UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

PHILIP REBMANN — Case No. 97-13023 K

Debtor

JOHN R. WICKS, JR.

Plaintiff

-vs- — AP No. 98-1106 K

PHILIP REBMANN

Debtor

Barbara M. Sims, Esq.
280 Humboldt Parkway
Buffalo, New York 14214

Attorney for Plaintiff

Jeffrey A. Lazroe, Esq.
135 Delaware Avenue, Suite 101
Buffalo, New York 14202

Attorney for Debtor/Defendant

The Court conducted a two-day trial upon the Plaintiff's Complaint in this Chapter 7 case, and upon the Plaintiff's objection to the Debtor's claim of exemption in a certain $7500 fund. The following constitute the Court's rulings, conclusions and decision under Rule 52 F.R.Civ.P.

As this writer made clear in open court, it is hard to imagine how any debtor could do a more thorough job of sending creditors on wild goose chases than this Debtor and his attorney have done. And in so doing, they present a novel question. Cases are legion dealing with hiding assets as a basis for denial or revocation of discharge, or for a finding that a debtor has tainted his claim of an exemption. Here, however, we have a debtor whose failure to make full disclosure created an impression that he had assets hidden, when in fact he had none (so far as we can tell). The fact that he apparently has no assets hidden is established only by virtue of three years of contentious litigation prosecuted in good faith by one of his creditors, with other creditors paying diligent attention.

Is there a price to pay for this kind of conduct by a debtor? This Court relies on its inherent powers under *Chambers v. Nasco*, 501 U.S.32 (1991), to restore order to the processes of this Court as applied to this case, and will *sua sponte* order the Debtor and his counsel to Show Cause why sanctions should not issue.

THE FALSE SIGNALS

This case began as an involuntary Chapter 7 petition filed by a creditor with whom the Debtor had been involved in litigation for several years, and two other creditors. In response to the involuntary petition, the Debtor claimed that he "is not insolvent and has valid assets to pay any bonified [sic] claims incurred." But approximately two months later he withdrew his Answer, consented to a voluntary Chapter 7 filing, and provided schedules and statements that disclosed over $90,000 worth of unsecured debt owed to three dozen or more creditors, and virtually no assets. Of course, anyone who first examined the Answer to the involuntary petition would wonder where the "valid assets" to pay any claims had gone in the interim.

When he filed his mailing matrix of creditors together with his schedules and statements, the attorney for the petitioning creditors was not listed; hence, the "point person" for the creditors who were pursuing him did not receive a notice of his Section 341 meeting. (Although not in evidence, it is surely understandable that her clients would have thought that she received the same notice they got, and would not have forwarded theirs to her.)[1] No creditors appeared at the November 2 meeting of creditors. (This will be discussed further later.)

The Debtor scheduled as an asset a rural homestead that he owned with his girlfriend of seventeen years. They had used at least five different property addresses for this

[1] It will be pointed out later herein that it was Debtor's counsel's omission, yet now he argues that his opposing counsel may not be heard to claim "foul" as to notice that her clients received.

home, but the Debtor scheduled only one of them. (Taxing authorities had assigned two different addresses, but the Debtor and his co-owner provided three other addresses to other accounts, such as utilities.) Creditors who knew only of a different address obviously would wonder whether he was hiding one or more other parcels of real estate.

The automobile he scheduled was a Honda Civic, when in fact it was a Hyundai, perhaps leaving a creditor who knew him to drive a Hyundai wondering why he failed to schedule that vehicle.

He scheduled the value of the home at $10,000, when anyone who looked at the tax rolls knew that the home was assessed at $40,000. Was the house intentionally undervalued?

He scheduled the home as being encumbered by a $5,000 mortgage on which he paid $100 per month, when in fact the Plaintiff's attorney, examining real property records, discovered that the mortgage had gone into default more than ten years earlier and the Debtor has never paid a penny on it. Wasn't this mortgage time-barred? And why does the Debtor assert monthly payments he has never made?

Immediately after the petition was filed, substantial improvements were made to the home, supposedly paid for by the companion using her credit card. Hence, any creditor riding by the home after the bankruptcy would have observed work-in-progress and greater value than $10,000, and the only evidence that can now be adduced regarding the value of the home at the time of the filing of the petition is the word of the Debtor and his companion.[2]

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[2] A startling letter received from Debtor's counsel seeking, in part, to bolster the evidence in this regard will be discussed later. And this Court will order an accounting for all the improvements to the home.

