

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In Re:

JASON M. BENTLEY,

Debtor.

ORDER

Chapter 7

Case No: 97-22384-N

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By Notice of Motion dated January 13, 1998, Anthony Comparato, by his attorneys, Harris Beach and Wilcox, LLP, moved this Court for an Order pursuant to Rule 57 of the Federal Rules of Civil Procedure for declaration of the rights and liabilities of parties with respect to a certain annuity issued by ITT Hartford to the debtor pre-petition, and the Court having received and reviewed said Notice of Motion together with Mr. Comparato's Amended Notice of Motion dated January 13, 1998; the Statement in Support of the Motion for Declaratory Relief signed by David L. Rasmussen, Esq. and received by the Court on January 14, 1998 and the exhibits annexed thereto; the Statement on Behalf of the Debtor by debtor's attorney, Charles W. Rogers, Esq. received by the Court on January 27, 1998; the Affidavit of Charles W. Rogers, Esq. sworn to January 27, 1998 and the exhibits annexed thereto; a Notice of Cross-Motion of the Chapter 7 Trustee, Kenneth W. Gordon, dated February 27, 1998 seeking alternative relief pursuant to FRCP 57, 11 USC section 522(g) and 11 USC section 544; the Affirmation of the Trustee in Support of said motion dated February 27, 1998 with the exhibits annexed thereto; the Affirmation in Further Support of Mr. Comparato's motion signed by Heidi Schult-Gregory, Esq. dated March 13, 1998; the Affirmation in Further Support of Mr. Comparato's motion signed by Heidi Schult-Gregory, Esq. dated April 8, 1998 and the ITT Hartford Annuity Agreement attached thereto which is the subject of these motions; and the various memoranda of law and

letter memoranda received by the Court from counsel regarding the pending motions; and upon hearing argument by Heidi Schult-Gregory, Esq. on behalf of Mr. Comparato, Kenneth W. Gordon, Esq. on behalf of the Trustee and Theodore Pucher, Esq. on behalf of the debtor and upon due deliberation, it is hereby

**ORDERED AND DECLARED** that the Hartford Annuity payments under annuity contract #CCX 3173 made in October 1997 and to be made in October 1998 each in the amount of \$10,000.00 are property of the debtor's bankruptcy estate; and it is hereby further

**ORDERED** that any security interest in said annuity contract granted by debtor to Anthony Comparato is hereby void pursuant to 11 USC section 544; and it is hereby further

**ORDERED AND DECLARED** that pursuant to 11 USC section 522(g) debtor waived his interest and may not claim as exempt said annuity payments; and it is hereby further

**ORDERED** that the annuity payment to be paid in October, 1998 under Hartford Annuity Contract #CCX 3173 shall be paid and tendered to Kenneth W. Gordon, Chapter 7 Trustee at his office address located at 2541 Monroe Avenue, Suite B4, Rochester, New York 14618. \*

So Ordered this \_\_\_ day of April 1998

5/15/98

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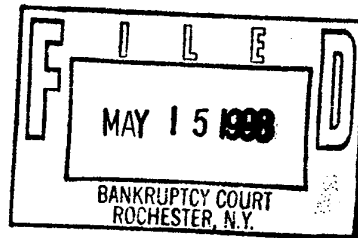
Honorable John C. Ninfo, II  
Bankruptcy Court Judge

Approved as to form and content:

Heidi Schult-Gregory, Esq.  
Attorney for Anthony Comparato

*[Handwritten signature]*

Theodore Pucher, Esq.  
Attorney for Debtor



\* And it is further ordered that

Mr. Comparato's claim can be amended ~~within~~ within  
Trustee has 30 days from filing to

*[Handwritten initials]*



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APPEARANCES:

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HARRIS, BEACH & WILCOX, LLP  
Of Counsel: HEIDI S. GREGORY, ESQ.  
130 East Main Street  
Rochester, New York 14608

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KENNETH W. GORDON, ESQ.  
2541 Monroe Avenue  
Suite B 4  
Rochester, New York 14618

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1 BK No. 97-22384

2 CLERK: Jason Bentley.

3 MR. GORDON: Good morning your Honor.

4 THE COURT: Good morning.

5 MS. GREGORY: Good morning.

6 MR. GORDON: I assume the Court has  
7 received our additional submissions. Both  
8 Mr. Comparato's counsel and I have submitted some  
9 additional material to the Court on the issue of the  
10 annuity and what the annuity provided with respect  
11 to assignments.

