

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:

AMERICAN HISTORIC RACING  
MOTORCYCLE ASSOCIATION, LTD.

Debtor

\*  
\* Case No. 06-06626  
\*  
\* Chapter 11  
\*  
\*  
\*  
\*  
\* Nashville, Tennessee  
\* February 7, 2007

\* \* \* \* \*

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE MARION F. HARRISON  
UNITED STATES BANKRUPTCY COURT

APPEARANCES:

For the Debtor:

SAMUEL K. CROCKER  
TIMOTHY G. NIARHOS  
Crocker & Niarhos  
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For Team Obsolete:

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PLLC

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U.S. Trustee:

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United States Trustee  
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Transcriber:

LAURIE MCCLAIN  
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Nashville, TN 37221  
615-662-4212, 615-351-6293 cel

1 (The following is a requested  
2 portion of proceedings on  
3 2/7/2007.)

4 MADAME CLERK: We are hear on Case No. 06-06626,  
5 American Historic Racing Motorcycle Association.

6 THE COURT: All right. Let's make appearances on  
7 the record.

8 MR. CROCKER: Sam Crocker and Tim Niarhos here,  
9 Your Honor, for the debtor.

10 MR. HILDEBRAND: Henry Hildebrand, I'm here for  
11 the Team Obsolete party.

12 THE COURT: All right. All right. Last week we  
13 had a hearing in this case on several alternative requests  
14 for relief filed by Robert T. Iannucci.

15 Can you all hear me?

16 MR. CROCKER: Yes.

17 MR. HILDEBRAND: Yes.

18 THE COURT: All right. Team Obsolete Limited --  
19 Team Obsolete Products Limited, Team Obsolete Promotions,  
20 Inc., Jim Redman, Rick Vesco as executor of the estate of  
21 Don Vesco, Dave Roper, Lon McCroskey, Erik Green and John  
22 Kain, for the -- and for the convenience of the Court and  
23 the parties, I'm going to refer to these as "Team Obsolete."

24 We have a hearing on those, as well as a request  
25 for -- the debtor's request that this Court estimate Team

1    Obsolete's claim. Team Obsolete filed a motion to dismiss  
2    the case, which (Inaudible) withdrew at the hearing.

3            Instead, Team Obsolete pursued an alternative  
4    request for relief. Specifically, Team Obsolete asserted  
5    that under 28 U.S.C. Section 1412 the Court should transfer  
6    venue to the Bankruptcy Court for the Eastern District of  
7    New York; or in the alternative, pursuant to Eleven U.S.C.  
8    Section 305, the Court should abstain, allowing the District  
9    Court for the Eastern District of New York to resolve what  
10   is now pending, the lawsuit that involves the debtor and  
11   Team Obsolete.

12           In conjunction with this request for extension,  
13   Team Obsolete also asks that the Court grant relief from the  
14   automatic stay to complete the pending litigation. The  
15   Court did not consider this last request because the motion  
16   for relief from the automatic stay was not properly before  
17   the Court, there being no notice, as required.

18           Based on the pleadings and testimony and the  
19   arguments of counsel, the Court finds that Team Obsolete's  
20   request should be denied.

21           As a preliminary matter, the Court finds that Team  
22   Obsolete's objection to Exhibit FF, a redacted letter from  
23   the debtor's New York attorney, should be sustained. The  
24   debtor did not provide the Court an unredacted version, and  
25   the Court did not consider the redacted letter in its

1 ruling.

2 That said, I'll address the issue of venue now.  
3 Pursuant to 28 U.S.C. Section 1412, it's within this Court's  
4 discretion to transfer venue to another jurisdiction. And I  
5 point the parties to the Middle District of Tennessee case  
6 decided in 1986, MacLamore (phonetic) versus Tomison  
7 (phonetic), In re Tomison.

8 Team Obsolete had the burden to establish, by a  
9 preponderance of the evidence, that a transfer of venue is  
10 required in the district -- in the interest of justice or  
11 for the convenience of parties.

12 And I point the parties to the In re Gourlay case  
13 from the Western District of Tennessee, decided in 1997.  
14 "Where a case is commenced in the proper venue, as it was  
15 here, the decision to transfer should be exercised with  
16 extreme caution."

