

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re : Chapter 7
:
Janet L. Natale :
Debtor(s) : Bankruptcy No. 98-34221 SR

MEMORANDUM

By: Stephen Raslavich, United States Bankruptcy Judge.

Introduction.

A Chapter 7 Discharge Order was entered in the above case on May 20, 2004. On June 1, 2004, an appeal of that Order was taken by the French & Pickering Creeks Conservation Trust Inc.. (the "Trust") By Order dated April 19, 2006, the District Court remanded the case to this Court with instruction to answer certain questions relevant to the appeal, including the reasons the Court granted the Debtor a discharge. The Court writes in compliance with the District Court's mandate.

Background.

This 1998 bankruptcy case has a lengthy history. Exposition of certain of the major points of contention may be found in the opinions of this Court in *In re Natale*, 237 B.R. 865 (E.D.Pa. 1999) and the Court of Appeals in *In re Natale*, 295 F.3d 375 (3d Cir. 2002). As the Circuit Court noted, the disputes in this case are an outgrowth of the Natales' action in constructing a residence on a property in violation of a restrictive covenant that ran in favor

of the Trust.

After extensive litigation, and at least one other bankruptcy filing, the residence, per State Court Order, was to be demolished. On November 5, 1998, in a transparent last ditch effort to thwart such result, the Debtors filed the present case, jointly, under Chapter 13.

In their original bankruptcy schedules the Debtors listed the home as an asset owned jointly by them with Mr. Natale's parents. The value of the property was listed as unknown, but putative liens against the property, in the estimated aggregate amount of \$390,000.00, were scheduled. The Debtors claimed an exemption in the realty in the amount of \$33,363.00, pursuant to 11 U.S.C. § 522(d)(1).

The Trust moved swiftly in the wake of the bankruptcy filing and quickly obtained an Order lifting the bankruptcy stay. Demolition of the residence followed almost immediately thereafter. Litigation next ensued over the value of the property in its now unimproved condition and the relative priorities of various lienholders, including the Trust. The Court is aware that the Trust appealed a decision declaring its judgment lien subordinate to the liens of two mortgagees, but the Court is unclear as to the status of that appeal today.

The foregoing aside, on October 8, 2002, Janet Natale

converted her Chapter 13 case to Chapter 7.¹ Gloria Satriale was appointed Trustee. A meeting of creditors pursuant to 11 U.S.C. § 341(a) was scheduled for November 21, 2002. That hearing was continued until December 12, 2002, on which date it was held. On December 23, 2002, the Debtor filed amended bankruptcy schedules. On Amended Schedule C, Mrs. Natale had deleted any claim to an exemption in realty, but she continued to claim an exemption in various items of personalty, including household goods and furnishings, clothing, jewelry, and a vehicle. The appropriate statutory references were cited with respect to these exemption claims, all of which fell within the allowable limits of 11 U.S.C. § 522(d).

On January 13, 2003, the Trust filed an Objection to the Debtor's claim of exemption and on January 21, 2003 filed another document entitled "Objection to Discharge." No answer by Mrs. Natale was filed to the exemption objection, which was scheduled for hearing on February 12, 2003. An answer to the "Objection to Discharge" was filed by Mrs. Natale on February 19, 2003, the same day on which that matter was slated to be heard.

In its Objection to Claim of Exemption, the Trust asserted 1) that Mr. and Mrs. Natale had divorced since the filing of their Chapter 13 case; 2) that by virtue of the deed restriction the

¹ Mr. Natale's case remained in Chapter 13 and was eventually dismissed on September 17, 2004.

realty, which formerly housed a house, could be used only for agricultural purposes; 3) that at the meeting of creditors, Mrs. Natale testified to the Chapter 7 Trustee that she had "surrendered" her interest in the property to her former husband; 4) that such transfer was improper; and 5) that Mrs. Natale was not entitled to any exemption in the realty. The Trust asked the Court to sustain its objection to exemption and vacate the surrender.

