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

Docket no. 03-5023

United States Court of Appeals

for

the Second Circuit

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

OPENING BRIEF OF APPELLANT PRO SE RICHARD CORDERO

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

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

I. Preliminary Statement

The two orders appealed from were issued on March 27, 2003, (SPA-9&19, below) by the Hon. David G. Larimer, U.S. District Judge of the U.S. District Court for the Western District of New York. Underlying them were an order entered on December 30, 2002, (SPA-1) and a recommendation of February 4, 2003, (SPA-11-15) for an order submitted to the District Court by the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge of the U.S. Bankruptcy Court for the Western District of New York.

Part 1. BRIEF

II. TABLE OF CONTENTS

III. TABLE OF AUTHORITIES

A. CASES

B. STATUTES

C. RULES

1. Federal Rules of Bankruptcy Procedure

2. Federal Rules of Civil Procedure

3. Federal Rules of Appellate Procedure

D. OTHER AUTHORITIES

Part 2. SPECIAL APPENDIX (SPA-)

I. Orders appealed from and notices of appeal

A. *Cordero v.* ***Gordon*** (dismissal of cross-claims between defendants in *Pfuntner v. Gordon et al*, adversary proceeding, dkt. no. 02-2230, derived from *In re Premier Van Lines*, dkt. no. 01-20692, in the U.S. Bankruptcy Court, WBNY)

B. *Cordero v.* ***Palmer*** (denial of default judgment application by third party claimant-defendant against third party defendant as in A. *Pfuntner v. Gordon et al*, adversary proceeding, dkt. no. 02-2230, derived from *In re Premier Van Lines*, dkt. no. 01-20692)

II. Dockets

III. Text of Authorities

Part 3. APPENDIX
(in a separate volume)

SUMMARY

IV. Jurisdictional Statement

A. Jurisdiction of the district court

1. Within a bankruptcy case (dkt. no.01-20692), an adversary proceeding was filed in bankruptcy court by a non-party to this appeal. The court ordered Dr. Cordero's cross-claims against Trustee Kenneth Gordon dismissed (SPA-1). Dr. Cordero appealed to the district court (SPA-3) under 28 U.S.C. §158(a) (SPA-85).
2. In that adversary proceeding, Dr. Cordero, as a third party plaintiff, applied to the bankruptcy court for default judgment against Third-party defendant David Palmer (SPA-10). The court ordered the application transmitted to the district court (SPA-11) pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984). It made its recommendation thereon to the district court (SPA-11-15) under 28 U.S.C. §157(c)(1). Dr. Cordero moved in district court on March 2, under Rule 8011(a) F.R.Bkr.P. to enter default judgment and withdraw the adversary proceeding under 28 U.S.C. §157(d) (SPA-85).

B. Basis of appellate jurisdiction

3. This appeal from the two district court's orders of March 27 (SPA-9&19), is founded on 28 U.S.C. §§158(d) and 1291 (SPA-84), both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).*

C. Filing dates and timeliness of the appeal

4. The motions for rehearing in *Cordero v. Gordon* and *Cordero v. Palmer* were both denied by the district court on March 27, 2003 (SPA-9&19). From that date began to run under Rule 6(b)(2)(A) F.R.A.P. (SPA-81) the 30 days provided under Rule 4(a)(1)(A) F.R.A.P. (SPA-80) for filing a notice of appeal to the circuit court. That notice was timely filed on April 25, 2003 (SPA-21).

D. Appeal from final orders

5. The district court's March 27 order in *Cordero v. Gordon* (SPA-9) was final in dismissing Dr. Cordero's notice of appeal and, consequently, his cross-claims against Trustee Gordon.
6. The March 27 order in *Cordero v. Palmer* (SPA-19) was final in denying Dr. Cordero's right to default judgment for a sum certain against Defaulted party Palmer and stating that the bankruptcy court should conduct an inquest in which Dr. Cordero would be required to demonstrate damages as a precondition to his recovery of an uncertain sum.

