

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

FRANK T. TRIPI
KATHLEEN M. TRIPI
d/b/a LANPLAN DESIGN

Case No. 92-13238 K

Debtors

The Debtors' "Notice of Motion for Withdrawal of Petition," filed June 22, 1995, is denied, because the Debtors are admittedly in possession (through their counsel) of sufficient assets to pay all creditors in full with interest, and to pay all administrative expenses and court costs in full, but they refuse to turn said assets over to the Trustee or to make suitable arrangements for payment of all claims and expenses.

Under such circumstances, the best interest of creditors and the estate lie in permitting the Trustee to complete his duties.

The Debtors' efforts to justify dismissal lack any stated basis in law whatsoever, and are couched in allegations that raise sophistry to new heights. Instead of admitting that the true reason for the delay in getting creditors paid in this case and in getting any surplus to the Debtors is the failure and refusal of Debtors' counsel to turn over to the Trustee the mortgage that the Trustee has had to sue for (as discussed in the accompanying Order granting the Trustee's Motion for Summary Judgment), the Debtors claim that such delay is caused by the Trustee's refusal to accept an offer of less than sufficient money to satisfy all claims.

By their own actions the Debtors and their counsel have prevented the Trustee from fulfilling his trust, and they now complain of his steadfast representation of the rights of creditors.

Such disingenuousness is not the stuff of which sound motions to withdraw the petition are made. Indeed, the Defendants' posture here seems to be "We've got something you seem to have an absolute right to, but don't expect us to raise sound defenses or to turn it over. Take less than it's worth or we will raise every hurdle we can." This has been compounded by delaying tactics and courtroom antics that verge on unprofessional.¹ When asserted against a court-appointed fiduciary charged with a federal, statutory duty to "collect and reduce to money the property of the estate," such conduct smacks of improper interference and obstruction with an officer of a Court.

The Motion is denied. The Adversary Proceeding will proceed in accordance with an Order of even date herewith. The

¹At a July 20, 1995 status conference on the record in Niagara Falls, counsel was loudly disrespectful to the Trustee's counsel and even contradicted the Court when the Court stated that the Court and Trustee had been very patient of his clients. (In fact, the docket shows that out of eight previous conferences on the record, the Defendant's counsel appeared on only one occasion -- that was April 19, 1995. On May 11, 1994, June 22, 1994, August 17, 1994, September 21, 1994, October 19, 1994, January 18, 1995 and May 17, 1995, only the Trustee or his counsel appeared, in each instance reporting his efforts to work with the Defendants. Defendants' counsel could have appeared at any of these regularly scheduled and docketed hearings to complain, had he a genuine basis for doing so.

Defendants will Answer and defend, or will default, as ordered therein.

SO ORDERED.

Dated: Buffalo, New York
October 2, 1995

/s/Michael J. Kaplan

U.S.B.J.