12 I think what we learned is this, Judge:  
13 That the annuity contract did allow assignments, that  
14 it provided a specific mechanism for providing those  
15 assignments.

16 It's my belief that Mr. Comparato failed  
17 to comply with those requirements. Namely, there  
18 was not a written letter signed by the owner of that  
19 annuity, which was sent to the correct address and,  
20 therefore, according to the terms of the annuity  
21 contract, any attempted assignment would have been  
22 ineffective, and to supplement that, I did go back  
23 in my file and dig out some correspondence I received  
24 from the Debtor's counsel back on December 12, 1997,  
25 indicating that, in fact, the October '97 annuity

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2 payment was in fact paid by Hartford to the Debtor  
3 in this case. For example, after obviously receiving  
4 the correspondence upon which Mr. Comparato is  
5 seeking to rely, which was dated I believe on  
6 December of '96, clearly from my perspective was it  
7 not only information and practice for procedure, but  
8 in practice Hartford did not honor an agreement,  
9 annuity due in -- and in fact sent that money to  
10 Mr. Bentley, and Mr. Rogers cooperated with  
11 me in getting that money back from Mr. Bentley and  
12 giving to the Trustee, and Trustee's account.

13 THE COURT: Is that true?

14 MS. GREGORY: Your Honor, with respect to  
15 the notification issue on ITT Hartford, we did what  
16 the consented Debtor's attorney -- notified  
17 ITT Hartford. We notified an individual by the name  
18 of Lawrence Felt in Watertown, New York. The reason  
19 for doing that is because that was the information  
20 provided us through Debtor's attorney. At that time  
21 we did not have the annuity contract in hand. We  
22 notified them. They obviously received notification  
23 because they did respond in writing, but at no time  
24 did notification or sufficiency of that notification  
25 ---

BK No. 97-22384

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2 THE COURT: Who responded in writing?

3 MS. GREGORY: Mr. Lawrence Felt did respond.

4 THE COURT: Who is Mr. Lawrence Felt?

5 MS. GREGORY: I believe he was the contact  
6 person that the Debtor's attorney was dealing with.

7 THE COURT: Is he just a local agent?

8 MS. GREGORY: Yes, I believe a local agent,  
9 and that is why our notification, our written notice  
10 that the annuity payments had been signed was sent  
11 directly to Mr. Felt. He was the contact person.

12 It's our contention, your Honor, that that  
13 notification was sufficient. Although there was no  
14 writing, and I do agree with that there was no written  
15 notice sent directly to the Hartford office. We did  
16 not do that. We did not contact anyone in the  
17 Connecticut office.

18 Again, the reason for doing that, we didn't  
19 realize that was what was supposed to be done under  
20 the annuity contract terms, and it's our position  
21 that under the UCC for perfection purposes, it would  
22 be notification.

23 THE COURT: You're either under the UCC,  
24 or you're not under the UCC. If you're under the  
25 UCC, you didn't have what is -- you didn't have a

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2 copy of it -- you didn't notify him under the document,  
3 you didn't file UCC filing statements. You can't  
4 have it both ways.

5 MS. GREGORY: Your Honor, to the extent  
6 I am both ways, I apologize.

7 Yes, we feel we do not fall under  
8 Article 9 of the UCC, but to the extent under the  
9 terms of the annuity, we feel we have satisfactorily  
10 met those terms. The notification was sent to the  
11 agent, that it was disclosed to us from the Debtor's  
12 attorney.

13 THE COURT: This is what we're going to  
14 do. I'm going to reserve for myself the right to  
15 supplement any order that you give me, because I'm  
16 not going to write my decision, but I'm going to  
17 make sure that -- the Court's belief is that this  
18 is outside the UCC, because it is an insurance product,  
19 so that the terms, we need to perfect, by filing  
20 a financing statement. That is I think from the  
21 perspective there is a right to payment outside  
22 the UCC, which is, we know now from the contract,  
23 assigned, and in order to effectively assign it, it  
24 provides things to be done. The things that need  
25 to be done in the Court's view under that contract,



