

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Outline of Dr. Richard Cordero

for oral argument on January 3, 2008

against the Trustee’s motion to dismiss

in *Dr. Richard Cordero, Creditor v. David and Mary Ann DeLano, Debtors*, 06-4780-bk-CA2

appeal from *Cordero v. DeLano*, 05-6190L, WDNY

A. Original motion

- I. The Trustee failed both to appear and answer a single motion or pleading for years in either the bankruptcy, the district, or the appeals Court and having thus missed the opportunity to invoke through a motion the benefit of judicial process for which he showed only contempt, he is now a party in default **2112**
- II. This conclusory motion is to be dismissed because the Trustee failed even to hint any legal argument that an appellant that has been deprived of standing in the case, such as Dr. Cordero, has any legal duty to object to a court approval - which the Trustee does not even allege was or even would be served on such appellant- to his final report, which he cannot allege he timely served on such appellant, but only that the latter was “subsequently served” and only with “a summary of the account” **2115**
- III. A finding by the Court that the debtors engaged in bankruptcy fraud through concealment of assets and that the Trustee protected them by not investigating their financial affairs will render their bankruptcy petition, the Final Report, the summary of the account, and Judge Ninfo’s approval a nullity, thus preventing the dismissal of the appeal on the alleged failure to object to the Report **2118**
- IV. Evidence of the Trustee’s contempt for the Court and the law, whether concerning his duty to provide legal grounds for it to decide on or his duty to perform his office in compliance with pertinent regulations and supervisory instructions **2120**
- V. The Trustee’s motion does not meet the substantive requirements for a motion because it is devoid of legal argument just as it fails to meet other formal requirements under FRAP and the CA2 Local Rules **2123**
- VI. Relief requested..... **2125**

B. Amended motion

- I. The Trustee’s arrogant perfunctoriness shown in his original motion is only confirmed in his amended motion and provides further grounds for his motion to be dismissed with prejudiced and for costs to be assessed against him **2135**
- II. Recapitulation of relief requested with additions (in bold) **2139**

C. Placing the motion on the motions calendar

- I. The Court’s placement on the substantive motions calendar of the Trustee’s motion to dismiss although the Court denied the same treatment to Dr. Cordero’s 14 motions and indicated that all his motions will be referred to the panel is arbitrary and discriminatory treatment that constitutes a denial of equal protection under law and a subterfuge for the Court to rid itself of this appeal and thus evade the conflict of interests with which it confronts the Court **2152**
- II. The Trustee’s arrogantly perfunctory and conclusory motion to dismiss provides no argument, let alone authority, for the implied allegation that there is any duty to object to his final report, not to mention “a summary of the account”, much less that failure to do so within a given period –not even hinted at- renders dismissable a pending appeal; and shows not even an awareness of the fact that an appellant deprived of standing in the case, such as Dr. Cordero, would have no duty to object in addition to prosecuting his appeal..... **2157**
- III. Precedent gives rise to the expectation that the Court placed the Trustee’s arrogantly perfunctory motion on the motions calendar and, disregarding its factual and legal baselessness, will use it as a pretext to dismiss the case, so that due process requires that it invoke 28 U.S.C. §294(d) to transfer this appeal to an impartial and unrelated retired judge **2162**
- IV. Relief requested..... **2165**

Dated: January 3, 2008
 59 Crescent Street
 Brooklyn, NY 11208

Dr. Richard Cordero

 Dr. Richard Cordero
 Appellant and Creditor
 tel. (718) 827-9521

United States Court of Appeals for the Second Circuit

06-4780-bk

Dr. Richard Cordero,

Appellant and creditor

v.

