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The Dismissal of the *DeLano* Case

How a Court of Appeals compromised its integrity to protect a bankruptcy fraud scheme as part of coordinated judicial wrongdoing thus complementing its systematic dismissal of complaints against its peers[1]

The *DeLano* case was filed voluntarily by a bankruptcy officer of a bank with 39 years' experience in the banking and financing industries and his wife, a Xerox specialist, in the Bankruptcy Court, WBNY[2], and from there it was appealed by a creditor to the District Court[3], WDNY, and then to the Court of Appeals for the Second Circuit, CA2. There the question presented on appeal explicitly stated that it had one unifying issue, namely, the existence and means of operation of a judicially supported bankruptcy fraud scheme[4].

I. A bankruptcy officer files a self-serving incongruous bankruptcy petition

From the start of the appeal, the creditor moved CA2 to enable itself to ascertain the facts as a prerequisite to applying the law by ordering the debtors to produce documents as necessary to establish the good faith of any bankruptcy petition (11 U.S.C. §1325(a)(3))[5] as their bank account statements. The need for them was all the more obvious because the debtors had claimed that in hand and on account they only had $535, yet they had a regular income and after deduction of generous living expenses their stated disposable income to apply to their proposed debt repayment plan was $1,940! Likewise, the DeLanos declared in their petition

a that their only real property was their home (D:30)[2], bought in 1975 (D:342) and appraised in November 2003 at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and receiving during that period at least $382,187…through a string of eight mortgages! (D:341) *Mind-boggling!*[6]

b. that they owed $98,092 –spread over 18 credit cards (D:38)- while they valued their household goods at only $2,810 (D:31), less than 1% of their earnings in the previous 3 years and their excess income for 2 months! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their worklives of more than 30 years.

c. Theirs is one of the trustee's 3,907 *open* cases[7] and their lawyer's 525[8] before the same judge.

II. The judges protect an insider that can incriminate them in a plea bargain

Despite these and similar blatantly suspicious incongruities in the debtors' petition (¶¶2a-3)[1], the Court did exactly the same as had done the debtors, the bankruptcy panel and U.S. assistant and regional trustees, and the judges below[18]: CA2 denied him not once, or twice, but five times every single document that he requested.(¶2)[1] Thereby the Court condoned and even joined in the unlawful denial of the creditor's right to discovery and disregarded its duty to know the facts to which to apply the law. So it left the whereabouts of at least $673,657 of the debtors' assets unaccounted for[9]…in just one of the trustee's 3,909 *open* cases![16] Even worse, it abused in self-

interest its power by covering up the fraud of the debtors and the support of its bankruptcy judge appointee and district judge peer for the bankruptcy fraud scheme.

Indeed, if the debtors had been ordered to produce supporting documents, they would have been proved to have filed a fraudulent bankruptcy petition that contained false statements to conceal assets in preparation for traveling debt-free into their golden retirement. As a result, they would face up to 20 years imprisonment and devastating fines of up to $500,000 each. Therefore, they would have an incentive to enter into a plea bargain whereby in exchange for a reduction of the criminal charges against them, Mr. DeLano would have traded up: Drawing from his by now longer than 39 year long career as a banker and bankruptcy officer, he would provide testimony incriminating the trustees, the judges, and other court officers.

In turn, those judges would enter into their own plea bargains where they would agree to disclose their evidence that CA2 judges have known about the bankruptcy fraud scheme for years, since before the reappointment of the bankruptcy judge to a second term in office[10], and have likewise supported or tolerated it.

III. CA2's pretext of equitable mootness to commit an inequitable dismissal

Having placed itself in a conflict of interests between safeguarding due process and ensuring its survival, CA2 proceeded in its own and its collegial interest. Since it could not grant the creditor's incessant motions for the debtors' incriminating documents and thus, could not decide the case on the merits, CA2 resorted to the expediency of a summary order:

> [This] appeal is subject to dismissal under this Court's sua sponte authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005)[11]; *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993)[12]. See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005) *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

The Court disregarded the law and the facts by invoking for its dismissal the doctrine of equitable mootness. To begin with, neither of those cases even hinted its availability to cure bankruptcy fraud, much less a bankruptcy fraud scheme. In fact, neither deals with fraud at all. Nor do they deal with bankruptcies under 11 U.S.C. Chapter 13 and its simple "adjustment of debts of an individual with regular income"[22] to creditors under a plan of cents on the dollar repayment.

