

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTNER,

Plaintiff

Adversary proceeding
no. 02-2230

-vs-

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

Defendants

CORDERO'S

AMENDED ANSWER

RICHARD CORDERO

Cross- and Third-party Plaintiff

WITH

-vs-

CROSSCLAIMS

KENNETH W. GORDON and M&T BANK

Cross-defendants

AND

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

Third party defendants

THIRD-PARTY CLAIMS

Dr. Richard Cordero, co-defendant, incorporates herein his Answer, mailed to the Plaintiff and each co-defendant on November 2, 2002, in its entirety without modifying its contents. Thus, this pleading serves as a vehicle to add his cross-claims against co-defendants Trustee Kenneth Gordon, Esq., and Manufacturers & Traders Trust Bank. The pleading also gives notice to the Plaintiff and the co-defendants of Dr. Cordero's third-party claims against Mr. David Palmer, Mr. David Dworkin, Jefferson Henrietta Associates, and Mr. David Delano.

1. Mr. David Palmer, who owned the Debtor, Premier Van Lines, (hereinafter referred to as Premier) doing business from the warehouse at 900 Jefferson Road, Rochester, NY, 14623,

and who represented to Dr. Cordero that his property was stored there, is joined as a third-party defendant.

2. Mr. David Dworkin, owner and/or manager of the warehouse at 900 Jefferson Road, Rochester, NY, 14623, (hereinafter referred to as the Jefferson-Henrietta warehouse), who represented to Dr. Cordero that his property was stored there and billed him therefor, is joined as a third-party defendant.
3. Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607, which is the company that owns or manages the Jefferson-Henrietta warehouse where Dr. Cordero's property was represented to be stored by Mr. Dworkin, its principal or agent, is joined as a third-party defendant.
4. Manufacturers & Traders Trust Bank, at 255 East Avenue, Rochester, NY 14604, (hereinafter referred to as M&T Bank), which holds a blanket lien against the Debtor's assets, including the storage containers supposedly containing Dr. Cordero's property, is served as a cross-defendant.
5. Mr. David Delano, Assistant Vice President at M&T Bank in Rochester, who represented to Dr. Cordero that his property was stored at the Jefferson-Henrietta warehouse, is joined as a third-party defendant.
6. Kenneth Gordon, Esq., the Chapter 7 Trustee, is served as a cross-defendant.
7. The jurisdiction of the Court over this Adversary Proceeding, which relates to Chapter 7 Case No: 01-20692, pending in the U.S. Bankruptcy Court of the Western District of New York, and over the herein stated cross-claims, and third-party claims is provided by 28 U.S.C. 1334 and 28 U.S.C. 157(b) (2) and (c)(1).
8. Under 28 U.S.C. 1409, the Court is the proper venue for this Adversary Proceeding and cross-claims and third-party claims.

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I. STATEMENT OF FACTS

9. The parties listed above are the main actors in this almost year-long saga about how principals or agents can bounce forward and kick back a person that lives hundreds of miles away in order to escape responsibility for their own lack of due care and diligence and thereby, with no regard for that person’s property, effort, time, money, and needs, pass on that responsibility to someone else...and the customer?, ‘may he fend for himself!’ Some of the salient bouncings are the following, whose account may not make for a soothing bedtime reading, but the events that they refer to have certainly constituted a nightmarish imbroglio for Dr. Cordero. Enjoy!

10. Premier was in the storage business and had received Dr. Cordero’s property for storage.

11. Beginning on January 9, 2002, and continuing for more than three months Dr. Cordero communicated with Premier’s owner, Mr. David Palmer, who assured him that his property was safe at the Jefferson-Henrietta warehouse. Yet, Mr. Palmer failed to keep his promise to confirm that in writing... At no time did he mention that Premier was in financial difficulties, let alone in liquidation under Chapter 7. Then he bounced Dr. Cordero to his associate, Mr. David Dworkin, and eventually, even his phone would be disconnected and there would be no way of getting in touch with Mr. Palmer.

12. Likewise beginning in January 2002 and continuing for some three months, Dr. Cordero communicated with Mr. Dworkin. He too assured Dr. Cordero that his property was in good

condition at the Jefferson-Henrietta warehouse, where Premier rented warehousing space and Mr. Palmer had his office. Just as Mr. Palmer, Mr. Dworkin failed to keep his promise to state that in a letter and send it to Dr. Cordero. Nor did he mention for months that Premier was in any sort of financial difficulties, let alone that it had gone bankrupt.

13. By contrast, Jefferson Henrietta Associates, Mr. Dworkin's company, sent Dr. Cordero a bill for the storage of his property, including the insurance fee.
14. After Dr. Cordero kept calling Mr. Dworkin and asking him for that written statement of the whereabouts and condition of his property, Mr. Dworkin told him for the first time in April that Premier was in bankruptcy proceedings. By that time all the filing deadlines had passed. What is more, although Premier had filed under Chapter 11 over a year earlier, in March 2001, both Mr. Palmer and Mr. Dworkin kept billing Dr. Cordero for storage for a year thereafter and for months after the conversion of the case to Chapter 7 in December 2001, as if the company were a going concern and without giving notice of to Dr. Cordero of any bankruptcy proceedings. Then Mr. Dworkin bounced Dr. Cordero to M&T Bank, a Premier lien holder, without stating the name of any officer in specific.
15. M&T Bank, through Mr. Mike Nowicki in Buffalo and his Vice President Vince Pusateri in Rochester, acknowledged that their Bank held a general lien against Premier's assets, including storage containers, but not against the property of Premier's customers contained in them. Mr. Pusateri referred Dr. Cordero to his Assistant Vice President David Delano, to Trustee Kenneth Gordon, and to Premier's attorney, Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro.
16. Dr. Cordero called Attorney Stilwell, explained the situation, and asked to be put in touch with Mr. Palmer. Attorney Stilwell agreed and said that he would have Mr. Palmer call him and added that if Mr. Palmer did not call him by the end of the week, Dr. Cordero could call back.
17. Mr. Palmer never called, wrote, or otherwise communicated with Dr. Cordero through his attorney or anybody else.
18. Dr. Cordero kept calling Attorney Stilwell, who did not take or return his calls. Eventually he wrote to Dr. Cordero that he could not disclose Mr. Palmer's whereabouts and that, "Premier ceased operations at the end of 2001. Our understanding was that the landlord of

the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about....The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company....”

