

1  
2  
3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 SACRAMENTO DIVISION  
6  
7

8 In re: )  
9 DEROY THOMPSON, ) Case No. 06-25382-B-11  
10 ) Docket Control No. UST-1  
11 Debtor(s). ) Date: March 6, 2007  
12 \_\_\_\_\_ ) Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued  
14 the following ruling. The official record of the ruling is  
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of  
16 the court's decision under the E-Government Act of 2002 (the  
"Act"), a copy of the ruling is hereby posted on the court's  
17 Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable  
format, as required by the Act. However, this posting does not  
18 constitute the official record, which is always the ruling  
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 Neither the respondent within the time for opposition nor the  
21 movant within the time for reply has filed a separate statement  
22 identifying each disputed material factual issue relating to the  
23 motion. Accordingly, both movant and respondent have consented to the  
24 resolution of the motion and all disputed material factual issues  
25 pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

26 The debtor's opposition is overruled and the motion is  
27 granted in part. This case is converted to one under chapter 7.  
28

1       The United States trustee ("UST") moves for conversion or  
2 dismissal pursuant to 11 U.S.C. § 1112(b)(1) for cause. Specifically,  
3 the UST cites to subsections 1112(b)(4)(B) [gross mismanagement of the  
4 estate] and 1112(b)(4)(F) [unexcused failure to satisfy timely any  
5 filing or reporting requirement established by this title or by any  
6 rule applicable to a case under this chapter.] The UST alleges  
7 without dispute that debtor sold property of the estate located at  
8 1395 Torrance, Sunnyvale California, post-petition without court  
9 permission as required by 11 U.S.C. Section 363. One of the duties of  
10 the debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a), 1106(a)(1),  
11 and 704(a)(2), is that the debtor-in-possession "be accountable for  
12 all property received." Section 363(b)(1) provides that property of  
13 the estate may be used, sold, or leased only after notice and a  
14 hearing. The debtor-in-possession violated that Section by "selling"  
15 the property without either notice or a hearing. He has failed in his  
16 duty to be accountable for the property.

17       The debtor's opposition is unpersuasive. The three  
18 bankruptcy cases cited by him are unhelpful. As noted in the  
19 opposition, each deals with factual situations that are only remotely  
20 similar and thus each is distinguishable. The state court case  
21 provided in the opposition, Buss v. J.O. Martin Co., 241 Cal.App.2d.  
22 123, 50 Cal.Rptr. 206 (Cal. Ct. App. 1966), actually favors the UST's  
23 position. It includes a citation to a case from the Ninth Circuit  
24 Court of Appeals defining mismanagement: "To 'mismanage' means to  
25 manage badly, improperly, or unskillfully" McKnight v. United States  
26 78 F.2d 931, 933 (9th Cir. 1935). By selling property of the estate  
27 without court permission, the debtor has managed the estate

1 improperly.

2       The court finds that conversion of this case is in the best  
3 interest of creditors. Debtor's reference to 11 U.S.C. § 1129(a)(7)  
4 is misguided. That subsection and Section 1112(b)(1) address  
5 different things. Under Section 1112(b)(1), the court may consider a  
6 variety of factors including: whether there would be a loss of rights  
7 granted in the case if it were dismissed rather than converted and  
8 whether the debtor engaged in misconduct and whether creditors are in  
9 need fo a chapter 7 case to protect their interests. See generally 7  
10 Alan N. Resnick and Henry J. Sommer, COLLIER ON BANKRUPTCY, ¶ 1112.04[6]  
11 (15<sup>th</sup> ed. revised 2006). Here, the debtor's conduct shows that a  
12 chapter 7 trustee is necessary for an organized liquidation of the  
13 estate. A dismissal would also deprive the estate of a potential  
14 recovery of the Sunnyvale property as an unauthorized post-petition  
15 transfer using 11 U.S.C. § 549. Furthermore, a trustee can examine  
16 any additional transactions by the debtor both pre-petition and post-  
17 petition.

18       The court will issue a minute order.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28