

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of  
BELTON INNS, INC.

Debtor

DAVID A. ERICKSON, TRUSTEE  
FOR BELTON INNS, INC.,

Plaintiff

Case No. 86-261-C

Adv. No. 87-0238

vs.

TARRANT COUNTY TITLE COMPANY,  
G. BRYAN MARTIN d/b/a W.M.D.  
INVESTMENTS, RICHARD C. POWELSON,  
REAL ESTATE INVESTMENT COUNSELORS,  
LTD., WOOLPERT CONSULTANTS.

Defendants.

RULING AND ORDER--MOTION TO STRIKE

On March 1, 1988, a hearing was held on plaintiff's motion to strike the answer filed by G. Bryan Martin d/b/a W.M.D. Investments, and as duly authorized agent for W.M.D. Investments, Richard Powelson, and Real Estate Investment Counselors, Ltd.

Lynne Wallin Hines appeared for the plaintiff, and James L. Bennett appeared for G. Bryan Martin d/b/a W.M.D. Investments.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(E). Having reviewed the file and having heard the arguments of counsel, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The complaint to compel turnover of funds was filed on November 12, 1987. Tarrant County Title Company and G. Bryan Martin, d/b/a W.M.D. Investments were named as the defendants.

2. On December 11, 1987, the amended complaint was filed pursuant to order of court. The amended complaint added Richard C. Paulson, Real Estate Investment Counselors, LTD., and Woolpert Consultants as defendants.

3. The defendant Tarrant County Title Co. appeared by counsel and filed an answer on January 12, 1988.

4. On January 12, 1988, G. Bryan Martin "for himself and as duly authorized agent for W.M.D. Investments, Richard Powelson, and Real Estate Investment Counselors, Ltd." appeared pro se and filed an "answer to complaint to compel turnover of funds, and allegations of jurisdiction and venue" for himself and the other named defendants.

5. On February 10, 1988, G. Bryan Martin d/b/a/ W.M.D. Investment Counselors, Ltd." appeared by counsel and filed an answer. This answer did not raise any allegations as to jurisdiction and venue.

6. On January 28, 1988, default judgment was entered against the defendant Woolpert Consultants, for failure to appear, plead or otherwise defend.

7. The contract of sale filed with the complaint and amended complaint reveals that one G. Bryan Martin appears

to have signed said document as vice president of W.M.D. Partnership. The addendum to this contract of sale recites that "W.M.D. Investments has not yet been incorporated so that G. Bryan Martin is not a vice president thereof, but rather G. Bryan Martin is doing business as W.M.D. Investments and is, in fact, the Buyer under the contract; ..."

8. There has been no showing by G. Bryan Martin that he is an agent, attorney in fact, or proxy to represent Richard C. Powelson or Real Estate Investment Counselors, LTD.

#### APPLICABLE LAW AND ANALYSIS

Rule 9010(c), Bankruptcy Rules, provides in part as follows:

"The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to Official Form No. 17 or Official Form No. 18...."

C. Bryan Martin has made a prima facie showing that he is, in fact, W. M.D. Investments. Accordingly, there has been a showing that he is the duly authorized agent for "W.M.D. Investments."

However, there has been no showing by G. Bryan Martin that he is the duly authorized agent for Richard C. Powelson or Real Estate Investment Counselors, Ltd.

James L. Bennett, Attorney at Law, has appeared as "attorney for G. Bryan Martin and as agent for W.M.D. Investments, Richard Powelson and Real Estate Investment Counselors, Ltd." There is no showing that said attorney has been authorized to enter an appearance for Richard Powelson or Real Estate Investment Counselors, Ltd. Therefore, said attorney is unable to appear and answer on behalf of said defendants.

The court concludes that G. Bryan Martin has failed to show that he is an agent of Richard Powelson and Real Estate Investment Counselors, Ltd. and that James L. Bennett has not entered an appearance for said defendants. Accordingly, Bankruptcy Rules 7012, 9010, and 9011 have not been satisfied.

IT IS ACCORDINGLY ORDERED, as follows:

(1) Plaintiff's motion to strike the answers of Richard C. Powelson and Real Estate Investment Counselors, Inc., of January 12, 1988, and February 10, 1988 is SUSTAINED, and said answers are accordingly struck from the pleadings; and

(2) Plaintiff's motion to strike the answer of G. Bryan Martin, d/b/a W.M.D. Investments is OVERRULED.

Dated this 4th day of March, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE

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TARRANT COUNTY TITLE COMPANY,  
G. BRYAN MARTIN d/b/aW.M.D.  
INVESTMENTS, RICHARD C. POWELSON,  
REAL ESTATE INVESTMENT COUNSELORS,  
LTD., WOOLPERT CONSULTANTS.

Defendants.

RULING AND ORDER  
DEFAULT JUDGMENT AGAINST RICHARD C. POWELSON.  
AND REAL ESTATE INVESTMENT COUNSELORS. LTD.

On January 21, 1988, plaintiff filed his motion for default against W.M.D. Investments, Richard C. Powelson, and Real Estate Investment Counselors, Ltd.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(E). The court having reviewed the file now enters its ruling and order.

FINDINGS

1. The Complaint to Compel Turnover of Funds was filed on November 12, 1987, and amended on December 11, 1987.
2. On December 15, 1987, plaintiff served the amended complaint on W.M.D. Investments, Richard C. Powelson, and Real Estate Investment Counselors, Ltd., as evidenced by the Certificate of Mailing filed on December 16, 1987.

3. By previous ruling and order filed herein, the court has held that G. Bryan Martin, d/b/a W.M.D. Investments has appeared and plead.

4. In the same ruling and order the court held that Richard C. Powelson and Real Estate Investment Counselors, Ltd., have not appeared, plead or otherwise defended against the complaint, as amended.

5. The defendants, Richard C. Powelson and Real Estate Investment Counselors, Ltd., were served in due legal form and manner.

6. This court has jurisdiction of the parties and subject matter.

7. The defendants, Richard C. Powelson and Real Estate Investment Counselors, Ltd. have failed to appear, plead or defend in the manner and within the time prescribed by the Bankruptcy Rules and are therefore in default.

8. Plaintiff has filed his certification of examination of the docket and calendar entries herein.

9. Plaintiff has affirmatively stated that the defendants, Richard C. Powelson and Real Estate Investment Counselors, LTD., are not in the military service and they are not under any legal disability or prisoner in any reformatory or penitentiary.

IT IS ACCORDINGLY ORDERD, ADJUDGED AND DECREED that the plaintiff, David A. Erickson, Trustee for Belton Inns, Inc., have

default judgment against the defendants, Richard C.

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Powelson and Real Estate Investment Counselors, LTD., thereby making any claim or interest of said defendants inferior to that of the Plaintiff-Trustee.

Dated this 4<sup>th</sup> day of March, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE

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