

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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In re

Charles R. Livecchi, Sr., dba Sole Officer and Shareholder of CRL Management, Inc.,      Bk. No. 09-20897  
Chapter 11

Debtor.

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**THE UNITED STATES' STATEMENT IN SUPPORT OF THE UNITED STATES  
TRUSTEE'S MOTION TO CONVERT OR DISMISS**

The United States of America, by its attorney, William J. Hochul Jr., United States Attorney for the Western District of New York, Jane B. Wolfe, Assistant U.S. Attorney, of counsel, on behalf of its agency the Department of Housing and Urban Development ("HUD"), hereby joins in and supports the U.S. Trustee's Motion to Convert or Dismiss this case (the "Motion"). In support of the Motion, the United States, states the following:

1. Certain proceedings are now pending in this Court by the debtor, Charles R. Livecchi, Sr. dba Sole Officer and Shareholder of CRL Management, Inc., for reorganization of his estate pursuant to Chapter 11 of Title 11 of the United States Code, pursuant to a Petition filed on April 8, 2009.

2. The United States of America is interested in these proceedings as shown by its Proof of Claim filed on or about June

17, 2009, in the amount of \$1,169,032.00. This is a general unsecured claim.

3. The United States became a creditor of the Debtor when it obtained a Judgment in a lawsuit entitled United States v. Livecchi, et al., U.S. District Court for the Western District of N.Y., 03-CV-6451, reported at 605 F.Supp.2d 437 (W.D.N.Y. 2009). The lawsuit alleged a claim pursuant to 12 U.S.C. § 1715z-4a(a)(1)(B), commonly known as the equity skimming statute, that enables the government to sue any owner or operator of a multifamily project financed through a HUD-insured mortgage "to recover any assets or income used . . . in violation of a regulatory agreement that applies to [such] project." See Livecchi, 605 F.Supp.2d at 440. The statute allows the government to recover a penalty in an amount up to double the value of the assets and income of the property that the court determines have been used in violation of the regulatory agreement, which amount is referred to in the caption of this statute as double damages. 12 U.S.C. § 1715z-4a(c).

4. The Judgment was entered in the District Court case on March 31, 2009.<sup>1</sup> Eight days later, on April 8, 2010, the Debtor

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<sup>1</sup> The Judgment was amended on April 29, 2009. The amount of the Judgment represents double the income from the property that the court determined was retained in violation of the regulatory

commenced this Bankruptcy case by filing a voluntary petition under Chapter 11. The Debtor filed a Notice of Appeal of the Judgment on April 9, 2009.

5. As set forth in the U.S. Trustee's Motion, at the Section 341 meeting of creditors, the debtor indicated that an appeal of the USA's judgment was a key factor in this case moving forward. See Dk. # 83-1, ¶ 4. However, it was not until May 24, 2010, well after the U.S. Trustee's Motion was filed, that the debtor obtained an Order authorizing the appointment of Jonathan Schapp, Esq. of Mattar, D'Agostino & Gottlieb, LLP to handle the appeal. See Dk. # 113.

6. On or about July 21, 2010, Assistant U.S. Attorney Robert Trusiak, who is handling the appeal for the government, contacted Mr. Schapp in an effort to schedule a status conference with the Second Circuit Court of Appeals to get the appeal moving. However, Mr. Schapp advised Mr. Trusiak that the firm had withdrawn its representation. Therefore, it appears that the appeal is not being diligently pursued by the debtor despite the professed importance of the appeal to this reorganization case.

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agreement, i.e., double \$481,438, plus interest; the amount of the loss suffered by HUD is not part of the calculation of the "double damages" award.

7. The financial statements filed by the debtor show a marginal profit at best. However, since May 2009, the financial statements do not contain an aging of accounts receivable nor do they indicate whether or not there has been an accrual of unpaid expenses. The United States notes that in the debtor's Disclosure Statement much is made of the fact that the May 2010 Statement of Cash Flows shows cash on hand of \$2,429.64. However, the June 2010 Statement of Cash Flows contained in the June 2010 financial statement shows a **negative cash on hand of \$1,3375.97**. See Dk. # 123, page 3 of 20. Thus, the debtor may not be able to propose a feasible plan of reorganization.

8. Despite the passage of over sixteen (16) months the debtor has failed to file a confirmable plan of reorganization and it appears that the debtor may not be able to effectuate a plan of reorganization.

9. It is in the best interests of creditors and the debtor's estate to convert the present Chapter 11 proceeding to a proceeding under Chapter 7 of Title 11 of the United States Code or to dismiss this case because it appears that there may be a continuing loss to and diminution of the estate as well as an absence of a reasonable likelihood of rehabilitation; there has been an unreasonable delay of over sixteen months which may have adversely affected unsecured

creditors; and it appears that the debtor does not have the ability to effectuate a plan of reorganization.

10. The debtor is not a farm or a corporation that is not a moneyed business or commercial corporation.

**WHEREFORE,** the United States of America respectfully requests that this Court (1) grant the U.S. Trustee's Motion to Convert this case to a proceeding under Chapter 7 or dismiss this case; and (2) grant such other and further relief as the Court deems just and proper.

DATED: Buffalo, New York, August 18, 2009.

Respectfully submitted,

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