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9 UNITED STATES BANKRUPTCY COURT  
10 FOR THE DISTRICT OF OREGON

11 In Re: ) Bankruptcy Case  
12 Edgar M. Cleveland and ) No. 05-49032-rld11  
13 M. Teresa Cleveland, )  
14 Debtors. )  
15 \_\_\_\_\_ )  
16 Kenneth S. Eiler, Chapter 11 )  
17 Trustee, ) Adv. Proc. No. 07-03230-rld  
18 Plaintiff, )  
19 v. )  
20 Fred York, as Trustee for the ) REPORT AND RECOMMENDATION  
21 York Family Living Trust, ) REGARDING WITHDRAWAL OF  
22 Defendant. ) REFERENCE  
23 \_\_\_\_\_ )  
24 )  
25 )  
26 )

27 This is an action brought pursuant to 11 U.S.C. § 548 by the  
28 Chapter 11 Trustee, alleging that defendant received a fraudulent  
29 transfer from the debtors. Discovery has been completed, and the  
30 adversary proceeding is ready for trial.

31 The defendant requested, and, having filed no proof of claim

1 in the debtors' bankruptcy case, is entitled to a jury trial of this  
2 matter. See Granfinanciera, SA v. Nordberg, 492 U.S. 33, 64 (1989)  
3 (A defendant has the right to a jury trial in a fraudulent  
4 conveyance action brought by the trustee provided that defendant did  
5 not file a claim in the bankruptcy case.).

6 The bankruptcy court has limited statutory authority to  
7 conduct a jury trial. As set forth in 28 U.S.C. § 157(e), in a case  
8 within a bankruptcy court's jurisdiction as to which there is a  
9 right to trial, the bankruptcy court may conduct the jury trial  
10 (1) "if specially designated to exercise such jurisdiction by the  
11 district court" and (2) "with the express consent of all the  
12 parties."

13 In this district, when the bankruptcy court determines that a  
14 right to a jury trial exists, the bankruptcy court may conduct a  
15 jury trial "if all parties consent in writing and there is approval  
16 by a district judge." LR 2100-8(a). In this case, all parties have  
17 not consented to trial of this matter by the bankruptcy court.  
18 Accordingly, the bankruptcy court is limited to conducting pretrial  
19 proceedings.


20 As stated above, pretrial proceedings are complete in this  
21 adversary proceeding, and the matter is ready for scheduling of  
22 trial submissions, and, ultimately, for trial.

23 Pursuant to LR 2100-4, this constitutes my report to the  
24 District Court regarding the pending adversary proceeding and my

25 ///

26 ///

1 recommendation that the District Court withdraw the reference for  
2 purposes of trial of the adversary proceeding.

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4   
5 Randall L. Dunn  
6 Bankruptcy Judge

7 cc: Daniel F. Vidas  
8 Kenneth S. Eiler, Trustee  
9 Kelly Greene McConnell  
Laura J. Walker  
U.S. Trustee

Bankruptcy Noticing Center  
2525 Network Place, 3rd Floor  
Herndon, Virginia 20171-3514

# CERTIFICATE OF SERVICE

District/off: 0979-3  
Case: 07-03230

User: pj  
Form ID: pdf018

Page 1 of 1  
Total Served: 1

Date Rcvd: Sep 16, 2008

The following entities were served by first class mail on Sep 18, 2008.  
ust +US Trustee, Portland, 620 SW Main St #213, Portland, OR 97205-3026

The following entities were served by electronic transmission.  
NONE.

TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Sep 18, 2008

Signature:

