UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the *Premier*, the *Pfuntner v. Gordon et al.*, and the *DeLano* (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the *Premier*, *Pfuntner*, and *DeLano* cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:
Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004

ORDER

IT IS HEREBY ORDERED that the motion is _____**GRANTED**_____**DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

Blank

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION TO QUASH
a bankruptcy court's order
to sever a claim from
the case on appeal in this Court
to try it in another bankruptcy case

In re PREMIER VAN LINES, INC.,
Debtor

Case no. 03-5023

JAMES PFUNTER,
Plaintiff

Adversary Proceeding
Case no. 02-2230

-v-

KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK,
Defendants

RICHARD CORDERO
Third party plaintiff

-v-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.

2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfuntner v. Gordon et al, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole Pfuntner case, moot; and makes a mockery of the appellate process.

3. Indeed, Judge Ninfo is reopening now Pfuntner v. Gordon et al. to sever from it Dr. Cordero's

claim against Mr. DeLano and have Dr. Cordero try it in another case, that is, Mr. and Mrs. DeLano's bankruptcy case, dkt. no. 04-20280. The foregone conclusion is that the Judge will grant the DeLanos' motion to disallow that claim, which arose from the Pfuntner case, and thus eliminate Dr. Cordero from the bankruptcy case. Judge Ninfo and the DeLanos want to do this now, after treating Dr. Cordero as a creditor for six months, because he is the only creditor that analyzed the DeLanos' January 26 petition and other documents and showed in his July 9 statement evidence of fraud. Consider these few elements, cf. longer list at Exhibit E-page 88 §IV:

a) Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…but declared in their petition only $535 in hand and on account; and household goods worth merely $2,910 at the end of two lifetimes of work!, while they owe $98,092 on 18 credit cards, but made a $10,000 loan to their son, undated and described as "uncollectible". Does one need to be a lending industry insider, like Mr. DeLano, to recognize that these numbers do not make sense or rather to know how and with whom to pull it off?

4. Evidence that the Order's purpose is to eliminate Dr. Cordero and protect the DeLanos is that Judge Ninfo suspended all proceedings in the DeLano case until the motion to disallow Dr. Cordero's claim has been finally determined at an evidentiary hearing in 2005, or beyond in case of appeals! (E-155¶2) If the Judge did not suspend the DeLano case, **1)** Dr. Cordero would move for Judge Ninfo to force the DeLanos to comply with his pro-forma July 26 order of document production, which he issued at Dr. Cordero's instigation but they disobeyed with impunity (E-95, 105, 107,109); **2)** move to force the DeLanos to comply with his discovery requests, such as production of bank and debit card account statements that can lead to the whereabouts of the concealed assets and thus prove bankruptcy fraud by the DeLanos and others, requests that the DeLanos are likely to respect even less than they did the Judge's order; and **3)** move again for examination of the DeLanos and others under FRBkrP Rule 2004. To ensure that no such action by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!

5. By not allowing the DeLano case from moving forward concurrently with the motion to disallow, Judge Ninfo excuses the Trustee from resubmitting for confirmation the DeLanos' debt repayment plan so that Dr. Cordero cannot oppose it by introducing any additional evidence of the DeLanos' bankruptcy fraud that he may discover. By so preventing concurrent progress of the case, Judge Ninfo harms all the 21 creditors, who have an interest in repayment beginning immediately, as well as the public at large, who necessarily bears the cost of fraud and wants it uncovered. Hence, Judge Ninfo has issued his Order with disregard for the law and appellate process, in bad faith, and contrary to the interest of the creditors and the public.

TABLE OF CONTENTS

****

I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process

6. The case on appeal in this Court originates in the Adversary Proceeding Pfuntner v. Gordon et al., all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousers, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

> Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank.

8. It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?

9. The situation would not be better at all if Dr. Cordero were found in the severed proceedings to have a claim against Mr. DeLano in the Pfuntner case on appeal here. When the Court remanded the case for trial, the other parties would try to escape liability by pointing to that finding. Either way, whatever justice could have been achieved through the appellate process would have been intentionally thwarted in anticipation by distorting through piecemeal litigation the dynamics among multiple parties and claims within the same series of transactions.

II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. DeLano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim

10. This is how the Bankruptcy Code, at 11 U.S.C., defines a "creditor":

> §101. Definitions
>
> (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…
>
> (15) "entity" includes person…

11. In turn, it defines "claim" thus:

> (5)"claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;[1]

12. These definitions easily encompass Dr. Cordero's claim against Mr. DeLano. Moreover, FRBkrP Rule 3001(a) provides thus:

[1] This definition of a claim was adopted in *United States v. Connery, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).*

(a) Proof of Claim

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

13. Dr. Cordero's proof of claim of May 15 was so formally correct that it was filed by the clerk of court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the benefit provided under FRBkrP Rule 3001(f):

(f) Evidentiary effect

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

14. Dr. Cordero's claim is now legally entitled to the presumption of validity. Hence, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their January 26 petition (E-3 Schedule F). It follows that to overcome that presumption they had to invoke legal grounds on which to mount a challenge to its validity. However, just as Judge Ninfo disregards law and rules so much that he did not cite any to support his Order, so Att. Werner.