His claim of exemptions asserted exemptions for two different automobile accidents as to which he was the injured party. Now he says there was only one, the one that involved a settlement that this Court had to approve. Did he settle another one without Court approval?

Soon after the filing of the petition he was driving a Pontiac he had received as a "gift," but no Pontiac was scheduled. Of course, a post petition gift need not be scheduled unless it is an inheritance or matrimonial property as set forth at 11 U.S.C. § 541(a)(5), but an amended schedule would have been helpful to the Court and to any creditor who might have wondered whose Pontiac the Debtor was driving.

In his schedule of personal property he said "Debtor has $10,000 + interest judgment against John R. Wicks who is a creditor of debtor." There was no indication in the schedules or statements that in fact Wicks' bonding company had posted a $10,000 bond to permit an appeal of that judgment, nor was it disclosed that approximately $4100 of what Wicks owed Rebmann had been declared to be subject to a lien in favor of the Debtor's attorney, nor was there scheduled the fact that that lien would satisfy, if paid by Wicks, what counsel was owed under the Debtor's contingent fee agreement, nor was it scheduled that the attorney was actively seeking to recover that amount of the judgment from Wicks pursuant to a State Court Order that precluded Wicks from being able to set off that amount owed to counsel against what the Debtor owed Wicks. Although some of this information might not have been of substantial interest to creditors generally, it was of very substantial interest to Wicks, who, as one of the petitioning involuntary creditors, had been pleased to read the Debtor answer the involuntary

petition by conceding that the Debtor's obligation to Wicks was subject to set-off. Once the Debtor consented to bankruptcy, he reversed field on this entirely.[3] Also, every creditor had a right to know about the bond, about any liens or charges upon what Wicks owed Rebmann (since that was "property of the estate," unless exempted) and in following the whereabouts of any payments Rebmann had received.

What is stated above as being the "true" state of affairs despite the red flags sent up by the Debtor, had to be tediously extracted in lengthy, expensive proceedings, culminating in a two day trial in this Court. And the arrogance of it all is epitomized in Debtor's counsel's closing argument in which he rhetorically asked "What are we doing here? There's nothing here." As if to say, "What's the big deal?"

It is a very big deal. Particularly because, as stated by Plaintiff's counsel at closing argument, if this Debtor had simply remained consistent with the first pleading he filed here in May of 1997, stating that her client's judgment against the Debtor "is offset," we would not have had these three years of litigation at all, at least not at the instance of this particular creditor.

And perhaps even more importantly, as this Court made clear on the record, the "big deal" is that we are here trying to impose some order and integrity upon the appalling

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[3] The Debtor's counsel's effort, at closing argument, to reconcile these two inconsistent positions by the Debtor failed. Indeed, in a pleading that the Debtor filed in this Adversary Proceeding on May 14, 1998, the Debtor stated "creditor Wicks seeks a determination that his claim is discharged by set-off, however, there is a Supreme Court determination as to what set-offs are applicable." Debtor's counsel ignores the fact that it was his client's own Answer to the involuntary petition that waived that determination and specifically stated that Wicks' judgment against the Debtor "is off-set by a $10,000 judgment." This is not something that Plaintiff's counsel "dreamed-up." This too will be discussed later.

spectacle of a disdainful and cavalier attitude by this Debtor (and perhaps his counsel) toward the processes of the Court, toward the solemnity of an oath, toward the duty of cooperation with the Court, and toward the duty of full, fair and careful preparation of schedules and statements.

The Debtor seeks to explain away all his shortcomings here by claiming that he had had a mental breakdown at the time that he was working with his attorney to prepare these schedules and statements, and was under anti-psychotic drugs and other medications. This Court agrees with Plaintiff's counsel's closing argument that there is no evidentiary basis for presuming that the Debtor's mental condition and taking of the prescribed medications excuse anything. No evidence compels a conclusion that his condition rules out a deliberate endeavor to mislead parties and the Court.[4] The Court also finds this medical explanation to be just another red herring when raised, for the first time here, two years after the adversary proceeding was commenced. There should have been some point before now that the Debtor and his counsel looked at his schedules and statements, listened to the arguments made by the Plaintiff's counsel here over and over in pre-trial conferences, status reports, etc., and said to his attorney "I wasn't myself back then. Let's get this record straightened up." Instead, the Debtor made his opponent prove every iota, every shade, and every nuance of the Debtor's own failure to be thorough, honest, and candid. And now that it is all proven at his creditor's expense, he endeavors to shrug it all off by saying that he had mental impairment at the time that he gave this information to his attorney back in 1997. The "What's the big deal?" attitude has pervaded every aspect of the

[4] The Court thoroughly rejects the improper, post-trial effort by Debtor's counsel in his June 12, 2000 letter to fill this evidentiary "gap" with his own "testimony" about what are probably privileged communications he had with the Debtor's doctor.

