

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

In re:)	
)	
SENATE ACCEPTANCE CORPORATION,)	Case No. 13-30244
)	(Involuntary Chapter 7)
Debtor.)	

**EMERGENCY MOTION FOR APPOINTMENT OF AN INTERIM TRUSTEE
PURSUANT TO 11 U.S.C. § 303(g)**

CMS Family IV LLC and Charles M. Steiner (together, the “Movants”), two of the petitioning creditors in this involuntary chapter 7 proceeding, by their undersigned counsel, pursuant to 11 U.S.C. § 303(g) and Fed. R. Bankr. P. 2001, hereby file this emergency motion requesting the appointment of an interim chapter 7 trustee (the “Motion”).¹

I. PRELIMINARY STATEMENT

Senate Acceptance Corporation (the “Debtor”) provides premium financing for automobile insurance policies purchased from various insurance carriers through Senate Insurance Agency, Inc. (the “Insurance Agency”), an affiliate of the Debtor. The Debtor’s president, chief executive officer, and, upon information and belief, sole shareholder, Geary B. Katz (“Mr. Katz”) has admitted that the Debtor is unable to pay its debts as they come due. The Debtor has not made any monthly payments on notes held by movant, CMS Family IV LLC, since August 1, 2013 and several of the checks issued by the Debtor to make monthly payments to its other lenders in October 2013 have bounced.

The Movants have recently obtained information regarding the Debtor’s business practices

¹ Contemporaneous with the filing of this Motion, the Movants filed an ex parte motion to (i) shorten the notice period and schedule an expedited hearing on the Emergency Motion and (ii) prohibit the Debtor from using, transferring encumbering, leasing or otherwise disposing of any assets or property in which the Debtor has a legal or equitable interest pending resolution of the Emergency Motion.

and finances which, at worst, suggests that Mr. Katz is engaged in a Ponzi scheme through the Debtor, or, at best, has completely mismanaged the Debtor's business. The Debtor appears to have engaged in a pattern and practice of borrowing funds from Movants and other lenders to fund existing debt service and payoff on existing promissory notes and/or to pay premiums due to insurance carriers on automobile policies. In the last month, Mr. Katz has continued to request additional funding from Movants to pay existing debts, including note payments to lenders.

Moreover, Mr. Katz has grossly mismanaged the Debtor's business to the detriment of its unsecured creditors, including Movants, by failing to file its tax returns for at least the past two years, failing to maintain customary and appropriate financial records, including a profit and loss statement, balance sheet or cash flow statement, and attempting to sell the Debtor's receivables, which are the only assets available to pay unsecured creditors. Alarming, the Debtor continues to finance consumers' automobile insurance policy premiums despite knowing that it has insufficient funds to pay the premium amounts to the insurance carriers when due, which could result in the cancellation of the consumers' automobile policies.

The immediate appointment of an interim chapter 7 trustee is necessary to preserve property of the estate, prevent loss of assets to the estate, stop the apparent Ponzi scheme, halt premium financing activities which could result in consumers losing their automobile insurance, and investigate the financial affairs of the Debtor.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 303(g).
2. Venue is proper in this Court by virtue of 28 U.S.C. §§ 1408 and 1409.
3. The matter before the Court is a core proceeding under 28 U.S.C. § 157(b)(2).

III. BACKGROUND

4. The Debtor is a premium finance company whose business operation consists of financing premiums on the automobile policies sold to consumers through its affiliate, the Insurance Agency. Affidavit of Adam Steiner ¶ 15(b).

5. Mr. Katz is the president, chief executive officer, and, upon information and belief, sole shareholder of the Debtor. *Id.* ¶ 11.

6. The Debtor derives cash flow chiefly from two sources: (i) monthly loan payments made by customers; and (ii) refunds of unearned premiums on insurance policies that are cancelled. *Id.* ¶ 15(b).

7. Customers of the Insurance Agency electing to finance their policies sign a premium finance agreement with the Debtor, which grants the Debtor a security interest in, and power of attorney to cancel the policy upon default and assigns any refunds to the Debtor. *Id.* ¶ 15(c).

8. When a policy premium is financed, the Debtor pays the premium to the insurance carrier between seven (7) and thirty (30) days after issuance of the policy. *Id.* The customer policyholder pays the balance of premium to the Debtor in monthly installments over one year with interest at an average rate of between twenty-five and twenty-eight percent (25-28%). *Id.* Approximately forty percent (40%) of customer's policies are cancelled for default or otherwise. *Id.* ¶ 15(d).

9. The Debtor is privately financed through loans made by numerous private individuals and entities, including the Movants. *Id.* ¶ 15(e).

10. The Movants are holders of unsecured promissory notes made by the Debtor. *Id.*

¶ 5-6. CMS Family IV LLC is the holder of three promissory notes with an outstanding balance of \$2,500,000.00 plus interest, fees and costs. *See* Involuntary Petition [Doc. 1] at p. 2; Affidavit of Adam Steiner ¶ 5. Charles M. Steiner is the holder of three promissory notes with an outstanding balance of \$1,500,000.00 plus interest, fees and costs. *See* Involuntary Petition [Doc. 1] at p. 2. Charles Steiner also advanced \$200,000 to the Debtor on or about October 3, 2013, which is not evidenced by a promissory note. Additional Steiner family members and other entities (the “Steiner Lender Group”) collectively hold promissory notes payable by the Debtor with a total principal and outstanding balance of approximately \$6.4 million. Affidavit of Adam Steiner ¶ 6.