19. Dr. Cordero had to call Trustee Gordon several times until he first took his call on May 16, 2002. The Trustee said that he did not run Premier's business; that Mr. Dworkin had taken it over, and told Dr. Cordero to file a proof of claim in the bankruptcy court, whose phone number and case number 01-20692 he gave him. Dr. Cordero requested Trustee Gordon to put in writing the information about the case and the parties that he had already dealt with in his search for his property. The Trustee agreed to do so. Then he bounced Dr. Cordero back to Mr. Dworkin, saying that he would know about Dr. Cordero's property.
20. Dr. Cordero called the Bankruptcy Court only to learn from Deputy Clerk Karen Tacy that the deadline for filing a proof of claim had already gone by on April 24, 2002, and that Dr. Cordero was not in the mailing matrix.
21. After Trustee Gordon failed to send the promised information and documents, Dr. Cordero had to write to him on May 30, and then follow up with calls, which Trustee Gordon neither took nor returned. It was not until two weeks later that for all communication with Dr. Cordero the Trustee sent him copy of his letter to Mr. Dworkin dated April 16, 2002, and a cover letter to Dr. Cordero simply suggesting “that you retain counsel to investigate what has happened to your property.”
22. Dr. Cordero called Mr. Dworkin, who said that he had received from Trustee Gordon the keys to Mr. Palmer's office, located in the Jefferson-Henrietta warehouse.
23. Dr. Cordero called M&T Bank Pusateri, who said that he would try to find a list of Premier's customers, that Mr. Delano was in charge of the Premier case and was working with an appraiser to determine the value of Premier's assets in order to determine the value of the lien, and that he would have Mr. Delano call Dr. Cordero.
24. Mr. Delano called Dr. Cordero on June 18, 2002, and said that he had called Mr. Dworkin to request a list of all the Premier customers with belongings in the Jefferson-Henrietta

warehouse and that Mr. Dworkin had agreed to send it, and that Mr. Dworkin was billing the other Premier customers with belongings in that warehouse. Mr. Delano said that he had seen crates with the label “Cordero” in the warehouse. He referred Dr. Cordero to M&T Bank’s Attorney Mike Beyma, at Underberg & Kessler, and told Dr. Cordero that he would have his lawyer call him once he had received the documents from Mr. Dworkin.

25. Attorney Amber Barney, at Underberg & Kessler, called Dr. Cordero. She said that the Bank sold at auction storage containers and other assets of Premier to Champion Moving & Storage. Then by letter she bounced Dr. Cordero to Champion at 795 Beehan Road, Rochester, NY 14624.
26. Dr. Cordero called Champion and talked to his manager, Mr. Scott Leonard, who confirmed that Champion had bought Premier’s assets and equipment, including storage containers. He promised to send information thereabout and Champion catalogs. Mr. Leonard never sent anything to Dr. Cordero. He bounced Dr. Cordero to Trustee Gordon.
27. Dr. Cordero called Mr. Delano. He confirmed the sale to Champion of the Premier assets on which M&T Bank had a lien, but that it was still too earlier for Champion to contact Dr. Cordero about his property and that Champion would continue to serve the storage contracts.
28. Dr. Cordero called Champion’s owner, Mr. Christopher Carter, who indicated that he had not received either his property or that of some other Premier customers.
29. Mr. Carter then examined the business files included among the Premier assets and equipment that he had removed from the Jefferson-Henrietta warehouse to Champion’s warehouse. Thereby he discovered that Premier had assets, including storage containers, at Plaintiff’s warehouse located on 2140 Sackett Road, in Avon, NY, and that Dr. Cordero’s property had been stored there some years earlier.
30. When Dr. Cordero next phoned Mr. Carter and learned about it, he requested that Mr. Carter write to Mr. Pusateri of M&T Bank to let him know.
31. M&T Bank launched another investigation. It then found out that Premier had stored at Plaintiff’s warehouse assets and storage containers, including some with a label bearing Dr. Cordero’s name and a lot number. The Bank informed Dr. Cordero of the name and address of Plaintiff Pfuntner’ lawyer, Mr. David MacKnight.

32. Dr. Cordero wrote to Mr. MacKnight, who neither wrote back nor took or returned any of his phone calls.
33. Thus, Dr. Cordero had to contact Plaintiff Pfunter by phone. Plaintiff expressed his wish to be paid for the storage of his property in his warehouse. On three occasions, Dr. Cordero asked and Plaintiff Pfunter promised to find out and let him know the number of storage containers in which his property was held and the condition of the property. However, on each occasion Plaintiff failed to provide that information.
34. By contrast, Plaintiff Pfunter said that he would not release his property because the trustee for Premier, Mr. Gordon, could then sue him. On the last occasion that Dr. Cordero asked him to put that in writing, Plaintiff Pfunter refused and then hung up on Dr. Cordero.
35. Dr. Cordero called Trustee Gordon, who would not take or return any of his calls. In his last call to his office, on Monday, September 23, Dr. Cordero asked to speak with him. His secretary Brenda put him on hold. When she came back, she said that Mr. Gordon was not taking any more calls concerning Premier. Dr. Cordero asked why and she said that Dr. Cordero could write. He told her that he had copied his letter to Mr. Pfunter's lawyer to the Trustee, but the latter had not given him any feedback on it. Therefore, Dr. Cordero asked whether Mr. Gordon would reply to any letter from him. Brenda said that she was only a secretary following instructions and hung up on him.
36. Trustee Gordon sent Dr. Cordero a letter dated September 23, in which he accused Dr. Cordero of harassing his staff: "Your continual telephone calls to my office and harassment of my staff must stop immediately." He published his accusation by copying that letter to David D. MacKnight, Esq., Michael Beyma, Esq., and Ray Stilwell, Esq. Other people in his and their offices may have read that letter and its accusation of harassment.
37. Trustee Gordon also wrote there that, "I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again."
38. On September 27, 2002, Dr. Cordero wrote to Trustee Gordon to let him know why his letter of September 23, was unjustified in its content as well as unprofessional in its tone, to request an apology, an assurance that the lines of communication would be opened, and copies of letters con-

cerning him that the Trustee had sent to other parties. Trustee Gordon never replied to Dr. Cordero.