V. Statement of Issues Presented for Review

A. In Cordero v. Gordon

7. Do the complete-on-mailing and the three-additional-days provisions of Rule 9006(e) and (f) F.R.Bkr.P, respectively (SPA-69), apply to Rule 8002 F.R.Bkr.P.

so that a notice of appeal timely mailed just as a motion to extend time to appeal timely mailed must be considered also timely filed even after the conclusion of the 10-day period or the 30-day period, respectively?

8. Did the court err when before any discovery whatsoever it summarily dismissed the cross-claims against Trustee Gordon of defamation as well as negligence and reckless performance as trustee, whereby the court failed to apply the standards for determining the legal sufficiency of the complaint, which though written by a pro se litigant it did not liberally construe, and went on to pass judgment on the merits while disregarding the genuine issues of material fact raised by the complaint?

B. In *Cordero v. Palmer*

9. Did the district court err in disregarding the objective and outcome determinative fact under Rule 55 F.R.Civ.P. (SPA-76) that the default judgment applied for was for a sum certain and instead imposed on Dr. Cordero the obligation to demonstrate recoverable loss although such obligation is not only nowhere to be found in Rule 55, but also contradicts its clear language of automaticity of entry of default judgment for a sum certain where a defendant has been found in default for failure to appear?

C. As to court officers at the district and the bankruptcy courts

10. Does the participation of bankruptcy and district court officers in a series of events of disregard of facts, procedural rules, and the law that consistently affect Dr. Cordero to his detriment and cannot be explained away as mere coincidences, but instead form a pattern of intentional and coordinated activity, create in the mind of a reasonable person the appearance of bias and prejudice sufficient to raise the justified expectation that Dr. Cordero will likewise not get an impartial and fair trial by those officers in those courts so as to warrant the removal of the case to a neutral court, such as the District Court for the Northern District of New York?

VI. Statement of the Case

11. The bankruptcy case of a moving and storage company spawned an adversary proceeding in bankruptcy court, where Dr. Cordero, a former client of the company, was named, together with the trustee, Kenneth Gordon, Esq., and others, defendant. Appearing pro se, Dr. Cordero cross-claimed to recover damages from Trustee Gordon for defamation as well as negligent and reckless performance as trustee. The Trustee moved to dismiss and the court summarily dismissed the cross-claims before disclosure or discovery had taken place and

although other parties' similar claims were allowed to stand. Dr. Cordero timely mailed his notice of appeal, but on the Trustee's motion, the District Court dismissed it as untimely filed.

12. Dr. Cordero served the Debtor's owner, Mr. David Palmer, with a summons and a third party complaint, but he failed to answer. Dr. Cordero timely applied on December 26, 2002, for default judgment for a sum certain. Only belatedly and upon Dr. Cordero's request to take action, did the bankruptcy court make a recommendation on February 4, 2003, namely, that the district court not enter default judgment because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.' Dr. Cordero moved the district court to enter default judgment despite the bankruptcy court's prejudgment of the case. Making no reference to that motion, the district court accepted the recommendation because Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain." Dr. Cordero moved the district court to correct its mistake since the application did involve a sum certain. The district court summarily denied the motion.

VII. Statement of Facts

A. In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and to avoid a review of his performance and fitness to serve, files false and defamatory statements about Dr. Cordero with the court and his U.S. trustee supervisor

13. A client –here Appellant Dr. Cordero- who resides in NY City, had entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993 and since then paid its storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about it. Mr. Palmer and his attorney assured him that his property was safe and in his warehouse at Jefferson-Henrietta, in Rochester (A-18). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.

14. In search for his property, Dr. Cordero was referred to the Chapter 7 trustee– here Appellee Trustee Gordon– (A-39). The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any

information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him (A-16,17).

15. Eventually Dr. Cordero found out from third parties (A-48,49;109, ftnts-5-8;352) that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but even enjoined Dr. Cordero not to contact him or his office anymore (A-1).

