UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 11
BE-FIT HEALTH & RACQUET, INC. a/k/a GOLD'S GYM a/k/a IMAGES	:	
Debtor	:	Bankruptcy No. 97-31273F
BE-FIT HEALTH & RACQUET, INC. a/k/a GOLD'S GYM a/k/a IMAGES	:	
Plaintiff	:	
v.	:	
HEALTHTIME RACQUET AND FITNESS CLUB, INC.	:	
Defendant	:	Adversary No. 97-1008

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MEMORANDUM

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By BRUCE FOX, Bankruptcy Judge:

Healthtime Racquet and Fitness Club, Inc. ("Healthtime") has filed two motions. One motion is to dismiss this chapter 11 bankruptcy case. The other motion is to dismiss an adversary proceeding. The basis for seeking dismissal is the same in both instances: that the debtor filed this bankruptcy case without receiving requisite corporate authority.

The debtor opposes the relief sought. It maintains that the needed corporate authority has been obtained.

The relevant facts are undisputed.

On September 16, 1997, the debtor filed a voluntary petition in bankruptcy under chapter 11. The debtor did not attach to that petition a copy of a corporate resolution authorizing this filing.[1] However, in response to Healthtime's motion to dismiss, the debtor attached a copy of a corporate resolution dated September 19, 1997, purporting to authorize the corporate bankruptcy filing.

Healthtime argues that this resolution was enacted three days after the bankruptcy filing, and thus cannot properly authorize the earlier filing. The debtor maintains that the September 19th resolution ratified the September 16th filing.

In Price v. Gurney, 324 U.S. 100, 106 (1945), the Court held that a bankruptcy court must look to local law to determine whether a corporate voluntary bankruptcy petition was duly authorized. If the filing was not properly authorized in accordance with state law, the bankruptcy case must be dismissed. See, e.g., Hager v. Gibson, 108 F.3d 35 (4th Cir. 1997).

Pennsylvania is the alleged site of incorporation for this debtor. Under present state law, 15 Pa. C.S.A. § 1903(a)[2] (which codified former 15 P.S. § 1319

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[1]By virtue of Local Bankr.R. 1002.2(c), a corporate debtor is directed to provide "evidence of authority to initiate the case [at the time of filing of] the [bankruptcy] petition."

[2]Section 1903 states in relevant part:

> (a) General rule.--Whenever a business corporation is insolvent or in financial difficulty, the board of directors may, by resolution and without the consent of the shareholders, authorize and designate the officers of the corporation to execute a deed of assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or file an answer consenting to the appointment of

(continued...)

(repealed)), authority for a corporation to file a voluntary bankruptcy petition can only be provided by resolution of the corporate board of directors. The authority to file does not rest with any particular corporate officer, including the president. In re Penny Saver, Inc., 15 B.R. 252, 253 (Bankr. E.D.Pa 1981); see also, e.g., In re American Intern. Industries, Inc., 10 B.R. 695 (Bankr. S.D.Fla. 1981); In re Al-Wyn Food Distributors, Inc., 8 B.R. 42 (Bankr. M.D.Fla. 1980).

Moreover, a creditor, such as Healthtime, has standing here to raise the failure of a corporation to obtain the requisite authority, since creditors are parties in interest in chapter 11 proceedings. 11 U.S.C. § 1109(b); accord In re Penny Saver, Inc.; see also Matter of Marin Motor Oil, Inc., 689 F.2d 445 (3d Cir. 1982), cert. denied, 459 U.S. 1207 (1983).

Healthtime is correct that the instant debtor's voluntary petition could only be authorized by its board of directors. But in arguing that such authority was not provided in this instance, the movant overlooks the principle of "ratification."

In Hager v. Gibson, the Fourth Circuit Court of Appeals addressed whether, under Virginia law, a corporate bankruptcy filing not initially authorized may be later ratified and thereby validated. The appellate court concluded that Virginia would follow "the general rule, as expressed in Restatement (Second) of Agency, § 82

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[2](...continued)
a receiver upon a complaint in the nature of an equity action filed by creditors or shareholders, or file an answer to an involuntary petition in bankruptcy admitting the willingness of the corporation to have relief ordered against it.

(1958)"[3], id., 108 F.3d at 39, permitting the "ratification/relation back doctrine." Id., at 39.

I believe that Pennsylvania law would also permit a corporate board to ratify an earlier filed voluntary bankruptcy petition by a corporate officer.

