

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

VIOLA RUGGIERO

Case No. 98-11089 K

Debtor

Absent a showing that the Internal Revenue Service and the United States Department of Labor have determined that the notion of such a “lump sum pension” payment is not an oxymoron,¹ there can be no doubt about the fact that a \$34,000 “lump sum pension” payment is not exempt. But that does not begin to answer the question before the Court.

The question before the Court is this: “What is to be done about a Chapter 13 debtor who receives \$34,000 in funds and spends them wildly (for example, a \$7,000 ‘gift’ to her companion) before she is ‘caught’? Is there anything in the Code that makes this behaviour ‘wrong,’ and does the Debtor’s state of mind make any difference?” (She probably would like to say that she thought that any pension payments would be exempt property.)

To begin to address these questions we must survey the possibilities. They include (in no particular order) -

- no consequence at all.

¹“Pension” means “a fixed amount, other than wages, paid at regular intervals to a person . . . in consideration of age, merit, poverty, injury or loss sustained, etc.” Random House Unabridged Dictionary, 2nd Edition 1993. The concept of a lump sum is incompatible with that of a fixed amount paid at regular intervals.

- a money judgment for the Chapter 7 estate.
- denial of discharge.
- dismissal of the case.
- referral to the Department of Justice for possible criminal investigation.
- some combination of the above.

Next we must ask how we treat those similarly situated who do not squander the money. What we say to those people, at the very least, is to turn the money over voluntarily toward the satisfaction of your confirmed Chapter 13 plan. This may or may not result in substantial surplus remaining for a debtor to spend as she wishes.² But if we did not know about the debtor's right to this payment, and if the percentage to creditors should be raised as a result (11 U.S.C. § 1329(a)), that too would be done, resulting in completion of a plan that pays a higher amount to creditors than had originally been confirmed.³

It is, perhaps, conceivable that a debtor who "spends first and asks questions later" should fare no worse than one who asks before spending. This might happen where the debtor had a completely non-culpable state of mind. But it is not conceivable that under any circumstances the one who spends first and asks later should be treated better than the Chapter 13 debtor who does not presume to make her own decisions as to what is right and wrong regarding

²For example, if only \$10,000 were needed to complete a 20% plan, the debtor would complete the plan, receive her discharge, and enjoy the \$24,000 balance of the lump sum. If the fund is exempt, this might be an appropriate result.

³For example, if the \$34,000 lump sum were thought to be part exempt and part non-exempt, but litigation would be required to resolve the difference, the trustee might well propose a settlement that would pay more than the originally proposed percentage to creditors, but which nonetheless leaves a "surplus" for the debtor to enjoy after discharge.

the expenditure of the funds.

It may be that there ultimately might properly be presented to this Court the question of whether those funds were or were not exempt funds. But this is not the proper time. This Debtor may not be permitted to jump to the same status as a debtor who turns the funds over to her attorney or the Chapter 13 Trustee and asks the Court please to determine her rights.

As to this Debtor, we need to know where the money went, every penny of it, with specificity. Only then will all parties in interest know what the economic considerations are surrounding a decision to pursue or not to pursue the legal issues presented. It does not suffice for the Debtor to say “the money is gone, so just decide the issue of law.” If the money has been turned into other valuable assets or is otherwise recoverable, then some of the legal issues presented might warrant decision, but perhaps not others.

Regardless of where this inquiry ultimately leads, the first step is critical to the restoring of the equitable balance between the actions of this Debtor, and the fact that many debtors choose to ask the right questions at the right time.

It is therefore ordered that the Trustee’s objection to the claim of exemption is hereby continued as follows. His request to extend the time to object to discharge is granted pending further order of the Court. The Debtor is hereby ordered to file, within 20 days of the date of this Order, a sworn affidavit reciting, with precise detail and particularity, the disposition of the \$34,000 “lump sum pension” payment she received, including its initial disposition and any subsequent disposition whether direct or indirect. Said sworn statement shall also explain, in detail, and with particularity, how her reported “total assets” on her most recent “summary of

schedules” reflects nearly \$10,000 in assets LESS than her “total assets” reported at the beginning of her Chapter 13 case, this despite her having since received \$34,000 in a lump sum payment. The Trustee’s objection to the claim of exemption is continued for tracking to **September 13, 2000 at 10:00 a.m.** in Part I, U.S. Bankruptcy Court, Olympic Towers, 300 Pearl Street, Suite 350, Buffalo, New York.

SO ORDERED.

Dated: Buffalo, New York
August 23, 2000

/s/ Michael J. Kaplan

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