

ROBB EVANS & ASSOCIATES LLC

Receiver of the Assets of

DebtWorks, Inc., and

Andris Pukke

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Federal Trade Commission v. Ameridebt, Inc., et al.

CASE No. PJM 03-3317

Reply to Limited Objection of Stephen Todd Cook to Receiver's Motion for Order Approving Receiver's Report for the Period September 20, 2005 Through December 31, 2005; and (Proposed) Order Granting Motion for Order (1) Approving Receiver's Report for the Period September 20, 2005 Through December 31, 2005; and (2) Approving Receiver's and Attorneys' Fees and Expenses and Authorizing Payment Thereof

Filed July 20, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERIDEBT, INC., et al.,

Defendants.

Civil Action No. PJM 03-3317

**REPLY TO LIMITED OBJECTION OF STEPHEN TODD COOK TO RECEIVER'S
MOTION FOR ORDER APPROVING RECEIVER'S REPORT FOR THE PERIOD
SEPTEMBER 20, 2005 THROUGH DECEMBER 31, 2005**

Robb Evans & Associates LLC ("Receiver") hereby submits its reply to the limited objection (the "Limited Objection") of Stephen Todd Cook ("Cook") to the Receiver's motion for approval of the Receiver's Report for the period of September 20, 2005 through December 31, 2005 ("Third Report"), the only opposition or objection timely filed to the pending Receiver's Motion for Order (1) Approving Receiver's Report for the Period September 20, 2005 Through December 31, 2005; And (2) Approving Receiver's and Attorneys' Fees and Expenses for Second Expense Period and Authorizing Payment Thereof ("Fee/Report Motion"). The Receiver disputes the claims and allegations made in Cook's Limited Objection and contends that the Limited Objection should be overruled; however, the Receiver does not object to the record and the Order on the Receiver's Fee/Report Motion reflecting that Cook has objected to the content of portions of the Third Report.

The Receiver's Third Report addresses the real property located at 35 Ocean Heights Drive ("Ocean Heights Property") title to which is held by Andris Pukke ("Pukke"). Cook

claims to have an enforceable written lease for the Ocean Heights Property which includes an option to purchase the Property exercisable for three years until June 1, 2007, a copy of which was produced to the Receiver by Cook and which is attached hereto as Exhibit 1 (the "Purported Lease/Option").

Cook's Limited Objection contests the portrayal of Cook's Purported Lease/Option and his testimony at the Receiver's deposition of Cook conducted in November 2005 in two respects. First, Cook objects to the Receiver's characterization of the Purported Lease/Option as allowing Cook to live in the Ocean Heights Property "rent-free" and Cook points to various property expenses which he contends he is required to pay. However, as set forth in the Purported Lease/Option, Exhibit 1, paragraph 4: "The total rent for said property shall be \$0 to be paid in amounts of \$0 due and payable on the 1st day of each month." The Purported Lease/Option specifically characterizes any other expenses paid by Cook pertaining to the Ocean Heights Property as payments "in lieu of rent." See Exhibit 1, ¶ 4. The Receiver's use of the term "rent-free" to describe Cook's tenancy is expressly supported by the language in the Purported Lease/Option.

Cook's Limited Objection further contests the Receiver's statement that the option purports to give Cook the right to purchase the Ocean Heights Property "well below the market value." Cook is correct that he did not testify the option to purchase was "well below the market value," and the Receiver did not intend to suggest that Cook so testified. However, Cook argues that the Receiver "improperly characterized the option price as being below the market value at the time the option was granted" although the quoted text from the Report does not specify the time frame. Further, the Receiver believes its conclusion that the option price is "well below the market value" is amply supported by the three-year term of the Purported Lease/Option, the real estate market in the Southern California area and the dramatic price increases occurring at the

time the Purported Lease/Option was allegedly negotiated and executed, particularly in the area where the Ocean Heights Property is located. That Cook has a different opinion as to the option price from the Receiver does not warrant Cook's Limited Objection being sustained.

The Receiver is entitled to have the Court review and approve the Receiver's reports of activities and confirm its activities during the course of the receivership. See 2 Clark on Receivers § 383.1, pp. 643-644 (3rd ed. 1992) ("A receiver's account and report is for the purpose of informing the appointing court and parties interested of the receiver's stewardship. Since the receiver is the court's officer, the court may at its own instance approve or disapprove the report of the receiver."). The argument in Cook's Limited Objection that the Receiver is not entitled to have the Court approve the Receiver's Reports and confirm its activities during the receivership is unsupported by any law and citation to authority.

