

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**In re:**

**ZEBRANEK & DOUGHTEN P.A.,**

**Debtor.**

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**Case No. 01-04461-6B7**

**ORDER**

This case came on the Paul Doughten's Amended Motion to Dismiss Voluntary Bankruptcy of Zebranek & Doughten, P.A. (Doc. No. 19) based on the Debtor's lack of authority to file a bankruptcy petition.

James Zebranek ("Zebranek") and Paul Doughten ("Doughten") entered a business relationship in March of 2000. Doughten became 50% shareholders of Zebranek & Doughten, P.A. ("the Debtor"), a Florida professional corporation, with Zebranek being the other 50% shareholder. Doughten paid \$60,000.00 to acquire his 50% interest in the Debtor and subsequently personally guaranteed a \$93,000.00 loan to the Debtor. The Debtor's board of directors consisted of four (4) directors; Zebranek, Zebranek's wife, Doughten and Doughten's wife. Zebranek also served as the Debtor's President.

The Debtor conducted its meetings informally and formal notice was not regularly given, however, directors were given some notice anytime a meeting was to occur. The Debtor held corporate meetings on June 29, 2000 and on July 3, 2000 in which the two shareholders/directors discussed a possible dissolution of the Debtor. Zebranek and Doughten never agreed to dissolution of the Debtor.

Doughten returned to the Debtor's offices on July 4, 2000 and discovered Zebranek had changed the locks on the doors. Doughten and his wife, along with Doughten's attorney and a court reporter attempted to attend a director's meeting of the Debtor on July 24, 2000. Zebranek refused to allow Doughten's counsel and the court reporter to attend the meeting. Doughten filed a Petition for a Writ of Mandamus against Zebranek individually and the Debtor to obtain corporate records, which Zebranek had refused to produce.

Zebranek and his wife, as directors of the Debtor, met on May 8, 2001 and authorized the Debtor to file a Chapter VII bankruptcy petition. The other two directors, Doughten and his wife were not provided notice of the meeting and neither voted on whether to authorize the bankruptcy filing. Zebranek, as president of the Debtor, filed a voluntary bankruptcy petition under Chapter VII of the Bankruptcy Code on May 9, 2001.

Florida Corporations Law as set out in Florida statutes §§ 621 and 607 et seq. controls, since no evidence has been presented to indicate the Debtor's Articles of Incorporation govern the issues in this proceeding.

There is no specific provision of Florida Business Corporation Act which specifically address the power to file voluntary petition in bankruptcy, however, other provisions of the Act require specific resolution of the board of directors before taking action consistent with filing a petition in bankruptcy. *In re American Intern. Industries, Inc.*, 10 B.R. 695, 696 (Bankr.S.D.Fla. 1981). Florida Statute §607 et seq. applies to Florida professional corporations pursuant to Florida Statute §621.13. Section 607.1202 provides in relevant part:

- (1) A corporation may sell...or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders of record approve the proposed transaction.
- (2) For a transaction to be authorized:

- (a) The board of directors must recommend the proposed transaction to the shareholders of record...and communicates the basis for its determination to the shareholders of record with the submission of the proposed transaction as provided in subsection (5).
- (5) ...the transaction to be authorized shall be approved by a majority of all the votes entitled to be cast on the transaction.

Section 607.1202 applies to a voluntary petition under Chapter VII of the Bankruptcy Code, since the filing of a petition pursuant to Chapter VII results in a transfer of a corporate debtor's assets to a trustee in bankruptcy. *Id.* at 697. Authority to file a voluntary bankruptcy petition on behalf of a corporation requires approval of the corporation's board of directors. *In re Park Towers Corp.*, 387 F.2d 948 (2<sup>nd</sup> Cir. 1967); *Matter of Brandon Farmer's Market, Inc.*, 34 B.R. 148 (Bankr.M.D.Fla. 1983); *Matter of Great Northwest development Co.*, 28 B.R. 141 (Bankr.E.D.Mich. 1983); *In re Autumn Press, Inc.*, 20 B.R. 60 (Bankr.D.Mass. 1982); *In re American Intern. Industries, Inc.*, 10 B.R. 695 (Bankr.S.D.Fla. 1981).

Zebranek argue the Debtor had approval of the board of directors, since Zebranek and his wife approved the Debtor's filing and Doughten and his wife had abandoned the Debtor.<sup>1</sup>

Florida Statute §607.0824 provides:

- (1) ...a quorum of the board of directors consists of a majority of the number of directors prescribed by the articles of incorporation or the bylaws.
- (2) If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the board of directors...

The Debtor's board of directors consisted of four (4) directors. Zebranek and his wife were the only two of the Debtor's four directors present at the unnoticed meeting to determine whether the Debtor should file a bankruptcy petition. Doughten and his wife had no notice of the meeting and did not attend the meeting. Section 607.0824 requires that at least three of the

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<sup>1</sup> Zebranek's argument that Doughten and his wife abandoned the Debtor is inconsistent with the evidence. Doughten had attempted to remain involved in the corporation, but was shut out by Zebranek. Zebranek changed the locks on the Debtor's building and disallowed Doughten to bring his attorney to a meeting of the board of

debtor's four directors be present for a quorum and then a majority of the quorum for action by the board. The Debtor did not have authority from the board of directors, since the authorization given on May 8, 2001 did not meet the requirements of Section 607.0824 for board action.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Motion is due to be **GRANTED**;  
and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtors case is **DISMISSED**.

Dated this 31st day of July, 2001.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Court

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directors on July 24, 2000. Zebranek failed to give any notice of the board of directors meeting on May 8, 2001 to Doughten or Doughten's wife. Doughten's conduct was not consistent with abandonment.