

# ORIGINAL

1 UNITED STATES BANKRUPTCY COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 --oOo--

4 In Re: ) Case No. LA11-17831-TD  
5 GENE DOUGLAS BALAS and )  
CARLOS A. MORALES, ) Los Angeles, California  
6 ) Tuesday, May 17, 2011  
7 Debtors. ) 2:00 p.m.  
8 )

9 CONT'D HRG RE UNITED STATES  
10 TRUSTEE'S MOTION TO DISMISS  
11 PURSUANT TO 11 U.S.C. SECTION  
12 1307(C) OR FOR RELATED RELIEF

13 HRG RE CONFIRMATION OF CHAPTER  
14 13 PLAN

15 TRANSCRIPT OF PROCEEDINGS  
16 BEFORE THE HONORABLE THOMAS B. DONOVAN  
17 UNITED STATES BANKRUPTCY JUDGE

18 APPEARANCES:

19 For the Debtors:

20 DAVID M. STERN, ESQ.  
21 ROBERT J. PFISTER, ESQ.  
22 Klee, Tuchin, Bogdanoff  
& Stern, LLP  
23 1999 Avenue of the Stars  
39th Floor  
Los Angeles, California 90067  
(310) 407-4065

24 PETER M. LIVELY, ESQ.  
25 ILYA B. VOLK, ESQ.  
The Law Office of Peter M.  
Lively  
11268 Washington Boulevard  
Suite 203  
Culver City, California 90230  
(310) 391-2400

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 APPEARANCES: (cont'd.)

2 For the United States  
3 Trustee:

PETER C. ANDERSON, ESQ.  
JILL M. STURTEVANT, ESQ.  
Office of the United States  
Trustee  
725 South Figueroa Street  
Suite 2600  
Los Angeles, California 90017  
(213) 894-0405

7 For the Chapter 13 Trustee:

ANGELA N. GILL, ESQ.  
700 South Flower Street  
Suite 1950  
Los Angeles, California 90017  
(213) 996-4400

10 Court Recorder:

Wanda Toliver  
United States Bankruptcy Court  
Edward R. Roybal Federal  
Building  
255 East Temple Street  
Los Angeles, California 90012  
(213) 894-5011

14 Transcriber:

Briggs Reporting Company, Inc.  
6336 Greenwich Drive, Suite B  
San Diego, California 92122  
(310) 410-4151

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 LOS ANGELES, CALIFORNIA TUESDAY, MAY 17, 2011 2:00 PM

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Please remain seated. This Court is  
5 now in session. The Honorable Thomas B. Donovan presiding.

6 THE COURT: Good afternoon.

7 ALL PARTIES: Good afternoon, your Honor.

8 THE COURT: Balas and Morales. May I have your  
9 appearances, please.

10 MR. ANDERSON: Good afternoon, your Honor. I'm  
11 Peter Anderson. I'm the United States Trustee for region  
12 16. I am the Movant on this motion.

13 THE COURT: Thank you.

14 MR. STERN: Good afternoon, your Honor. Nice to  
15 see you. David Stern and Robert Pfister from the Law  
16 Offices of Klee, Tuchin, Bogdanoff and Stern, appearing as  
17 special counsel on behalf of the Debtors.

18 THE COURT: Thank you.

19 MR. ANDERSON: Also with me, your Honor, is Jill  
20 Sturtevant, my Assistant United States Trustee.

21 THE COURT: Thank you.

22 MR. LIVELY: Your Honor, Peter Lively, counsel for  
23 the Debtors. And my associate Ilya Volk is also present.

24 THE COURT: I'm sorry. I didn't --

25 MR. LIVELY: My associate Ilya Volk is also.

1 THE COURT: -- thank you. Did you wish to appear?

2 MS. GILL: Good afternoon, your Honor. Angela  
3 Gill on behalf of the Chapter 13 Trustee, Kathy A. Dockery.  
4 Kathy Dockery also is present.

5 THE COURT: Thank you.

6 MS. DOCKERY: Kathy Dockery, Chapter 13 Trustee.

7 THE COURT: Thank you.

8 Mr. Anderson.

9 MR. ANDERSON: If I could, I'd like to make a  
10 brief statement to begin.

11 THE COURT: Sure.

12 MR. ANDERSON: As the Court knows, as all the  
13 parties know, the Attorney General has advised Congress that  
14 the executive branch will no longer defend the  
15 constitutionality of Section 3 of DOMA as applied to legally  
16 married same-sex couples.