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2 specifically notice to ITT Hartford, that at the  
3 address that is shown, is a provision which is at  
4 least in part for the benefit of ITT Hartford, in  
5 the Court's view would be waivable by them, so that  
6 if your noticed to the Watertown office, for example,  
7 and deem effective by them, they could accept it.  
8 They would have the ability to do that because that  
9 provision really is in large part for their benefit.  
10 But, in fact, we know from the facts here they did  
11 not. They did not waive their right to have the  
12 assignment noticed, given directly to them, because  
13 in fact, unless the facts Mr. Gordon has given me  
14 are not correct they paid on the '97 payment, which  
15 was after the notice was sent directly to the Debtor,  
16 and they did not feel there was compliance because  
17 of a contracting question and/or that they had not  
18 waived the specific provisions of the contract.  
19 From the Court's perspective, you as a secured  
20 creditor, you've been there, I think that is not an  
21 outright assignment. I think it was an assignment  
22 for security purposes. In the Court's view, in  
23 December of 1996, it could have, for example, gone  
24 into an outright assignment because the Debtor was  
25 by then already in default. However, in commercial

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2 transactions your client has the obligation to ensure  
3 that it does what he needs to do under the document,  
4 to take control of those documents, and being given  
5 the proper notice, such debt that the insurance company  
6 paid over the monies the next time to the Debtor.

7 So I believe, therefore, that you had not  
8 done by this notice and had never done prior to the  
9 filing of the petition such access were necessary  
10 to cause the effect, your assignment, and to establish  
11 your right to have those payments paid directly by  
12 ITT Hartford.

13 And then the Court has to look, as I've  
14 said before previously too, if you pool all of those  
15 hearings together, look at 544 and what the Trustee's  
16 rights are, the Trustee has to step into the shoes  
17 of the other creditors, it would appear that other  
18 creditors would have gotten that money, ITT, because  
19 it hadn't red-flagged it or done anything to honor  
20 your assignment, and I'm not aware of any other law  
21 that would give you the right to that as between  
22 ITT, third party, you and the Debtor. You have a  
23 right. That's between the Debtor and yourself, the  
24 contract, but it's unperfected for third parties  
25 because ITT didn't honor your notification.

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2 If ITT had honored your notification,  
3 I would say you had trumped the Trustee. But they  
4 obviously did not, and they did choose to waive it.

5 So, therefore, I'm going to find that the  
6 Trustee has the right.

7 Now, what I'm not going to do to you, or  
8 I am going to direct ITT, because I'm not really  
9 finding for purposes of this decision, I'm not  
10 really, because Hartford hadn't been a party to  
11 this. I'm not going to find the right between you.  
12 As I said to you before, if you want to go back to  
13 State court, at some point, and bringing an action  
14 against ITT Hartford for failure to pay over, an  
15 honor your notification to its agent, it's a different  
16 situation, but I'm not going to let them hold up the  
17 payment because of that, as to you, Mr. Gordon, do  
18 you understand?

19 MR. GORDON: Yes, I do.

20 THE COURT: They're on the hook for it or  
21 they're not on the hook for it. They either  
22 wrongfully failed to honor your notification. I don't  
23 know, that is between you and your client. I'm not  
24 going to bar you from that. I'm not making that  
25 finding as between the two of you. I'm making it

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2 for purposes of the Debtor and the estate, but I'm  
3 not going to make it, you know, and to recover  
4 collateral estoppel on that issue, because it  
5 wasn't actually litigated for our purpose because  
6 it's too different. It's not consistent, and not  
7 secured.

8 And the second element that is between the  
9 Debtor, I think the Debtor, with 522 (g) has given  
10 up the right from an exemption of those monies.  
11 I think it's very clear under the statute and under  
12 the Court's view with respect to that.

13 I'm going to ask you to put together an  
14 order, and you may mark up the order a little bit  
15 in terms of findings, because this has been sort of  
16 -- I don't want to take the time to write it, but  
17 I think we all understand what was, because we had  
18 sort of a logical progression of all this.

19 MR. GORDON: What I understand, I just  
20 want to have this brief conversation with the Judge  
21 in order to -- declaring that the October '97 payment,  
22 which is already in the Trustee's possession ---

23 THE COURT: And/or property to the estate  
24 direct the Hartford to pay the October '98 payment  
25 to the Trustee, and putting in some language about

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2 in State court to ---

3 MR. GORDON: You would not want to have  
4 that in the order at all?

5 THE COURT: We have to think about that,  
6 because my concern is then Hartford will pay the  
7 money and pay to the Court and look for an actual  
8 determination. As long as in this court, I -- even  
9 you may have to go in the District Court in Connecticut  
10 on diversity basis to sue, unless you can bring in  
11 New York, for example, and you may have to go to a  
12 different Federal court.

