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Attorneys for Debtor Pepper R. Bujak

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE:)	Case No. 10-03569-JDP
)	
JOHN T. BUJAK AND PEPPER R. BUJAK,)	MOTION TO BIFURCATE AND
)	SEPARATELY ADMINISTER
Debtors.)	BANKRUPTCY ESTATE
)	

COMES NOW Debtor Pepper Bujak, by and through her counsel of record, the law firm of Dinius & Associates, PLLC, and hereby moves this Court for an Order bifurcating and separately administering her bankruptcy estate from her estranged husband John Bujak’s bankruptcy estate. This Motion is supported by the affidavit of Pepper Bujak.

ANALYSIS

Whether a bankruptcy court has the authority to bifurcate and administer was addressed in the case *In re Estrada*, 224 B.R. 132 (Bkrtcy. S.D.Cal. 1998). In that case, a married couple filed a joint chapter 7 case on October 16, 1996. It was determined that the case was a “no-asset”

case and was closed on February 10, 1997. Thereafter, Mr. Estrada died entitling Mrs. Estrada to substantial life insurance proceeds. The bankruptcy case was reopened as a result.

Mrs. Estrada moved to bifurcate or separately administer the jointly filed case on the grounds that joint administration was “no longer feasible.” The bankruptcy court stated that Section 302(a) permits a married couple to file a joint petition. Section 302 is designed for ease of administration and to permit the payment of one filing fee. However, “joint petition actually creates two separate bankruptcy estates.” *Id.*, p. 135. The court also recognized that there is no statutory provision to sever a jointly filed petition but that “section 302(b) provides that the Debtor’s estate could be separately administered from [the husband’s] estate.” *Id.*

The court in *Estrada* also analyzed whether opposing parties and creditors would suffer prejudice by separate administration of the estates. “The sole aim of substantive consolidation is fairness to all creditors.” *Id.*, p. 136. In *Estrada*, the court found that because separate administration would have no effect on the substantive rights of creditors, no prejudice could be demonstrated. Ultimately, the court granted the motion and administratively separated the estates as requested. *Id.*

In this case, there are two separate estates at issue: John Bujak’s estate and Pepper Bujak’s estate. Those estates have not been substantively consolidated. When considering whether the estates should be consolidated, the court ultimately determines “what equity requires.” *Id.*, p. 135. Here, equity requires that the two estates be adjudicated separately for the following reasons:

1. That John Bujak filed an action for divorce in Canyon County, Case No. CV11-6901.
2. Since then, John has indicated that he will no longer assist Pepper Bujak in the current bankruptcy proceeding.

3. The adversary proceedings currently pending in no way pertain to the actions or liabilities of Pepper Bujak and Ms. Bujak should not be subjected to prolonged litigation in those matters.

4. When John and Pepper Bujak initially filed for bankruptcy protection, they were married and living together. John completed all the paperwork necessary for them to file. Since John was Pepper's husband and a licensed attorney who had done bankruptcy work before – she trusted he completed the filings and schedules in a true and accurate manner.

5. In August 2011, Ms. Bujak discovered a substantial missing asset on the bankruptcy schedules submitted to this Court – namely a Rolex watch.

6. Prior to August 9, 2011, Ms. Bujak did not realize the Rolex was not included on their schedules nor did she know, at the time, that it needed to be listed. At the time the Petition for bankruptcy was filed Ms. Bujak relied upon John to accurately complete the schedules and was not in a position to question him or his handling of the bankruptcy.

7. On the eve of September 1, 2011, John attempted to dissuade Ms. Bujak from disclosing the missing asset and tried to get her to lie to the U.S. Trustee and the Bankruptcy Trustee about the Rolex being a gift to her parents prior to their filing bankruptcy.

8. Despite John's position on the matter and his efforts to get Ms. Bujak to lie about the Rolex, she met with the Bankruptcy Trustee and the U.S. Trustee to advise them of the asset.

9. Ms. Bujak will file updated schedules including the Rolex watch. Although John sold the Rolex in May or June 2011, John told Ms. Bujak he still has approximately ½ of the proceeds from the sale of the Rolex. Ms. Bujak did not receive any of the proceeds from the sale of the Rolex.

Affidavit of Pepper Rae Bujak.

Further, separate administration would in no way prejudice creditors. First, Pepper Bujak is not liable to creditors in the adversary proceedings. Further, Pepper Bujak is unemployed, been out of the work force for over 15 years, and has no marketable skills. *Id.* Just like in *Estrada*, no substantive rights of creditors would be affected. The validity of the creditor's claims does not change as a result of this request. As such, separate administration and bifurcation comports with the ultimate goal of ensuring fairness to all creditors.