The Receiver's Third Report, particularly as to the Ocean Heights Property, contains neither "innuendo" nor "hyperbole" as asserted by Cook but does set forth the Receiver's analysis and conclusions based on the information available to the Receiver through its investigation. The Court may and should have the benefit of this analysis and the Receiver's conclusions consistent with the Receiver's investigatory and reporting duties in the case.

Although the Receiver contends that the Limited Objection should be overruled for the reasons stated, the Receiver does not oppose Cook's alternative request that the order approving the Receiver's Third Report reflect that Cook objected to portions of the report addressing the Ocean Heights Property. The Limited Objection is the only response or opposition of which the Receiver is aware that has been timely filed in response to the Receiver's Fee/Report Motion. The Receiver has therefore lodged concurrently herewith a proposed form of order on the Receiver's Fee/Report Motion that includes a statement as requested by Cook and provides that

the order approving the Third Report does not determine any rights or claims of Cook with respect to his alleged interest in the Ocean Heights Property.

WHEREFORE, the Receiver respectfully submits that the Fee/Report Motion should be granted as requested.

Dated: July 20, 2006

MCKENNA LONG & ALDRIDGE LLP

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Attorneys for Robb Evans & Associates LLC,
Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2006, a copy of the foregoing **Reply to Limited Objection of Stephen Todd Cook to Receiver's Motion for Order Approving Receiver's Report for the Period September 20, 2005 through December 31, 2005**, along with a proposed Order, was served on the parties listed on the attached Service List in the manner indicated.

Date: July 20, 2006

/s/ G. David Dean

G. David Dean

SERVICE LIST

The following CM/ECF participants were served by electronic means:

Robert M Adler - Radler@oconnorhannan.com; Jcomisiak@oconnorhannan.com

Gary C. Adler – gadler@oconnorhannan.com; jmurphy@oconnorhannan.com

Ramona Dee Elliott - relliott@ftc.gov

Geoffrey Smith Irwin – gsirwin@jonesday.com

Charles Kevin Kobbe - kevin.kobbe@dlapiper.com

William N. Lobel – wlobel@irell.com

Glenn A. Mitchell - gamitchell@steinmitchell.com; abeato@steinmitchell.com

Lucy Emily Morris - lmorris@ftc.gov

Dara Beth Oliphant – dara.oliphant@usdoj.gov

Kevyn D. Orr – korr@jonesday.com

Jeffrey Mark Reisner – jreisner@irell.com

Sanford M Saunders, Jr. - saundersS@gtlaw.com

Roger Schlossberg - bkcreditor@schlosslaw.com; rschlossberg@schlosslaw.com

Mark David Taylor - taylor.mark@arentfox.com

John Buchanan Williams - jbwilliams@jonesday.com; aypowell@jonesday.com

The following non-CM/ECF participant was served by first-class mail, postage prepaid:

Jeanne M. Crouse, Esquire
U.S. Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

EXHIBIT 1

Lease Purchase Agreement

- ~~1. Parties: The parties to this Agreement are: Andris N. Pukke, hereinafter called Landlord and Stephen Todd Cook, hereinafter called Tenant.~~
2. **Property:** Landlord hereby lets the following property to Tenant for the terms of this Agreement: a) the real property known as:
- 35 Ocean Heights Drive, Newport Coast, CA 92657**
3. **Term:** The term of this Agreement shall be for Thirty Six (36) Months. Beginning at 12 noon, June 1, 2004 and ending at 5pm on June 1, 2007.
4. **Rent:** The total rent for said property shall be \$0, to be paid monthly in amounts of \$0 due and payable on the 1st day of each month. **In lieu of rent tenant is responsible for all real estate taxes on property. Tenant is also responsible for any and all repairs that are necessary. Home improvements for said property shall be at the expense of tenant.**
5. **Utilities:** Tenant is responsible for telephone, internet, water, electric, gas, and cable, and pool service.
6. **Security Deposit:** Tenant shall deposit with the Landlord, \$0 to be held as security deposit.
7. Tenant shall not lease or sublease nor assign the premises without the written consent of the Landlord (but consent of the landlord shall not be unreasonably withheld).
8. Landlord may enter premises at reasonable times for the purposes of inspection, maintenance or repair, and to show the premises to buyers or prospective tenants. In all instances, except those of emergency or abandonment, the Landlord shall give 24-hour notice prior to such an entry.
9. Tenant agrees to occupy the premises and shall keep same in good condition, reasonable wear and tear excepted.
10. Tenant agrees to regularly maintain the building and grounds in a clean, orderly, and safe manner.
11. Tenant agrees not to use the premises in such a manner as to disturb the peace and quiet of neighbors. Tenant further agrees not to maintain public nuisance. **Tenant agrees to allow up to 4 family, friends, or business associates of Landlord to stay on the premises for up to 16 weeks per calendar year. Landlord shall give Tenant two weeks notice if home needs to be occupied. Tenant has right to stay on premise while Landlord's family, friends, or business associates are using the premises.**