At the exemption hearing on February 12, 2006 only an attorney for the Trust appeared. Counsel for the Trust reiterated the Trust's position that due to the deed restriction, no realty exemption could be claimed by Mrs. Natale. As to the surrender, counsel advised that he did not think that there was any written surrender. Rather, he stated that at the creditors meeting Mrs. Natale "just threw up her hands and said you can have it all." N.T. 2/12/04 at page 4.² The Court, overlooking the fact that by virtue of the amendments to her bankruptcy schedules, Mrs. Natale no longer even claimed a realty exemption, stated that it would sustain the objection. As to "vacating the surrender," however, the Court expressed doubt that the purported "surrender" had any legally cognizable affect such as might be vacated, which the Court thereupon declined to do. N.T. 2/12/04 at pages 4-5.

² For convenience of interested parties and the District Court, the transcript of the brief hearing on February 12, 2003 is appended hereto as Exhibit "A."

At the exemption hearing, counsel for the Trust for the first time raised the potential impropriety of Mrs. Natale's having also allowed Mr. Natale to take certain personal property which had apparently been in a mobile home on the property at the time the Natales vacated the property. The Court did not address this untimely and belatedly raised issue, nor was its Order of February 12, 2003 intended to cover it.³

The Trust's objection to discharge was heard on February 19, 2003. Review of the Trust's pleading makes clear that the basis for the Trust's objection to discharge mirrored in virtually all material respects its objection to Mrs. Natale's exemption claims; to wit: that a homestead exemption was being claimed (referring here to Mr. Natale) in a property where none could be claimed because of a covenant precluding residential development. Also, this time in somewhat stronger language, the Trust alleged that Mrs. Natale "by her admission" had improperly transferred "property" to her husband without authorization from the Court and

³ The deadline for filing objections to exemptions is normally 30 days after the date on which the first meeting of creditors is concluded or 30 days after amendments to the exemptions claimed are made. Unlike the time periods in Rules 4004(a) and 4007(c), however, the time period for objecting to exemptions does not recommence if a case is converted to another chapter. *In re Smith*, 235 F.3d 472, 477 (9th Cir. 2000). Arguably, therefore, the entirety of the Trust's objection to exemption was untimely.

without adequate consideration.⁴ The Trust therefore asserted that Mrs. Natatle should be denied a discharge under 11 U.S.C. § 727(a)(2).

The Debtor's answer to the Trust's objection to discharge, inter alia, denied that she had transferred any property whatsoever to anyone, and also noted that her amended schedules claimed no homestead exemption.⁵ Mrs. Natale further noted that the Statement of Intention Regarding Secured Debts, filed by her with her bankruptcy schedules, indicated her intention to surrender all secured property to her secured creditors.

At the February 19, 2003 hearing, the same attorney who had represented the Trust at the February 12, 2003 hearing again appeared. The Debtor and her counsel were also in attendance. The Trust's counsel advised the Court that the Trust's Objection to Discharge was based on the Debtor's testimony at the creditors meeting having to do with abandoning all of the couple's marital property to her husband. He stated that the property included

⁴ It is unclear whether the reference to "property" in the Trust's pleading refers to just realty (which seems to be the fairest reading of it) or to realty and personalty. If it was to realty only, the belated pressing of an objection to discharge, at the February 19, 2003 hearing based on allegedly transferred personalty would have been untimely. Nevertheless, as discussed, infra, the matter of personalty, as with realty, was dealt with and disposed of on the merits.

⁵ Incredibly, the Trust's counsel advised the Court that he checked the Court docket and that it did not "state what was filed." N.T. 2/19/03 at page 9. The Court observes that the docket at entry 109 clearly recites that an amended Schedule C, (which reflects exemption claims), was filed on December 23, 2002.

personal property and possibly real estate. N.T. 2/19/04 at page 3 (emphasis added) He went on to claim that he had been to trying unsuccessfully to clarify with Debtor's counsel whether the realty had been abandoned, but that the abandonment of some personalty by the Debtor was admitted. Counsel added that the Trust was in possession of the couple's divorce papers so it knew what Mr. Natale had received in that context. Without further elaboration, nor the offer of any evidence, counsel stated that under those circumstances the Trust was objecting to the Debtor's discharge.

