

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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|                                     |   |                                      |
|-------------------------------------|---|--------------------------------------|
| In re                               | ) |                                      |
|                                     | ) |                                      |
| LYMAN DELO DAYTON and               | ) | Bankruptcy Case No. 01-34521         |
| ELIZABETH DOTY DAYTON,              | ) |                                      |
|                                     | ) |                                      |
| Debtors.                            | ) | Chapter 7                            |
|                                     | ) |                                      |
| LYMAN DAYTON AND ELIZABETH          | ) | Adversary Proceeding No. 03P-2034GEC |
| DAYTON                              | ) |                                      |
|                                     | ) |                                      |
| Plaintiffs,                         | ) |                                      |
| v.                                  | ) |                                      |
|                                     | ) |                                      |
| PAUL J. NEWMAN; DAVID ALEXANIAN;    | ) |                                      |
| ELIXIR FILMS; JAMES MCCULLOUGH;     | ) |                                      |
| CRUSADER ENTERTAINMENT, LLC;        | ) |                                      |
| BOB YARI; PERSIK PRODUCTIONS, INC.; | ) |                                      |
| and DOES 1 through 50, inclusive,   | ) | ORDER REMANDING MATTER TO            |
|                                     | ) | THE SUPERIOR COURT OF                |
| Defendants.                         | ) | CALIFORNIA                           |

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On August 6, 2003, a Motion for Judgment on the Pleadings filed by Crusader Entertainment LLC, Persik Productions, Inc., Elixir Group, LLC, Bob Yari and David Alexanian (collectively, "WTRFG entities") came before the court. The motion sought judgment on the pleadings as to counts III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the complaint in this adversary proceeding. The motion was joined by defendant Paul J. Newman ("Newman") and

was opposed by plaintiffs Lyman and Elizabeth Dayton (“Daytons”). Daniel J. Bussel of Klee, Tuchin, Bogdanoff & Stern LLP appeared in behalf of the WTRFG entities; James C. Swindler of Swindler & Co. appeared in behalf of Newman; and Reid W. Lambert of Woodbury & Kesler and Steven M. Rubenstein (telephonically) appeared in behalf of the Daytons. Based upon the pleadings and the argument of counsel, the Court makes the following ruling.

### FACTS

1. On October 11, 2000, Red Fern Productions, Inc. (“Red Fern”) filed Chapter 11 bankruptcy before this court (Bankruptcy Case No. 00-31641GEC). On June 12, 2001, the case was converted from Chapter 11 to Chapter 7 and Gary E. Jubber (“Jubber”) was named the Chapter 7 Trustee.
2. On October 2, 2001, the Daytons filed Chapter 7 bankruptcy before this court (Bankruptcy Case No. 01-34521). After conversion to Chapter 13 and reconversion of the case to Chapter 7, Duane H. Gillman (“Gillman”) was named the Chapter 7 Trustee.
3. On February 13, 2002, Gillman, as trustee of the Dayton bankruptcy estate, filed a motion for order approving auction of property of the estate seeking authority to sell the tangible and intangible property relating to the remake of the motion picture *Where the Red Fern Grows* including the intellectual property rights.
4. On January 24, 2002, Jubber, as trustee of the Red Fern bankruptcy estate, filed a motion to approve sale of property free and clear of liens. The motion sought authority to sell all rights and interests of Red Fern relating the remake of the motion picture *Where the Red*

*Fern Grows* including the intellectual property rights, the film negative, and elements related thereto.

5. Gillman's and Jubber's motions were both amended to provide for the joint sale of property from the two estates.
6. On March 28, 2002, the trustees' joint motion for the sale of assets came before the court and was approved. Crusader Entertainment, LLC, Persik Productions, Inc, and WRFG were the successful bidders at the sale.
7. There is no appeal pending and no pending motion to reconsider the order approving the sale.
8. On February 25, 2003, the Daytons initiated a lawsuit (the "Lawsuit") by filing a complaint in the Superior Court for the County of Los Angeles, State of California.
9. The Lawsuit's complaint (the "Complaint") named the WTRFG entities and Newman as the defendants (collectively referred to as the "Defendants").
10. The Complaint, which contains twelve causes of action is grounded in state law alleging breach of fiduciary duty, breach of contract, breach of confidence, unfair competition pursuant to the California Practices Act, Business and Professional Code §§ 17000 et seq, civil conspiracy, and constructive trust.
11. The Complaint alleges that the Defendants agreed to act as agents for the Daytons in an attempt to secure financing for the purpose of bidding on property to be sold at a bankruptcy auction sale conducted by Gillman and Jubber on March 28, 2002, and that instead, the Defendants usurped the opportunity for themselves.