Debtor's and the Debtor's counsel's approach to this case. Never once during the pre-trial proceedings or the trial was there a hint of a desire to have justice done. They have played this as a game.

The Debtor has used the Chapter 7 process here as a sword rather than a shield. And his attorney did the same, assisting his client in discharging what his client owed to Wicks while the attorney actively pursued Wicks for the amounts that the State Court gave the attorney in his own right for his representation of the Debtor in state court proceedings.

The Court is not aware of any particular ethical rule that might have been violated by this arrangement, but it is perfectly clear to the Court that this attorney's personal pecuniary interest adverse to a creditor in this case, and arising out of the relationship between this Debtor and that creditor, did not serve the interests of justice in this case.

DISCUSSION

All of this being said, it is clear that the Court cannot grant the Plaintiff's request that the debt owed to him by the Debtor be declared non-dischargeable under § 523. There simply is no basis under any provision of the Code for declaring any particular debt non-dischargeable in any case for any reasons extrinsic to the circumstances that gave rise to the debt itself, except for failure to schedule the debt in the bankruptcy proceeding. The Plaintiff's claim is a simple contract claim, dischargeable in bankruptcy. Hence, that prayer by the Plaintiff is rejected.

Moreover, assuming for the sake of argument only, that the Plaintiff's Complaint under § 727 was timely, and that his objection to the Debtor's claim of a $7500 exemption in proceeds of a personal injury action too was timely, the Court is aware of no authority by which revocation of discharge or denial of exemption is warranted where the Debtor's worst offense has been to give incomplete answers and to play a game of feints and misdirection that did not hide any assets, but rather gave his creditors a hard time and led them a merry chase causing them to waste time and resources. Those prayers for relief too, therefore, are denied.

However, this Court finds that this Debtor, since the beginning of this very serious matter that was commenced by the filing of an involuntary bankruptcy petition against him, has been abusive of the processes of this Court, and has been vexatious as to the Plaintiff in this Adversary Proceeding.

In addition to the "false signals" described above, it is important to note that when the Debtor decided to discontinue his defense of the involuntary petition, and to consent to the entry of an Order for relief under Chapter 7, this Court ordered him to file his schedules of assets and debts no later than 15 days after the date of the Order for relief. The date of the Order was August 19, 1997, so the deadline was September 4. He disobeyed this Order. It was not until October 6 that the Debtor informed the Clerk's office of any creditors other than the three creditors who had commenced the involuntary petition - - some three dozen additional creditors. Those initial three were the only creditors that had been served by the Clerk's office with the notice of the § 341 meeting, the bar date for the filing of complaints objecting to discharge, the bar date for the filing of objections to the dischargeability of particular claims, etc. And those

three creditors' counsel, the Plaintiff's counsel here, was specifically omitted from the October 6 submission. So when the § 341 meeting was held on November 2, 1997, no creditor or creditor's attorney appeared. Local Rule 1009-1 is supposed to specifically guard against injustice in this regard by requiring that "the delayed initial filing of a schedule, statement, list, or other document that discloses the existence of parties-in-interest who were not disclosed in the list of creditors that accompanied the petition" is included in the definition of "amendment" and must be treated as "amendments" requiring an "Amendment Cover Sheet" in a form prescribed by the Clerk. When the Debtor's counsel filed the required schedules, well past the 15 days that the Court had allowed, he signed the Amendment/Schedule Cover Sheet which stated "I certify that I have served all parties who are affected by this amendment/schedule with a copy thereof (and if applicable a copy of the § 341 meeting notice), and have served the United States Trustee and any Trustee."

