IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re: JOSEPH RAYMOND HORSLEY S.S.N. 519-48-3765 and LYNDA K. HORSLEY S.S.N. 518-52-2976, Debtors.	Bankruptcy Number 99-30458 JAB Chapter 7

MEMORANDUM DECISION AND ORDER DENYING TRUSTEE'S MOTION FOR ORDER GRANTING SUBSTANTIVE CONSOLIDATION OF ESTATE OF JOSEPH RAYMOND HORSLEY WITH ASSETS AND LIABILITIES OF GRANITE TITLE *NUNC PRO TUNC*

The Chapter 7 trustee (Trustee) filed a motion, pursuant to 11 U.S.C. § 105, seeking to substantively consolidate the assets and liabilities of Granite Title & Insurance Agency, Inc., (Granite Title) with the estate of one of the joint debtors, Joseph Raymond Horsley (Horsley). Upon consideration of the evidence produced, the arguments of counsel, and after review of applicable case law, the Court denies the motion for substantive consolidation upon the grounds set forth below.

FACTS

1. Horsley and Harlan Hammond (Hammond) founded Granite Title in 1996, with each of them

owning a 50 percent interest in the company. Granite Title performed real estate closings and escrow functions and issued title insurance on real property. Horsley worked as an escrow officer for Granite Title for as long as it was a functioning entity.

2. After the initial organizational meeting, Hammond and Horsley met once a month to review the activities of Granite title, and kept corporate minutes of the meetings.

3. In mid 1997, Hammond suffered a debilitating stroke and resigned from Granite Title. He apparently relinquished any ownership interest in Granite Title to Horsley in early 1998, and is no longer affiliated with Granite Title. No action was taken to replace Hammond on Granite Title's Board of Directors.

4. Following Hammond's resignation from Granite Title, Horsley continued to keep some corporate minutes in a manner similar to how the minutes were previously kept with Hammond. Specifically, Horsley would produce minutes that on a specific date Granite Title approved certain asset purchases.

5. While at Granite Title, Horsley controlled Granite Title's escrow trust account held at Brighton Bank. The escrow trust account was used to hold premiums and escrow funds in trust for persons purchasing title insurance policies issued by Granite Title, and persons closing sales and purchases of real estate through Granite Title. The escrow trust account records were not accurate.

6. Horsley also maintained the records for Granite Title's operating account. The operating account was used for payroll and day to day operating expenses of the company. The operating account records were accurate.

7. On numerous occasions from February 1998 through July 1999, Horsley used funds from Granite Title's escrow trust account for his personal investments. Horsley made wire transfers of funds from Granite Title's escrow trust account to brokerage accounts held primarily in his own name, to be used for the purchase of securities or to meet margin calls.

8. Horsley also maintained a separate investment account funded by his personal monies.

9. Horsley testified that Granite Title funds were not co-mingled with funds from his personal investment account.

10. Horsley participated in real estate transactions that were processed by Granite Title in which Strata Funding Group Inc., Strata Marketing, Inc., and Household Properties, Inc., received monies from Granite Title's escrow trust account.

11. David W. Goodman, Horsley's son-in-law, and David W. Goodman's uncle, Chris Goodman, were affiliated with Strata Funding Group Inc., Strata Marketing, Inc., and Household Properties, Inc.

12. Horsley transferred funds from Granite Title's escrow trust account to third parties in transactions unrelated to the business affairs of Granite Title.

13. Attorneys Title Guaranty Fund, Inc. (ATGF) underwrote the title insurance policies issued by Granite Title.

14. Upon discovery of Horsley's transactions related to Granite Title's escrow trust account, ATGF filed suit against Horsley in state court, Civil No. 9909096932, and effectively terminated Granite Title's operations in July 1999. The suit has been resolved as set forth below in paragraph 20.

15. ATGF also filed suit against David W. Goodman and others (characterized as the RICO Defendants) related to the transactions involving Granite Title's escrow trust account. The action remains pending.

16. ATGF retained the accounting firm of Neilson Elggren LLP (Neilson) to analyze certain real estate purchase/sale and financing transactions processed by Granite Title through its escrow trust account for use in the litigation against the RICO Defendants.