13 I find under 544, avoid is whatever  
14 security.

15 MR. GORDON: And 522 (g). I think we're  
16 on the same page. I'll take a crack at it.

17 THE COURT: I'm sure you want to circulate  
18 It.

19 MR. GORDON: I'll circulate it.

20 THE COURT: And feel free to mark it up.

21 MR. GORDON: We'll do our best job.  
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REPORTER CERTIFICATE

I, Mary Dianetti, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated July 20, 1998

At Rochester, New Y

*MSI*  
Mary Dianetti

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Comparato

Plaintiff(s)

v.

6:98-cv-06364

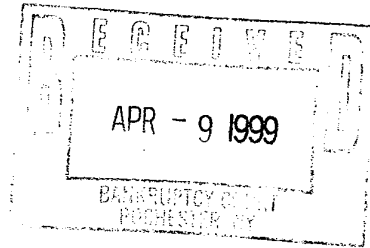
Bentley

Defendant(s)

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PLEASE take notice of the entry of an ORDER filed on  
4/5/99, of which the within is a copy, and entered 4/5/99  
upon the official docket in this case. (Document No. 7 .)

Dated: Rochester, New York  
April 5, 1999



RODNEY C. EARLY, Clerk  
U.S. District Court  
Western District of New York  
2120 U.S. Courthouse  
100 State Street  
Rochester, New York 14614

Enclosure  
TO:

Heidi Schult Gregory, Esq.  
Theodore N. Pucher, Esq.  
Kenneth W. Gordon, Esq.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FILED  
SEPT 21 1998  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

ANTHONY COMPARATO,

Appellant,

98-CV-6364T

v.

DECISION  
and ORDER

JASON BENTLEY and KENNETH W. GORDON,  
as Chapter 7 Trustee,

Appellees.

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INTRODUCTION

Appellant, Anthony Comparato ("Comparato"), a creditor of the Chapter 7 debtor, Jason M. Bentley ("Bentley" or "debtor"), brings this bankruptcy appeal pursuant to Title 28 of the United States Code §158(a)(1), seeking reversal of the May 15, 1998 Order of Hon. John C. Ninfo, United States Bankruptcy Court Judge, which denied Comparato's motion pursuant to Fed. R. Civ. P. 57 for a declaration that the proceeds of a certain annuity contract issued by ITT Hartford to the debtor pre-petition were not property of the bankruptcy estate, but rather had been validly assigned to Comparato by the debtor. Judge Ninfo's May 15, 1998 Order also granted the Chapter 7 Trustee's cross-motion for a declaration that



the annuity proceeds are property of the bankruptcy estate and that future annuity payments should be directed to the Trustee.

For the reasons that follow, Judge Ninfo's May 15, 1998 Order is affirmed in its entirety.

#### BACKGROUND

On March 19, 1996, Bentley executed a Promissory Note and Assignment of Proceeds (the "Agreement") in exchange for a loan of capital from Comparato. The Agreement was drafted and executed without the assistance of legal counsel. The terms of the Agreement provided that Comparato would give Bentley a line of credit up to \$30,000 to be used for the opening of Sir Richard's Pizza and Pasta. Bentley agreed to pay the principal and 12% interest in annual installments. The parties agreed that the installment due dates would coincide with the dates on which Bentley was scheduled to receive payments from the ITT Hartford Insurance Group ("Hartford") as part of a personal injury settlement between Bentley and the Greece Central School District.

The Agreement provided, in relevant part, that

I hereby assign the \$40,000 settlement from the Greece Central School District and ITT Hartford Insurance Group of which \$10,000 has already been paid in legal fees leaving a balance of \$30,000 due to me on the respective dates stated above. In the event of default in payment as described herein, Anthony Comparato, his heirs or assigns, may immediately claim any unpaid balance of the

settlement to satisfy this note and the undersigned does hereby assign any proceeds of the settlement (in the event of default) to Anthony Comparato and this assignment may be recorded anytime before the expiration in the County Clerks [sic] office.