17 The President instructed the executive branch to  
18 continue to enforce the statute, and has said that he wants  
19 to make it possible for Congress to appear and make  
20 arguments in support of the constitutionality of Section 3  
21 in these cases, where the constitutional issue is presented.

22 It was for that reason that I filed the motion to  
23 dismiss in this case. I believe that this is also expressed  
24 in the Attorney General's letter, which is your Exhibit A at  
25 page five, where he says:

1                   "Notwithstanding this  
2                   determination, the President has  
3                   informed me that Section 3 will continue  
4                   to be enforced by the executive branch.  
5                   To that end, the President has  
6                   instructed the executive agencies to  
7                   continue to comply with Section 3 of  
8                   DOMA..."

9                   D-O-M-A.

10                   "... consistent with the  
11                   executive's obligation to take care that  
12                   the laws be faithfully executed unless  
13                   and until Congress repeals Section 3 or  
14                   the judicial branch renders a definitive  
15                   verdict against the law's  
16                   constitutionality."

17                   The house bipartisan legal advisory group has been  
18 notified of this very case, and has asked me to come here  
19 today to request a brief continuance, so that it can  
20 determine whether to intervene in this case, in order for  
21 its arguments on the constitutional issues the Debtors have  
22 raised.

23                   A one-week continuance will be sufficient for us  
24 to find out what the house bipartisan legal advisory group  
25 intends to do, and to notify the Court whether there will be

1 a pleading or an argument made in support of the motion to  
2 dismiss that I filed.

3 I understand that the local rules call for a  
4 written motion to continuance filed at least three days  
5 before the hearing. I apologize that I was unable to do  
6 that. There are many people working on this problem in real  
7 time, so to speak.

8 I think you can appreciate how important it is,  
9 since I have come here personally, which is the first time I  
10 have come here in five years. And I would ask the Court to  
11 please consider this. I believe the Debtors are agreeable  
12 to this.

13 Thank you very much.

14 THE COURT: Thank you, Mr. Anderson.

15 Mr. Stern.

16 MR. STERN: Thank you, your Honor. Your Honor, we  
17 are reluctantly agreeing to a continuance, although we do  
18 not believe that the passage of a week or any period of time  
19 will make this law any better.

20 But as long as we can have a date -- and I  
21 understand your calendar is probably busy -- in the next  
22 week, when can actually bring this on and get these Debtors  
23 to a confirmed plan, we hope, we would acquiesce in Mr.  
24 Anderson's request, and ask the Court to set this on a  
25 calendar at the earliest possible time, hopefully next week.

1 THE COURT: Okay. Thank you. Mr. Anderson.

2 MR. ANDERSON: That would be agreeable, if you  
3 would give us a date.

4 THE COURT: I assumed it would.

5 MR. ANDERSON: Huh?

6 THE COURT: I assumed it would be.

7 MR. ANDERSON: Yes.

8 THE COURT: Okay. I have one intermediate thought  
9 right now. We have Ms. Dockery and her attorney here today.  
10 And it seems to me that the matters of their objections to  
11 the Debtors' papers might be gotten out of the way right  
12 now. And I don't see any reason why not to get that out of  
13 the way and perhaps save those folks another trip to the  
14 Court next week.

15 MR. ANDERSON: No objection.

16 THE COURT: Okay. Ms. Gill.

17 MS. GILL: Well, your Honor, with respect to the  
18 plan proposed by the Debtors, the Trustee did raise  
19 objections, which were filed after the 341 meeting of  
20 creditors, fairly routine objections for certain documents  
21 to prove and substantiate the Debtors' income and as well as  
22 feasibility of the plan. And the Debtors have complied with  
23 all of the Trustee's requests. And the Debtors' proposed  
24 plan does appear to be feasible. The Trustee has received  
25 bank statements and tax returns, as well as pay advices from

1 both Mr. Balas and Mr. Morales. And therefore, the  
2 Trustee's objections to plan confirmation appear to be  
3 resolved.

4 THE COURT: All right. Would you like to withdraw  
5 your motion? Would you like me to do something else by way  
6 of an order?

