

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 00-20281

DAVID A. PACELLI,

Debtor.

DECISION & ORDER

BACKGROUND

On February 9, 2000, David A. Pacelli (the "Debtor") filed a petition initiating a Chapter 7 case. Although the Debtor failed to list them as assets on the Schedules and Statements required to be filed by Section 521 and Rule 1007, at a March 17, 2000 initial Section 341 Meeting of Creditors (the "341 Meeting"), the Debtor's Trustee (the "Trustee") learned that the Debtor was the owner of eight (8) Yamaha and Kawasaki jet skis and several trailers (the "Jet Skis").¹

On April 2, 2001, the Trustee filed an Application for an Order Shorting Time and a Motion (the "Sale Motion") which requested that he be authorized to sell the Jet Skis by including them in a public auction sale (the "Auction Sale")

¹ Apparently the Trustee felt, after fully investigating this matter, that there was insufficient grounds for him to bring an objection to the Debtor's discharge under Section 727 because of the failure of the Debtor to schedule the Jet Skis.

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scheduled for April 14, 2001.² The Court entered an Order Shortening Time and scheduled a hearing on the Sale Motion for April 11, 2001.

On April 9, 2001, the Debtor's attorney advised the Court that: (1) the Trustee, in the late Fall of 2000, had agreed to accept \$4,000.00 from the Debtor to purchase the estate's interest in the Jet Skis; (2) although the Debtor had defaulted on the purchase and failed to pay the agreed upon amount to the Trustee, a bank check, dated April 4, 2001 in the amount of \$4,000.00, had been delivered to the Trustee on or about April 9, 2001; and (3) it was the opinion of the attorney for the Debtor that it would be in the best interests of the estate for the Trustee to accept the \$4,000.00 for the Jet Skis, rather than to include them in the Auction Sale where it was unlikely that the estate would net \$4,000.00.

On the return date of the Sale Motion, the Trustee advised the Court that: (1) after the Debtor failed to complete the purchase of the estate's interest by paying him the agreed upon \$4,000.00 purchase price, he looked for ways to liquidate the Jet Skis and learned of the Auction Sale; and (2) after

² The Auction Sale of numerous items had been previously extensively publicized and was to include assets from other bankruptcy estates being sold by other panel trustees.

discussions with the auctioneer he believed, in his business judgment, that since, unlike in the Fall of 2000 when he had accepted the Debtor's offer, this was an excellent time of year to sell the Jet Skis, it was likely that the estate would net more than \$4,000.00 from the Auction Sale.

The Court granted the Sale Motion and advised the parties that it would issue a Decision & Order in this matter.

DISCUSSION

The Court is hearing an increasing number of motions: (1) for turnover orders where a debtor has failed to turnover non-exempt assets of an estate to a trustee; (2) for authority to sell an asset because a debtor has failed to pay the trustee an agreed purchase price for the estate's non-exempt interest in the asset; and (3) for contempt because a debtor has failed to comply with a turnover order entered by the Court.³

In connection with pre Court ordered turnovers and agreements to purchase the estate's interest in an asset that is fully or partially non-exempt, panel trustees, attorneys for

³ The Court requires turnover orders to: (1) be personally served upon the debtor; (2) set forth a specific deadline for the turnover of personal property or its value; and (3) advise the debtor that a failure to comply with the order may result in a contempt order being entered.

debtors and debtors themselves should understand that if trustees give debtors written notice of a time by which they must perform, whether it be to pay any purchase price for the estate's interest in an asset which is fully or partially non-exempt, or to turnover fully or partially non-exempt assets or their value to the trustee, the Court will fully support the panel trustees and enforce their time deadlines.

As a result, debtors may: (1) lose the ability to purchase the estate's interest in such an asset; and (2) in the future, be required to pay costs, including reasonable attorney fees, if a trustee is required to bring a turnover motion because the debtor has failed to turnover fully or partially non-exempt assets or their value within the time set forth in a written notice from the trustee.

Furthermore, the Court will expect that, if a debtor has failed to purchase the estate's interest in a fully or partially non-exempt personal property asset by a deadline set forth in a written notice from the trustee, within twenty-four (24) hours after the written deadline has expired, the debtor will physically deliver that property to the trustee, or to any location designated by the trustee in a written notice, unless the trustee has given the debtor different written instructions.

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Section 521 includes among the debtor's duties, that the debtor shall:

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(3) and (4) (2000).

The requirements set forth in this Decision & Order are determined by this Court to be necessary for debtors to perform their duties with regard to assets of the estate that are fully or partially non-exempt.

CONCLUSION

The Trustee's Motion to Sell the Jet Skis at the Auction Sale is in all respects granted.

IT IS SO ORDERED.

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

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Dated: April 13, 2001