

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

**NOTICE OF MOTION
FOR A DECLARATION OF
THE MODE OF COMPUTING THE TIMELINESS OF
AN OBJECTION TO A CLAIM OF EXEMPTIONS
AND
FOR A WRITTEN STATEMENT ON AND OF LOCAL PRACTICE**

PLEASE TAKE NOTICE, that Dr. Richard Cordero on submission moves this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, for declaratory judgment to be issued on April 21, 2004, or as soon as the next possible motion date, establishing unambiguously I. the mode under Rule 4003(b) FRBkrP for computing the timeliness of an objection to a claim of exemptions and II. what authoritative value the court accords to “local practice” relative to that of laws and rules, and for a written statement of such “local practice”.

I. The period for filing objections to a claim of exemptions under Rule 4003(b) runs from the conclusion of the meeting of creditors after taking into account all adjournments

1. Rule 4003(b) FRBkrP provides that objections to a claim of exemptions can be filed within 30 days after the conclusion of the meeting of creditors. Such meeting in the above-captioned DeLano case was held on March 8, 2004, in Rochester, NY., and presided by James Weidman, Esq., attorney for Chapter 13 Trustee George Reiber. However, although the meeting’s very purpose was to examine the DeLanos, it was frustrated when Mr. Weidman cut off Dr. Richard Cordero, the only creditor present, after the latter had asked only two questions of the DeLanos. Therefore, far from the meeting having concluded on that occasion, it can hardly be said to have started yet.
2. In any event, the meeting was adjourned to April 26 by both Mr. Weidman at the meeting of creditors and Trustee Reiber at the hearing on confirmation of plans held in this court later that day. Consequently, the meeting did not conclude on March 8 and, as a result, the 30-day period for filing objections to a claim of exemptions has not begun to run.
3. Nevertheless, Dr. Cordero files now his objection to the DeLanos’ claim to exemptions in order

to be on the safe side of timeliness. While indisputably on that side, he seeks a ruling establishing explicitly that the point in time under Rule 4003(b) from which the 30-day period begins to run is the conclusion of the meeting as extended by any adjournment and that the conclusion must be expressly announced by the trustee or the court giving notice thereof.

II. Recent statements of the court undermine the reasonable expectation that it will give effect to even clear statutory language rather than disregard it in favor of “local practice”

A. Dr. Cordero’s uncontradicted statement of facts to the court in Mr. Weidman’s presence

4. Although the language of Rule 4003(b) is clear and case law has confirmed its clarity beyond doubt, the explicit expression of its construction in a ruling by this court is necessary because the court has recently given additional evidence that it will disregard even clear, unambiguous statutory language in favor of what it calls “local practice”.
5. Indeed, on March 8, Dr. Cordero stated in open court, the Hon. John C. Ninfo, II, presiding, that after he had asked only two questions of the DeLanos at the meeting of creditors earlier that afternoon, Mr. Weidman, who presided it, cut him off and immediately thereafter adjourned it. Mr. Weidman alleged to justify his action that there was no more time to continue the meeting.
6. However, Mr. Weidman’s allegation was objectively untenable:
 - a) He ended the meeting of the DeLanos at around 1:59p.m.;
 - b) Dr. Cordero was the only creditor of the DeLanos present;
 - c) the hearing on confirmation of plans would not start until 3:30p.m. in the courtroom downstairs in the same building;
 - d) after those on the DeLano case left the meeting of creditors room, Mr. Weidman was left with just one lawyer and two other persons;
 - e) judging by the amount of time that he spent on the two previous cases, he could have disposed of that third one in 10 to 15 minutes and there would still have been plenty of time for the DeLano meeting to continue.
7. When Dr. Cordero related these facts to the court, Mr. Weidman was in the courtroom at Trustee Reiber’s table and did not contradict Dr. Cordero’s account. The latter can be easily corroborated, of course, since the meeting of creditors was taped recorded.
8. However, the court opened its response by saying that Dr. Cordero would not like what it had to say; that it had read Dr. Cordero’s objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.
9. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting’s purpose was for the creditors to examine the debtors. He

also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

10. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney.
11. Dr. Cordero added that Mr. Weidman's conduct raised questions because Mr. Weidman kept asking him what evidence he had that the DeLanos had committed fraud despite his having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice.

B. The court impermissibly gave precedence to “local practice” over law and rule

13. At no point did the court recognize that the unambiguous purpose of 11 U.S.C. §§341 and 343 is precisely to examine the creditors. Two questions asked by the sole creditor present, particularly one that traveled all the way from New York City to Rochester in order to examine the debtors and who specifically pointed that fact to Mr. Weidman, do not constitute an examination. There can be no doubt that Mr. Weidman conducted himself unlawfully, arbitrarily, and suspiciously.
14. Yet, the court came to Mr. Weidman's defense and raised “local practice” as his shield. In so doing, the court also wielded “local practice” as a sword to cut down the law of Congress. With the same swing of “local practice” it defeated Dr. Cordero's reasonable expectation that an act of Congress constitutes the law of the land. As such, federal laws and rules must be applied the same way and to the same full extent in New York City, Rochester, Los Angeles, Miami, and Alaska, without suffering any diminution through any unsuspectingly unsheathed and treacherously stabbing unwritten inconsistent “local practice”.