Addressing the realty issue first: although the Trust's pleading seems to refer to an improper exemption claimed by Mr. Natale, counsel for the Debtor appeared to assume that the objection to discharge being pressed had to do with a realty exemption claim by Mrs. Natale. On that score, counsel understandably emphasized that on her amended schedules Mrs. Natale made no such claim, and stressed that she had personally sent the amended schedules to the Trust's counsel and verbally informed him that Mrs. Natale claimed no realty exemption.

Surprisingly, counsel for the Trust said little about a claim to a realty exemption on the part of Mr. Natale, but instead joined the issue argued by Debtor's counsel, i.e., a realty exemption claim by Mrs. Natale. In this respect, counsel obdurately maintained that the Trust was uncertain whether Mrs. Natale was claiming a realty exemption, because Debtor's counsel had not

provided him with evidence to the contrary, and because there was a trailer home then on the property.

The Court pointed out that a certification of mailing of the amendments resulted in a common law presumption of their receipt by the Trust. Moreover, the amendments had been on the Court docket for almost two months. The Court observed that the Trust's counsel could have verified the situation at any time, and in fact could have examined the relevant documents that very morning prior to the hearing. The Court reiterates here its exasperation that the Trust belabored an issue (an alleged realty exemption on the part of Mrs. Natale) that could never really have been in genuine dispute and, even if it were, was so clearly capable of complete clarification with the exercise of but the most modest of effort.

Turning to the issue of personalty: counsel for the Trust advised the Court that the Trust was not objecting to discharge based on the Debtor's personal property exemption claim. Rather, the basis of the objection was the purported abandonment of personal property to Mr. Natale discussed at the creditors meeting. Counsel for the Debtor described the property to which the Debtor had referred as disputed marital property, consisting of "certain odds and ends," with an estimated value of under \$1,000. In response to the Court's inquiry, Trust counsel advised that the Trust never conversed with the Chapter 7 Trustee about the personalty issue after the creditors meeting concerning whether a

further investigation was warranted. (As will be discussed below the Trustee filed a report of no assets on May 16, 2004.) The Court thereupon described the remarks of Debtor's counsel as a proffer of what the Debtor would testify to on the issue of the personalty if called to do so. Counsel for the Debtor confirmed that to be the case, and counsel for the Trust declined an invitation from the Court to examine the Debtor on that point. The Court thereafter dismissed the objection to discharge.

Discussion.

Turning in order to the questions articulated by the District Court at Page 5 of its Memorandum and Order:

1) The Court observed at the hearing on February 19, 2003 that the Trust's objection to discharge was improperly initiated via a motion, instead of by way of a complaint as required under F.R.B.P. 4004(a); 7001(4) Nevertheless, the Court is and was then aware that there is a substantial body of law which instructs Federal Courts to resolve claims on the merits in the absence of prejudice to an opposing party, and provided the mis-styled pleading contains a short and plain statement of the claims made and the relief sought. Accord, e.g., *In re Cannonsburg Environmental Associates LTD*, 72 F.3d 1260, 1265 (6th Cir. 1996) Such was the case here. Accordingly, the Court did not dismiss the

objection to discharge on procedural grounds.⁶

2) The Trust's objection to discharge was dismissed on the merits and the Court will set forth the reasons herein.⁷ On this score, the Court notes initially that the bankruptcy discharge is the heart of the fresh start which the Bankruptcy Code provides to honest but unfortunate debtors. Denial of discharge is an extreme step that is not to be taken lightly. Indeed, the Third Circuit Court of Appeals has held that all of the sections of 11 U.S.C. § 727(a) are to be liberally construed in favor of the debtor and strictly construed against the objector. *See, e.g., Rosen v. Bezner*, 996 F.2d 1527, 1531 (3d Cir. 1993). The burden of proof, by a preponderance of the evidence, as to the requisite elements of a dischargeability cause of action rests with the objector. *Grogan v. Garner*, 498 U.S. 279, 285-291, 111 S.Ct. 654, 657-661. (1991).

Under § 727(a)(2), the plaintiff must establish that:

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has

⁶ The Court also noted at the hearing on February 19, 2003 that the Trust's objection was filed on January 21, 2003, whereas the 60 day filing deadline appeared to have expired on January 20, 2003, making the filing untimely. In checking back, the Court has confirmed that January 20, 2003 was a national holiday, thus the January 21, 2003 filing was not, in fact, untimely.

