

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In Re:	§	
	§	
TODAY’S DESTINY, INC.	§	CASE NO. 05-90080
	§	
Debtor	§	CHAPTER 7
	§	
JOSEPH M. HILL, TRUSTEE IN BANKRUPTCY FOR DEBTOR,	§	
	§	
Plaintiff	§	
	§	
VS.	§	Adversary 06-03285
	§	
MICHAEL DAY, ET AL.	§	
	§	
Defendants.	§	

**TRUSTEE’S MOTION AGAINST PIONEER FOR TURNOVER OF PROPERTY
BELONGING TO THE BANKRUPTCY ESTATE OR,
ALTERNATIVELY, MOTION TO ENFORCE SETTLEMENT AGREEMENT**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Joseph M. Hill, Trustee for the Bankruptcy Estate of Today’s Destiny, Inc., files this Motion against Pioneer for Turnover of Property Belonging to the Bankruptcy Estate or, Alternatively, Motion to Enforce Settlement Agreement, and in support thereof would respectfully show the Court:

I. FACTUAL OVERVIEW

1. On or about February 27, 2009, Joseph M. Hill, Trustee for the Bankruptcy Estate of Today’s Destiny, Inc. (hereinafter “Trustee”), entered into a Settlement Agreement (*see Exhibit A*) with Pioneer Capital Corporation (hereinafter “Pioneer”), which was approved by this Court on April 27, 2009 (*see Order granting Trustee’s Motion to Compromise Controversy (Doc. 659)*). The terms of the Settlement Agreement stipulated that in exchange for \$8,000.00

paid in two installments of \$4,000.00 due April 1, 2009 and May 1, 2009, Trustee would release any and all claims against Pioneer and dismiss it from this litigation.

2. Pioneer paid the first installment of \$4,000.00 on June 11, 2009, over two months late.

3. Pioneer has refused to comply with the May 1 payment deadline and has not made the second payment of \$4,000.00 as specified in the Settlement Agreement.

II. ARGUMENT

4. Bankruptcy Code Section 542(b) provides:

“Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.”

11 U.S.C. § 542(b).

5. In accordance with 11 U.S.C. § 541(a)(7), the benefits of the Settlement Agreement entered into by the Trustee and Pioneer constitute property which has accrued to the estate. Therefore, the \$8,000.00 amount that Pioneer agreed to pay constitutes property of the estate.

6. The outstanding payment of \$4,000.00 constitutes a debt pursuant to 11 U.S.C. § 103(5)(A).

7. Based on the plain terms of the Settlement Agreement and its subsequent approval by this Court, the debt is mature, immediately and currently due, and should be payable upon the order of the Trustee. *See In re Corland Corp.*, 967 F.2d 1069, 1078 (5th Cir. 1992).

8. Neither 11 U.S.C. § 542(c) nor 11 U.S.C. § 542(d) is applicable. Additionally, no right of set-off is applicable under 11 U.S.C. § 553.

9. The Trustee has demanded payment of the outstanding \$4,000.00 to no avail. See **Exhibit B**, letter from Trustee's Counsel. Pioneer is indebted to the bankruptcy estate in the amount of \$4000.00, and that debt is mature and payable upon the order of the Trustee. Therefore, Trustee requests that the Court enforce the Settlement Agreement and order that Pioneer pay the \$4,000.00, which constitutes property of the estate. *See Saddle Creek Energy Development v. Eagle Domestic Drilling Operations*, Civ. Act. No. H-07-MC-217, 2007 WL 1702398 (S.D. Tex. June 12, 2007).

III. RESCISSION

10. Alternatively, Trustee requests rescission. Because Pioneer has materially breached the terms of the Settlement Agreement by nonpayment, this Court should order the Settlement Agreement rescinded and reinstate Pioneer as a party to this litigation. If the Court orders rescission, Trustee will tender the \$4,000.00 previously paid by Pioneer.

IV. ARGUMENT FOR ATTORNEY'S FEES

11. Trustee attaches correspondence from Pioneer's counsel showing that Pioneer's failure to pay the final \$4,000.00 is deliberate. **See Exhibit C**, emails. Pioneer obviously hopes that the amount in controversy is sufficiently low that Trustee will not pursue it. Trustee respectfully requests that the Court award Trustee attorney's fees based on Pioneer's deliberate noncompliance with the Settlement Agreement, based on Chapter 38 of the Texas Civil Practice and Remedies Code and the inherent discretionary power of the Bankruptcy Court.

V. PRAYER

12. For the above reasons, Trustee respectfully requests that the Court enforce the Settlement Agreement and order Pioneer to deliver the \$4,000.00 that is property of the bankruptcy estate. Alternatively, Trustee requests that the Court rescind the Settlement Agreement and reinstate Pioneer as an active party to this litigation. Trustee further requests an order awarding Trustee attorney's fees, costs, and such other relief to which the Trustee is justly entitled.

Respectfully submitted,

/s/ Ernest W. Boyd

Ernest W. Boyd
State Bar of Texas 00783694
SD Texas ID # 23211
500 Dallas, Suite 1200
Houston, Texas 77002
Phone: (713) 655-1200
Fax: (713) 655-0222

ATTORNEYS FOR
JOSEPH M. HILL, TRUSTEE

OF COUNSEL:

MEHAFFY WEBER, P.C.
Susan Hardie Jacks
State Bar No. 08957600
S.D. Texas I.D. No. 4192
Jeremy R. Stone
State Bar No. 24013577
S.D. Texas I.D. No. 27060

and

JOSEPH F. ARCHER, P.C.
Joseph F. Archer
500 Dallas, Suite 3400
Houston, Texas 77002
(713) 654-7799
(713) 654-7814

CERTIFICATE OF SERVICE

I certify that, on this 21st day of July, 2009, I served a true and correct copy of this document on the parties listed below (i) by First Class, U.S. mail or, (ii) where indicated, electronically on those persons who receive electronic notification.