39. Dr. Cordero wrote to Hon. Judge John C. Ninfo, II, on September 27, to complain about Trustee Gordon's refusal to communicate with him about the course of the proceedings, although the importance of being able to do so had increased upon the discovery of other assets of the Debtor. He also applied for a determination of whether Mr. Gordon's performance in this case complied with his duties as trustee and whether he was fit to continue as such.

40. Judge Ninfo referred that application to Assistant United States Trustee Kathleen Dunivin Schmitt.

41. Trustee Gordon wrote to Judge Ninfo on October 1, 2002, and claimed that Dr. Cordero had made more than 20 phone calls to his staff and that because the same message had been repeated to him, he had been belligerent, demanding, and demeaning to the Trustee's staff, and had become very angry at it. The Trustee also portrayed Dr. Cordero as lacking the capacity or good faith to understand the Trustee's role. His own words were these:

a) "I have instructed my staff to advise former customers of Premier Van Lines that items stored with Premier Van Lines were not property of the bankruptcy estate, were not to be administered by me and could be accessed by contacting either the landlord from whom Premier Van Lines rented its facilities or the attorney's for M&T Bank who held a lien on the assets of Premier Van Lines. Mr. Cordero was so advised when he contacted my office in the early spring of 2002. In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them. I spoke myself with Mr. Cordero on at least one occasion to reemphasize the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys....Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff. After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets....I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application."

42. Trustee Gordon published that letter of October 1, by sending it Judge Ninfo, and copying it to Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq.; David D. MacKnight, Esq.; Michael Beyma, Esq.; Ray Stilwell, Esq.; and Dr. Cordero. Other people in his and their offices may have read that letter.

II. STATEMENT OF CLAIMS

43. All averments made above are hereby adopted by reference.

A. David Palmer

44. Regardless of how Mr. Palmer may have benefited from his application for protection under the bankruptcy laws, he did not thereby acquire immunity from all his liability to all people for any harm that he did to any person. This is particularly so with respect to those people, such as Dr. Cordero, to whom he failed to give notice of, and from whom he concealed, the financial difficulties of his company.

45. Moreover, having invoked the jurisdiction of the Court to benefit from the application of the bankruptcy laws, Mr. Palmer remains under that jurisdiction until the final disposition of all matters related to the company and his management of it for whose benefit he made such application.

46. Mr. Palmer intentionally misrepresented the condition of Premier when in his conversations with Dr. Cordero beginning on January 9, 2002, he concealed that his company, not only had financial difficulties, but was already in liquidation under Chapter 7, yet pretended that it was in a position to store safely his property. Thereby Mr. Palmer deprived Dr. Cordero of the opportunity to take action to protect his property.

47. Mr. Palmer intentionally, recklessly, or negligently misrepresented the whereabouts of Dr. Cordero's property when in his conversations with Dr. Cordero beginning on January 9, 2002, he affirmed that his property was in the Jefferson-Henrietta warehouse, when in fact either none or only some of his property was there, although [t]he was in a position and had the duty to know where it was since he had collected money to store and insure it.

48. Mr. Palmer failed his duty of due care for Dr. Cordero's property when he intentionally, recklessly, or negligently left all or some of it in Plaintiff Pfuntner's warehouse in Avon; failed to pay Plaintiff under the lease with Plaintiff for warehousing it there; and failed to disclose in the bankruptcy filings and proceedings his liability for that property and his asset in the storage containers holding such property and in his right to collect fees for its storage.
49. Mr. Palmer breached his contract with Dr. Cordero for the safe storage of his property in exchange for the monthly storage fee as well as insurance fee for which he billed and received payment from Dr. Cordero.
50. Mr. Palmer committed fraud if he billed and received payment from Dr. Cordero for storage of, and insurance for, Dr. Cordero's property although he had lost or abandoned such property.
51. Mr. Palmer committed insurance fraud if he billed and received payment from Dr. Cordero to insure his property but failed to secure insurance coverage for it, and all the more so if he was in no position to secure such coverage because he had lost or abandoned such property.
52. By proceeding so fraudulently, recklessly, or negligently, Mr. Palmer has caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

B. David Dworkin

53. Mr. Dworkin rented warehousing and office space in his Jefferson-Henrietta warehouse to Premier since June 2001 or thereabouts. He had such close business relations to Mr. Palmer that the latter represented him as his associate to Dr. Cordero and Mr. Dworkin for months did not correct Dr. Cordero when the latter made statements to him to the effect that Mr. Dworkin and Mr. Palmer were associates or partners. Thus, Mr. Dworkin must have known the financial condition of Premier and Mr. Palmer.
54. Yet, Mr. Dworkin intentionally concealed and misrepresented that condition when in his

conversations with Dr. Cordero beginning in January 2002 and his correspondence to him beginning with his letter of March 1, 2002, he concealed that Premier, not only had financial difficulties, but was already in liquidation under Chapter 7, that Mr. Palmer had taken off, and gave the impression that Premier was a going concern capable of storing his property safely.

55. Likewise, Mr. Dworkin fraudulently, recklessly, or negligently misrepresented the condition of Dr. Cordero's property when in his conversations with Dr. Cordero beginning in January 2002, he affirmed that his property was in the Jefferson-Henrietta warehouse and was safe, when in fact either none or only some of his property was there.
56. Thereby Mr. Dworkin fraudulently avoided prompting Dr. Cordero into taking action to protect his property and preserved his opportunity to step into the shoes of Premier to bill Dr. Cordero for the storage of his property.
57. When Mr. Dworkin accepted the transfer from Premier of the right to bill Dr. Cordero for the storage of his property, as stated in his letter of March 1, 2002, and did bill him therefor on the invoice dated March 7, 2002, Mr. Dworkin became the party to a contract for storage with Dr. Cordero.
58. But if no such contract existed, Mr. Dworkin had no right to bill Dr. Cordero and committed fraud by pretending that he had such right.
59. Mr. Dworkin was fraudulent, reckless, or negligent when he caused his company Jefferson Henrietta Associates to issue an invoice dated March 7, 2002, billing Dr. Cordero for storage of, and insurance for, his property, although he later admitted that he never even knew for sure whether Mr. Palmer had ever moved Dr. Cordero's property into the Jefferson-Henrietta warehouse.
60. Mr. Dworkin committed insurance fraud when on the March 7, 2002, invoice he billed Dr. Cordero for insurance coverage for his property although he later admitted in his letter of April 25, 2002, that Jefferson Henrietta Associates was not carrying any insurance on his property.
61. Mr. Dworkin was reckless or negligent when, after assuming from Premier the right to bill Dr. Cordero for the storage of his property and the obligation to exercise due care for it, he

failed to inventory the property that he allowed Champion Moving & Storage to remove from his Jefferson-Henrietta warehouse and did not monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

62. By proceeding so fraudulently, recklessly, or negligently, Mr. Dworkin has breached his storage contract with Dr. Cordero, caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

C. Jefferson Henrietta Associates

63. When Jefferson Henrietta Associates accepted the transfer from Premier of the right to bill Dr. Cordero for the storage of his property, as stated in the letter of March 1, 2002, and did bill him therefor on the invoice dated March 7, 2002, Jefferson Henrietta Associates became the party to a contract for storage with Dr. Cordero.