⁷ This recitation of the Court's reasons will constitute the findings of fact and conclusions of law required per F.R.B.P. 7052 (incorporating F.R.C.P. 52)

permitted to be transferred, removed or destroyed, mutilated, or concealed –

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

11 U.S.C. § 727(a)(2).

The Court notes, as have others, that since acknowledgment of intent to defraud is unlikely, actual fraudulent intent may be ascertained by circumstantial evidence or inferences drawn from a course of conduct. *Rosen*, 996 F.2d at 1534.

The Court stresses at the outset the paucity of the record presented to it at the dischargeability hearing. Indeed, at the risk of putting too fine a point on things, the Court notes that the plaintiff actually offered no evidence whatsoever. The record, such as it was, nevertheless demonstrated overwhelmingly that not only had the Trust failed to carry its burden of proof, but that the objection itself was utterly specious.

A) The Realty

The Trust vociferously asserted its position throughout the proceeding that no realty exemption was available to either Mr. or Mrs. Natale by reason of the deed restriction against their property. As to Mrs. Natale, however, that question had ceased to be a fact in dispute from and after the date she filed an amended Schedule C deleting any claim to a realty exemption. To the extent

this issue figured in the discharge objection proceeding it was a "red herring" of no moment whatsoever.

The Trust pinned its hopes mainly on the purported transfer or abandonment of the realty by Mrs. Natale to Mr. Natale. However, the facts and the law belied any such contention. In the first place, when Mrs. Natale converted her case from Chapter 13 to Chapter 7, she ceased for all practical purposes to have any interest in the realty. Upon conversion, Mrs. Natale's interest in the realty came under the control of the Chapter 7 Trustee. See 11 U.S.C. § 348(f); 11 U.S.C. § 704(a)(1); *In re Brierwood Manor, Inc.*, 239 B.R. 709, 716 (Bankr. E.D. Pa. 2001)(explaining that upon conversion to Chapter 7 Trustee must locate and take control of estate property); B.R. 1019(4); *In re Cohen*, 305 B.R. 886, 898 (9th Cir. BAP 2004); *In re Costello*, 2004 WL 2480987 *1 (Bankr. D.Vt.) ("Since the case has been converted to Chapter 7 . . . control over all assets of the estate falls on the Trustee") Thus, any purported attempt by Mrs. Natale to transfer her interest in the property to Mr. Natale, or to abandon her interest in the property to him, in the manner described, would have been void and of no affect. This is not, however, to say that there was before the Court persuasive evidence of any such transfer, or any effort by Mrs. Natale to transfer or abandon the realty.

The Court notes that although Mrs. Natale was present at the hearing, her testimony on this seemingly central issue was not

elicited, nor for that matter was the transcript of the creditors meeting offered into evidence. The Trust's own counsel, furthermore, hedged on this important point at the hearing when he stated that the property alleged to have been improperly transferred by Mrs. Natale to Mr. Natale "possibly" included real estate. Counsel's circumspection on this point, and his effort to distance himself from the Trust's strident pleading, is perhaps understandable, given that at the February 12, 2003 hearing the very same attorney acknowledged that there were no writings memorializing any transfer, apparently leaving the only evidence on this point to consist of the fact that at the creditors meeting Mrs. Natale is reported to have thrown her hands in the air and said (presumably of her husband) "you can have it all." N.T. 2/12/03 at page 4.

As the Court pointed out on February 12, 2003, it is doubtful that this statement had any legally cognizable affect whatever, and the statement itself (if it was in fact made) was, most likely, simply an expression of frustration by Mrs. Natale, at her husband, her circumstances, or both. Suffice it to say, this "record" in no way demonstrated that Mrs. Natale had engaged in the conduct proscribed by § 727(a)(2) such as would warrant the denial of her discharge. Indeed, the Court is constrained to observe that the decision to press forward with a discharge objection on the strength of evidence so exceedingly weak strikes it, quite simply,

as an abuse of process. Accordingly, the Court, without hesitancy, dismissed the objection insofar as it pertained to the realty.