CONCLUSION

Based on the foregoing, Debtor Pepper Bujak respectfully requests that this Court grant her Motion to Bifurcate and Separately Administer her estate.

DATED this 9th day of September, 2011.

DINIUS LAW

/s/ Kevin E. Dinius

By: _____

Kevin E. Dinius

Attorneys for Debtor Pepper R. Bujak

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of September, 2011, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Jeremy Gugino, Trustee
gugino@cableone.net

Matthew Christensen, Attorney for Trustee
mtc@angstman.com

U.S. Trustee
ustp.region18.bs.ecf@usdoj.gov

Sheila Schwager and Janine Reynard, Attorneys for Creditor Intermountain Community Bank
sschwager@hawleytroxell.com
jreynard@hawleytroxell.com

Joe Lozano, Attorney for Litton Loan Servicing
notice@bkcyllaw.com

Randall Peterman and Noah Hillen, Attorneys for Canyon County
rap@moffatt.com
ngh@moffatt.com

Ronald Shepherd, Attorney for Martin Palominos
rshepherd@nampalaw.com

Richard Crawford, Trustee for Bankruptcy Estate of Jennifer Ensley
trustee@richardcrawford.com

Derrick O'Neill, Attorney for The Bank of New York Mellon
derrick@oneillpllc.com

Additionally, a copy of the foregoing was served on the following parties by first class mail:

ALL PARTIES LISTED ON THE ATTACHED MAILING MATRIX OBTAINED FROM THE CLERK.

DINIUS LAW
/s/ Kevin E. Dinius

By: _____
Kevin E. Dinius
Attorneys for Debtor Pepper R. Bujak

3. Since then, John has indicated that he will no longer assist me in the current bankruptcy proceeding.

4. The adversary proceedings currently pending in no way pertain to the actions or liabilities of myself and I should not be subjected to prolonged litigation in those matters.

5. When we initially filed for bankruptcy protection, John and I were married and living together. John completed all the paperwork necessary for us to file. Since John was my husband and a licensed attorney who had done bankruptcy work before – I trusted he completed the filings and schedules in a true and accurate manner.

6. In August 2011, I discovered a substantial missing asset on the bankruptcy schedules submitted to this Court – namely a Rolex watch.

7. Prior to August 9, 2011, I did not realize the Rolex was not included on our schedules nor did I know, at the time, that it needed to be listed. At the time the Petition for bankruptcy was filed I relied upon John to accurately complete the schedules and was not in a position to question him or his handling of the bankruptcy.

8. On the eve of September 1, 2011, John attempted to dissuade me from disclosing the missing asset and tried to get me to lie to the U.S. Trustee and the Bankruptcy Trustee about the Rolex being a gift to my parents prior to our filing bankruptcy.

9. Despite John's position on the matter and his efforts to get me to lie about the Rolex, I met with the Bankruptcy Trustee and the U.S. Trustee to advise them of the asset.

10. I will file updated schedules including the Rolex watch. Although John sold the Rolex in May or June 2011, John told me he still has approximately ½ of the proceeds from the sale of the Rolex. I did not receive any of the proceeds from the sale of the Rolex.

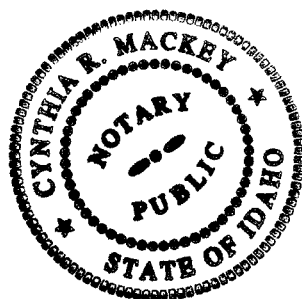
11. I am unemployed, have been out of the work force for over 15 years, and have no marketable skills.

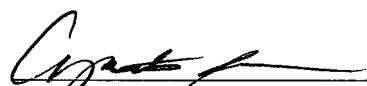
12. I respectfully request that this Court grant my Motion to Bifurcate and Separately Administer my estate.

DATED this 9th day of September, 2011.


Pepper Bujak

SUBSCRIBED AND SWORN to before me this 9th day of September, 2011.




Notary Public for Idaho
My commission expires: 07/17/2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of September, 2011, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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Sheila Schwager and Janine Reynard, Attorneys for Creditor Intermountain Community Bank
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Joe Lozano, Attorney for Litton Loan Servicing
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Randall Peterman and Noah Hillen, Attorneys for Canyon County
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ngh@moffatt.com

Ronald Shepherd, Attorney for Martin Palominos
rshepherd@nampalaw.com

Richard Crawford, Trustee for Bankruptcy Estate of Jennifer Ensley
trustee@richardcrawford.com

Derrick O'Neill, Attorney for The Bank of New York Mellon
derrick@oneillpllc.com

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DINIUS LAW
/s/ Kevin E. Dinius

By: _____
Kevin E. Dinius
Attorneys for Debtor Pepper R. Bujak

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