64. But if no such contract existed, Jefferson Henrietta Associates had no right to bill Dr. Cordero and committed fraud by pretending that it had such right.

65. Jefferson Henrietta Associates was fraudulent, reckless, or negligent when on its March 7, 2002 invoice it billed Dr. Cordero for storage of, and insurance for, his property, without first ascertaining that the property for which it claimed to be providing storage was in fact in its warehouse or despite its reason to believe that it might never have been there.

66. Jefferson Henrietta Associates committed insurance fraud when on the March 7, 2002, invoice it billed Dr. Cordero for insurance coverage for his property although it later admitted in its letter of April 25, 2002, that it was not carrying any insurance on his property.

67. Jefferson Henrietta Associates was reckless or negligent when, after assuming from Premier the right to bill Dr. Cordero for the storage of his property and the obligation to exercise due care for it, it failed to inventory the property that it allowed Champion Moving & Storage to remove from its Jefferson-Henrietta warehouse and did not monitor such removal so that

now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

68. By proceeding so fraudulently, recklessly, or negligently, Jefferson Henrietta Associates has breached his storage contract with Dr. Cordero, caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.
69. Jefferson Henrietta Associates is the employer of Mr. Dworkin and as the principal is liable for the acts of its agent.

D. David Delano

70. Mr. Delano was reckless or negligent when on June 18, 2002, he stated to Dr. Cordero that he had seen storage containers bearing the label 'Cordero' in the Jefferson-Henrietta warehouse, if he did not actually see any such containers there.
71. Mr. Delano, as the M&T Bank officer in charge of the Premier case, was reckless or negligent when he failed to inventory Premier's assets and equipment on which his Bank held a lien and which were stored in the Jefferson-Henrietta warehouse, although he knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of M&T Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for their removal to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.
72. By proceeding so recklessly or negligently, Mr. Delano has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused

him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

E. M&T Bank

73. M&T Bank was reckless or negligent when it failed to inventory Premier's assets and equipment on which it held a lien and which were stored in the Jefferson-Henrietta warehouse, although it knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of the Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for the removal of the container and their property to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.
74. By proceeding so recklessly or negligently, M&T Bank has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.
75. M&T Bank is Mr. Delano's employer and as the principal is liable for the acts of its agent.

F. Trustee Kenneth Gordon

76. Trustee Gordon failed to exercise due diligence in finding out whether Premier had assets elsewhere than at the Jefferson-Henrietta warehouse, even though he had access and control of Premier's business files, and he could have done exactly what Mr. Carter did after removing to Champion's warehouse Premier's assets and equipment, including its business files, that is, examine its files to determine whether Premier had assets, including storage containers, elsewhere. By so doing, Mr. Carter was able to discover that Premier had such assets at the Plaintiff's warehouse in Avon. This made it possible to find some such containers labeled "Cordero" and presumably containing property of Dr. Cordero.

77. Trustee Gordon recklessly or negligently abandoned Premier's assets and equipment, including storage containers, to third parties, namely, Mr. Dworkin and Jefferson Henrietta Associates, without even making an inventory of what he was abandoning, although he knew that the containers held property of Premier's customers, who had substantial claims on Premier for the property that they had entrusted to it for storage.
78. Trustee Gordon recklessly or negligently handled Premier's liquidation under Chapter 7 when he failed to give those customers notice, not only that Premier was in liquidation, but also that he was abandoning such assets and equipment, including the containers with their property, to Mr. Dworkin and Jefferson Henrietta Associates, then allowing yet another party, namely, M&T Bank, to sell them to still another party, that is, Champion Moving & Storage, which would even physically remove the containers with their property to Champion's warehouse; failed to ask the customers to consent to such removal; and failed to monitor it. Thereby he deprived Premier customers, such as Dr. Cordero, of the opportunity to protect their property and their claims against Premier.
79. Trustee Gordon failed to exercise good judgment and due diligence by failing to recognize and discharge his duty so to notify such Premier customers, who formed a class of claimants whose notification was required for the proper liquidation of Premier's assets. Indeed, professional experience or common sense would have told Trustee Gordon that such Premier customers would want to have their property back or know its whereabouts. Therefore, they had claims on Premier, but would run into difficulty with Premier creditors, including those that had possession or control of Premier's storage containers and equipment stored elsewhere. The correctness of this elemental reasoning is shown by Plaintiff Pfuntner's refusal to release to the defendants Premier's assets in his Avon warehouse or even to allow Premier customers, with whom Plaintiff had never entered into any contract, such as Dr. Cordero, to remove their property stored in Premier's storage containers.
80. By proceeding so recklessly or negligently, Trustee Gordon has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims. What was he thinking!? Is this how a company is liquidated

competently under Chapter 7? To end up in this tangle, what need was there for a trustee?