A. Mr. DeLano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection on July 19, 2004

15. This is all Att. Werner could come up with in his July 19 Objection to a Claim (E-101):

Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

16. To avoid confusion, it should be noted that neither M&T Bank, nor Mr. DeLano, nor Dr. Cordero is a party to "Premier Van Lines (01-20692)". They are parties to the Adversary Proceeding. Thus, its docket no. 02-2230, is the one relevant because that is the case pending before this Court under docket no. 03-5023. But Att. Werner's citation works as an unintended reminder to this Court that it has jurisdiction to decide this motion because the Proceeding on appeal is being disrupted by arbitrary severance of a claim in it to be dragged into the DeLano case.

17. Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero's claim against him, namely, the third party claim of Mr. DeLano's negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano's M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer's clients held in such containers, such as Dr. Cordero's, which ended up lost or damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCivP Rule 8(a) to give "a short and plain statement of the claim". So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

19. It was only after Dr. Cordero's July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). How-ever, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims 'to have been in this business for 28 years', must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the $291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero's insistence the Judge issued on July 26 (E-107, 103).

23. In their desperation, Att. Werner denied Mr. DeLano's liability to Dr. Cordero and even that of his employer, M&T Bank, which is not even a creditor in the DeLano case and is not represented by Att. Werner or his law firm (E-130§III). However, an attorney's opinion on his client's lack of liability does not constitute evidence of anything and rebuts no legal presumption, and all the more so a lay man-like opinion unsupported by any legal authority (E-138§I).

24. Then Att. Werner spuriously alleged that Dr. Cordero did not set forth any claim against Mrs.

DeLano. Yet he filled out Schedule F (E-3), which requires the debtor to mark each claim thus:

> If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

25. A bankruptcy claim is perfectly sufficient if only against one of the joint debtors! Att. Werner must have known that. Hence, this allegation was spurious and made in bad faith (E-131§IV).

26. With a denial of knowledge belied by the facts, an irrelevant opinion on non-liability, and a spurious allegation Att. Werner cannot do what the claim objection form in capital letters required him to do (E-101):

> DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f)

27. Case law has interpreted this requirement thus:

> The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity. *In re Babcock & Wilcox Co., 2002 U.S. Dist. LEXIS 15742, at 6 (E.D.La. 2002)*.

28. The objector's evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim. *In re Wells, 51 B.R. 563 (D.Colo. 1985)*; *Matter of Unimet Corp., 74 B.R. 156 (Bankr. N.D. Ohio 1987)*. See also Collier on Bankruptcy, 15 ed. rvd., vol. 9, ¶3001.09[2]. Denial of liability as an employee is not evidence or proof of anything.

C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount

29. Dr. Cordero stated a legally sufficient claim against Mr. DeLano in a complaint that satisfied the notice pleading requirements of the FRCivP. The claim also satisfied the Bankruptcy Code, for it requires only that notice essentially of the claim's existence and amount be given. In fact, the Proof of Claim Form B10 provides in 9. Supporting Documents "…If the documents are voluminous, attach a summary." That is precisely what Dr. Cordero did when he mailed his claim against Mr. DeLano on May 15 with three pages out of the 31 pages of the complaint, including the caption page, which was labeled (E-77):

> Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court

30. That only notice of the claim must be given follows from the fact that even the debtor, the trustee, a codebtor, or a surety can file the claim if the creditor fails to do so timely. None of them have to give notice of how the claim arose and what its legal basis is. Even a contingent and disputed claim is a valid claim under 11 U.S.C.§101(5); (¶11, supra). Judge Ninfo had no justification to pierce, as it were, the presumption of validity of Dr. Cordero's claim against Mr. DeLano in the case on appeal here and drag the claim out and into the DeLano case so that, as Att. Werner put it (¶15), Dr. Cordero 'substantiate an obligation of Debtors' to him. By doing so the Judge showed again his bias against Dr. Cordero and toward the local parties (E-118§IV).

D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing

31. Section 502(b) of Title 11 provides that if a claim is objected to, the judge:

> …shall determine the amount of such claim…and shall allow such claim in such amount…

32. The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim, whose proof "shall constitute prima facie evidence of the validity and amount of the claim". This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other words, drowning in debt. It is his challenge that is suspect.

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim "because such claim is contingent or unmatured". It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim's contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

34. If the judge cannot determine the claim's amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

> (c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case…shall be estimated.