Initials AP STC RS

12. Tenant shall, upon termination of this Agreement, vacate and return the premises in the same condition that it was received, less reasonable wear and tear, and other damages beyond the control of the Tenant.

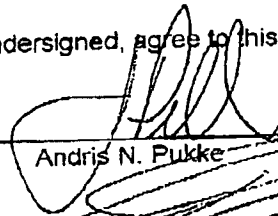
13. If home is sold, this lease is binding on all parties who lawfully succeed the current Landlord and Tenant.

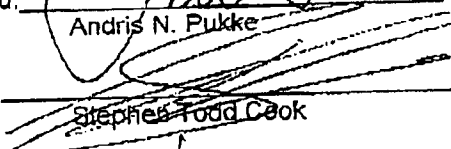
14. Any waiver or modification of the condition of this Agreement shall be in writing and signed by both Landlord and Tenant.

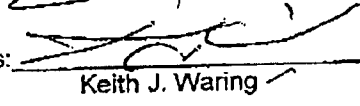
15. Any holding over after the termination of this Lease shall be construed as creating a month-to-month tenancy.

16. Additional Terms: **Tenant has the option to purchase the property for \$3,225,000 at anytime within the 36 month lease period. The seller will pay \$0 towards the buyer's settlement costs. This option expires at 5pm, June 1, 2007.**

We, the undersigned, agree to this Lease:

Landlord: 
Andris N. Pukke

Tenant: 
Stephen Todd Cook

Witness: 
Keith J. Waring

Date: 6/4/04

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERIDEBT, INC., et al.,

Defendants.

Civil Action No. PJM 03-3317

**ORDER GRANTING RECEIVER'S MOTION FOR ORDER
(1) APPROVING RECEIVER'S REPORT FOR THE PERIOD
SEPTEMBER 20, 2005 THROUGH DECEMBER 31, 2005; AND
(2) APPROVING RECEIVER'S AND ATTORNEYS' FEES AND EXPENSES FOR
SECOND EXPENSE PERIOD AND AUTHORIZING PAYMENT THEREOF**

The matter of the Receiver's Motion for Order (1) Approving Receiver's Report for the Period September 20, 2005 Through December 31, 2005; and (2) Approving Receiver's and Attorneys' Fees and Expenses for the Second Expense Period and Authorizing Payment Thereof ("Fee/Report Motion") filed by Robb Evans & Associates LLC ("Receiver") as Receiver over the assets of Andris Pukke and DebtWorks, Inc. came before the Court pursuant to Local Rule 105. The Court, having reviewed and considered the Fee/Report Motion and the pleadings and papers filed in support thereof by the Receiver, and no timely opposition or objection to the Fee/Report Motion having been filed in accordance with Local Rule 105 except for the Limited Objection of Stephen Todd Cook ("Cook") to Receiver's Motion for Order Approving Receiver's Report for the Period of September 20, 2005 Through December 31, 2005 ("Limited Objection"), and notice having been duly given to the interested parties, and good cause appearing therefor,

IT IS ORDERED that the Receiver's Fee/Report Motion is hereby granted in its entirety, and the Limited Objection of Cook overruled; and it is

FURTHER ORDERED that the Receiver's Report of Activities for the period of September 20, 2005 through December 31, 2005 ("Third Report") is hereby approved and the Receiver's activities described therein are hereby confirmed, provided that the Court acknowledges that Cook has objected to the portions of the Third Report concerning the real property located at 35 Ocean Heights Drive, Newport Coast, California ("Ocean Heights Property"), and nothing in this Order shall determine the rights, claims or interests of Cook with respect to the Ocean Heights Property; and it is

FURTHER ORDERED that the fees and expenses of the Receiver, the Receiver's staff and the Receiver's attorneys for the period of October 1, 2005 through April 30, 2006 ("Second Expense Period") described in detail in the Receiver's Fee/Report Motion are hereby approved, and the Court hereby authorizes payment thereof as requested in the Fee/Report Motion.

Dated:

PETER J. MESSITTE
United States District Judge