C. The court's advice that Dr. Cordero should call to find out what the “local practice” provides is unlawful, impracticable, and meaningless in practice

15. Fortunately, the court understood how such “local practice” in the hands of an arbitrary officer could make short shrift of Non-local Dr. Cordero's reliance interest, and after thinking quickly, provided the necessary advice: Dr. Cordero should call to find out what the “local practice” is

rather than just read the law and rely on it strictly.

16. What an astonishing statement for a federal judge to make!, for it is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice given in advance and opportunity to be heard, not tidbits of local knowledge that to forestall unfair surprise one must ferret out on a hit and miss basis. Ironically, the setting in which Judge Ninfo expressly confirmed the supremacy in his court of “local practice” over legality was a hearing; and the occasion on which such “local practice” had trampled underfoot the law was a meeting of creditors convened through judicial notice.
17. Moreover, Judge Ninfo’s advice to a non-local party to call to find out what the “local practice” is detracts from the reflection of analytical capacity that a judge must demonstrate to be effective and respected in his position, for how impracticable and meaningless in practice it is!
 - a) Whom was Dr. Cordero supposed to call to obtain all the details of “local practice”? Had he called a clerk of court and asked that she tell him all there is about “local practice”, would she not have jumped and said, “Ah!, you mean the local rules. You can download them from the Internet or I can send you a hard copy in the m...” “No! no! I mean “local practice”, you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law.” Would the baffled clerk not think that Dr. Cordero was low on something in the head and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by “local practice”?
 - b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with Dr. Cordero the secrets of “local practice”?
 - c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether “local practice” would allow him to ask more than two questions at the meeting of creditors if he was the only creditor present?
 - d) So finally Dr. Cordero resigns himself and calls a Rochester attorney, Jimmy, who advertises his specialty as “local practice”, and tells him that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten “local practice”. Jimmy’s eyes roll up and down wondering what this self-styled doctor, most likely a sheep veterinarian, can possibly mean until he blushes a little and tells Dr. Cordero, “You had me going with that euphemism. Sure!, You can hire me to teach you real good the unwritable dirty secrets of how things get cookin’ in our local court. You can’t get closer ‘local’ than that...unless you also want ‘practice’, but that gonna cost you an arm and a leg too.”
 - e) And it comes to happen that one day Dr. Cordero is in court and hears it said that Rule 4003(b) provides that...but Dr. Cordero jauntily springs to his feet, “Forget ‘bout it!, Judge, ‘cause Jimmy told me what’s meaning in “local practice”: that the 30 day period begins to run from the date stated in the notice of meeting of creditors, no matter what happens on that occasion.” Will the court say, “Now you are talking, Dr. Cordero! If Jimmy told you what the “local practice” is and you relied on it, then that’s the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance. What else did Jimmy tell you?”

18. Oh! stop this nonsense! This is a memorandum of law, not a five cent skitch! Yet, the above statements lay out the implications of what a federal judge said in open court and for the record. And it was no joke then either, for on the basis of that “local practice” all the enormous effort that Dr. Cordero made to educate himself about the law and rules of bankruptcy in order to analyze a petition and write a five-page statement of objections meticulously supported by cited legal provisions and all the time and effort that he spent traveling to Rochester were rendered meaningless because the judge said that it was perfectly OK in “local practice” for the trustee’s attorney to put an end to the debtors’ examination after the second question by the sole creditor present if the attorney had no time to lose before the debtors might blurt out something.
19. No doubt, this is a very serious matter. Its logical and grave consequence is that if §§341 and 343 do not mean what they say because “local practice” says that they mean something else, then one must wonder what Rule 4003(b) really means. When must a non-local file his objection to a claim of exemptions in order to have a chance at its being considered timely? What does the rest of the Code and the Rules mean? Why bother at all researching the law when in the end the court will not hesitate to unfairly surprise a non-local by doing whatever it says “local practice” is? By proceeding thus, the court has created an untenable situation of legal uncertainty and arbitrariness.
20. But it has confirmed with certainty how it proceeds: Judge Ninfo conducts the court’s business, not as a federal judicial officer sworn to uphold the Constitution and apply the laws of the United States, but rather as the Lord of the Fiefdom of Rochester, one carved out of the territory of applicability of the acts of Congress, whose laws and rules he disregards just as he stretches the facts out of proportion. For how much longer?

III. Relief requested:

21. Therefore, Dr. Cordero respectfully request that:
 - a) the DeLanos’ claim of exemptions not be granted;
 - b) the grant of such claim not be considered, if at all, until the issue of the good faith of their bankruptcy petition has been conclusively established;
 - c) the court expressly state that under Rule 4003(b) the 30-day period within which to object to a claim of exemptions does not begin to run until the meeting of creditors, after all its adjournments, is formally announced as concluded by the trustee or the court and notice thereof is timely given to the parties in interest;
 - d) the court explicitly recognize that:
 - 1) “local practice” is absolutely powerless to invalidate a provision of law or a rule, whether it be an act of Congress or a rule of any of the Federal Rules of Procedure or Evidence or a state law or rule;
 - 2) it will never give such “local practice” precedence over any such act or rule in any proceeding before it;
 - 3) it will not allow “local practice” to be used to confer on a local party an advantage over a non-local party;

- e) send Dr. Cordero a written statement of “local practice” not inconsistent with any law or rule and which it suggests that if at all possible and cost-effective Dr. Cordero observe when participating in proceedings before it.

March 31, 2004

Dr.
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