7 Well, I guess one thing I'm thinking is, I know  
8 the Chapter 13 office has, you know, a lot of work to do  
9 every week. And so, I don't want to burden your office with  
10 a new and different hearing next week, if I don't have to.

11 And so what I would suggest is that the  
12 confirmation hearing be continued to a date separate from  
13 the hearing on the United States Trustee's motion.

14 MS. GILL: Your Honor, I think that's a very good  
15 suggestion. I don't know what you have as far as your dates  
16 for the U.S. Trustee's motion, but the next --

17 THE COURT: Well, I haven't even thought about it  
18 yet.

19 MS. GILL: -- okay. Well, I was just going to  
20 mention the next confirmation hearings on your calendar --  
21 well, there's one upcoming on May 26th --

22 THE COURT: Yeah.

23 MS. GILL: -- that's probably too short.

24 THE COURT: Yeah.

25 MS. GILL: The next one after that is on June 9th.



1 And thereafter, on June 23rd. And the Trustee would be  
2 amenable to any of those dates.

3 THE COURT: Okay. I would say, if there's any  
4 further delay in ruling on the United States Trustee's  
5 motion, we could just move the confirmation hearing out a  
6 little farther each time, so that we don't inconvenience you  
7 folks.

8 MS. GILL: Absolutely, your Honor.

9 THE COURT: So --

10 MS. GILL: So, how about the June 23rd date as --  
11 for the confirmation hearing?

12 THE COURT: -- well, let me go back to --

13 MS. GILL: I apologize. Okay.

14 THE COURT: -- Mr. Anderson and Mr. Stern. I have  
15 a busy day around here every day it seems, just as Mr.  
16 Anderson and his staff do just about every day. So, I guess  
17 I could conceivably hear this anytime next week. But rather  
18 than -- I hate to inconvenience people more than necessary,  
19 so I would just suggest a realistic date for this  
20 continuance. So that next time we go, as opposed to next  
21 time we don't go.

22 MR. STERN: We are perfectly prepared to go next  
23 week. Obviously the house and the Attorney General have  
24 made the determination to request one week. So, I would  
25 hope that we could actually do it next week. As your Honor

1 is aware, this concerns real people and their lives, as well  
2 as --

3 THE COURT: Sure.

4 MR. STERN: -- interesting legal issues. So I  
5 would like to sort of get this going if we could.

6 THE COURT: Sure. Mr. Anderson, your thoughts.

7 MR. ANDERSON: We will make ourselves available at  
8 your convenience, your Honor.

9 THE COURT: Okay.

10 MR. ANDERSON: Any time next week is fine.

11 THE COURT: I guess one other question I have. I  
12 know the Attorney General's letter was issued some time ago.  
13 I suppose it took the house some time to get going on this.  
14 But I wonder -- I mean, it seems to me a little late to be  
15 asking for a continuance, as you acknowledge, Mr. Anderson.

16 When exactly did the house get -- I know they got  
17 the request in the Attorney General's letter, the suggestion  
18 that they could step in. And I know that they -- the  
19 speaker did indicate that he was going to take action, but  
20 when did they actually take action? That's what I'm  
21 wondering.

22 MR. ANDERSON: In this case?

23 THE COURT: No, not in this case. Action to deal  
24 with the Attorney General's letter.

25 MR. ANDERSON: I don't know the answer to that

1 question, your Honor.

2 THE COURT: Okay.

3 MR. STERN: We actually do have some information.

4 This is David Stern.

5 In a case pending in the Northern District of  
6 California, the Golinski v. U.S. Office of Personnel  
7 Management case, which is on the docket as case number  
8 10CV0257. A lawyer from mister -- actually a member of the  
9 House of Representatives, Kerry Kircher, filed an affidavit  
10 in that case on the 4th of May, indicating awareness of this  
11 case. And that is found at paragraph 9B.

12 So, your inquiry is well taken, and under many  
13 circumstances, we would have pointed this out and opposed on  
14 that basis. Because this is at the 12th hour for no real  
15 reason, since they knew about it.

16 THE COURT: Well, except that Congress always  
17 takes a while.

18 MR. STERN: That -- well, that's undoubtably true.  
19 But I would say that they have had more than ample notice,  
20 and have been aware of this case for at least the last two  
21 weeks. So, I can't answer why they waited until an hour  
22 before the hearing to contact the U.S. Trustee, but they  
23 did.