12. The Complaint does not allege that the sale price of the estates' property was unfair.
13. The Complaint does not allege any form of bankruptcy fraud, collusive bidding, mistake or error on the part of the Chapter 7 trustees or the bankruptcy court.
14. The Complaint does not seek to set aside the sale, vacate the sale, or redirect payment of the proceeds of the sale in any way that would affect the administration of the estates or the final distribution to creditors in either bankruptcy proceeding.
15. The Complaint does not allege a breach of fiduciary duty, breach of contract, breach of confidence, unfair competition, or civil conspiracy on the part of either of the bankruptcy estates or the bankruptcy trustees.
16. The Complaint does not allege that an opportunity belonging to either of the bankruptcy estates or bankruptcy trustees was usurped.

### **JURISDICTION**

Daytons argue that this court lacks jurisdiction over the dispute between the parties because the Lawsuit neither arises under nor is related to either of the two bankruptcy proceedings and that the outcome of the Lawsuit would have no effect on the administration of either of the bankruptcy proceedings. Defects in subject-matter jurisdiction can never be waived and may be raised at any time. Franklin Savings Corp. v. United States, 180 F.3d 1124, 1129 (10<sup>th</sup> Cir. 1999). A federal court must satisfy itself of subject matter jurisdiction before proceeding to the merits of a claim. Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). The Complaint alleges that Daytons' concept or the idea of purchasing at the trustee's sale was usurped by defendants in disregard of certain

contractual obligations owed by defendants to the Daytons and seeks a remedy in behalf of the Daytons individually. That being the case, the bankruptcy estates and the trustees of the bankruptcy estates have no stake in the outcome of this lawsuit. Bankruptcy courts lack related jurisdiction to resolve controversies between third parties which do not involve the bankruptcy estate or affect administration of the estate. See In re Gardner, 913 F.2d 1515, 1518 (10<sup>th</sup> Cir. 1990); Craig's Stores of Texas, Inc. v. Bank of Louisiana, 266 F.3d 388 (5<sup>th</sup> Cir. 2001) (debtor's state law causes of action against bank for postconfirmation breach of contract fell outside jurisdiction of bankruptcy court); Work Family Directions, Inc. v. Children's Discovery Centers, Inc., 223 B.R. 40 (1<sup>st</sup> Cir. BAP 1998) (state court proceeding to determine validity and enforceability of guaranty between two creditors of the debtor was not sufficiently related to bankruptcy case to confer subject matter jurisdiction); In re Schwarzwald, 242 B.R. 734 (Bankr. M.D. Florida) (court had no "related to" jurisdiction to determine the validity of a tax lien in property which had been abandoned by trustee). The outcome of the Lawsuit, regardless of whether judgment is granted in favor of Daytons or the Defendants, would have no effect on the bankruptcy estates. The Lawsuit does not involve the bankruptcy estates or the bankruptcy trustees, and the controversy is not sufficiently "related to" the bankruptcies to confer jurisdiction. This court lacks subject matter jurisdiction over the Lawsuit.

The Lawsuit was removed to the bankruptcy court pursuant to 28 U.S.C. § 1452. Section 1452(b) provides that where the court lacks jurisdiction, the matter may be remanded based on equitable grounds. If that were the only statute to apply to a situation such as this, there would be no requirement that a case removed under § 1452(a) be remanded on the purely legal ground that

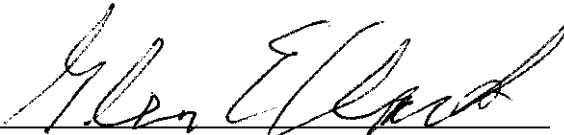
the court lacks subject matter jurisdiction. Under 18 U.S.C. § 1447(c), remand is required where a court lack subject matter jurisdiction. Because § 1447(c) requires that the matter be remanded, the two statutes cover different contingencies, and both should be given effect. Daleske v. Fairfield Communities, Inc., 17 F.3d 321, 324 (10<sup>th</sup> Cir. 1994). For that reason, the lawsuit must be remanded to the State of California.

Based upon the above, it is hereby

ORDERED that Adversary Proceeding No. 03P-2034GEC is remanded to the Superior Court of California, County of Los Angeles, for further adjudication.

DATED this 19 day of September, 2003.

BY THE COURT:

  
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GLEN E. CLARK, CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT

CERTIFICATE OF MAILING

I hereby certify that on the 23 day of September, 2003, I mailed a true and accurate copy of the foregoing ORDER to the following by depositing the same in the United States mail, postage prepaid, addressed as follows:

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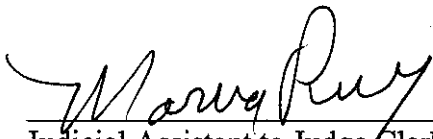
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