17. Neilson prepared a thirty-four page report, plus exhibits, pursuant to Fed. R. Civ. P. 26(a) for the litigation against the RICO Defendants. The report detailed the transactions related to Granite Title's escrow trust account and the diversion of escrow account funds; calculated claims by third party lenders and the portion of damages attributable to various parties, and provided an opinion as to the damages asserted by Strata Funding Group and Household Properties. Neilson also assembled an multi-page report of the transactions in the escrow trust account showing the dates of transactions as well as clearance dates, item numbers, payees/payors, memorandum descriptions, amounts, and a running book balance.

18. Neilson concluded that $530,007.07 was permanently diverted from the escrow trust account in certain real property transactions.

19. Of the specific real property escrow transactions analyzed by Neilson, approximately fifteen percent involved the diversion of funds from Granite Title's escrow trust account. The balance of the real property transactions processed by Granite Title were unrelated to the diversion of funds from Granite Title's escrow trust account.

20. On August 18, 1999, in resolution of the state court action brought by ATGF, Horsley consented to entry of judgment in the amount of $543,450 for monies owing as alleged in the compliant in connection with eleven closings at Granite Title.

21. Neilson also concluded that other funds totaling $994,294.97 were diverted from the Granite Title escrow trust account.

22. Neilson could not find ledger sheets for all transactions, and the purpose of many transactions remain unresolved, although the payors/payees have been determined.

23. Neilson did not analyze Granite Title's operating account or its corporate records.

24. Neilson did not analyze Horsley's personal accounts.

25. Horsley and Lynda Kendall Horsley filed a joint petition seeking relief under chapter 7 on November 30, 1999.

26. The summary of amended schedules filed in the chapter 7 case lists $559,396 in debt. Of that amount, $543,450 represents the judgment that Horsley owed to ATGF, leaving a balance of $15,946 in unsecured debt owed to five consumer creditors unrelated to transactions with Granite Title.

27. Horsley's total assets in summary of amended schedules are listed at $620; consisting only of "personal property."

28. The Trustee has investigated claims that might be brought against various parties if Horsley's estate is substantively consolidated with the assets and claims of Granite Title. He has concluded that there are numerous transactions that may give rise to preferential and fraudulent transfer causes of

action, fraud causes of action, and/or causes of action under Utah's Fiduciaries Act. The Trustee also believes that Granite Title may have Fiduciary Act causes of action against Brighton Bank, the holder of the Granite Title escrow trust account.

29. If substantive consolidation is granted, but the effective date is not effective *nunc pro tunc* to the date of filing of Horsley's case, the Trustee believes most of the causes of action he has investigated would be bared as untimely.

30. The Trustee has not investigated the corporate books of Granite Title to determine if they were properly maintained.

31. At the time Granite Title ceased operations, it had certain assets consisting of a lease on its premises from Brighton Bank, modest funds in its operating and reserve accounts, and office equipment including desks, computers, conference tables, file cabinets and a phone system that Horsley valued in excess of $10,000.

32. At the time Granite Title ceased operations, its accounts payable included rent to Brighton Bank, a modest amount to vendors for office supplies, a phone bill, and an amount to ATGF on title policies.

DISCUSSION

The Trustee's motion to consolidate is a core proceeding, and this court may enter a final order resolving the motion. 28 U.S.C. § 157(b)(A) and (O). The Trustee seeks substantive consolidation of the

assets and liabilities of nondebtor Granite Title with Horsley's case only[1] and asks that such consolidation be made effective *nunc pro tunc* to November 30, 1999. The Trustee stresses that the relief sought is not to consolidate Horsley with Granite Title, for to do so may impact the Trustee's future ability to proceed under Utah's Fiduciaries Act, but only to consolidate the assets and liabilities of both. In support of his motion, the Trustee calls upon the equitable powers of the Court as set forth in 11 U.S.C. § 105.[2]

Substantive consolidation developed as judge made law under the Bankruptcy Act of 1898. *See e.g. In re Sampsell v. Imperial Paper Corp.*, 313 U.S. 215 (1941), *reh'g denied*, 313 U.S. 600 (1941)(implicitly approving substantive consolidation under the Act in the context of a creditor's claim status); *Fish v. East*, 114 F.2d 177 (10th Cir. 1940)(analyzing substantive consolidation under the Act). While the Act contained no express authority for the practice, the ability to order substantive consolidation was implied from the bankruptcy court's general equitable powers.[3] *Reider v. Federal Deposit Insurance Corp.*, 31 F.3d 1102, 1105 (11th Cir. 1994)(citing *Pepper v. Litton*, 308 U.S. 295, 304 (1939)("courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity.")).