24 THE COURT: Okay. Okay.

25 MR. ANDERSON: I think something that I can add.

1 THE COURT: I'm sorry.

2 MR. ANDERSON: I think something that I can add.  
3 And this is Peter Anderson.

4 THE COURT: Sure.

5 MR. ANDERSON: This problem has been being worked  
6 on. That's what's been represented to me. It just hasn't  
7 worked its way fully through. Sometimes these things take  
8 time. I don't think it was for want of trying or neglect.  
9 They're aware.

10 But it simply has taken time to work this through.  
11 We were unable to obtain this letter by this point in time.  
12 We're hopeful in a week to be able to do that.

13 THE COURT: Well, I understand. And I'm not  
14 speaking to be critical of you or your office, Mr. Anderson.  
15 I'm just trying to figure out just what the timing is, and  
16 where we're going, and how to get there in an orderly way.

17 Well, I guess the concern I still have is, so I  
18 pick a date next week, and maybe we go through this again.  
19 And again you got an 11th hour or 12th hour call. That's  
20 what I'm concerned about. There are a lot of people in the  
21 courtroom. These are important issues. I wonder.

22 Mr. Pfister.

23 MR. PFISTER: Good afternoon, your Honor. Robert  
24 Pfister. Your Honor, one way to address the Court's concern  
25 might be to set a deadline of next week, or whenever your

1 Honor has the time for a hearing, to set an outside deadline  
2 of that hearing date and time for any filing by the House of  
3 Representatives or any other interested party.

4           That way we will know that when we gather again  
5 next week, that the development won't only be a statement by  
6 the House that they do intend to intervene, but would rather  
7 be the substance of the arguments that they intend to make.

8           THE COURT: Well, I like the suggestion for this  
9 reason. That, you know, papers first and hearing later is a  
10 better way to go than something at the last minute. And so,  
11 I'm more interested in what the House has to say, than the  
12 precise time when I'm going to see somebody representing the  
13 House in this courtroom. So, that's -- I like your idea for  
14 that reason.

15           I could indeed set this for hearing next week, but  
16 I don't want to do it needlessly. I would rather everybody  
17 allow me to take the time I need to think this one through  
18 and deal with it, than have a bunch of meaningless hearing  
19 dates or meaningless continuances.

20           So, what if we talk instead for a few minutes  
21 about a realistic deadline for any further papers in this  
22 matter. And I take it the only further papers that would be  
23 appropriate at this juncture would be currently, late papers  
24 from the government, either from Mr. Anderson's office or  
25 from Washington.

1           So we're asking -- the real request is for further  
2 time to get those on file. And I wonder if something better  
3 than, you know, 74 hours -- 72 hours or 96 hours, or a date  
4 five days away or seven days away, would be helpful to the  
5 process.

6           You know, if I set a deadline for papers, say, on  
7 the 31st, two weeks from today, and then a hearing in the  
8 week following that. That means a three-week delay because  
9 of this request, but it might be a more useful three-week  
10 delay.

11           And then there's the question, well, so an  
12 intervener comes in and has something to say. I assume the  
13 Debtors would want a chance to say something in response.

14           MR. PFISTER: Your Honor, if you were inclined to  
15 set a further briefing schedule for any further submissions  
16 strictly from the House, perhaps you could set -- you could  
17 take the House at their suggestion of one week. That date  
18 did come from them. And then give us one week to respond,  
19 to put in any reply to anything they submit. And then a  
20 hearing, if your Honor's calender is available, the  
21 following week.

22           And you know, your Honor's order could note, or  
23 perhaps the record today might reflect, that the Court  
24 granted the House of Representative's rather extraordinary  
25 request an hour before a previously scheduling hearing, at

1 which everyone was ready and prepared to proceed with the  
2 case, and that this is a firm deadline. And should the  
3 Congress wish to be heard, they now have their opportunity.

4 THE COURT: Mr. Anderson, do you know any reason  
5 why the House would need more than a week to get its papers  
6 on file?

7 MR. ANDERSON: I don't know any reason for that,  
8 but it --

9 THE COURT: But it happens, I realize.

10 MR. ANDERSON: -- I'm -- yeah. I'm just cautious.  
11 I liked your original schedule the best, because I guess  
12 maybe then there can be no excuses. But I have no personal  
13 knowledge one way or the other.