11. According to Mr. Katz, the Debtor owes approximately \$50 million in outstanding note obligations (the “Lender Notes”) to various private individual and corporate noteholders, who can be divided into at least five “lender groups.” *Id.* ¶ 23. Based on information derived from the bank statements and the expense ledger, it is impossible to determine an exact amount of the Lender Notes, but it is unlikely that Mr. Katz’s \$50 million estimate is correct; the principal balance of the Lender Notes is probably substantially higher. *Id.* In addition to the Steiner Lender Group, a second lender group consists primarily of members of the Monsein family and related entities, which collectively hold notes made by the Debtor with an outstanding principal balance of approximately \$10.6 million. *Id.* According to Mr. Katz, there are three other lender groups. However, it is not possible to determine the outstanding principal balance owed to these lender groups given the limited information provided by Mr. Katz. *Id.* Although requested, Mr. Katz refused to provide Movants with copies of the Lender Notes, a schedule of the Lender Notes, or the names of the holders of the Lender Notes, with limited exceptions. *Id.* ¶¶ 23, 34.

12. The Debtor has failed to make the required interest-only payments on its promissory notes to most of the noteholders in the Steiner Lender Group. *Id.* at ¶¶ 8-10.

13. In or about October 2013, Mr. Katz asked the Steiner Lender Group to make additional loans to the Debtor in order to cover a principal call on another lender's note. *Id.* ¶ 11. This was the most recent of several requests from Mr. Katz to the Steiner Lender Group to provide additional financing to the Debtor to cover lender calls and costs of the Debtor's business in the previous two years. *Id.* As a result, the Steiner Lender Group became concerned and requested a meeting with Mr. Katz and permission for their accountants to review the business records of the Debtor. *Id.* ¶ 12.

14. Over the ensuing month and a half, Adam Steiner engaged in communications with Mr. Katz and the Debtor's attorneys and reviewed the limited financial information provided by the Debtor. As a result, Adam Steiner discovered that Mr. Katz had grossly mismanaged the Debtor. For example:

- a. Mr. Katz conceded that the Debtor has not maintained current financial statements or other records, such as a profit and loss statement, balance sheet, cash flow statement, key performance indicator reports, or a schedule of Lender Notes. *Id.* ¶ 17.
- b. Mr. Katz admitted that the Debtor has not filed its 2011 or 2012 tax returns, and is not sure whether it filed its 2010 or 2009 return. *Id.* ¶ 45.
- c. Mr. Katz lacks basic knowledge of the Debtor's financial operations. He has admitted that he does not know (i) the precise amount of the Debtor's indebtedness to its lenders (*id.* ¶¶ 16, 39); (ii) the Debtor's gross monthly revenues (*id.* ¶¶ 36-38); or (iii) whether the Debtor is insolvent (*id.* ¶ 40). His

estimates of the Debtor's monthly receipts were off by \$1 to 2 million per month, a misstatement of approximately one-hundred to two-hundred percent. *See id.* ¶¶ 38, 21. Either Mr. Katz utterly lacks a basic understanding of the Debtor's business, or he is obfuscating the facts in order to conceal a Ponzi scheme.

- d. The Debtor has been unable to retain the accountant it engaged to prepare financial statements and cannot even obtain work product from the accountant. *Id.* ¶ 33. This raises red flags with respect to the reliability and soundness of Debtor's financial condition and recordkeeping.
- e. Mr. Katz caused the Debtor to comingle its operations with the Insurance Agency, which is also controlled by Mr. Katz. The Insurance Agency pays most of the general operating expenses for the Debtor. *Id.* ¶¶ 22.
- f. Mr. Katz has recently admitted that the Debtor was and is unable to pay its debts as they become due, including monthly interest payments on the Lender Notes and approximately \$900,000.00 due to three different insurance carriers for insurance policy premiums. *Id.* ¶¶ 41-42.
- g. To secure a needed influx of cash, Mr. Katz has approached the Debtor's lender groups for additional financing, and, failing that, Mr. Katz, in desperation, has stated that he intends to sell the Debtor's accounts receivables to a bank in order to pay the insurance carriers. *Id.* ¶ 43. Although Mr. Katz refused to provide Movants with any details regarding his attempt to sell the Debtor's primary assets, the Movants are concerned that Mr. Katz will sell the accounts receivable under a factoring agreement at a deep discount.