/s/ Jeremy R. Stone
Jeremy R. Stone

Heather M. Forrest (**Electronic**)
Jeffrey G. Hamilton
J. Wade Holt
Jackson Walker, L.L.P.
901 Main Street, Suite 6000
Dallas, Texas 75202
Counsel for American Enterprise Leasing, Inc.

Mr. Frank J. Schmidt (**Electronic**)
The Schmidt Law Firm, P.C.
8000 Maryland Avenue, Suite 930
Clayton, MO 63105

Mr. Michael Sharp (**Electronic**)
Attorney at Law
1100B S. Friendswood Drive
Friendswood, TX 77546

Mr. Donald Scott Mackenzie (**Electronic**)
Attorney at Law
9603 White Rock Trail, Suite 324
Dallas, Texas 75238

Mr. Joe W. Meyer (**Electronic**)
Meyer Knight & Williams
8100 Washington Avenue, Suite 1000
Houston, Texas 77007

Mr. Craig J. Cowgill
2211 Norfolk Street, #1190
Houston, TX 77098-4054

Theresa D. Mobley **(Electronic)**
Cage Hill
5851 San Felipe, Suite 950
Houston, Texas 77057

Paul L. Gumina **(Electronic)**
Attorney at Law
1735 N. First Street, Suite 300
San Jose, CA 95112

Melissa S. Hayward **(Electronic)**
Locke, Liddell & Sapp, LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
Counsel for Bankers Healthcare Group, Inc.

John Robert Jones **(Electronic)**
Delgado Acosta
221 N. Kansas, Suite 2000
El Paso, Texas 79901
Counsel for Sterling National Bank

Mr. John Akard, Jr. **(Electronic)**
Mason, Coplen & Banks, PC
7500 San Felipe, Suite 700
Houston, Texas 77063-1709

Brian Ira Tanenbaum **(Electronic)**
The Law Offices of Brian Ira Tanenbaum, Ltd.
2970 Maria Avenue, Suite 207
Northbrook, IL 60062
LEAD COUNSEL for American Enterprise Leasing, Inc.

Paul J. Laurin
Weiner & Laurin, LLP.
15760 Ventura Blvd., Suite 1727
Encino, California 91436-2152
Counsel for Bankers Healthcare Group, Inc.

Lawrence Alan Lynn **(Electronic)**
Coats Rose
Three Greenway Plaza, Suite 2000
Houston, Texas 77046
Counsel for Susquehanna Patriot Commercial Leasing Company

Bruce W. Akerly (**Electronic**)
Linda D. Thai
Bell Nunnally & Martin
3232 McKinney Avenue, Suite 1400
Dallas, Texas 75204-2429
Counsel for Eastern Funding

Gregory A. Balcom (**Electronic**)
Joann Karn
Balcom Law Firm
8584 Katy Freeway, Suite 305
Houston, Texas 77024
Counsel for CFC Investment Company, Inc.

John E. Mitchell (**Electronic**)
Vinson & Elkins, LLP
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201
Counsel for HPSC, Inc.

Mark W. Stout (**Electronic**)
Lively, Padfield & Stout, LLP
777 Main Street, Suite 1920
Ft. Worth, Texas 76102
Counsel for Irwin Commercial Finance Corporation;
Financial Pacific Leasing, LLC.; and Puget Sound Leasing Company

Patricia Baron Tomasco (**Electronic**)
c/o Brown & McCarroll, LLP
111 Congress Avenue, Suite 1400
Austin, Texas 78701
Counsel for Greater Bay Capital

R. Paul Yetter (**Electronic**)
Yetter & Warden
909 Fannin, Suite 3600
Houston, Texas 77010
Counsel for General Electric Capital Corporation

A. Elliott Barrow, Jr.
Barrow Law Firm
1051 Chuck Dawley Boulevard
Mt. Pleasant, SC 29464-4181

Christopher P. Craven (**Electronic**)
Wells Cuellar, PC
440 Louisiana, Suite 718
Houston, Texas 77002

Jeffrey M. Hirsch (**Electronic**)
Schlanger Silver
109 N. Post Oak Lane, Suite 300
Houston, Texas 77024

Mr. Joshua King
Attorney at Law
330 North Main Street
Kaysville, UT 84037

John J. O'Brien
257 E. Lancaster Avenue, Suite 201
Wynnewood, PA 19096

Eric J. Taube (**Electronic**)
Hohmann Taube & Summers, LLP
100 Congress Avenue, Suite 1800
Austin, Texas 78701

Mr. Terry Vanderpool
Attorney at Law
1973 Old Ranch Road
China Spring, Texas 76633

Dr. Grant Douglas Lewis
1156 Kenny Centre Mall
Columbus, OH 43220

Michael P. Ridulfo (**Electronic**)
Brown McCarroll L.L.P.
1111 Bagby
47th Floor
Houston, TX 77002-2543

Heather M. Forrest
Jeffrey G. Hamilton
J. Wade Holt
Jackson Walker, L.L.P.
901 Main Street, Suite 6000
Dallas, Texas 75202