

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

ANGELO M. MALDONADO
LINDA A. MALDONADO

Case No. 93-13442 K

Debtors

ANGELO M. MALDONADO and
LINDA A. MALDONADO

Plaintiffs

-vs-

AP 94-1026 K

NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE

Defendant

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Attorneys for the Plaintiffs

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ORDER AND MEMORANDUM

Before the Court are a Motion and Cross Motion for Summary Judgment. The Court need not undertake a complete exposition of the matters before it, and certain resolutions now appear clear from the papers.

First, *DeChiaro v. New York State Tax Commission*, 760

F.2d 432 (2nd Cir. 1985) is still good law, is on point, and binds this Court. The fact that liability for sales tax might be remote in time does not render it dischargeable.

Second, from the Debtors' papers it appears that the Conciliation Conferee's decision was set aside by the Appeals Division. Hence, there has been no pre-bankruptcy adjudication that would bar this Court from determining the Debtors' tax liability under 11 U.S.C. § 505 (a).

Third, genuinely disputed issues of material fact *may* surround the question of whether Angelo Maldonado was a responsible person, and the Court is not prepared to rule in the State's favor in that regard strictly on the basis of two documents signed by him as "President" of the business, where his counsel has asserted that the State has withheld discoverable materials from her, which materials would (it is claimed) substantiate the Debtor's claim that he was not a responsible officer. While it may be that the materials would ultimately be ruled not to be discoverable if a proper motion to compel were made and defended, the Court cannot presume that the Debtors have already obtained all the discovery that they are entitled to. The Court treats this statement as a plea for further discovery under Rule 56(f), and grants it.¹

¹To the extent that the Debtors seek summary judgment in their favor, their cross-motion is denied, without prejudice. They have offered no evidence yet to overcome the presumptions

The Motion and Cross Motion are denied. Discovery shall be completed by August 1, 1995, and this matter is set for Calendar Call at 11:30 a.m. on August 16, 1995.

SO ORDERED.

Dated: Buffalo, New York
June 5, 1995



U.S.B.J.

attending Mr. Maldonado's signature as "President" of the corporation.