UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

RICHARD PENEPENT Case No. 99-13022 K

Debtor

The salient facts are not in dispute. The Debtor has been engaged in vitriolic litigation with one or another of his family members for ten years, and this is the second time in six years that he has come into Chapter 11 after suffering adverse decisions in state court. As set forth on page 8 of his Memorandum of Law, his intentions here are to get "time to exhaust his State Court appeals." Then, he says, he "will be in a position to successfully reorganize." I view this as an admission that this Chapter 11 filing is simply to delay his creditors and to defer any day of reckoning.

As this Court has said on so many occasions in so many ways, one may not come here to thwart or ward-off duly-adjudicated rights of others. Rather, one comes here to acknowledge them and to propose to pay them in whole or in part, or otherwise to address them in a fundamentally fair manner.

This Court will not permit its processes to be used as a sword rather than as a shield. It will not provide a debtor with a new weapon in an arsenal to wage a war of attrition.

Nor will this Court permit even a good faith debtor to circumvent bonding or other state law protections necessary to prevent the costs and risks associated with appeals of pre-bankruptcy state court judgments from falling on the non-debtor party thereto.

This Court will not tie the hands of a non-debtor litigant while the debtor freely

pummels her, or even while the debtor quixotically seeks state court review.

This Court is not some sort of "alternative" to the due process of law that is as alive and well in the state courts as it is in the federal courts.

No matter how many times we say these things or in how many ways and in how many contexts, it is still misunderstood. So it must be stated yet again. "Once your obligations have been declared by a court of law, come here to deal fairly with the obligation, not to deny it or to raise a new hurdle or a new set of hoops for your opponent to jump through. If your intention is to continue a state court fight, you will not be permitted to do so on more favorable terms by being a debtor here, than are available to you in state court."[1]

If this case is not voluntarily converted by the Debtor to a Chapter 7 case before March 21, 2000, then the stay as to Sophie Penepent and the estate of Francis Penepent is lifted in all regards. Her motion to dismiss is denied without prejudice, for failure to notice all parties in interest pursuant to Rule 2002. If the Debtor or any other party in interest seeks to dismiss, a new motion must be heard on 20 days notice to all parties in interest. If someone other than the Debtor seeks conversion to Chapter 7 that too must be by motion on notice to all parties.

SO ORDERED.

Dated: Buffalo, New York
March 10, 2000

/s/ Michael J. Kaplan

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Michael J. Kaplan, U.S.B.J.

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[1]Indeed, even the august Texaco discovered that its Chapter 11 filing in New York did not win it relief from the multi-billion dollar bonding requirement that Texas law required of it if it sought review of the decision it lost to Pennzoil.