17 The Court in In re HME Records, the Middle  
18 District of Tennessee case decided in 1986, the Court set  
19 forth -- this Court set forth five finders -- factors to  
20 consider determining whether venue should be transferred:  
21 Proximity of creditors to the Court, the proximity of the  
22 debtor to the Court, the proximity of necessary witnesses,  
23 the location of assets, and the economics of the  
24 administration of the estate.

25 While various Courts have added other factors to

1 be considered, Courts agree that the economics of the  
2 administration of the estate is the most important  
3 consideration in deciding whether to change the venue of a  
4 Chapter 11 Bankruptcy case.

5 And I cite, again, In re Tomison. In addition to  
6 the economics of the administration of the case, the Court  
7 finds that the relative economic harm to debtors and  
8 creditors caused by transfer, and the effect on the parties  
9 and their willingness or ability to participate in the case  
10 or the adversary proceedings are also relevant in the  
11 present case.

12 Relevant facts, albeit somewhat simplified here,  
13 are -- are -- are as follows: Team Obsolete did file a  
14 lawsuit against the debtors and others. Only one other  
15 defendant remains in this case, which has been pending in  
16 the District Court for the Eastern District of New York for  
17 approximately six years.

18 While it appears that most of the discovery has  
19 been completed, at least as to the issue of liability,  
20 there's been no disclosure of expert witnesses or any  
21 discovery thereof.

22 Apparently, the next step in the New York  
23 litigation would be for the debtor to file a motion for  
24 summary judgment. However, general counsel for the debtor  
25 testified that success on a motion for summary judgment was

1 unlikely because there were too many factual disputes.

2 Prior to the debtor filing for bankruptcy, the  
3 attorney handling the litigation withdrew because the debtor  
4 was unable to pay an outstanding bill for approximately  
5 \$179,000 in legal fees.

6 The debtor has no secured creditors -- creditors,  
7 and substantially all the debtor's unsecured debt is related  
8 to the litigation with Team Obsolete.

9 There's no dispute the venue was proper in this  
10 Court at the time of the petition, or that there are  
11 currently no estate assets, witnesses, creditors, or  
12 principals of the debtor located in Middle Tennessee, since  
13 the movement of the office recently to North Carolina.

14 However, the Court is persuaded that the economic  
15 devastation that would be caused to the debtor far outweighs  
16 any inconvenience to Team Obsolete. Indeed, there was  
17 credible testimony presented by the debtor; the Court finds  
18 more credible than that are the creditors' witnesses that  
19 Mr. Ianucci had stated that he would litigate this New York  
20 -- he would litigate with this nonprofit organization, and I  
21 -- and until it was -- and I quote, "until it was broke,"  
22 close quote.

23 Basically, to transfer this case to the Bankruptcy  
24 Court in New York would require the debtor to start the  
25 bankruptcy process yet again, including their retention of

1 new bankruptcy counsel, causing further dissipation of the  
2 estate, and like -- likely making it impossible for the  
3 Court to reorganize.

4 It is this Court's opinion that the preponderance  
5 of the evidence does not support transferring this case to  
6 the Bankruptcy Court in the Eastern District of the New  
7 York.

8 Indeed, the Court also finds that the current  
9 location of the debtor's offices in North Carolina are  
10 closer to here than they are into -- to the Eastern District  
11 of New York. And the debtor recently did business here.

12 The next issue is whether this Court should  
13 abstain from all the matters relating to the administration  
14 of the case, pending resolution of the lawsuit filed by Team  
15 Obsolete in the District Court, Eastern District of New  
16 York.

17 Eleven U.S.C. Section 305 A1 state that -- states  
18 that: "The Court, after notice on a hearing, may dismiss the  
19 case under this title, or may suspend all proceedings in a  
20 case under this title at any time, if the interest of  
21 creditors and the debtor would be better served by such  
22 dismissal or suspension. This is an extraordinary remedy  
23 that should be applied with extreme caution."