Rather, those two cases dealt with Chapter 11 bankruptcies and the complex reorganization of bankrupt companies. Actually, they were even more complex, for they involved third companies and individuals that were not even parties to the bankruptcy cases! In fact, those cases dealt with the release of debt owed by non-party companies to the reorganizing debtor company in exchange for a substantial contribution to its reorganization plan and a challenge after the completion of the arrangement by a creditor, to whom giving relief would have required "unraveling the Plan". To avoid such dire consequence, the courts in those cases applied:

> Equitable mootness [] a prudential doctrine that is invoked to avoid disturbing a reorganization plan once implemented. [E]quitable mootness is a pragmatic principle, grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable. The doctrine [is] merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties. *Metromedia, §III*.

By contrast, deciding *DeLano* on its merits by ordering document production and finding out that the debtors engaged in fraudulent concealment of assets would not disturb their completed debt repayment plan in any way. There would be no "recoupment of these funds 'already paid from non-parties, and the continued payment to creditors would be neither impracticable nor' "impose an unfair hardship on faultless beneficiaries who are not parties to this appeal", *Chateaugay, §II*. Instead of making token repayment and evading over 78% of their debts, the DeLanos would have to keep paying the rest of what they owe the only innocent parties here: those who in good faith became their creditors and to whom it would be inequitable to deprive of what is owed them in order to allow the DeLanos to benefit from their participation in the bankruptcy fraud scheme.

IV. CA2 dismissed the case as it does complaints: disregarding law and facts

Equity was farthest from all concerns of CA2. It was faced with a conflict of interests between its duty to impartially apply the law to the facts and its interest in self-preservation. It compromised and chose to protect itself by not giving its judicial appointee and peer cause to incriminate it for supporting their bankruptcy fraud scheme. To that end, it simply fetched equitable mootness and two citations and slapped them on an order form and without ascertaining whether any was even applicable, dismissed *DeLano*. Thereby it committed an inequity against the creditor, an innocent party, by depriving him of his claim against the debtors, the fraudsters, and his day in court.

Worse yet, it undermined the integrity of judicial process by dispensing with discovery and the facts and ruling in its own favor. Nothing extraordinary for CA2, just another dismissal with the same willful ignorance of the facts and the law as when judges systematically dismiss complaints against their own without investigation regardless of the gravity of the allegations[13]. As for the creditor, he moved for panel rehearing and hearing en banc. Will any judge vote that determining his or her CA's integrity "involves a question of exceptional importance" (FRAP 35(a)(2)) or is covering up a bankruptcy fraud scheme routine coordinated judicial wrongdoing?

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[1] Http://Judicial-Discipline-Reform.org/Follow_money/enbanc_14mar8.pdf.

[2].Http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf, §V.

[3] Http://Judicial-Discipline-Reform.org/docs/DrCordero_DeLano_WDNY_21dec5.pdf.

[4] Http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_06_4780_CA2.pdf at 19§V.

[5] Http://Judicial-Discipline-Reform.org/docs/11usc_Bkr_Code_2005.pdf.

[6] Http://Judicial-Discipline-Reform.org/Follow_money/Penfield_homesale.pdf.

[7] Http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf.

[8] Http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf.

[9] Http://Judicial-Discipline-Reform.org/docs/DeLanos_income.pdf.

[10] Http://Judicial-Discipline-Reform.org/Follow_money/motion_en_banc.pdf at CA:1978.

[11] Http://Judicial-Discipline-Reform.org/docs/Metromedia_416f3d136.pdf.

[12] Http://Judicial-Discipline-Reform.org/docs/Chateaugay_988f2d322.pdf at 1963§III.

[13] Http://Judicial-Discipline-Reform.org/docs/DrRCordero_v_JJNinfo_WBNY.pdf. and http://Judicial-Discipline-Reform.org/docs/DrCordero_v_CJWalker_CA2_19mar4.pdf.