

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

CORRECTING ORDER TO
ADD EXHIBITS

In re

J. Anthony DiGiulio, aka Gioacchino
Anthony DiGiulio, fdba formerly an
office of Maziarz-DiGiulio Insurance
Agency, Inc.

Case No. 06-3973 K

Debtor

Upon the affirmations, exhibits, letter dated April 6, 2009, and Memorandum of Law of Nicholas C. Gagliano, attorney for Petitioner requesting a Court order granting Petitioner relief from the automatic stay of respondent-debtor's bankruptcy petition, and the reply affidavit of Lawrence Brown, attorney for bankruptcy trustee, John Ring, in opposition, and

Upon this Court's order dated December 17, 2008 deciding that Petitioner's claim regarding Frances Conigliaro's CNB Bank property is non-dischargeable pursuant to 11 U.S.C. § 523(a)(4); and that pursuant to 11 U.S.C. § 362(c)(2)(C) respondent-debtor's automatic stay is terminated and Petitioner may proceed to enforce its judgment in Monroe County Surrogate's Court, but only as to property that is NOT property of the Bankruptcy Estate or otherwise subject to the claims of that Estate, and

NOW, upon hearing Nicholas C. Gagliano in support of Petitioner's motion, and Lawrence Brown, in opposition thereto, and upon due deliberation, it is

ORDERED that petitioner's motion for relief from respondent-debtor's automatic stay is granted to a limited extent, as described below, thereby permitting Petitioner to pursue enforcement of Petitioner's judgment against respondent-debtor in Monroe County Surrogate's Court.

By the “Amended Opinion and Order” of this Court, appended hereto, filed September 17, 2008 (which has been appealed, but is not stayed pending appeal), this Court denied the Decedent’s Estate’s Motion for turnover of an asset traceable in part to what the Monroe County Surrogate found (by Decision of January 5, 2006) was an improper diversion by the Debtor of assets of the Decedent or her estate.

This Court found that though the Monroe County Surrogate ordered the “return” of the money, the Decedent’s estate had not sought, nor did the Surrogate *sua sponte* impose a lien or trust on any assets of the Debtor, or declare that the diverted sums were not owned by the Debtor. Thus, the Decedent’s estate recorded a money judgment against the Debtor and proceeded to enforce it, leading to the Debtor’s Chapter 7 bankruptcy filing.

The consequence of said ruling by this Court (unless overturned on appeal) is that the asset in question is available to all creditors of the Debtor, not just to the Decedent’s estate.

Separate and apart from the above, this Court declared, after trial, that the Decedent’s estate holds a non-dischargeable debt against the Debtor in the amount of \$ 93,181.78. That estate is free to seek an Order from the Surrogate directing the Debtor to repay the Decedent’s estate from property that is not property of the Debtor’s bankruptcy estate, if that is proper procedure in Surrogate’s Court. For example, the Debtor may have acquired new assets since the filing of his Chapter 7 case; which assets could be used to satisfy the judgment, and such would be free and clear of any claim by the Bankruptcy Trustee.

Additionally, counsel for the Decedent’s estate seems to be of the belief that there is other property titulary owned or controlled by the Debtor, or otherwise available for the

satisfaction of the debt, which property is not subject to the Trustee's claims on behalf of other creditors, or the ownership of which has yet to be determined by any court, as between the Bankruptcy Estate and the Decedent's estate. The stay is lifted to pursue such matters, but only on notice to the Chapter 7 Trustee.

Finally, if the Debtor is in contempt of the Surrogate's Court by failing to "return" the money by some lawful means, his bankruptcy filing cannot insulate him to the extent that the debt has been declared non-dischargeable. And this may be true as to third persons who may have aided and abetted the Debtor's defalcations.

For the information of anyone relying upon this Order, this Court also appends a certain stipulation and Order regarding, in part, the Decedent's Estate.

SO ORDERED.

Dated: Buffalo, New York
April 27, 2009

U.S.B.J.