B. Personalty

The case as to the personalty was equally deficient. The testimony of the Debtor, by way of proffer, was that the personalty was disputed marital property with a value of less than \$1,000. As noted, Trust counsel declined to examine the Debtor and, indeed, appeared satisfied with the Debtor's explanation. (See N.T. 2/19/03 at page 15) Leaving aside the fact that there was no evidence that the property in question even belonged to the Debtor, there certainly was no evidence that the Debtor had acted intentionally to defraud her creditors as to the "odds and ends" in question. The Court accordingly dismissed the objection to discharge in this respect as well.

3. A good bit of discussion at the hearing on February 19, 2003 clearly revolved around the issue of the Debtor's claim to a realty exemption. The Court had sustained the Trust's objection to exemption on February 12, 2003, principally because it was uncontested, and because the Court had overlooked the fact that the Debtor had amended her schedules to delete any such claim. The colloquy with counsel on February 19, 2003 served to remind the Court that this issue, in view of the amendments, was much ado about nothing, leading the Court to remark that, to the extent the objection to exemption was being revisited as part of the Objection

to Discharge, there was really nothing to talk about, and the Objection to Exemption would be dismissed. At that juncture and this juncture the Court views the entire subject as moot.

4. The Court did not dismiss the Objection to Discharge for reasons other than those set forth above.

The District Court's last remaining question is why this Court entered a discharge order on May 20, 2004. The short answer is because the Debtor was entitled to the Order and the Court was required to issue it. Federal Rule of Bankruptcy Procedure 4004 (c) provides, as follows:

(c) Grant of Discharge

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual

(B) a complaint objecting to the discharge has been filed,

(C) the debtor has filed a waiver under § 727(a)(10),

(D) a motion to dismiss the case § 707 is pending,

(E) a motion to extend the time for filing a complaint objecting to discharge is pending,

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

B.R. 4004(c) (Emphasis added.)

In this matter an Objection to Discharge, which had been treated as a complaint, had been filed. However, as discussed above, the objection was dismissed, which is to say that judgment was entered in favor of the Debtor and against the Trust. The Trust appealed that decision. However, as the District Court noted in its April 19, 2006 Order at footnote 1, the appeal of the dismissal order was itself dismissed on June 22, 2004. Although the dismissal of that appeal was without prejudice, no further appeal was taken, nor for that matter is the Court aware of any further proceedings here or in the District Court with respect to the Order dismissing the discharge Objection. Arguably, the Debtor's discharge order should have been entered much sooner than May 20, 2004.

As the District Court noted, an objection to a discharge is an adversary proceeding. B.R. 7001(4). That makes Bankruptcy Rule 7062 (Stay of Proceedings to Enforce a Judgment) applicable to the order denying the objection to discharge. See B.R. 7062(d) incorporating F.R.C.P. 62 in adversary proceedings. That rule allows the appealing party to seek a stay pending the appeal. See B.R.

7062(d). Likewise, Bankruptcy Rule 8005—also applicable here—allows for a stay pending appeal. If the Trust had desired a stay, it was required to “present [its request] to the bankruptcy judge in the first instance.” B.R. 8005. It did not. A leading commentator explains the effect of failing to seek and obtain a stay:

An appellant is not obliged to seek a stay pending appeal. The consequence of failing to seek or obtain a stay is that the prevailing party may treat the judgment or order of the bankruptcy judge as final, notwithstanding that an appeal is pending. If the judgment awards money or property, it may be executed upon unless stayed; if it awards an injunction, the injunction is effective unless stayed; if it refuses an injunction, the prevailing party may engage in the conduct which was sought to be restrained unless a stay pending appeal is obtained. The appellant does not lose the right of appeal merely because the judgment has been executed or otherwise acted upon if effective relief can be secured following reversal.

If the judgment is reversed, any satisfaction obtained by the executing judgment creditor may have to be returned. However, as a practical matter, it may be beyond the power of either the appellate or bankruptcy courts to undo certain actions even if the judgment is reversed. In such case, seeking a stay becomes mandatory. Otherwise, the appeal may be dismissed as moot.