81. Trustee Gordon defamed Dr. Cordero when in the abovementioned letters of September 23 and October 1, 2002, published to, among others, the peers and professionals named above, and in all likelihood their and the Trustee's staff, the Trustee, negligently or with either knowledge that it was false or reckless disregard for the truth, falsely accused him of harassing his staff, demeaning it, becoming very angry at it, behaving unreasonably in his demands of it, and being irrationally stubborn in making more than 20 phone calls to his staff just to be told the same message.
82. This false accusation stated conduct unbecoming of a professional, damaging to the image of a reasonable and well-respected person, and apt to make a person the subject of ridicule. Hence, it cast Dr. Cordero's general character in a false light and impaired his reputation and standing in the community, particularly among his peers, other professionals, and their staff.
83. Trustee Gordon also impugned Dr. Cordero's professional capacity and competency as well as his good faith when, in the above indicated instances, he stated that Dr. Cordero failed or refused to understand the Trustee's limited role and showed poor understanding of it. This impugnement was particularly defamatory and uncalled-for given the facts.
84. Indeed, if Trustee Gordon's role were so unambiguously understandable, there should be no reason:
 - a) for Attorney David MacKnight, who represents Plaintiff Pfuntner, to sue him "to determine the obligations and duties of the Trustee..." as Mr. MacKnight stated he would do in his letter to Dr. Cordero of September 19, 2002, with copy to the Trustee;
 - b) for Mr. Pfuntner both to refuse to release Dr. Cordero's property in Premier's storage containers for fear that the Trustee may sue him and to refer Dr. Cordero to the Trustee;
 - c) for the Trustee to write to Mr. Dworkin, in whose warehouse Premier had leased storage and office space, in April 2002, four months after the conversion of the case from Chapter 11 to Chapter 7, to let him know what the Trustee would be or not be renting or controlling and how Mr. Dworkin should handle Premier's customers;

- d) for Mr. Dworkin to deem it necessary to refer Dr. Cordero to the trustee for Premier to find out how to proceed with his respect to his property;
- e) for Attorney Raymond Stilwell, who represents Mr. Palmer, to have engaged in conduct that was then objected to by the Trustee, as shown in Mr. Stillwell's letter of May 30, 2002;
- f) for Attorney Michael Beyma, who represents M&T Bank, to have referred Dr. Cordero to the Trustee;
- g) for Attorneys MacKnight and Beyma to feel compelled to copy the Trustee to letters that they wrote to Dr. Cordero;
- h) for M&T Bank Vice President Vince Pusateri and Assistant Vice President David Delano to have referred Dr. Cordero to Trustee Gordon.

85. Is it because Trustee Gordon understands his role as being so limited that he stated in his October 1 letter that he would "soon be issuing a No Distribution Report"?

86. The fact that those parties referred Dr. Cordero to Trustee Gordon shows also that they deemed the Trustee to have information that Dr. Cordero needed to obtain to pursue the search of his property. Thus, the Trustee failed in his duty as such when he enjoined Dr. Cordero not to call his office any more, thereby denying him information and assistance that he had the duty and was in a position to provide to Dr. Cordero.

87. By casting these aspersions on Dr. Cordero's conduct and character, Trustee Gordon intended to make the Hon. John C. Ninfo, II, to whom Dr. Cordero had applied for a review of the Trustee's performance and fitness, as well as Assistant United States Trustee Kathleen Dunivin Schmitt, in whose province remains the supervision of a Chapter 7 trustee, believe that his own conduct was justified so as to obtain a personal benefit, namely, that no action be taken on Dr. Cordero's application. As the Trustee put it in his October 1 letter, "Please accept this letter as my response to the application made by Richard Cordero dated September 27, 2002 in the above-referenced matter [Premier Van Lines, Inc., Case No.: 01-20692, Chapter 7] in which he seeks my removal as Trustee....Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application."

88. Since Trustee Gordon is both an officer of the court and an appointee under federal law, he knew that such status imposes upon him the duty to be truthful and act in good faith when he

makes statements either to the court or the U.S. Trustee. Likewise, ethical considerations applicable to members of the bar and requiring lawyers to conduct themselves with honesty and candor also impose the same duty on him.

89. The peers and professionals and their staff to whom Trustee Gordon published his defamatory statements, aware of the Trustee's status, could reasonably assume that he was properly discharging that duty. Their assumption would have led them to lend even more credence to the Trustee's statements, thereby aggravating the detrimental impact of his statements on Dr. Cordero's reputation and standing.
90. By means of his defamatory statements, Trustee Gordon intended to lead the Judge and the U.S. Trustee to dismiss Dr. Cordero's application as one not to be taken seriously because submitted by just an irascible, verbally abusive man of limited intelligence and little intellectual honesty that had gotten mad because not able or willing to get it however many times he was told while searching for his things: Trustee Gordon could do nothing for him...and neither could the Court nor the U.S. Trustee. This is outrageous!

III. STATEMENT OF RELIEF SOUGHT

91. All averments made above are hereby adopted by reference.
92. Dr. Cordero respectfully requests that the Court:

A. All cross-defendants and third-party defendants

93. Hold the parties addressed by this pleading, namely, Trustee Gordon and M&T Bank, the cross-defendants, and Mr. Palmer, Mr. Dworkin, Jefferson Henrietta Associates, and Mr. Delano, the third-party defendants, jointly and severally liable to Dr. Cordero for their failure to establish the whereabouts of, and produce, Dr. Cordero's property;
94. Order those parties to establish the whereabouts of, and produce, Dr. Cordero's property;
95. Order those parties jointly and severally to pay compensation to Dr. Cordero for the deterioration, loss, or theft of his property, whose value is estimated at \$14,000 incremented by the capitalized moving, storage, insurance and related fees and taxes that Dr. Cordero has

paid since his property went into storage in August 1993;

96. Order the parties jointly and severally to move at their expense and risk Dr. Cordero's property wherever they may find it to an agreed storage place, just as the property of the other Premier customers was moved free of charge to them to another storage place;
97. Hold each of those parties liable for punitive damages to Dr. Cordero for having engaged in fraudulent, reckless, or negligent conduct that for the best part of a year has caused him an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims;
98. Hold the parties jointly and severally liable for any award or prorata share for which Dr. Cordero may be found liable to Plaintiff Pfuntner;

B. David Palmer, David Dworkin, and Jefferson Henrietta Associates

99. Hold Mr. Palmer, Mr. Dworkin, and Jefferson Henrietta Associates liable for breach of contract and order them to pay compensation to Dr. Cordero;

C. Trustee Kenneth Gordon

100. Hold Trustee Gordon liable for defamation to Dr. Cordero and/or for having cast him in a false light, and order him to pay compensation in the amount of \$100,000;
101. Order Trustee Gordon to pay Dr. Cordero punitive damages for his malicious and outrageous statements, contained in his September 23 and October 1, 2002, letters, to Judge Ninfo, hearing the case where he was the trustee, and to Assistant U.S. Trustee Schmitt, supervising his performance as trustee, in order to disparage Dr. Cordero and dissuade them from taking any action on Dr. Cordero's application for a review of Trustee Gordon's performance and fitness as trustee;
102. Order Trustee Gordon to issue a retraction of his defamatory and false light statements as well as an apology and publish them to everybody who may have read or otherwise learned

of such statements;