Unlike related provisions allowing for procedural consolidation or joint administration, substantive

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[1] Horsley and Lynda Kendall Horsley filed a joint case pursuant to 11 U.S.C. § 302(a). Although there has been no court determination pursuant to 11 U.S.C. § 302(b) regarding the consolidation of Horsley and Lynda Kendall Horsley's estate, since November 30, 1999, it appears that the case has been administered in a consolidated fashon.

[2] 11 U.S.C. § 105(a) provides in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

[3] For a critical assessment of the bankruptcy court's equity power *see* Hon. Marcia Krieger, "*THE BANKRUPTCY COURT IS A COURT OF EQUITY": WHAT DOES THAT MEAN?*, 50 S.C. L. REV. 275 (1999).

consolidation escaped codification in the Bankruptcy Reform Acts of 1978 and 1994. *In re Bonham*, 229 F.3d 750, 763 (9th Cir. 2000). Notwithstanding, substantive consolidation continues to be utilized under the Code as a manifestation of the broad equitable power detailed in 11 U.S.C. § 105(a). As set forth in the Advisory Committee Note to Fed. R. Bankr. P. 1015[4], substantive consolidation affects the substantive rights of the creditors of the different estates; it creates one common pool consisting of assets, liabilities, and a single body of creditors, while at the same time extinguishing the liabilities between the consolidated parties.[5] *Bonham*, 229 F.3d at 764; *Federal Deposit Insurance Corp. v. Colonial Realty Co.*, 966 F.2d 57, 58-59 (2d Cir. 1999). As such, it is only available after extreme caution is taken to ensure that such a measure is warranted. *See In re Flora Mir Candy Corp.*, 432 F.2d 1060, 1062 (2d Cir. 1970).

Beginning with *Fish*, 114 F.2d 177 and continuing in *Federal Deposit Ins. Corp. v. Hogan (In re Gulfco Invest. Corp.)*, 593 F.2d 921 (10th Cir. 1979), this Circuit determined that substantive consolidation may be employed in the appropriate circumstances. Those circumstances are set forth in *Gulfco* which adopted the ten prong test in *Fish*. The *Gulfco/Fish* criteria can be reduced into two general components: (1) the extent to which the entity to be substantively consolidated was managed or controlled by the debtor, and (2) whether the entity to be substantively consolidated had an economic

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[4] The Advisory Committee Note to Fed. R. Bankr. P. 1015 provides in relevant part: "Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates."

[5] To best effectuate the equities of substantive consolidation, some courts have found that the court may limit the consolidation to certain classes of claims, specific property, or may otherwise condition the consolidation within its discretion. *See In re Cooper*, 147 B.R. 678, 682 (Bankr. D.N.J. 1992); *In re Steury*, 94 B.R. 553, 557 (Bankr. N.D.Ind. 1988); *In re Parkway Calabasas, Ltd.*, 89 B.R. 832, 837 (Bankr. C.D.Ca. 1988), *aff'd* 949 F.2d 1058 (9th Cir. 1991).

existence independent from the Debtor. Application of the *Gulfco/Fish* criteria is difficult under the present circumstances because the Trustee's motion proposes substantive consolidation of an individual with a corporate entity,[6] whereas *Gulfco* anticipates, as does much of the case law, substantive consolidation of a parent corporation with a subsidiary or corporate affiliate.[7] This Court concludes that the Trustee has proved the first but not the second component of the *Gulfco/Fish* criteria.

Assuming, arguendo, that Horsley is viewed as the parent corporation, an application of the *Gulfco/Fish* criteria indicates that Horsley was one of the incorporators of Granite Title, that he was presumably the sole owner, and that he had exclusive control of Granite Title after Hammond's withdrawal. However, Granite Title was an independent entity, generating its own income apart from Horsley. It was Granite Title, that financed Horsley, rather than the reverse. Granite Title had an independent financial existence apart from Horsley prior to 1998, and continued its title business even after Horsley began invading the escrow trust account. Finally, to a limited extent, Granite Title continued to maintain corporate minutes. Therefore, all of the *Gulfco/Fish* tests related to the parent's financial dominance over the entity to be consolidated necessarily fail.