Pennsylvania courts have endorsed the concept of ratification by a principal of conduct earlier undertaken by an agent. See, e.g., Oliver v. City of Clairton, 374 Pa. 333 (1953); Bell v. Scranton Trust Co., 282 Pa. 562, 569 (1925); see also Ebasco Services, Inc. v. Penn. Power & Light Co., 460 F.Supp. 163, 203-04 (E.D.Pa. 1978). Indeed, the Pennsylvania Supreme Court has cited favorably to section 82 of Restatement of Agency (Second). Savidge v. Metropolitan Life Ins. Co., 380 Pa. 205, 209 (1955).

Ratification of the acts of an agent may be either express or implied. E.g., In re Packer Ave. Associates, 1 B.R. 286, 292 (Bankr. E.D.Pa. 1979). Here, there is no doubt that the corporate board of Be-Fit Health & Racquet, Inc. supports the debtor's bankruptcy filing. The corporation resolution of September 19th makes that clear. Therefore, the debtor's board of directors has sought by this resolution to ratify the bankruptcy filing. Compare Schwartz v. Mahoning Valley Country Club, 382 Pa. 138, 142 (1955) (Court refused to imply ratification to the board's conduct when the

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[3]Section 82 of the Restatement of Agency (Second) contains the following proposition:

> Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.

members of the board did not have “full knowledge of all the material facts and circumstances”).

In its analysis of Virginia state law regarding ratification of authority to file a corporate bankruptcy petition, the Fourth Circuit in Hager cited to In re I.D. Craig Service Corp., 118 B.R. 335 (Bankr. W.D.Pa. 1990) for support. The Craig decision concluded that, under Pennsylvania law, the corporate board had ratified the voluntary petition filed improperly filed by the corporation’s president.

Not only does the Craig decision support the application of ratification in this instance, but the Third Circuit Court of Appeals, in In re Eastern Supply Co., 267 F.2d 776, 778 (3d Cir.), cert. denied, 361 U.S. 900 (1959), held that there may be ratification of authority to file an involuntary bankruptcy petition:

> The further point is pressed that the attorney's authority came too late, that is, after the petition was filed. But we should bear in mind the general rule that the ratification of an act purported to be done for a principal by an agent is treated as effective at the time the act was done. In other words, to talk technical even though fictitious language, the ratification 'relates back' in time to the date of the act by the agent. We have no direct authority saying that this is applicable to bankruptcy petitions but in the absence of something to indicate to the contrary, the general principle is applicable. See Kay v. Federal Rubber Co., 3 Cir., 1930, 46 F.2d 64, 65; Restatement, Agency 2d §§ 82, 100A (1958).

(emphasis added); see also Comprehensive Group Health Services Bd. of Directors v. Temple University of Com. System of Higher Ed., 363 F.Supp. 1069, 1098, n.52 (E.D.Pa. 1973) (“Apparently Mrs. Wilson, president of the HOC Board, authorized institution of the lawsuit before obtaining Board approval; however, we find that the Board properly ratified Mrs. Wilson's action, and that the ratification related back”).

Since the debtor's board of directors has sought to ratify this voluntary bankruptcy filing, and since under Pennsylvania law it may do so, the motions filed by Healthtime to dismiss this voluntary bankruptcy petition and the accompanying adversary proceeding must be denied.

Appropriate orders shall be entered.

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BE-FIT HEALTH & RACQUET, INC. a/k/a GOLD'S GYM a/k/a IMAGES	:	
Debtor	:	Bankruptcy No. 97-31273F

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ORDER

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AND NOW, this 4th day of November, 1997, upon motion of Healthtime Racquet & Fitness Club, Inc. to dismiss this chapter 11 case, it is hereby ordered for the reasons stated in the accompanying memorandum that the motion is denied.

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BRUCE FOX
United States Bankruptcy Judge

IN RE: Chapter 11
BE-FIT HEALTH & RACQUET, INC. Bankruptcy No. 97-31273F

Copies of the Bankruptcy Judge's Memorandum and Order dated November 4, 1997, were mailed on said date to the following:

Diana M. Dixon, Esquire
Jackman and Dixon
8 East Court Street
Doylestown, PA 18901

John A. Wetzel, Esquire
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1601 Market Street, 35th Floor
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Be-Fit Health & Racquet, Inc.
2420 Bethlehem Pike
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Plaintiff	:	
v.	:	
HEALTHTIME RACQUET AND FITNESS CLUB, INC.	:	
Defendant	:	Adversary No. 97-1008

....

ORDER

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AND NOW, this 4th day of November, 1997, upon motion of Healthtime Racquet & Fitness Club, Inc. to dismiss this adversary proceeding, it is hereby ordered for the reasons stated in the accompanying memorandum that the motion is denied.

BRUCE FOX
United States Bankruptcy Judge

IN RE:	Chapter 11
BE-FIT HEALTH & RACQUET, INC.	Bankruptcy No. 97-31273F
Be-Fit Health & Racquet, Inc.	Adversary No. 97-1008
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