10 *Collier on Bankruptcy* ¶ 8005.02 (15th ed. revised). There being no stay, the judgment denying the objection to discharge was final. Under § 727, this Court was required to enter an order of discharge: “The court *shall* grant the debtor a discharge ...” 11 U.S.C. § 727(a). (emphasis added) Section 727 of the Bankruptcy

Code provides that the court must grant a discharge to a chapter 7 debtor unless one or more of the specific grounds for denial of a discharge enumerated in paragraphs (1) through (12) of section 727(a) is proven to exist. 6 *Collier on Bankruptcy* ¶ 727.01.[1]

Federal Rule of Bankruptcy Procedure 4004, entitled "'Grant or Denial of Discharge,'" is the main procedural complement to section 727. *Id.*, ¶ 727.01[2]. Under Rule 4004(c)(1), the discharge is to be granted by the court "'forthwith'" on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Federal Rule of Bankruptcy Procedure 1017(e), "unless: ... -- a complaint objecting to the discharge has been filed." *Id.* citing B.R. 4004(c)(1). If a complaint objecting to the order of discharge is filed, the court's grant or denial of the discharge will be entered at the conclusion of the proceeding as a judgment in accordance with Federal Rule of Bankruptcy Procedure 9021. See 1983 Advisory Committee Note to Fed. R. Bankr. P. 4004

Despite the foregoing provisions it sometimes happens when a case is kept open by the Chapter 7 Trustee following the meeting of creditors that the entry of the Debtor's discharge is overlooked. That sometimes also happens when dischargeability proceedings unfold in an ad hoc procedural context, such as occurred here. Whatever the reason, entry of the Debtor's discharge was long overdue.

When the Trustee filed her report of no assets on May 16, 2004, it no doubt prompted the Bankruptcy Court Clerk's personnel and the Court Clerk, as is routine policy, prepared a discharge order utilizing Official Form 18. When it was presented to the Court, there was no discernible reason for the Order of Discharge not to be entered. Accordingly, the Order was entered.

By the Court:

Stephen Raslavich
United States Bankruptcy Judge

Dated: May 4, 2006

Copies Sent to:

Honorable Mary A. McLaughlin
United States District Court
3809 U.S. Courthouse
601 Market Street
Philadelphia PA 19106

Janet L. Natale
52 Fairview St. Rear
Stowe, PA 19464

Dexter K. Case, Esquire
Case DiGiamberardino & Lutz, P.C.
845 North Park Road
Suite 101
Wyomissing, PA 19610-1342

Gloria M. Satriale, Esquire
One McKinley Lane
Chester Springs, PA 19425

George Conway, Esquire
Office Of The U.S. Trustee
833 Chestnut Street
Suite 500
Philadelphia PA 19106

Robert J. Sugarman, Esquire
Sugarman & Associates
100 North 17th Street
7th Floor
Philadelphia PA 19103

Nancy Winther, Esquire
123 E. Gary Street
West Chester, PA 19380

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT
DISTRICT OF EASTERN PENNSYLVANIA

IN RE: . Case No. 98-34221 (SR)
RONALD L. NATALE and . Chapter 13
JANET L. NATALE, . Courtroom 4
Debtors. . 900 Market Street
February 12, 2003
10:13 A.M.

TRANSCRIPT OF OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS FILED
BY ROBERT J. SUGARMAN ON BEHALF OF FRENCH AND PICKERING CREEK'S
CONSERVATION TRUST, INC.
BEFORE HONORABLE STEPHEN RASLAVICH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For French and Sugarman and Associates
Pickering Creek's By: CARL EWALD, ESQ.
Conservation Trust: 100 North 17th Street
Robert Morris Building, 7th Floor
Philadelphia, Pennsylvania 19103

Audio Operator: Michelle Dietrich

Proceedings recorded by electronic sound recording, transcript
Produced by transcription service.

TRANSCRIPTS PLUS
435 Riverview Circle, New Hope, Pennsylvania 18938
e:mail courttranscripts@aol.com
215-862-1115 (FAX) 215-862-6639

1 THE COURT: Number 3, Ronald and Janet Natale.

2 MR. EWALD: Good morning, Your Honor. My name is
3 Carl Ewald. I'm here on behalf of creditor, F&P, French and
4 Pickering Creek's Conservation Trust.