103. Hold that Trustee Gordon failed to recognize his duty to provide to Premier customers in general notice and information necessary to protect their property held in Premier's storage containers, and in particular to Dr. Cordero, since he was repeatedly referred to the Trustee by other parties, and order him to pay compensation to Dr. Cordero for not having provided such notice and information;
104. Hold that Trustee Gordon failed in his basic duty of fairness as a fiduciary by having refused to communicate with Dr. Cordero, explicitly enjoining him not to contact his office again, and directing his staff to receive and accept no more telephone calls from Dr. Cordero regarding this subject, although the Trustee provided other parties with information concerning Dr. Cordero, and order him to pay compensation to Dr. Cordero;
105. Order Trustee Gordon to afford Dr. Cordero access to him and his staff and all the information that a competent and responsible trustee would provide to any party in general and to a party similarly situated as Dr. Cordero, including any information that may help in locating and retrieving his property;
106. Hold that Trustee Gordon failed to perform competently as trustee;
107. Hold that Trustee Gordon is not fit to continue as trustee in this case;
108. Award Dr. Cordero reasonable attorney's fees, court costs, and the expense concomitant with litigating this case hundreds of miles from his home, together with such other relief as may seem just and proper.

IV. Table of Exhibits

- 1) Letter of David **Dworkin**, owner/manager of Jefferson Henrietta Associates, of **March 1, 2002, to Dr. Cordero** informing him that from then on monthly storage payments are to be made to Jefferson Henrietta Associates, not to Premier.....[A:91]
- 2) **Bill** for past storage and insurance from **Jefferson Henrietta Associates of March 7, 2002, to Dr. Cordero**.....[A:92]
- 3) Manager **Dworkin's** letter of **April 25, 2002, to Dr. Cordero** stating that his property has not been removed from the **Jefferson**

- Henrietta** warehouse since it took possession of the premises, but it is no longer insured[A:93]
- 4) Trustee **Gordon's** letter of **April 16, 2002, to** Warehouse **Dworkin** stating that M&T Bank has a blanket lien on Premier's assets in his Jefferson-Henrietta warehouse and that the Trustee will not rent or control them[A: 17]
 - 5) Trustee **Gordon's** letter of **June 10, 2002, to** Dr. **Cordero** with copy of his April 16 letter to Warehouse David Dworkin[A: 16]
 - 6) Letter of **May 30, 2002,** of Raymond **Stilwell, Esq.,** attorney for David Palmer, owner of Premier Van Lines, **to** Dr. **Cordero** stating that **Premier** Van Lines ceased operations at the end of **2001**.....[A: 18]
 - 7) Letter of Michael **Beyma, Esq.,** attorney for M&T Bank, of **August 28, 2002, to** Dr. **Cordero** stating that the **Bank did not** sell to Champion or any other party the **cabinets storing his property**.....[A:94]
 - 8) Att. **MacKnight's** letter of **September 19, 2002,**to Dr. **Cordero** stating that he will soon be receiving Mr. Pfuntner's **summons and complaint**[A:14]
 - 9) Trustee **Gordon's** letter of **September 23, 2002, to** Dr. **Cordero** enjoining him from contacting his office [A:1]
 - 10) Trustee **Gordon's** letter of **October 1, 2002, to** Judge **Ninfo** asking the Judge not to take any action on Dr. Cordero's September 27 Application.....[A:19]

Dated: November 21, 2002
 59 Crescent Street
 Brooklyn, NY 11208

Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

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,

vs.

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

Third Party Defendants

SIRS:

PLEASE TAKE NOTICE, that the Trustee, Kenneth W. Gordon, will move this Court at 1550 U.S. Courthouse, 100 State Street, Rochester, New York, 14614 on the 18th day of December, 2002, at 9:30 a.m. on that day, or as soon thereafter as counsel can be heard, for an Order to Dismiss pursuant to Bankruptcy Rule 7012 the Cross-Claims Against the Trustee in the above Adversary Proceeding made by Richard Cordero against Kenneth W. Gordon, Chapter 7 Trustee for Premier Van Lines, Inc. (Case No: 01-20692).

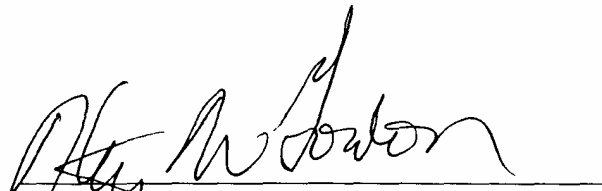
Chapter 7

Case No: 01-20692

AP No.: 02-2230

**NOTICE OF MOTION TO
DISMISS CROSS-CLAIM
AGAINST TRUSTEE IN
AN ADVERSARY
PROCEEDING**

Dated: December 5, 2002



Kenneth W. Gordon
Chapter 7 Trustee
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

TO: Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614

Dr. Richard Cordero, Esq.
59 Crescent Street
Brooklyn, New York 11208-1515

Raymond Stilwell, Esq.
Attorney for Debtor
300 Linden Oaks, Suite 220
Rochester, New York 14625

David D. MacKnight, Esq.
Attorney for Plaintiff
130 East Main Street
Rochester, NY 14604-1686

Mike Beyma, Esq.
Attorney for M&T Bank and David Delano
1800 Chase Square
Rochester, New York 14604

Rochester Americans Hockey Club
Office of the President
100 Exchange Blvd.
Rochester, New York 14614

David Palmer
1829 Middle Road
Rush, New York 14543

Jefferson Henrietta Associates
415 Park Avenue
Rochester, New York 14607

David Dworkin
415 Park Avenue
Rochester, New York 14607

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE: PREMIER VAN LINES, INC,

Debtor.

Chapter 7

Case No: 01-20692

JAMES PFUNTER,

Plaintiff,

A.P. No.: 02-2230

vs.

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,

TRUSTEE'S AFFIRMATION IN
SUPPORT OF MOTION TO
DISMISS CROSS-CLAIM

vs.

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

Third Party Defendants.

KENNETH W. GORDON affirms under penalties of perjury as follows:

1. I am the Chapter 7 Trustee appointed and designated as such in the above-referenced proceeding. The above-referenced bankruptcy case was commenced as a Chapter 11 case on March

5. 2001. The Chapter 11 proceeding was converted to Chapter 7 on December 20, 2001. I was appointed as Trustee on December 28, 2001.