Apart from the application of the *Gulfco/Fish* factors, *Gulfo* also considers substantive consolidation of two corporate entities appropriate "where a corporation is a mere instrumentality or alter

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[6] *See e.g. In re Bonham*, 229 F.3d at 765-69; *In re New Center Hospital*, 179 B.R. 848, 853 (Bankr. E.D.Mich. 1994), *aff'd in part, rev'd in part*, 187 B.R. 560 (E.D.Mich. 1995); *In re Mumford, Inc.*, 115 B.R. 390, 397 (Bankr. N.D.Ga. 1990); *In re Tureaud*, 45 B.R. 658, 662 (Bankr. N.D.Okla. 1985), *aff'd* 59 B.R. 973 (N.D.Okla. 1986).

[7] *See e.g. In re Hemingway Transport*, 954 F.2d 1 (1st Cir. 1992); *In re Affiliated Foods, Inc.*; 249 B.R. 770 (Bankr. W.D.Mo. 2000); *In re American Way Service Corp.*, 229 B.R. 496 (Bankr. S.D.Fla. 1999); In *re United Stairs Corp.*, 176 B.R. 359 (Bankr. D.N.J. 1995); *In re Vecco Construction Industries, Inc.*, 4 B.R. 407 (Bankr. E.D.Va. 1980).

ego of the bankrupt corporation, with no independent existence of its own." *Gulfco*, 593 F.2d at 928; *Fish*, 114 F.2d 177 (analyzing the consolidation of a subsidiary created to hinder and delay creditors), *cf*. *In re Alpha & Omega Realty*, 36 B.R. 416 (Bankr. D.Idaho. 1984)(declining to substantively consolidate nondebtor entities with the debtor when the parties were not alter egos of each other). Such was certainly not the case here.[8] Granite Title was an operating title company, and although Horsley raided its escrow trust account, eighty-five percent of its closings were not involved in Horsley's transactions that were ultimately the subject of ATGF's state court action. Therefore, this Court's finds insufficient evidence in the record that Granite Title existed as a "corporate shell" or "sham operation" existing only in furtherance of Horsley's improper financial dealings. *In re Lease-A-Fleet, Inc.*, 141 B.R. 869, 878 (Bankr. E.D.Pa. 1992).

In addition, *Gulfco* stresses that for substantive consolidation to be appropriate, the assets of the entities must be "hopelessly commingled." *Gulfco*, 593 F.2d at 929. Far from being hopelessly commingled, the evidence indicates that ATGF has already unraveled the transactions emanating from Granite Title's escrow trust account to the extent of multiple pages of detailed account reconstruction. Even though every conceivable transaction is not fully accounted for and every transfer has not been explained, this is certainly not a case where it is impossible to ascertain the origin and final disposition of

[8] On May 9, 2001, this Court entered a Default Judgment against ATGF, Advance Financial Services, Inc., Granite Title Insurance Agency, and R&M Funding Group L.L.C., in Adversary Proceeding No. 00P-2173JAB. Therein, the Court "ORDERED, ADJUDGED and DECREED that, pursuant to Counts 1, 2 and 3 of the Trustee's Second Cause of Action in this proceeding, Advance Financial, Granite Title and R&M Funding area each the alter ego of the Debtor Joseph Raymond Horsley." Despite that ruling, this Court will not predicate an order of substantive consolidation that requires a determination of mutual identity, upon a finding of alter ego in a default judgment.

the funds. Therefore, the Court concludes that the Trustee has not carried his burden of proof under the criteria set forth in *Gulfco*.

Were this Court to apply various tests outside this Circuit to determine whether substantive consolidation is applicable, the Trustee's motion would still be denied. For example, the two-part test in *In re Snider Brothers, Inc*., 18 B.R. 230, 238 (Bankr. D.Mass. 1982), requires that the applicant must show that there is a necessity for substantive consolidation, or a harm to be avoided by its use. The three-part test in *In re Auto-Train Corp.*, 810 F.2d 270, 276 (D.C. Cir. 1987), requires that the proponent show a substantial identity between the entities; consolidation is necessary to avoid some harm or to realize some benefit, and that if a creditor objects on the grounds that it relied on the separate credit of one of the entities to its prejudice; and that consolidation may be ordered only if the benefits heavily outweigh the harm. The test in *Union Savings Bank v. Augie/Restivo Baking Co, (In re Augi/Restivo Baking Co.),* 860 F.2d 515, 518 (2nd Cir. 1988), is whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity before extending credit. Finally, the substance of the test in *In re Vecco Construction Industries, Inc.*, 4 B.R. 407, 410 (Bankr. E.D.Va. 1980), requires that a court consider the identity and shared financial interests of the parties to be consolidated, and the benefit to be gained in light of the harm to be avoided. Summarizing these tests, the threshold criteria that the movant must meet is that there is a necessity for consolidation, that the benefit realized outweighs the harm to be avoided, and that there is a substantial identity between the debtor and the entity to be consolidated.

