

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Honorable Sidney B. Brooks

In re:)
)
TCR of Denver, LLC) Case No. 05-45287-SBB
) Chapter 11
Debtor)

BRIEF ON 11 USC §1112(b)
MOTION TO DISMISS BANKRUPTCY

U.S. Capital, Incorporated, (“U.S. Capital”) by and through its counsel, Kennedy & Kennedy, P.C., responds to the Court’s Order requesting Briefs entered on December 30, 2005 as follows:

Before I begin, I must take the time
To explain why this brief is written in rhyme
To assure all and sundry no insult is meant
I therefore cite my precedent:

In the history of this circuit’s bankruptcies
King Resources Company surely stands out.
The Honorable Fredrick M Winner, then sat
As the judge in the case with the clout.

The State of Texas claimed a lease forfeit
By missing a payment on time.
The judge thought the position quite absurd
And ordered the briefs done in rhyme.

As was the opinion that issued,
Authored by Winner, in faulting rhyme,
And followed on its heels by the,
Court of Appeals, Judge Jean S. Breitenstein.

The undersigned has not the celebrity,
Of King Resources’ counsel, Kapelke,

But the subject matter seemed to lend
Itself to a poetic trend;
So, in her duty she shall not fudge,
Particularly before the Chocolate Judge.

Now this allusion may not be obvious
And may in fact confabulate
Since it is not the intent to here obfuscate
But clarify; I elaborate:

The reference is to the fair Sunita
Six at the time and cute as a bug
Giggling with feet in the air,
Rolling on the judicial rug

Plunging her hand into a bowl of candy,
Seeking to find that which would delight her,
She shrieked, pulling her hand back in fright,
Retrieving a black, plastic spider.

Whether the confection or the arachnid it was
That made the permanent impression,
Years later and facing her first competition,
She told me of her science fair submission.

“They told me,” she said looking somewhat confused
“*He* would be there.” To which I said, “He who?”
“The judge,” she said, quite seriously,
“The Chocolate Judge?” she then queried.

Reader, lest one fear we engage
In slurs that insinuate race
Be calm, for the fair Sunita is brown
And the Judge of Caucasian face.

The reference here
is not to complexion
But to the ingredients
of the confection.

But to the point—to the Bankruptcy Code,
To see what we may see

To aid us in interpreting
1112(b).

Ah, then to the question of **or** or **and**
Or should I say of or **and** and?
And just how far absurdity may take us
In interpreting the law of the land.

A first question must be answered:
Must an interpreter presume
That Congress has at its command
A knowledge of the English language—
And the difference between **or** and **and**?

Not **any** Congress, let us recall,
This is the Congress that brought us all
The Iraq war based on weapons no one can see;
So reality must be a question of degree.

One can't be too careful in assessing the terrain,
For we hear one congressman recently declaim
The "radical militant librarians" are in fact
Out to derail the Patriot Act!

And now that domestic spying's okay
What chance has the BAPCPA?
When the radical militant librarians
Team up with the militant grammarians?

One could only hope for such a day;
Instead we must guess what they wanted to say.
"Who are they?" is the question to be feared
21st century legislation has been commandeered.

By special interests, it seems to be clear
So, where do we go from here?

Ah, but we wax far too political
Let us not be so critical
But to the statute repair
To find an answer there.

A case **shall** be dismissed 'tis clear
“for cause” including (a) through (o)
and (p). We know the “and” was “or”
A deliberate change? It would seem so.

With the Code explicit at §102(5)
that “or” is not exclusive,
The use of “or” made perfect sense
“And” is more elusive.
In grammar it is still correct
But has a quite absurd affect—

For example, if we look at (g),
A “failure to attend ...
The meeting of creditors” we will see
Would seem to give cause to send
A debtor packing....but if **and**
Means **and**, well then a debtor we see
Who appears at the meeting is totally free
To mismanage their estate with impunity
And nary worry about 1112(b).

(L) gives us revocation
Of an order of confirmation;
But if only confirmed plans may be dismissed,
This leaves room for so much amiss,
It simply cannot be what's meant.
It can't be the legislative intent.

Yesterday on NPR
Do you know what I heard?
A line that up until quite recently,
Would have seemed entirely absurd.

“You can access our pod by going
on-line to visit our web-site
at www.com,”
I'm sure I heard it right.

But to any person, intelligent or no,
who up and left this planet,
As recently as twenty years gone,
The sentence is incoherent.

All vestiges of Shakespeare's English gone
All is bits and blogs and bites.
All is chaos, all is anarchy,
An antiquity is the art of wordwrights.

Sunita, Krishna and Bishnu dance
To their I-pod tunes and burn
Dvds, not bras or flags—times change
And we must fade or learn:

For “con” is to take someone for a ride.
And “dis” is now a word for deride.
A junction is where two roads collide.
Deciphering the mysteries of Deuteronomy
Can't be much harder than the Judge's task
Here given. But logic, poor logic, browbeat
and weary gives way to economy.

Is it two children I seek to feed? **And** one?
Two children **or** one is quite different indeed.
And so finally this advocate is forced to concede—
Congress said naught what it meant to say.

Pressured to pass what it felt served a need,
Or pressured by money, or pressured by greed,
Some think the BAPCPA a travesty.
Can we bring this to Congress's attention?
By accumulating undismissable Chapter 11s?

I wish I could say I thought it would matter.
But then I should be quite as mad as our Hatter.
Before Winner, the evidence in that case proffered,
Included Alice in Wonderland, offered
One must presume, for the proposition,
That logic and language are in juxtaposition.

Back then to reality,
To the entities here involved,
We see a desire to dismiss
From debtor and creditor, court and
Trustee, and so we must capitulate
To that to which we stipulate.

With apologies to the Chocolate Judge
Who, in my mind, will always be
A “real judge” whose legacy
will remain steadfast despite
all fickle trends of time
But here is a challenge he did not foresee....

Can he rule in rhyme?

Dated this 9th day of January, 2006.

Respectfully submitted,

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Certificate of Mailing

I do hereby certify that on this 9th day of January, 2006, I did place a true and correct copy of the foregoing document in the U.S. Mail, first class postage pre-paid and addressed to the following:

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