2. The instant Adversary Proceeding was commenced by James Pfunter through his attorney David MacKnight to seek a declaration of the Court to determine who had the right to possess certain property in Mr. Pfunter's possession and the conditions under which delivery of such property was to be made.

3. Upon information and belief, Richard Cordero was a former customer of the debtor who stored items of personal property with the debtor. Based upon the pleadings and proceedings in this matter, it would appear as if some or all of Mr. Cordero's property was stored by debtor at a facility and on property owned by Mr. Pfunter.

4. Mr. Cordero has filed and served upon the parties an Answer to Mr. Pfunter's Complaint and a Third Party Complaint alleging Cross-Claims including Cross-Claims against me as Trustee. A copy of Mr. Cordero's Amended Answer with Cross-Claims is annexed hereto as Exhibit A. From a review of the Third Party Complaint with Cross-Claims, it would appear as if the allegations set forth in the Cross-Claims against the Trustee are identical in the two separate documents and thus a copy of the Third Party Summons and Complaint is not annexed hereto.

5. This Affirmation is made in support of a Motion to Dismiss the Cross-Claims made by Mr. Cordero against the Trustee.

6. Mr. Cordero's claims against the Trustee fall into two broad categories. First, in paragraphs 76 through 80. Mr. Cordero claims that the Trustee acted recklessly and negligently in failing to notify former customers of the debtor of the location of the stored personal property of such customers and in failing to administer such property and safeguard such property presumably as

as assets of the bankruptcy estate. Second, in paragraphs 81 through 90, Mr. Cordero complains that the Trustee has defamed him in two letters that were sent by the Trustee in connection with the bankruptcy proceeding. For the reasons set forth below, it is respectfully submitted even accepting the allegations of Mr. Cordero's claims as true, such claims are not legally sufficient and must be dismissed against the Trustee.

DEFAMATION CLAIM

7. Mr. Cordero alleges in paragraphs 36 and 37 that the Trustee sent to him a letter dated September 23, 2002 in response to Mr. Cordero's inquiries to the Trustee's office regarding the whereabouts and status of his personal property which he stored with the debtor. Mr. Cordero complains that the statements made by the Trustee in that letter were defamatory in nature. A copy of said letter was annexed to Mr. Cordero's Amended Answer with Cross-Claims and can be found near the end of Exhibit A annexed hereto.

8. Mr. Cordero alleges in paragraphs 41 and 42 that the Trustee wrote to the Court on October 1, 2002 in response to Mr. Cordero's complaint to the Court regarding the Trustee. A copy of the October 1, 2002 letter is also attached to Mr. Cordero's Amended Answer with Cross-Claims and can be found at the end of Exhibit A annexed hereto.

9. In paragraphs 81 through 90, Mr. Cordero alleges that the statements in the September 23, 2002 and October 1, 2002 letters were defamatory.

10. Assuming for the purposes of this Motion that the factual allegations set forth in Mr. Cordero's Amended Answer and Cross-Claim are true, they allege that defamatory statements were made in two letters by the Trustee which were both sent in connection with the bankruptcy proceeding in which the Trustee was appointed. Both letters directly addressed the issues raised by

Mr. Cordero and both related to matters which Mr. Cordero has alleged are involved in the administration of the bankruptcy proceeding.

11. It is well established under New York law that statements made in letters related to legal proceedings cannot form the basis of a defamation complaint unless made for the sole purpose of defamation with express malice. As the Supreme Court, Appellate Division, Third Department summarized in Grasso vs. Mathew, 164 AD2d 476, 479 (3rd Dept. 1990):

In the context of a legal proceeding, statements by parties and their attorneys are absolutely privileged, if, by any view or under any circumstances, they are pertinent to the litigation (Martirano vs. Frost, 25 NY2d 505, 507). No action for defamation exists unless the statement is so obviously impertinent as not to admit discussion of pertinence, and so needlessly defamatory as to warrant the inference of express malice and a motivation solely to defame (supra, 508). The absolute privilege embraces anything that may possibly or palpably be relative or pertinent, with the barest rationality, divorced from any palpable or pragmatic degree of probability (Dachowitz vs. Kranis, 61 AD2d 783). This test of pertinency is extremely liberal (Klein vs. McGauley, 29 AD2d 418, 420) and encompasses both words and writings (Youmans vs. Smith, 153 NY 214, 219), including correspondence between litigating parties and unsolicited offers of settlement (Klein vs. McGauley, supra at 420) which is the situation here.

12. Taking each of Mr. Cordero's factual allegations in the Cross-Claims as true, he alleges simply that he was defamed in correspondence by the Trustee and that the correspondence was clearly relevant to and in the context of bankruptcy proceedings. As such, the statements made in the correspondence by the Trustee were absolutely privileged and thus no action for defamation exists.

NEGLIGENCE AND RECKLESSNESS CLAIMS

13. Mr. Cordero alleges in paragraph 19 and 21 that the Trustee advised him that the debtor's business was not being operated by the Trustee and that information about Mr. Cordero's personal

property should be obtained by either contacting the landlord in possession of the property or from the lender who held a blanket security interest on all of the debtor's assets. In paragraphs 76 through 80, Mr. Cordero complains that the Trustee failed to locate Mr. Cordero's personal property and failed to notify Mr. Cordero of the whereabouts of Mr. Corder's personal property which was stored with the debtor. Mr. Cordero complains that the Trustee negligently or recklessly performed his duties as Trustee.

14. Assuming the allegations of fact made by Mr. Cordero are true, the "duties" which Mr. Cordero complains were performed negligently or recklessly are outside of the scope of the duties enumerated in the Bankruptcy Code to be performed by a Chapter 7 Trustee. Such duties are set forth in 11 U.S.C. §704. Those duties include collecting, safe guarding and accounting for property of the estate. Those duties do not include taking possession or control of property and items which were owned by third parties and do not constitute property of the estate.

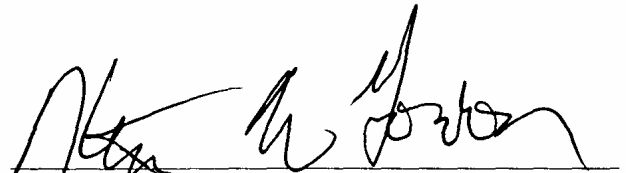
15. It is hornbook law that property held by the debtor under a bailment contract is not property of the estate. Collier's Bankruptcy §541.06 (1)(a). Under a bailment contract, the bailor or principal retains ownership of the property and if the agent or bailee files for bankruptcy, the debtor's estate does not acquire an ownership interest in the property but rather the bailor or principal is entitled to recover the property.