After this writer took this decision under submission, I specifically asked Debtor's counsel, by letter, whether he had sent notices to creditors in this case (other than in connection with this Adversary Proceeding). His response was "I do not believe that this office sent out any notices on this matter." (Letter from Jeffrey A. Lazroe, Attorney of Law, June 1, 2000).[5] He makes much of the fact that the Plaintiff here did receive the notice from the Clerk, and of the fact that the Plaintiff knew of many of the matters complained of in the Complaint or adduced at trial. But the Debtor and his counsel consistently miss the point in this regard. Even a creditor who knows the facts may complain of a debtor's failure to make those facts known to all

[5]Naturally, this story too has changed, as described later.

creditors. Among the reasons why a debtor must perform all of the duties required of a debtor under 11 U.S.C. § 521 and the Official Forms, and must follow all the rules governing the debtor's various disclosures and appearances at meetings at which he would face all of those creditors interested enough to appear is the fact that although the vast majority of cases do not have significant creditor interest, some cases attract substantial creditor interest and attention. In that smaller group, it is the interaction among creditors, as well as the interaction between specific creditors and the trustee, that presents lines of inquiry regarding the likelihood (or non-likelihood) of concealed assets, as well as whether there exist grounds for objections to dischargeability of particular debts or for objection to the discharge of the debtor in toto. It is in creditors asking other creditors "what did he tell you about his finances." and learning of truths or of lies told to others, that a dishonest debtor is separated from an honest debtor, and an unfortunate debtor separated from one who is a cheater and a fraud.

Yes, this Plaintiff clearly knew some of the facts that the Debtor chose not to explain in his schedules and statements (such as the existence and disposition of the $10,000 appeals bond). But we cannot possibly know what value might have been gained by the participation of some other creditor, a creditor who never received timely notice in this case because the Debtor's attorney did not properly provide it.

More specifically, the touchstone for an understanding of many of the rules of bankruptcy practice and procedure is to focus on the "hypothetical creditor." Hypothetical does not mean "speculative," but rather means the very real possibility that a party in interest did examine the file in the Clerk's office at some moment in time, and made decisions based upon

what she saw. Was the information disclosed there provocative? Would a closer look be warranted or would it be "throwing good money after bad?" There is also the very real possibility that a party-in-interest would have come to the Clerk's office to look at the file at a particular point in time had she been notified of the filing at a time when she could effectively act. One may readily see the damage that may be done by incomplete disclosures or by failure to provide notice, and one may readily contemplate the contributions that might be made by each creditor to one another or to the estate when a debtor has performed all the duties that the debtor is required to perform.[6]

The simple result of all of this for today's purposes is that regardless of what this Plaintiff knew and when, we simply have no idea what the progress of this case would have been, what assets might have been discovered (if, in fact, any are hidden), what resources might have been conserved, and what expenses might have been avoided, if the Debtor and his counsel had done everything in this case that the Code, the Rules, and the customs and practices of this Court

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[6]To illustrate the point, the Court recently encountered a debtor who neglected to schedule a $348,000 debt she owed for criminal restitution. The crime victim knew about the case and knew that the debt was not dischargeable But the omission hid from other creditors the fact that the debtor was running up her debts to them <u>after</u> she had already suffered this enormous restitution judgment that had rendered her hopelessly insolvent. Any (hypothetical) creditor who looked at the file before the omission was rectified was unaware that there was a sound basis for seeking a determination of non-dischargeability based on fraudulent use of credit accounts that the debtor knew she had no hope of ever repaying. (The Court ordered the bar date for § 523 complaints reopened.)

In another recent case, this Court encountered a Chapter 13 debtor who claimed that his house was encumbered by a valid mortgage to his father. This made it look like there was no non-exempt equity in the home. Upon questioning by the Court at the confirmation hearing, it was discovered that the mortgage was more than ten years old, and the father had never asked for any payments on it at all until the son filed Chapter 13. (The Court refused to honor the mortgage for purposes of the Chapter 13 Plan.)

It is irrelevant that the party who seeks denial or revocation of discharge, etc. had full knowledge of the missing facts. That party acts for the benefit of all creditors, and for the benefit of the processes of the Court, when he or she "blows the whistle" on even an otherwise-honest debtor's intentional dereliction of the duties of statute and rule.

require be done in every case.