35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim's value when liquidating the claim "would unduly delay the closing of the estate".

36. But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero's claim because Judge Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) "to ensure that the case is handled expeditiously and economically" and under

§1325(a)(3), to ascertain whether the DeLanos' 'plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law'. These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public's interest in bankruptcies free of fraud, which trumps a debtor's private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition's good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos' petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero's request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909[2] *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)

39. Intent can be inferred from a person's conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thereby denying him access to judicial process and requiring this Court to step in

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

41. Yet, Judge Ninfo knows that the DeLanos are all but certain to fail to produce documents to Dr. Cordero because they already failed to do so pursuant to the Judge's own order of July 26, a failure complained about by Dr. Cordero at the August 25 hearing without being contradicted by Att. Werner. Likewise, the DeLanos so much failed to produce documents at the requests (E-73,82) of Trustee Reiber that on June 15 he moved to dismiss. Moreover, the DeLanos already ignored Dr. Cordero's direct requests for documents of March 30 and May 23 (E-64¶80b, 83). Through denial of judicial assistance, the mission to conduct discovery on the claim against Mr.

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

DeLano is made an impossible one: Judge Ninfo has set up Dr. Cordero to fail!

IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero

42. Contrary to Judge Ninfo's statements, the issues that Dr. Cordero pursues in the DeLano case are not "collateral and tangential" (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the $291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero's property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bankruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).

43. If Judge Ninfo 'is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property' (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September *2002*, is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

> …[to] address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward….

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

45. By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

> In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction…

46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero' property could also have been stolen or damaged.

47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.

48. While Judge Ninfo blames Dr. Cordero for 'not taking possession and securing his property'

(E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and protracting the resolution of the case enormously.

49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

> Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano…(E-151)

50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

51. By contrast, Judge Ninfo put stock on the fact that "DeLano, through his attorney, has adamantly denied: (1) any knowledge…and (2) any…liability if there has been any loss or damage" to Dr. Cordero's property (E-150¶2). Did Dr. Cordero have to assert "adamantly" the evidence of such loss or damage for the Judge not to cast doubt on it with his formulation "if there in fact has been any loss or damage"?; id.

52. While Dr. Cordero's are "collateral and tangential issues" (E-153), the Judge considers that:

> whether the Debtors are honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to the Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00…(E-153-154)

53. Is this the way an impartial arbiter talks before having the benefit of the discovery that he is ordering Dr. Cordero to begin to undertake and who has allowed the DeLanos to conceal information by disobeying his July 26 document production order? Why does Judge Ninfo deem it "much more important" to make 21 creditors bear the loss of 4/5 of the $185,462 in liabilities of Mr. DeLano (E-3 Summary of Schedules) than to hold him, a bank loan officer for 15 years, to a higher standard of financial responsibility because of his superior knowledge? Why does Judge Ninfo deny Dr. Cordero the protection to which he is entitled under the Code? Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

54. Moreover, Judge Ninfo has already prejudged a key issue in controversy:

> …the Court determined that:…(2) the purpose of filing the Claim Objection was not to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors

> honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (E-154-155)

55. How does Judge Ninfo know that the Debtors believe anything "honestly" since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case "for unreasonable delay" in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero's claim now?

56. Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.

57. Do Judge Ninfo's statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero's position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

V. A mechanism for many bankruptcy cases to generate money, lots of it

58. The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, the confirmation of a plan generates a stream of payments from which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of the statements made in the petition would only be compensated -if at all, for there is no specific provision therefor- to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)

59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber,

Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos' petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos'.

61. There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy petitioners from having to account for $291,470; **2)** allows them to disobey his document production order with impunity; **3)** prejudges in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

VI. Relief requested

62. Therefore, Dr. Cordero respectfully requests that this Court:

a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;

b) Refer the Premier, the Pfuntner v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:

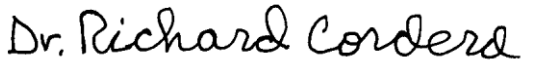
1. Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and
2. Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;
3. David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;

c) Disqualify Judge Ninfo from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

d) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on:

September 9, 2004



59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
tel. (718) 827-9521

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by fax or United States Postal Service on the following parties copies of my motion to quash the Order of WBNY Judge John C. Ninfo, II, of August 30, 2004:

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070
fax (585) 244-1085

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650
fax (585) 454-6525

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

Mr. George Schwergel
Gullace & Weld LLP
Att. for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP
Agents for eCast Settlement & Associates National. Bank
P.O. Box 35480
Newark, NJ 07193-5480
tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin. Dept.
acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

TABLE OF EXHIBITS

for the Motion in CA2 to Quash the 30aug4 Order of Bankruptcy Judge John C. Ninfo, II, WBNY

by

Dr. Richard Cordero

September 9, 2004