusko, regarding Graham
14 MacKenzie, I have received no further notice or confirmation regarding Mr. Mackenzie
15 assuming any responsibilities, in any official or legally recognized capacity, in regards to
16 the Braich bankruptcy.

17 12. In my opinion as a creditor, there have been several points of conflict of interest from the
18 onset of the bankruptcy proceedings. As an example of which is Mr. Brian McLean
19 acting as the attorney for KPMG while simultaneously representing the legal interest of
20 one of the petitioning creditors, Mr. Glen Walsh.

21 13. Another example concerns Mr. Jas Butalia. To my knowledge, Mr. Butalia, who was
22 appointed as an inspector in the bankruptcy, was also Mr. Walsh's auditor and tax
23

Declaration of Alex Penner in Support of Plaintiff's
Response to the KPMG Defendant's Motion to Dismiss
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1 adviser, while he was employed as a Senior Tax Partner for the chartered accountants
2 firm of BDO Dunwoody.

3 14. To my knowledge, at no time since the inception of the Braich bankruptcy has Mr.
4 Rusko, or any other member, of KPMG addressed in any significant and permanent way
5 the apparent conflicts stated above.

6 15. In paragraph 7 of Mr. Rusko's declaration, Mr. Rusko states that the arrest warrant
7 against Mr. Braich was vacated. He does not state that Mr. Braich was oversees and was
8 unaware of the warrants and upon his return to North America he retained a Canadian
9 lawyer who presented the underlying facts of the matter to the court and the warrant was
10 very quickly vacated.

11 16. I was in the courtroom on March 31, 2004, when the warrant was vacated. I clearly
12 remember Madame Justice Morrison appearing upset with Mr. Rusko and Mr. Mclean. In
13 fact I was present when she stipulated that they give assurances and undertakings to not
14 be involved in certain aspects of the bankruptcy matter. I was left with the impression
15 Madame Justice Morrison's displeasure was based on the quality of the information she
16 had been presented with when she was first requested by the trustee KPMG, by way of its
17 representatives to issue the warrant for Mr. Braich's arrest.

18 17. I was fortunate in that my group of friends that were also creditors selected me to travel
19 to various parts of Bulgaria to inspect the factory in which we were investing, along with
20 Mr. Braich. I met Mr. Braich's management team at the Kempinski hotel in Sophia,
21 Bulgaria. I met with, among other persons, Mr. Bill Bricker former CEO of Diamond
22 Shamrock (a fortune 500 company) and Mr. Jack Wahler. Mr. Jack Wahler and I traveled
23 to Vratsa, Bulgaria to view the manufacturing facility, named Chimco.

Declaration of Alex Penner in Support of Plaintiff's
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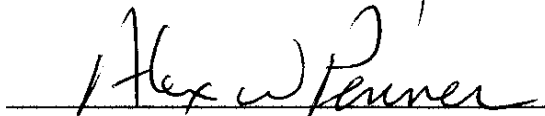
1 18. In his declaration Mr. Rusko states a thorough job had been done by KPMG, yet in
 2 several discussion with representatives of KPMG, I asked how they arrived at the
 3 conclusion Mr. Braich's assets within the sizeable family estate that his father had left
 4 Mr. Braich's mother and siblings had been depleted. I was informed by representatives of
 5 KPMG that they merely relied on information from Mr. Braich's family members. I took
 6 this to mean no meaningful examination was undertaken to identify what the value of Mr.
 7 Braich's actual share in the family estate was.

8 19. At various times, I was told by KPMG representatives that further progress on the
 9 bankruptcy matter was contingent on funds from the creditors and as none were
 10 forthcoming the matter would not progress.

11 20. In my opinion as a creditor in the involuntary bankruptcy of Erwin Braich, Robert Rusko
 12 (and other employees and agents of trustee KPMG) have not acted in furtherance of
 13 KPMG's duties as an officer of the court in Erwin Braich's Canadian bankruptcy
 14 proceedings.

15 I declare under penalty of perjury under the applicable laws of Canada, United States of
 16 America, and the State of Washington. I have read forgoing and all the statements made are true
 17 and correct to the best of my knowledge.

18
 19 Executed at Abbotsford, British Columbia, Canada, this 6 day of May, 2007.

20
 21 

22 Alex Penner, Declarant