The necessity for substantive consolidation in this case is to allow the Trustee to more easily reach the recipients of alleged preferences and fraudulent conveyances. Substantive Consolidation may avoid

the harm of allowing recipients of alleged transfers to retain the funds, and may realize the benefit of increasing the dividend to creditors. While the result is laudable, such a benefit oriented approach ignores the underpinning of substantive consolidation - that there be a substantial identity between Horsely and Granite Title. Rather, under the circumstances at hand, this Court finds most significant the question of whether there is a substantial identity between Horsley and Granite Title.

In this case, there is little support for a finding that there was a substantial identity between the parties. The majority of Granite Title's business transactions were independent of Horsley's improper conduct. There is contradictory evidence as to whether Horsley commingled his own monies with those from Granite Title's escrow account. There is uncontradicted evidence that at least some level of corporate formalities associated with Granite Title were continued after Hammond withdrew. In light of all these considerations, this Court cannot conclude that the Trustee has shown a substantial identity between Horsley and Granite Title.

The significance of a lack of identity in this case is amplified by the Trustee's request that this Court order substantive consolidation *nunc pro tunc* to November 30, 1999, the date of the filing of Horsley's petition. If this Court were to determine that substantive consolidation were appropriate here, "[t]he order of consolidation [would rest] on the foundation that the assets of all of the consolidated parties are substantially the same." *First National Bank v. Rafoth (In re Baker & Getty Financial Services, Inc.)*, 974 F.2d 712, 721 (6th Cir. 1992). Thus, to grant *nunc pro tunc* relief, it would inherently follow that this Court found a substantial identity exists between the parties to be consolidated. As set forth above, the evidence before this Court cannot support of a finding of substantial identity between Horsley and Granite

Title.

Nonetheless, *nunc pro tunc* relief is sought because substantive consolidation would be ineffective without the reach back because the causes of action anticipated by the Trustee may be time barred.[9] Therein lies friction between the Code and the effective use of substantive consolidation. The Code fixes the limitations on avoiding powers in 11 U.S.C. § 546. Granting the Trustee's motion would circumvent that Code provision under the broad guise of employing equity. 11 U.S.C. § 105 may only be used in furtherance, not in contravention, of the Code. *See Matter of Fesco Plastics Corp., Inc.*, 996 F.2d 152, (7th Cir. 1993)(reasoning that in the context of post-petition interest on claims, a bankruptcy court may not invoke § 105 to add something to the Code or to achieve a result inconsistent with what the Code provides). The *nunc pro tunc* relief sought is also inconsistent with this Circuit's ruling in *Crosby v. Mills*, 413 F.2d 1273, 1277 (10th Cir. 1969) (stating that *nunc pro tunc* orders cannot be used to reflect something that did not occur, only to correct a mistake or error that actually occurred). Therefore, even if this Court were to determine substantive consolidation was warranted, it is not persuaded to accord *nunc pro tunc* relief.

Also disconcerting is the jurisdictional quandary this Court is faced with in considering substantive

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[9] During closing argument, the Trustee offered a distinction between *nunc pro tunc* and the general concept of "relation back." He argued that relation back is more suited to the context of this case and that this Court should not disfavor making November 30, 1999, the effective date merely because of its historical reticence to granting *nunc pro tunc* requests. Under the facts of this case, the Court is less concerned with the guise of the retroactive date than its effect on parties. Alternatively, the Trustee argued that this Court need not make a determination at this time on whether to grant the *nunc pro tunc* request. This Court, however, declines the Trustee's invitation and recognizes that if it determined substantive consolidation were warranted, "[t]he order of consolidation [would rest] on the foundation that the assets of all of the consolidated parties are substantially the same. Therefore, the earliest filing date [would be] the controlling date, and all transfers . . . analyzed as of that date." *First National Bank v. Rafoth (In re Baker & Getty Financial Services, Inc.)*, 974 F.2d 712, 721 (6th Cir. 1992).