The Debtor also makes much of the fact that when all the blind alleys have been traveled and all the wild geese have flown away in this case, there was nothing of value there for creditors anyway (so far as we know). This similarly misses the point. It is not for any debtor to decide what is of value and what is not of value, what needs to be disclosed and what does not need to be disclosed, what procedures need to be followed and what procedures do not need to be followed. These are prescribed by law in a way in which the important determinations are made not by the Debtor, but by the Trustee, the creditors, and the Court. The fact that nothing of real value has been proven ever to have been hidden by this Debtor is completely irrelevant to the question of whether he has abused the bankruptcy process by having to be dragged kicking and screaming into making full disclosure, and irrelevant to the question of whether he has conducted his bankruptcy case and his defense of this litigation in a vexatious, malicious and bad faith manner.

The following language was drafted after trial by this writer for use in this Decision before the Court received a June 12, 2000 letter from the attorney for the Debtor. Standing alone, the following language alone suffices to support this Court's decision to use its inherent powers, recognized in *Chambers v. Nasco*, to apply sanctions. After reciting these pre - June 12 findings, the Court will explain why the June 12 letter makes the conduct of either the Debtor or the Debtor's counsel (or both) even more egregious here.

> The vexatious litigation conduct by the Debtor toward the Plaintiff began with the proceedings on the involuntary petition in 1997, when the Debtor claimed that he had assets sufficient to meet all

obligations. His story now is that other than Social Security and a half interest in a $10,000 house, he is a pauper, unable to work since he was injured on the Plaintiff's premises years ago. He counts on his live-in girlfriend's wages to make ends meet. The fact that it has taken many months, numerous appearances by counsel, a number of status reports, extensive pre-trial proceedings, and two days of trial to get from "there" to "here" is *ipso facto* vexatious and bad faith in a bankruptcy case, where full disclosure is compulsory even without demand. At the earliest pre-trial conferences in this Adversary Proceeding, Plaintiff's counsel laid out her concerns about the Debtor's failure to make full disclosure; evidence suggesting the existence of other real estate that was not disclosed, evidence of undervaluation of the scheduled property; a failure to disclose the $10,000 appeal bond; what she considered to be a failure to schedule the Debtor's debt to his own counsel, and all the other concerns.

Having now heard the evidence, it is clear to the Court that the Debtor's response to this Complaint should have been to promptly, amend his false "Answer" and promptly amend the schedules and statements to fully and properly address all of the concerns being raised by creditor's counsel. Instead, he engaged in meaningless attacks on the Plaintiff and his counsel, questioning the bona fides of their submissions.

Indeed, for sheer disingenuousness in the conduct of legal proceedings, it is hard to match this Debtor's flip-flop on the matter of this Plaintiff's standing as a "creditor" here. In response to the involuntary petition, the Debtor claimed that the Plaintiff had no standing because his claims against the Debtor were offset by the Debtor's claim against the Plaintiff.

But once the Debtor decided to agree to the Order for Relief, he claimed that Plaintiff had no right of offset because the question of any right of offset had been specifically taken to State Court and decided against the Plaintiff before the involuntary petition was filed.

The fact is that Debtor's <u>counsel</u> won a ruling in State Court that counsel's right to a contingent fee for prevailing against this Plaintiff in a personal injury action could not be offset by the

Plaintiff's judgment against the Debtor on a breach of contract action.

Debtor's counsel's current explanation is bizarre. He argues that offset can be a one-way street. That somehow the Plaintiff's claim against the Debtor was offset so the Plaintiff was not a "creditor," but that the Plaintiff was specifically barred by State Court Order from setting off what the Debtor's counsel "owned" of the judgment against Plaintiff. (Perhaps he believes that one person alone may shake hands.) This writer thinks it safe to say that even if the State Court ruled that Wicks could not claim a set-off as against counsel, of what Rebmann owed Wicks, it is not within the bounds of ethical advocacy to claim that Wicks is not a creditor of Rebmann. Any obligation of Wicks to Rebmann's counsel is simply a different payee for Wicks' liability to Rebmann. Yes, the State Court prohibited set-off of that amount by Wicks as against counsel, but NOT as against Rebmann. Counsel's argument to the contrary is ridiculous. Moreover, Rebmann's judgment against Wicks was $10,000, of which Lazroe's lien was only $4100. Wicks' claim against Rebmann was $12,000. Last time the Court looked, $12,000 was more than $5900. Wicks is, was, and remains a creditor of Rebmann. Debtor's counsel's effort to dance around the obvious like this is part of what has improperly vexed Plaintiff here.

