UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re: DAVID ARTHUR IZZO, Debtor.	BK. NO. 90-21471 DECISION AND ORDER

BACKGROUND

On July 17, 1990 the debtor, David Arthur Izzo (the "Debtor"), filed a voluntary petition initiating a Chapter 13 case. On January 16, 1992 the Chapter 13 case was converted to a Chapter 7 case and a trustee was appointed (the "Trustee"). The Trustee's minute report of the Section 341 meeting held on February 21, 1992 listed as a possible asset a wage dividend, which indicates that the asset was discussed at that time with both the Debtor and his attorney.

Thereafter, on or about February 25, 1992 an amendment to the Debtor's schedules was filed to add as personal property a 1992 Eastman Kodak Company bonus (the wage dividend referred to in the Trustee's minute report) and a 1991 income tax refund, each determined to be due to the Debtor prior to the conversion but not payable until after the conversion. Since these assets were not listed on the Debtor's Post Chapter 13 Conversion Schedule filed on January 17, 1992, this amendment appears to be the result of the discussions about the Debtor's assets at the Section 341 meeting. The amendment also claimed this personal property as exempt in accordance with Section 283 of the New York Debtor and Creditor Law

which sets forth the exemptions available to New York residents pursuant to 11 U.S.C. § 522(b).

By motion dated March 6, 1992 and returnable March 16, 1992 (served on the attorney for the Debtor but not the Debtor), the Trustee objected to the Debtor's claim that the income tax refund and Eastman Kodak Company bonus were exempt, alleging that the Debtor was bound by his claim of exemptions when the Chapter 13 case was originally filed and could not upon conversion claim a different set of exemptions. However, the Trustee later withdrew that objection and his objection to the claim of the income tax refund as exempt.

By a Decision and Order dated April 21, 1992 this Court adopted a prior 1985 decision of the Court, as affirmed by the District Court, In re Hess Dell Joiner, No. 85-20183 (Bankr.W.D.N.Y. Aug. 14, 1985), *aff'd by* Civ 85-1245T (W.D.N.Y. Dec. 9, 1985), disallowed the claim of exemption and, on the assumption that it had not yet been received by the Debtor, ordered that the Eastman Kodak Company bonus be turned over to the Trustee when received.

By motion dated June 22, 1992 and returnable July 20, 1992 the Trustee, having not yet received the Eastman Kodak Company bonus, moved for an Order holding the Debtor in contempt for his failure to obey the Court's April 21, 1992 Order. In his motion papers the Trustee alleged, upon information and belief, that the bonus was received by the Debtor on or about March 9, 1992 and that notwithstanding an additional May 4, 1992 demand letter to the Debtor's attorney, the Debtor had still failed to turn over the bonus.

The motion was adjourned by consent to July 27, 1992. At the July 27, 1992 hearing the attorney for the Debtor advised the Court that prior to receiving the Court's April 21, 1992 Order the Debtor had used his Eastman Kodak Company bonus to pay for one of his children's school tuition. Therefore, he argued, the Debtor could not and should not be held in contempt since it was impossible for him to perform under the Order at the time when he received it.

The Debtor's attorney was afforded until July 31, 1992 to submit anything further in connection with this matter, but no submission was received by that date.

DISCUSSION

As previously held by this Court, in order to find that a party should be held in civil contempt for failure to comply with the provisions of a Court Order, it is necessary to show that the party had knowledge of the Order but disobeyed it. From the facts in this case it appears that the Debtor had spent his Eastman Kodak Company bonus prior to the entry of this Court's April 21, 1992 Order. Therefore, the Debtor could never have performed under the Order which required that he turn over the bonus when he received it, and civil contempt does not lie.

However, the Court is extremely concerned about the failure of the Debtor, apparently after proper demand by the Trustee, to turn over property of the estate and to otherwise deal in good faith and cooperate with the Trustee. These are specific duties required of

a debtor under Sections 521 and 542 of the Bankruptcy Code, and the failure to meet these duties is absolutely unacceptable. The Trustee's duty to promptly marshal the assets of the estate and distribute them to creditors is fundamental to the orderly administration of the estate. Further, as this Court has often stated, the Bankruptcy Code and the bankruptcy system afford honest debtors a number of extraordinary rights and remedies. In a Chapter 7 case, one of the most important of these remedies is the ability to obtain a discharge from all pre-petition debts not otherwise excepted from discharge by Section 523. To obtain this extraordinary relief, the Bankruptcy Code and the bankruptcy system require relatively little from a debtor: only that he or she comply with the provisions of Section 521 and that the debtor is not otherwise ineligible for a discharge by reason of the provisions of Section 727. When a debtor fails to meet his duties and prevents the Trustee from performing his, there is an intolerable breakdown in the system.

Should the Debtor fail to immediately make satisfactory arrangements with the Trustee, the Trustee may wish to review the provisions of Section 727(d)(2)[1] which deal with the revocation of

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[1](d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if --

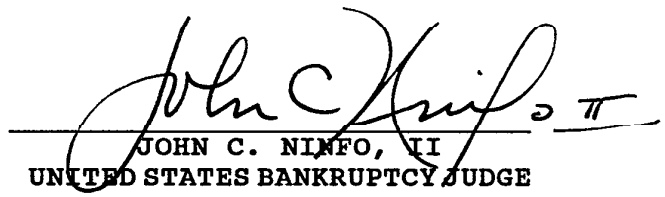
(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

a discharge. The Court also notes that Section 362(a)(3) provides for a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Further, Section 362(h) provides that "an individual injured by any willful violation of a stay provided by this Section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages." Upon reviewing the facts and circumstances of this matter in greater detail, the Trustee may feel that he is an individual who has been so injured. The facts concerning specific notice given to the Debtor that the Eastman Kodak Company bonus was an asset of the estate and demands that it be turned over to the Trustee would be important in such a review. The Trustee also could consider the commencement of an adversary proceeding against the Debtor.

CONCLUSION

The Trustee's motion for an Order holding the Debtor in civil contempt for failure to comply with this Court's April 21, 1992 Order is denied.

IT IS SO ORDERED.



JOHN C. NINFO, II
UNITED STATES BANKRUPTCY JUDGE

Dated: August 10, 1992