ORDER

David and Mary Ann DeLano

Appellees and debtors in bankruptcy

Having considered the briefs filed in his appeal, IT IS HEREBY ORDERED AS FOLLOWS:

A. Persons and entities concerned by this Order

1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors and Appellees in the above-captioned case, hereinafter *DeLano*, which shall be understood to include the cases below, namely, *In re David and Mary Ann DeLano*, 04-20280, WBNY, and *Cordero v. DeLano*, 05-6190, WDNY;
2. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585) 427-7225, and any and all members of his staff, including but not limited to, James Weidman, Esq., attorney for Trustee Reiber;
3. Devin L. Palmer, Esq. and Christopher K. Werner, Esq., attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585) 232-5300; and any and all members of their firm;

4. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585) 586-6392;
5. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585) 263-5812, and any and all members of her staff, including but not limited to, Ms. Christine Kyle, Ms. Jill Wood, and Ms. Stephanie Becker;
6. Ms. Diana G. Adams, Acting U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, and Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212) 510-0500;
7. Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;
8. U.S. Bankruptcy Judge John C. Ninfo, II, and Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585) 613-4200, and any and all members of their staff;
9. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, United States District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585)613-4035, and any and all members of their staff; and
10. Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents or items requested hereinafter.

B. Procedural provisions applicable to all persons and entities concerned by this Order, who shall:

11. Understand a reference to a named person or entity to include any and all members of such person's or entity's staff or firm;
12. Comply with the instructions stated below and complete such compliance within seven days

of the issue of this Order unless a different deadline for compliance is stated below;

13. Be held responsible for any non-compliance and subject to the continuing duty to comply with this Order within the day each day after the applicable deadline is missed;
14. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
 - a. the source or recipient of funds or who made any charge or claim for funds;
 - b. the time and amount of each such transaction;
 - c. the description of the goods or service concerned by the transaction;
 - d. the document closing date;
 - e. the payment due date;
 - f. the applicable rates;
 - g. the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document;
 - h. the beneficiary of any payment;
 - i. the surety, codebtor, or collateral; and
 - j. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;
15. Certify individually as such person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that such document has not been the subject of any addition, omission, modification, or correction of any type whatsoever and that it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or certify why such certification cannot be made with respect to any part or the

whole of such document and attach such document;

16. Produce any document within the scope of this Order by producing a true and correct copy of such document;
17. Produce a document and/or a certificate concerning it whenever a reasonable person acting in good faith would:
 - a. believe that at least one part of such document comes within the scope of this Order;
 - b. be in doubt as to whether any or no part of a document comes within that scope; or
 - c. think that another person with an adversarial interest would want such production or certificate made or find it of interest in the context of ascertaining whether, in particular, the DeLanos have committed bankruptcy fraud, or, in general, there is a bankruptcy fraud scheme involving the DeLanos and/or any other individual; and
18. File with the Court and serve on Appellant Dr. Richard Cordero at 59 Crescent Street, Brooklyn, NY 11028, tel. (718) 827-9521), and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

19. Any person or entity concerned by this Order who with respect to any of the following documents **i)** holds such document (hereinafter holder) shall produce a true and correct copy thereof and a certificate; **ii)** controls or knows the whereabouts or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the whereabouts or likely whereabouts of, and state such whereabouts and the name and address of the known or likely holder of such document:
 - a. The audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the

Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman, shall be produced by Trustee Schmitt, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

- b. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, which transcript has already been prepared and is in possession of Trustee Reiber, who shall produce it on paper and on a floppy disc or CD;
- c. The original stenographic packs and folders on which Reporter Dianetti recorded the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim, held on March 1, 2005, in the Bankruptcy Court, shall be kept in the custody of the Bankruptcy Clerk of Court and made available to this Court or the Judicial Conference of the United States upon the request of either of them;
- d. The documents that Trustee Reiber obtained from any source prior to the confirmation hearing for the DeLanos' plan on July 25, 2005, in the Bankruptcy Court, whether such documents relate generally to the DeLanos' bankruptcy petition or particularly to the investigation of whether they have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;
- e. The statement reported in *DeLano*, WBNY docket 04-20280, entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing before Judge Ninfo of the DeLanos' plan, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read;

f. The financial documents in either or both of the DeLanos' names, or otherwise concerning a financial matter under the total or partial control of either or both of the DeLanos, regardless of whether either or both exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's, since January 1, 1975, to date,

1) Such as:

- (a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at or issued by M&T Bank and/or any other entity in the world;
- (b) the unbroken series of documents relating to the DeLanos' purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, including but not limited to:
 - (i) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY; and
 - (ii) personal property, including any vehicle, mobile home, or water vessel;
- (c) mortgaged documents;
- (d) loan documents;
- (e) title documents and other documents reviewing title, such as abstracts of title;
- (f) prize documents, such as lottery and gambling documents;
- (g) service documents, wherever in the world such service was, is being, or may be received or given; and
- (h) documents concerning the college expenses of each of the DeLanos' children,

including but not limited to tuition, books, transportation, room and board, and any loan extended by a government or a private entity for the purpose of such education, regardless of whose name appears as the borrower on the loan documents;

2) the production of such documents shall be made pursuant to the following timeframes:

(a) within two weeks of the date of this Order, such documents dated since January 1, 2000, to date;

(b) within 30 days from the date of this Order, such documents dated since January 1, 1975, to December 31, 1999.

20. The holder of the original of any of the documents within the scope of this Order shall certify that he or she holds such original and acknowledges the duty under this Order to hold it in a secure place, ensure its chain of custody, and produce it only upon order of this Court, the court to which *DeLano* may be transferred, the Supreme Court of the United States, or the Judicial Conference of the United States.

21. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, W BNY, (hereinafter *Pfuntner*), are withdrawn from the District and Bankruptcy Courts to this Court pursuant to 28 U.S.C. §157(d) and the inherent power of this Court over lower courts in the Second Circuit.

22. The orders of Judge Ninfo, II, of August 9, 2005, confirming the DeLanos' Chapter 13 plan and of February 7, 2007, discharging the DeLanos after completion of their plan are hereby revoked; his order of August 8, 2005, to M&T Bank shall continue in force and the Bank shall continue making payments to Trustee Reiber until the appointment of a trustee to succeed him and from then on to the successor trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.

23. The notice signed by Clerk Warren, dated January 24, 2007, releasing employer from making further payments to Trustee Reiber is hereby withdrawn and the situation preceding it is reinstated as if the notice had never been given or acted upon.
24. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*, but shall continue subject to the jurisdiction of this Court and this Order, and such jurisdiction shall continue after appointment of a successor trustee or transfer of *DeLano* to any other court;
25. The Court recommends that:
 - a. the successor trustee be an experienced trustee from a district other than WDNY, such as a trustee based in Albany, NY, who shall:
 - b. certify that he or she:
 - 1) is unfamiliar with any aspect of *DeLano*,
 - 2) is unrelated and unknown to any party or officer in WDNY and WBNY;
 - 3) will faithfully represent pursuant to law the DeLanos' unsecured creditors;
 - c. exhaustively investigate the DeLanos' financial affairs on the basis of the documents described herein and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets,
 - d. produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets - whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and
 - e. file in the court under whose jurisdiction this case shall be at the time, and serve upon the DeLanos and Dr. Cordero a copy of, such report together with a copy of its related

documents, which shall include all documents obtained during the course of such investigation and any previous investigation conducted while the case was in the Bankruptcy Court or the District Court.

26. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶25 above; and such firm shall produce a certificate equivalent to that required therein.
27. Court Reporter Mary Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference of the United States for investigation of her refusal to certify that the transcript of her recording of the evidentiary hearing held in the Bankruptcy Court, WBNY, on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim would be complete, accurate, and tamper-free; Dr. Cordero's motion of July 18, 2005, for the District Court, WDNY, to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript and produce it for review and evaluation to the Conference, this Court, and Dr. Cordero.
28. Notwithstanding the above and without detriment to any party's duty to it carry out, *DeLano* and *Pfuntner* are reported under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the U.S. Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either of those cases and unacquainted with any of the parties to either of them, or court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that

may be investigated, and that no staff from the offices of the Department or the FBI in either Rochester or Buffalo participate in any way in such investigation.

29. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a visiting judge from a circuit other than the Second Circuit who is unfamiliar with either of those cases and unrelated and unacquainted with any of the parties to either of those cases, or any court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated in connection therewith.
30. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and any party shall be allowed to make its own electronic sound or video recording of any and all such proceedings.

FOR THE COURT:

Date