14 THE COURT: I'm going to go with the 31st for  
15 papers. But I'm going to give the Debtors a week for a  
16 response to further papers. That takes us to --

17 MR. ANDERSON: June 7th, your Honor.

18 THE COURT: -- "June 7th." Right, yeah. Well, I  
19 think I would like to have this hearing on June 13. What's  
20 the pleasure of the parties, morning or afternoon?

21 MR. ANDERSON: Morning's good.

22 MR. STERN: That works for the Debtors' side, your  
23 Honor.

24 MR. PFISTER: Afternoon, your Honor, if --

25 THE COURT: 2:00 o'clock?

1 MR. PFISTER: -- "two-o'clock" would be fine.

2 MS. GILL: That would be fine.

3 THE COURT: 2:00 o'clock. Okay. I'll continue  
4 this hearing then to June 14.

5 MR. ANDERSON: Thirteen.

6 THE COURT: "Thirteen," excuse me. I'm looking at  
7 a funny looking calendar. June 13, 2:00 o'clock. Any  
8 papers from Congress not later than May 31. Any further  
9 papers from the Debtors, June 7. Earlier would be better.

10 MR. PFISTER: We will endeavor to do it earlier,  
11 your Honor. Would you like the Debtors to prepare an order  
12 to upload for your Honor's signature?

13 THE COURT: Sure.

14 MR. PFISTER: And just so the record is clear, the  
15 sole party who is authorized to file papers on May 31 is the  
16 Congress?

17 THE COURT: The only request before me today is  
18 from Congress.

19 MR. PFISTER: Okay.

20 THE COURT: Indirectly it's --

21 MR. ANDERSON: Your Honor, we might be delivered  
22 something to give you on behalf of the Congress.

23 THE COURT: Yeah.

24 MR. ANDERSON: So, I'm going ask --

25 THE COURT: I was going to say that. Yeah. It



1 came -- this request comes through an agency of the federal  
2 government. And so, with that --

3 MR. PFISTER: Understood.

4 THE COURT: -- flexibility in the ruling. Yeah.  
5 I'm not looking for another brief from Mr. Anderson  
6 personally. I'm looking for a brief or papers from  
7 Congress.

8 MR. PFISTER: Right. And my intent in clarifying  
9 it was just so that other perhaps private parties, amicus  
10 briefs, that kind of thing, wouldn't then flood in and  
11 compound issues. So, we will draw the proposed order in  
12 such a way as to limit it to the Congress or an authorized  
13 representative of the United States.

14 THE COURT: Okay.

15 MR. ANDERSON: Thank you.

16 THE COURT: All right. Is there anything else  
17 that we need to talk about today that shouldn't wait until  
18 next month?

19 MR. STERN: I don't believe so.

20 THE COURT: Okay. Thank you very much.

21 ALL PARTIES: Thank you, your Honor.

22 MS. GILL: Your Honor, are you going to separately  
23 calendar the confirmation hearing?

24 THE COURT: I can't hear very well --

25 MS. GILL: I'm sorry.

1 THE COURT: -- when there's noise in this  
2 courtroom.

3 MS. GILL: The hearing on the confirmation was  
4 actually next on your calendar, I believe. Do you want  
5 to --

6 THE COURT: Yeah. We forgot to --

7 MS. GILL: -- take that up separately to schedule  
8 that?

9 THE COURT: -- so we will just put this case out  
10 to your confirmation calendar on June 23rd.

11 MS. GILL: Yes. Okay.

12 THE COURT: And again, if there's any reason why  
13 we can't have a worthwhile confirmation hearing on June  
14 23rd, we can move that date informally if you will just give  
15 us a call.

16 MS. GILL: All right. Thank you very much.

17 ALL PARTIES: Thank you.

18 MR. LIVELY: Your Honor, for the Debtors, if I  
19 could just get clarification for the record, the Debtors are  
20 current with their plan payments as of today. There's a  
21 payment coming due on the 24th of May. And given the  
22 Trustee's position that their objection is withdrawn, that  
23 this matter may go on consent calendar.

24 MS. GILL: As long as plan payments are current  
25 and nothing else renders the plan infeasible before then, we