16. It is clear from the claims made by Mr. Cordero that he asserts his right to recover his property. There is no allegation nor is there any dispute that Mr. Cordero's personal property never became property of the debtor's estate. The relief sought by Mr. Cordero as it relates to his personal property as set forth in paragraphs 93 through 98 clearly seeks relief which is outside the scope of the duties of a Chapter 7 Trustee.

17. Thus, even if the factual allegations in the Cross-Claims are deemed true, the duties and the obligations which Mr. Cordero seeks to impose on the Trustee are outside the scope of those duties defined under 11 U.S.C §704. As such, Mr. Cordero's Cross-Claims against the Trustee for recklessness and negligence in performing the Trustee's duties failed to state a cause of action.

WHEREFORE, it is respectfully requested that the Cross-Claims of Mr. Cordero against the Trustee be dismissed and that such other and further relief be granted by the Court as is deemed just and proper.

Dated: Rochester, New York
December 5, 2002



KENNETH W. GORDON
CHAPTER 7 TRUSTEE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

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,

vs.

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

Third Party Defendants

Chapter 7

Case No: 01-20692

AP No.: 02-2230

**ORDER TO
DISMISS CROSS-CLAIM
AGAINST TRUSTEE IN
AN ADVERSARY
PROCEEDING**

TAKE NOTICE OF THE ENTRY
OF THIS ORDER ON 12/30/02
PAUL R. WARREN, CLERK
U.S. BANKRUPTCY COURT

BY: Paul Warren
Deputy Clerk

DATE: 12/30/02

The Chapter 7 Trustee, Kenneth W. Gordon, having moved this Court by Notice of Motion dated December 5, 2002 for an Order dismissing cross-claims against the trustee and having submitted to the Court his affirmation dated December 5, 2002 in support of the motion and upon hearing the Chapter 7 Trustee, Kenneth W. Gordon, in support of the Trustee's Motion and Dr. Richard Cordero, having submitted his Affirmation with attached exhibits dated December 10, 2002 in opposition to the Trustee's motion and upon hearing Dr. Cordero in opposition to the motion and the Court having reviewed that all papers and proceedings had herein, and after due deliberation it is hereby

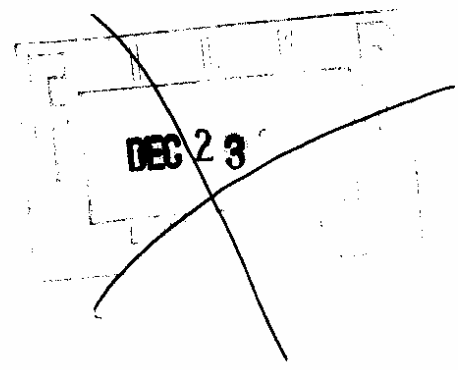
ORDERED, that the Trustee's Motion to Dismiss Cross-Claims Against the Trustee is granted and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed.

SO ORDERED THIS _____
DAY OF _____, 200____.
12/23/02



HONORABLE JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

DEC 23



**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re PREMIER VAN LINES, INC.

Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTNER,

Plaintiff

Adversary proceeding
no. 02-2230

-vs-

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

Defendants

CORDERO'S
NOTICE OF APPEAL
from
ORDER OF DISMISSAL
OF HIS CROSS-CLAIMS
AGAINST TRUSTEE GORDON

RICHARD CORDERO

Third party plaintiff

-vs-

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

Third party defendants

NOTICE OF APPEAL

Dr. Richard Cordero, co-defendant, appeals under 28 U.S.C. § 158(a) from the order of the Hon. Judge John C. Ninfo, II, granting Trustee Kenneth Gordon's motion to dismiss Dr. Cordero's cross-claims against him, which was entered in this adversary proceeding on December 30, 2002.

The names, addresses, and telephone numbers of Trustee Gordon -there is no information about any attorney representing him- and of the other parties to the Chapter 7 case and the adversary proceeding are as follows:

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

Premier Van Lines, Inc, Debtor,
Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod &
Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800

David Palmer, Third-party defendant,
1829 Middle Road
Rush, New York 14543
last attorney known:
Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod &
Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800

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

Rochester Americans Hockey Club,
Co-defendant
Office of the President
100 Exchange Blvd.
Rochester, New York 14614
(phone number or attorney not known)

M&T Bank, Co-defendant and
David Delano, Third-party defendant,
Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890

David Dworkin and
Jefferson Henrietta Associates, Third-party
defendants,
Karl S. Essler, Esq.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706

Together with this Notice, Dr. Cordero is filing attached hereto a separate Statement of Election to state that he elects the district court as the body to hear this appeal. Ten copies of that Statement and of this Notice are enclosed.

Payment of the prescribed \$105 filing fee is attached hereto.

Dated: January 9, 2003 Appellant Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515
Dr. Richard Cordero
tel. (718) 827-9521

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

(Added Aug. 1, 1991; and amended Mar. 1995; Oct. 1, 1997.)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTNER,

Plaintiff

Adversary proceeding
no. 02-2230

-vs-

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

Defendants

CORDERO'S
STATEMENT OF ELECTION

RICHARD CORDERO,

Third party plaintiff

-vs-

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

Third party defendants

STATEMENT OF ELECTION

Dr. Richard Cordero, appellant, hereby states, pursuant to 28 U.S.C. §158(c)(1)(A), his election to have the district court hear his appeal from the order of the Hon. Judge John C. Ninno, II, granting the motion brought by Kenneth Gordon, Esq., Trustee, to dismiss Dr. Cordero's cross-claims against him, which was entered on December 30, 2002.

Dated: January 9, 2003

59 Crescent Street
Brooklyn, NY 11208-1515

Appellant

Dr. Richard Cordero

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

Docket no. 03-5023

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

Kenneth Gordon,
Cross defendant-Appellee
and (no. 03-cv-6021L)

David Palmer,
Third party defendant-Appellee
(no. 03-MBK-6001L)

Appeal from the **United States District Court** for the Western District of New York

Opening brief and addendum
for and by

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

Blank