On October 9, 1996, (the first installment due date), Bentley defaulted by failing to make the first payment. Comparato demanded payment from Bentley and from Hartford. On December 23, 1996, Comparato sent a letter to Lawrence Felt of ITT Hartford in Watertown, New York, directing them to pay the remaining annuity payments to Comparato and enclosing a copy of the Agreement between Bentley and Comparato. ITT Hartford responded in writing, advising Comparato that they would "not volunteer any assignments of benefits."

The annuity contract between ITT Hartford and Bentley specifically provided that

You may assign this contract. Until you notify us in writing, no assignment will be effective against us. We are not responsible for the validity of any assignment.

The contract further defines "in writing" as meaning "a written form satisfactory to us and filed at our office in Hartford, Connecticut. All correspondence concerning this contract should be sent to our mailing address at P.O. Box 2999, Hartford, CT 06104-2999."

There is no factual dispute that Bentley never notified Hartford in writing of his purported assignment to Comparato, nor did Comparato provide written notice of the assignment to Hartford's Connecticut address. Comparato never requested a copy of the Hartford annuity contract from Bentley at the time they entered into their Agreement and, therefore, was not aware of the requirements for an assignment to be recognized by Hartford.

Comparato commenced an action against Bentley in New York Supreme Court, County of Monroe, for default under the Agreement. A Stipulation resolving the action was signed by counsel for both Comparato and Bentley on May 30, 1997, but never signed by a judge or entered in the case. Bentley filed a Chapter 7 bankruptcy petition on June 20, 1997.

ITT Hartford paid the October, 1996 annuity payment (\$10,000) directly to Bentley and tendered the October, 1997 annuity payment (\$10,000) to Bentley. The Trustee has recovered the 1997 payment and currently holds it in the Trustee's account. Although the record does not directly reflect it, the Trustee also presumably holds the October, 1998 annuity payment as property of the bankruptcy estate.

Appellant Comparato appeals Bankruptcy Judge Ninfo's May 15, 1998 Order which held (without discussion) that the October, 1997

and October, 1998 ITT Hartford annuity payments are property of the bankruptcy estate and that any security interest in said annuity contract granted by the debtor to Comparato is void pursuant to 11 U.S.C. § 544.

During the April 15, 1998 oral argument in Bankruptcy Court, Judge Ninfo stated on the record that Bentley's purported assignment to Comparato of the annuity contract was not an outright assignment, but rather was an assignment for security purposes. Judge Ninfo stated that the assignment could have become an outright assignment in December of 1996 because Bentley was, at that time, in default on the Agreement, but Comparato failed to take the actions necessary to make it an outright assignment. Thus, Judge Ninfo held that the assignment was not effective because the annuity contract specifically provided for "things to be done" which were not done, including the specific notice provisions. Judge Ninfo went on to say that Hartford could have waived its notice requirements, but chose not to and, instead, paid the 1997 annuity payment to Bentley even after receiving Comparato's December, 1996 letter to Lawrence Felt in Hartford's Watertown office. Judge Ninfo explained to Comparato, "[Y]ou have a right. That's between the Debtor and yourself, the contract, but

it's unperfected for third parties because ITT didn't honor your notification."

#### DISCUSSION

The Bankruptcy Court's factual findings must not be disturbed on appeal unless clearly erroneous. Bankruptcy Rule 8013. Conclusions of law are reviewed de novo. In re Taft, 184 B.R. 189 (E.D.N.Y. 1995). I find that Bankruptcy Judge Ninfo's findings of fact and conclusions of law were accurate and, therefore, I affirm his May 15, 1998 Order in its entirety.

The terms of the annuity contract between Bentley and ITT Hartford specifically provided that the contract was assignable only upon certain conditions, i.e. written notice by Bentley to a specific address, and that, absent those conditions, no assignment would be binding as against Hartford. Contractual restrictions concerning assignability are enforceable under New York law. See Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru, 109 F.3d 850, 856 (2<sup>nd</sup> Cir. 1997) [Under New York law, express limitations on assignability are enforceable.] It is undisputed that Hartford's conditions for assignment were not met. Comparato failed to obtain a copy of the Hartford annuity contract and, thus, failed to comply with its notice provisions. Therefore, while the March 19, 1996 Agreement may have been enforceable as between Bentley and

Comparato, it was not enforceable against Hartford as an assignment.