24 And I cite the parties to In re Cincinnati Gear  
25 Company, a Southern District of Ohio case decided in 2003,

1 at 304 B.R. 784 and 785:

2 "Whether to grant relief pursuant to Section 305  
3 is discretionary and must be made on a case-by-case basis."  
4 Again, I -- I cite the parties to another Ohio case, this  
5 time from the Northern District of New York. Another  
6 district -- Northern District of Ohio -- excuse me -- in  
7 2003, In re Fortran Printing, Inc., 297 B.R. 89 at page 94:

8 "In applying Section 305, Courts consider a wide  
9 range of factors, including, but not limited to: Who filed  
10 the bankruptcy petition, the availability of another forum  
11 to resolve the pending disputes, the necessity of federal  
12 proceedings to achieve a just and equitable solution, the  
13 expense of the federal proceedings in comparison with the  
14 proceedings in another forum, the purpose of the party  
15 seeking to remain in Bankruptcy Court, the economy and  
16 efficiency of having the Bankruptcy Court handle the matter,  
17 and the possible prejudice to various parties." Again,  
18 those come from the In re Fortran Printing case.

19 The Court finds that the facts of this case do not  
20 warrant such an extraordinary remedy. As already stated, it  
21 is not clear that the litigation in New York is almost to an  
22 end. While there was testimony that the case is 90 percent  
23 complete, the Court did not find this to be a credible  
24 opinion.

25 Moreover and most importantly, the debtor is now



1 unrepresented in the New York litigation, and realistically,  
2 no attorney is going to take the case knowing that the  
3 debtor's former attorney has such a large unpaid bill for  
4 legal fees.

5 To allow the New York litigation to go forward  
6 would force the debtor to accept a default judgment against  
7 it, or to convert its case to Chapter 7, and no longer would  
8 there be an ongoing concern such as this association.

9 And despite the attempts to characterize this  
10 litigation as complex, the Court believes that this is a  
11 basic contract dispute that can be easily decided here.  
12 Accordingly, the Court finds that abstention is not  
13 warranted.

14 As such the Court finds that the debtor to  
15 estimate Team Obsolete's claims should be granted. Eleven  
16 U.S.C. Section 502 C1 provides that this Court has the power  
17 to estimate any contingent or unliquidated claim, the fixing  
18 or a liquidation of which, as the case may be, would unduly  
19 delay the administration of the case.

20 For the reasons discussed above, the Court  
21 believes that estimating Team Obsolete's claim against the  
22 debtor is appropriate, because actually liquidation would  
23 unduly delay progress of the case, and would likely  
24 frustrate the debtor's reorganization effort.

25 Mr. Crocker, will you prepare an order

1 incorporating the Court's findings?

2 MR. CROCKER: Yes, Your Honor.

3 THE COURT: All right. And based on this Court's  
4 ruling, this claims litigation will be treated as a  
5 contested matter, and a pretrial conference will be set. I  
6 want the parties to discuss possible dates with Mr. -- Ms.  
7 Turner, and then Mr. Crocker can submit an order setting the  
8 pretrial conference.

9 What I'd like for you to submit in -- in  
10 contemplation of the pretrial conference and in advance of  
11 the pretrial conference is not only a pretrial statement,  
12 but also your views as to how this summary with the motion  
13 -- how this estimation should be done. And I'm -- I'm sure  
14 they'll differ, so you can submit them separately, if you'd  
15 like.

16 But I would like a pretrial statement with regard  
17 to this litigation, so that we have set forth what -- what  
18 the core of the issues are, and -- and -- and then, along  
19 with your statement, as to how this estimation should  
20 proceed.

21 With that we'll be adjourned. And I'll leave you  
22 on the line to talk with Ms. Turner. I'd like this -- these  
23 documents a week in advance of the pretrial conference, so  
24 bear that in mind when you set it with Ms. Turner.

25 With that I'll leave you with Ms. Turner. We'll

1 be adjourned.

2 (End of requested portion of  
3 proceedings.

4 \* \* \* \* \*

1 "I, court-approved transcriber, certify that the fore going  
2 is a correct transcript from the official electronic sound  
3 recording of the proceedings in the above-entitled matter."

4 Laurie McClain 2/24/07  
5 Signature of Approved Transcriber Date

6 LAURIE MCCLAIN  
7 Typed or Printed Name

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