15. It appears that Mr. Katz has caused the Debtor to engage in a Ponzi scheme and other fraudulent practices. Upon information and belief, Mr. Katz has caused the Debtor to engage in a pattern or practice of borrowing funds to pay existing debt. *Id.* ¶ 49. Mr. Katz has requested additional financing from the Movants because the Debtor needed the funds to make payments on existing promissory notes and/or to pay premiums due on automobile policies. *See id.* ¶ 11. Upon information and belief, Mr. Katz has made similar requests to other holders of Lender Notes. Mr. Katz has caused the alleged Debtor to continue entering into financing agreements with consumers to finance their automobile insurance premiums despite knowing that the Debtor does not have sufficient cash to pay the premiums to the insurance carriers.

16. On December 2, 2013 (the “Petition Date”), the Movants, along with the Nioma Cohen Trust f/b/o Ronna Cohen, the Sheldon Monsein Living Trust, the Judith Monsein Living Trust and Lauren Miller (the “Petitioning Creditors”) filed an involuntary petition (the “Involuntary Petition”) under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) against the Debtor.

IV. REQUEST FOR RELIEF AND APPLICABLE AUTHORITY

17. In order to preserve the property of the estate and to prevent further loss from the possible Ponzi scheme, fraud, conveyance or assignment of bankruptcy estate property, the Movants request that a chapter 7 trustee be immediately appointed pursuant to section 303(g) of the Bankruptcy Code.

18. Pursuant to section 303(g) of the Bankruptcy Code, any time after the commencement of an involuntary chapter 7 case, and prior to the entry of an order for relief, the Court may order the United States trustee to appoint an interim trustee to take possession of property of the bankruptcy estate and operate the debtor’s business, if such an appointment is

“necessary to preserve the property of the estate or to prevent loss to the estate.” 11 U.S.C. § 303(g); *see also In re The Centre for Management and Technology, Inc.*, 2007 WL 3197221 at *6 (Bankr. D. Md. 2007) (finding movants met their burden under Section 303(g) “to demonstrate the need for an interim trustee to preserve estate property and prevent loss to the estate.”).

19. Based on the information available to the Movant, it appears that the Debtor is engaged in a Ponzi scheme of continually borrowing new money from private lenders to fund debt service and/or payoffs on existing promissory notes and pay premiums due on automobile insurance policies financed through consumer premium finance agreements, or has otherwise completely mismanaged its business.

20. It further appears that the Debtor has now run out of new loan resources and lacks sufficient cash to meet its obligations. The Debtor has already defaulted on its debt service obligations to many of its lenders and is in imminent danger of defaulting on its premium payments to the insurance companies that issued policies to consumers based on the Debtor’s premium finance agreements.

21. The immediate appointment of a trustee is necessary to (i) prevent Mr. Katz from causing the Debtor to borrow additional funds, pledge the accounts receivables of the company or take any other action to perpetuate the scheme; and (ii) to investigate the conduct and financial affairs of the Debtor.

22. An interim trustee will be able to immediately halt the Debtor’s apparently fraudulent practice of entering into premium finance agreements with customers without sufficient capital or revenue to fund the premium payments to insurers.

23. Mr. Katz’s utter failure to maintain business, financial and accounting records, to

file tax returns, to provide financial information to lenders, to retain accountants and professed ignorance of basic operational information, such as the company's revenues and liabilities, demonstrate gross mismanagement and the need for immediate intervention. *See In re The Centre for Management and Technology, Inc.*, 2007 WL 3197221 at *6 (where “[s]trong uncertainty exists as to the reliability of [Debtor's] financial records and the nature of the organization itself,” finding an interim trustee was necessary “to try to make sense of these murky records and testimony.”).

24. Accordingly, to maintain and preserve the Debtor's assets and to prevent future depletion of the property of the estate, this Court should direct the United States Trustee to immediately appoint an interim chapter 7 trustee in this case to locate, take possession, and secure the assets and books and records of the estate and to operate the Debtor's business.

25. The Movants are able and willing to post the bond required under Federal Rule of Bankruptcy Procedure 2002, “to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under §303(i) of the Code.” Fed. R. Bankr. P. 2002. The Movants suggest that a bond in the amount of \$5,000.00 is appropriate in this case. It is unlikely that the Alleged Debtor will be entitled to damages under section 303(i) of the Code given that the Involuntary Petition contains six petitioning creditors with unsecured claims in excess of \$8 million and the competent testimony in the Affidavit of Adam Steiner that that Alleged Debtor is unable to pay its debts as they become due.

26. Pursuant to Local Bankruptcy Rule 9013-2, the Movants have not filed a memorandum in support of this Motion and rely solely on the Motion.

WHEREFORE, the Movants respectfully request that the Court (i) enter an order directing the United States Trustee to immediately appoint an interim trustee under Sections 303(g) and

701 of the Bankruptcy Code to locate, take possession, and secure the assets and books and records of the estate and to operate the Debtor's business; and (ii) grant such other and further relief as this Court deems fair and just.

Dated: December 2, 2013

WILEY REIN LLP
7925 Jones Branch Drive, Suite 6200
McLean, Virginia 22102
Telephone: (703) 905-2800
Facsimile: (703) 905-2820
vmorrison@wileyrein.com

By: /s/ Valerie P. Morrison
Valerie P. Morrison, Fed. Bar No. 24770
H. Jason Gold, *pro hac vice to be filed*
Lauren Friend McKelvey

13673297.1