It is likely that if Debtor's counsel had simply decided to pursue his own judgment against this Plaintiff and to let the Debtor use different bankruptcy counsel, rather than continuing to seek collection of his own judgment against Wicks while he was presiding over Rebmann's "catch-me-if-you-can" tactics, there would not have been the need for this Plaintiff to pursue this Adversary Proceeding, which directly challenges those tactics.

To be sure, there was a point in pre-trial conferences in this case at which this Court entered an Order inviting the filing of any suitable motion. This was in response to Plaintiff's counsel's chagrin at the flip-flop regarding set-off, and other issues. Arguments regarding estoppel were specifically discussed at that time. But no motions were filed along those lines. Having heard the evidence, the Court now understands Plaintiff's decision to rely on trial rather than motion practice. It is only after the Debtor has presented his

> evidence that the finder of fact may fully appreciate just how wantonly and cavalierly, as well as recklessly, even maliciously, this Debtor has approached the matter of his case and this Adversary Proceeding.

As indicated above, the Court would have rested on these findings had it not received a June 12, 2000 letter from Defendant's counsel. As an attorney, this writer can only hope that counsel has obtained a written waiver of attorney-client privilege from the Debtor, given the extent to which this counsel now describes the discussions that he had with his client at various times. Moreover, one must hope that counsel also has his client's waiver of doctor-patient privilege, because the letter describes discussions between counsel and the Debtor's physician regarding the Debtor's mental condition and how that condition might have impacted his client's credibility <u>at the trial we just concluded.</u>.

As if anything more stunning is possible, this letter also details an appraisal that counsel obtained on the house <u>at the time that he was working with the Debtor preparing schedules and statements</u> - an appraisal which was <u>not</u> filed along with the schedules and statements or <u>ever</u> filed with the Court, an appraisal of which this Court was <u>never</u> previously informed, an appraisal which the Court presumes was <u>never</u> provided to the Plaintiff. And the letter similarly describes a contractor sent by counsel out to the Debtor's house to determine what work would be needed, and the cost thereof, to make the house habitable - expert information that was also <u>not</u> ever provided in support of the schedules and statements filed with the Court, <u>never</u> brought to the attention of the Court, and, this writer supposes, <u>never</u> brought to the attention of the Plaintiff's counsel. Counsel talks about his knowledge of the Debtor's

"psychotic" condition, which counsel says he has known about since the time of the Debtor's "last automobile case," which presumably was before the filing of this bankruptcy petition. This condition is what counsel blames for his client's failure to have provided him with complete information at the time of the involuntary petition and the time of the filing of schedules and statements. And he says "In retrospect, I should have made it clear that the amended schedule only changed the address of the [real estate], and it should have read 1070 Sumner Road, Darien Center, New York, 14040 also known as 1136 Sumner Road, Darien Center, New York 14040. It would have eliminated any confusion, especially to the creditors." And counsel states that "In hindsight, I should not have taken on the representation of Mr. Rebmann in Bankruptcy Court."

The time for such revelations was three years ago when this case was commenced. Not now. The present Adversary Proceeding is not a self-contained lawsuit. It is a lawsuit premised upon a cavalier, misleading, irresponsible, sloppy, and disingenuous approach to the entire bankruptcy case, all of which was compounded by an identical approach toward the lawsuit itself. The June 12 letter proves the point precisely.

The consequence has been an enormous investment of time by the Court, and of time and money by Plaintiff and his counsel, compounded even further by Debtor's counsel's hiding of probative information and his simultaneous pursuit of his personal money claims against the Plaintiff.

Finally, the letter explains, at length, why Debtor's counsel "presumed" that his former paralegal, now retired, served the notices that counsel certified had been sent. He also "presumes" that everyone was notified because no creditors have attempted to contact the Debtor

or have sent the matter to a collection agency or have served the Debtor with legal process. Counsel forgets that when it is the first meeting notice that did not get sent to the creditors, the purpose of the rule requiring the attorney certification is not only to make sure that creditors get notice of the bankruptcy (there may well be later, other notices (of a proposed sale, or compromise, etc.) that might serve that purpose), but to make sure that they learn of the bar date for the filing of complaints under §§ 523 and 727. In fact, at least two other creditors who have appeared in this case specifically informed the Court, in open court either in Batavia or Buffalo or both, that though they received subsequent notices in the case, they did not receive the initial notice that would have given them a deadline for the filing of complaints.