Furthermore, although a specific prohibition against assignments may be waived in favor of an assignee, see Citibank, N.A. v. Tele/Resources, Inc., 724 F.2d 266 (2<sup>nd</sup> Cir. 1983), there is no evidence that Hartford waived the contractual pre-requisites to assignment of the Bentley annuity contract. In fact, after receiving notice from Comparato of the purported assignment, Hartford responded that they "would not volunteer any assignments of benefits" and tendered the 1997 annuity payment directly to Bentley.

Comparato commenced an action in state court to enforce the Agreement between he and Bentley, but was not successful in obtaining a judgment or order to enforce the Agreement prior to Bentley's bankruptcy filing. On June 20, 1997, the date that Bentley filed a Chapter 7 bankruptcy petition, the Chapter 7 Trustee obtained only the rights and powers of a judgment lien creditor as to all property of the debtor "on which a creditor on a simple contract could have obtained such a judicial lien." 11 U.S.C. § 544. Because no valid assignment of the annuity proceeds binding on ITT Hartford had occurred prior to the debtor's Chapter 7 filing, the Trustee thus obtained the rights of a judicial lien

creditor as to the annuity proceeds on June 20, 1997. Accordingly, Judge Ninfo correctly held that the October, 1997 and October, 1998 annuity proceeds are property of the debtor's bankruptcy estate.

On this appeal, Comparato adopts the view that the March 13, 1996 Agreement between he and Bentley was not an outright assignment of the annuity but rather was a security agreement giving Comparato a security interest in the annuity proceeds in the event of Bentley's default. Comparato argues that he was not required to take any action to perfect the security interest since insurance annuity contracts are specifically exempted from Article 9 of New York's version of the Uniform Commercial Code, see N.Y.U.C.C. § 9-104(g). Thus, Comparato argues that he should have priority as a secured creditor in the annuity proceeds over the bankruptcy Trustee's § 544 judicial lien rights.

Comparato's current position was not raised by Comparato's counsel before the Bankruptcy Court. During the March 18, 1998 oral argument, Comparato's counsel specifically stated that, "[i]t's the position of Mr. Comparato that the assignment was an outright assignment," and "since it was an outright assignment, your Honor, no security interest was created and there was no need to perfect such interest." (Transcript, pp. 3-4.)

Because Comparato's current argument was not presented to the court below, I decline to address it on appeal. See United States v. Int'l Brotherhood of Teamsters, 12 F.3d 360, 365 (2<sup>nd</sup> Cir. 1993) [Court of appeals should not ordinarily decide issues not presented below.]

Judge Ninfo's May 15, 1998 Order is affirmed in its entirety.

ALL OF THE ABOVE IS SO

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MICHAEL A. TELESKA  
United States District Judge

Dated: Rochester, New York  
March 31, 1999



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Comparato

Plaintiff(s)

v.

6:98-cv-06364

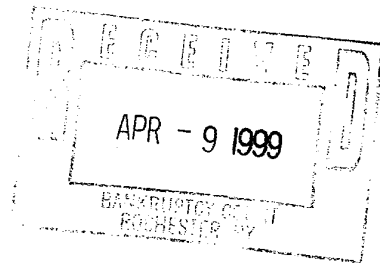
Bentley

Defendant(s)

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PLEASE take notice of the entry of a JUDGMENT filed on  
4/5/99, of which the within is a copy, and entered 4/5/99  
upon the official docket in this case. (Document No. 8 .)

Dated: Rochester, New York  
April 5, 1999



RODNEY C. EARLY, Clerk  
U.S. District Court  
Western District of New York  
2120 U.S. Courthouse  
100 State Street  
Rochester, New York 14614

Enclosure

TO:

Heidi Schult Gregory, Esq.  
Theodore N. Pucher, Esq.  
Kenneth W. Gordon, Esq.

# UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

ANTHONY COMPARATO,  
Plaintiff(s),

v.

JUDGMENT IN A CIVIL CASE

JASON BENTLEY and  
KENNETH W. GORDON,  
Defendant(s).

CASE NUMBER: 98-CV-6364T

- JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND THE JURY HAS RENDERED ITS VERDICT.
- DECISION BY COURT. THIS ACTION CAME TO HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN HEARD AND A DECISION HAS BEEN RENDERED.

IT IS ORDERED AND ADJUDGED that Judge Ninfo's May 15, 1999 Order is affirmed in its entirety.

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
98 APR -5 PM 2:40  
FILED

APRIL 5, 1999  
DATE

JACQUELINE LAWRENCE  
(By) DEPUTY CLERK

#8