5 THE COURT: Yes.

6 MR. EWALD: We filed a objection to exemption. It's
7 a little bit unorthodox because the debtor is claiming that she
8 has not filed an exemption. Debtor -- she -- her counsel is
9 not here at this time, but we -- what happened was at the 341
10 conference, the --

11 THE COURT: Well, is he expected or she? Who is
12 counsel for the debtor?

13 MR. EWALD: Uh, I -- I don't know. It's Nancy
14 Winther.

15 THE COURT: Either Nancy Winther or Dexter Case.

16 MR. EWALD: Dexter Case has withdrawn his appearance
17 on behalf of Janet Natale.

18 THE COURT: Okay. So, it must be Ms. Winther. Did
19 you expect her this morning?

20 MR. EWALD: I -- I didn't -- she didn't tell me that
21 she was coming, but I certainly expect that she would show up.

22 THE COURT: There's been no written response. Well,
23 let's see. You -- you didn't speak with her.

24 MR. EWALD: Well, I --

25 THE COURT: But you thought you might see her.

1 MR. EWALD: I've spoken with her about this. But I
2 haven't spoken with -- she hasn't told me that she was coming.
3 So, I can't say that she told me she was coming.

4 THE COURT: And she didn't tell you she wasn't
5 coming.

6 MR. EWALD: No.

7 THE COURT: Well, this is the time and the place for
8 the hearing. So, why don't you press on? What did you want to
9 say?

10 MR. EWALD: Okay. At the 341 conference, Your Honor,
11 the debtor testified that at the time she and her husband moved
12 out of the property, the marital property, she -- she allowed
13 him to take all of the personal property.

14 And it was my understanding that she also abandoned
15 the -- the real property to her husband.

16 Ms. Winther tells me that that's not the case. I --
17 I asked for a document to show that that was not the case. And
18 the only document I received was unsigned and unfiled. And I
19 brought that to her attention. I have not received a response.

20 Our position is that if she did abandon this property
21 to her husband, that that was an improper transfer of assets.
22 And that her husband has been claiming that the property was a
23 -- is exempt under the Domicile Exemptions. This property has
24 a long history, but there's a conservation easement on the
25 property that precludes it from ever being a residential

1 property.

2 And, therefore, we -- it's our position that it
3 cannot be exempt under Domicile Exemption.

4 THE COURT: Right. It certainly does have a history.
5 In fact, it was featured at the 3rd Circuit review, the
6 Appellate Court decision.

7 And then there is, in fact, no domicile there now.
8 It's been destroyed.

9 MR. EWALD: Um, the domicile has been destroyed, yes.
10 There's some question as to whether there's a trailer now on
11 the property. There was at one point, and that was demanded to
12 be removed. I don't know what happened.

13 THE COURT: Well, your form of order says that your
14 objection is sustained. And your objection asks that the Court
15 deny the exemption, which I'm prepared to do. And -- but then
16 it goes on to say, and vacate the surrender.

17 I'm a little less confident in that. I don't know
18 exactly what this surrender took the form of or what it looks
19 like or what it purports to be.

20 MR. EWALD: Your Honor, I don't think there is
21 actually any written surrender. My understanding is that she
22 just threw up her hands and said you can have it all.

23 THE COURT: Right. Okay. Well, um, I'm not sure
24 that has a legally cognizable effect such that I can vacate it.

25 MR. EWALD: Um-hum.

1 THE COURT: I will sustain the objection. And -- but
2 as to the having thrown her hands up in the air, since I really
3 don't know what the implications of that are, as a technical
4 matter, I don't think I'm going to go further than that in this
5 order.

6 MR. EWALD: Okay. Thank you, Your Honor.

7 THE COURT: You're welcome.

8 (Proceedings Adjourn at 10:19 A.M.)

9
10 C E R T I F I C A T I O N

11
12 I, Karen Hartmann, certify that the foregoing is a
13 correct transcript to the best of my ability, from the
14 electronic sound recording of the proceedings in the above-
15 entitled matter.

16
17 /s/ Karen Hartmann Date: April 25, 2006

18 TRANSCRIPTS PLUS
19
20
21
22
23
24
25