REMEDIES

Although, as indicated above, the Plaintiff did not prevail in establishing that the discharge that the Debtor received had been procured through fraud, nor that the $7500 exemption was tainted by the Debtor's fraud, it is clear that this Plaintiff has been victimized by malicious and vexatious practices in the prosecution of what was virtually "trumpeted" by the Debtor to be concealment of assets, to be understatement of the valuation of assets by the Debtor, to be inconsistent statements of fact and law by the Debtor, and to be a failure to make clear and consistent disclosures of such matters as the $10,000 appeals bond and the various rulings of the State Court just prior to the filing of the involuntary petition, which rulings were declaratory of various rights thereto.

Under *Chambers v. Nasco*, this Court has inherent power to sanction such vexatious conduct. And under 28 U.S.C. § 1927 an attorney may be sanctioned. It is now

ORDERED that on **August 2, 2000 at 2:00 p.m.** at **U.S. Bankruptcy Court, Olympic Towers, 300 Pearl Street, Suite 350, Part I, Buffalo, New York 14202**, Phillip Rebmann and his counsel Jeffrey Lazroe shall appear to Show Cause

1. Why both the Debtor and his counsel should not forever be enjoined from taking a position contrary to their initial position, that Wicks' claim against Rebmann is set off by Wicks' liability to either Rebmann or Lazroe, and why Wicks should not be discharged of any debt to Lazroe or Rebmann as a sanction imposed by this Court.[7] (Wicks would participate as a creditor in this estate to the extent that his claim against Rebmann exceeds his liability to Rebmann and Lazroe.)

2. Why, from the $7500 exemption being held by the Trustee, the Debtor or his counsel should not be ordered to pay all reasonable attorneys fees and costs of Wicks in this bankruptcy case. The Court finds that Wicks was victimized in this case and that he and his counsel have well-served justice by having held the Debtor and his counsel to account for all of the dead ends, blind alleys, and red herrings their conduct has created in this case.

3. Why the Debtor should not be permitted to pursue, in his own right, any grievance against his counsel that he may wish to raise with regard to the above monetary sanction or any possible violation of the attorney/client privilege. This is to be done, if at all, through the Attorney Disciplinary process of the State Bar.

[7]The doctrine of judicial estoppel might or might not alone suffice to support this ruling (see *U.S. ex rel American Bank v. C.I.T. Constr.*, 944 F.2d 253, 258), because the position did not persuade the Court, and was eventually abandoned. Hence, the Court relies on its inherent powers, rather than on the doctrine of judicial estoppel.

4. Why Rebmann should not be required to amend the schedules to conform to all of the proof adduced at trial, and required to file reports from Appraiser Grasco, Dr. Levy, and the contractor, as described in the June 12 letter from Rebmann's counsel. If he should fail to do so, his discharge would be revoked for disobedience of a lawful order of the Court.

5. Why the time to file § 523 and § 727 complaints should not be reopened, there being no evidence (other than the Debtor's counsel's unsupported certification, contradicted by his own letter of June 1 (not June 12)) that any creditors other than the initial three petitioning involuntary creditors ever received notice of that bar date.

6. Why Rebmann should not be ordered to file copies of all work orders, invoices, receipts, and all evidence of payment, regarding all improvements and repairs made to his residence since the filing of this bankruptcy petition, whether these were contracted for by, or paid for by, Rebmann or Ms. Congdon. If he fails to do so, not only would his discharge be revoked, but it would be presumed that he and/or Ms. Congdon have perjured themselves, and they would be referred for such criminal investigation and prosecution as the U.S. Attorney shall determine to be appropriate.

7. Why Lazroe should not at Lazroe's own cost and expense enable Rebmann to perform the above ordered duties with the assistance of competent counsel,[8] whether or not

[8] Lazroe has previously been sanctioned for "unreasonably and vexatiously multipl[ying] the proceedings" by the District Court of which this Court is a statutory "unit." *See United States v. Chicago Blower Sales of Buffalo, Inc.*, 851 F.Supp. 83 (W.D.N.Y. 1993). But Lazroe's wholly improper letter of June 12, 2000 blames everything on his client's mental condition and on a former employee of Lazroe. This Court will leave it to Rebmann, Lazroe, and, if necessary, the Grievance Committee, to sort the matter out.

Lazroe continues to represent Rebmann.

SO ORDERED.

Dated: Buffalo, New York
July 24, 2000

/s/ Michael J. Kaplan

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