consolidation of a debtor and nondebtor. While such a scenario was implicitly recognized by the Supreme Court in *In re Sampsell*, 313 U.S. 215, and expressly approved by other courts, *see e.g. In re United Stairs Corp*, 176 B.R. 359 (Bankr. D.N.J. 1995); *In re Tureaud*, 59 B.R. 973 (N.D.Okla. 1986); *In re Crabtree*, 39 B.R. 718 (Bankr. E.D.Tenn. 1984); *In re 1438 Meridian Place N.W., Inc.*, 15 B.R. 89 (Bankr. D.D.C. 1981), there exist other equally persuasive arguments from courts that have refused to take jurisdiction over a nondebtor. *See Helena Chemical Co. v. Circle Land and Cattle Corp. (In re Circle Land and Cattle Corp.)*, 213 B.R. 870 (Bankr. D.Kan. 1997); *In re Hamilton*, 186 B.R. 991 (Bankr. D.Colo. 1995); *Lease-A-Fleet, Inc*., 141 B.R. 869.

As a court of limited jurisdiction, this Court only obtains jurisdiction over an entity by the filing of a petition, either voluntarily or involuntarily pursuant to 11 U.S.C. §§ 301 or 303. Substantive consolidation of a nondebtor entity with an existing debtor circumvents that process and raises issues as to whether employing this judge-made mechanism is sufficient to obtain subject matter or personal jurisdiction over a nondebtor. *Circle Land and Cattle Corp.*, 213 B.R. at 876-77 (citing *In re Schwinn Bicycle Co.*, 210 B.R. 747, 761 (Bankr. N.D.Ill. 1997)("Section 105(a) gives the bankruptcy court authority to 'issue any order, process, or judgment that is necessary ir appropriate to carry out the provisions of this title. . . .' However, a bankruptcy judge can use such authority only if core or related jurisdiction otherwise lies over subject matter of the dispute.")); *In re S.T.R. Corp.*, 66 B.R. 49, 51 (Bankr. N.D. Ohio 1986)("Section 105 is not jurisdictional and does not grant the court jurisdiction which it does not already possess.")); *but see, Bonham*, 229 F.3d at 765 (citing cases allowing consolidation of non-debtor and debtor entities in furtherance of the equitable goals of substantive consolidation). Certainly, for

substantive consolidation to effectively bring a nondebtor within the jurisdiction of this court, the identity of the nondebtor must be so far subsumed in the debtor that they are as one. Furthermore, substantive consolidation acts as an "end run" around the requirements and potential consequences under § 303 as well as leaving unanswered the question of what rights or protections attach to a consolidated nondebtor, e.g. automatic stay under § 362, avoiding powers under §§ 542-549. *Lease-A-Fleet, Inc.*, 141 B.R. at 873-74. To order substantive consolidation in this case rides rough-shod over the basic tenants of this Court's jurisdiction. Even when the goal is to enhance the assets of the estate, estate enhancement alone is not of sufficient benefit, in this Court's view, to allow equity to defeat the statutory jurisdiction and limitations periods set forth in the Code.

Although the Trustee laudably seeks the ability to file causes of action against various entities to seek return of misappropriated funds and enhance the assets of the combined estate, and thus benefit all creditors, that goal does not outweigh the harm that would be caused by granting this motion. In essence, the Trustee seeks substantive consolidation, not to enhance the reorganization of multiple hopelessly intertwined debtors treated by parties as one unit, but instead as a mechanism to expand the statutory limitations periods to recover from third parties funds misappropriated from an autonomous nondebtor. This is simply an attempt to do indirectly that which the Code prohibits. Therefore, it is hereby

ORDERED, that the Motion for Order Granting Substantive Consolidation of Estate of Joseph Raymond Horsley with Assets and Liabilities of Granite Title *Nunc Pro Tunc* is Denied.

DATED this 17th day of August, 2001.

Judith A. Boulden
United States Bankruptcy Judge

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CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing **MEMORANDUM DECISION AND ORDER DENYING TRUSTEE'S MOTION FOR ORDER GRANTING SUBSTANTIVE CONSOLIDATION OF ESTATE OF JOSEPH RAYMOND HORSLEY WITH ASSETS AND LIABILITIES OF GRANITE TITLE *NUNC PRO TUNC*** by mailing the same, postage prepaid, to the following, on the 17th day of August, 2001:

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