16. Dr. Cordero applied to the bankruptcy judge in charge of the bankruptcy case, the Hon. John C. Ninfo, II, for a review of the Trustee's performance and fitness to serve (A-7). The judge took no action save to refer the application to the Trustee's supervisor, an assistant U.S. Trustee (A-29).

17. Subsequently, in October 2002, Mr. Pfuntner brought an adversary proceeding (A-21,22) against Trustee Gordon, Dr. Cordero, and others. Dr. Cordero, appearing pro se, cross-claimed against the Trustee (A-70,83,88); who moved to dismiss (A-135). Before discovery had even begun or any initial disclosure had been provided by the other parties -Dr. Cordero provided numerous documents with his pleadings (A-11,45,62,90,123,414)- and before any meeting whatsoever, the judge dismissed the cross-claims by order entered on December 30, 2002 and

mailed from Rochester (SPA-1).

18. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003 (SPA-3). It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved to dismiss it as untimely filed (A-156) and the district court dismissed it (SPA-6,9).

B. David Palmer abandons Dr. Cordero's property and defrauds him of the fees; then fails to answer Dr. Cordero's complaint; yet, the courts deny Dr. Cordero's application for default judgment although for a sum certain, prejudge a happy ending to his property search, and impose on him a Rule 55-extraneous duty to demonstrate loss.

19. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees. Mr. Palmer, as Debtor (SPA-25-entry-13,12), was already under the bankruptcy court's jurisdiction, yet failed to answer the complaint of Dr. Cordero, who timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain (SPA-12;A-294). But disregarding Rule 55, never mind the equities between the two parties, both courts denied Dr. Cordero and spared Mr. Palmer default judgment under circumstances that have created the appearance of bias and prejudice, as shown next.

C. Bankruptcy and district court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial

1. The bankruptcy court excused Trustee Gordon's defamatory statements as merely **"part of the Trustee just trying to resolve these issues"**

20. Trustee Gordon submitted statements, some false and others disparaging of Dr. Cordero's character, to the bankruptcy court in his attempt to dissuade it from undertaking the review of his performance and fitness as trustee requested by Dr. Cordero. The latter brought this to the court's attention (A-32,41). Far from showing any concern for the integrity and fairness of proceedings, the court did not even try to ascertain whether Trustee Gordon had made false representations to the court in violation of Rule 9011(b)(3) F.R.Bkr.P.

21. On the contrary, it excused the Trustee in open court when at the hearing of the motion to dismiss it stated that:

> "I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court…it's all part of the Trustee just trying to resolve these issues." (A-274-275)

22. When the court approves of the use of defamation by an officer of the court trying to avoid review, what will it use itself to avoid having its rulings reversed on appeal? How much fairness would an objective observer expect that court to show the appellant?

2. The court disregarded facts and the law concerning genuine issues of material fact when dismissing Dr. Cordero's cross-claims of negligence and recklessness against Trustee Gordon

23. It was Mr. Pfuntner, not Dr. Cordero, who first sued Trustee Gordon claiming that:

> "17. 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 to be held by the Trustee on September 26, 2002," (A-24)

24. Does it get any more negligent and reckless than that? While the Trustee denied the allegation, it raised an issue of fact to be determined at trial. So how could the court disregard similar genuine issues of material fact raised by Dr. Cordero's cross-claims of negligence and reckless performance as trustee and before any discovery or meeting whatsoever merely dismiss them, thereby disregarding the legal standard for determining a motion to dismiss?

3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed, and surprisingly finding that it had been untimely filed, denied it

25. After Dr. Cordero timely mailed his notice of appeal and Trustee Gordon moved to dismiss it as untimely filed, Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledge in his brief in apposition that the motion had been timely filed on January 29 (A-235), the judge surprisingly found that it had been untimely filed on January 30. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly make a mistake on such a critical matter. Thus, who changed the filing date and on whose orders?[1] Why did the court disregard the factual discrepancy and rush to deny the motion? Do court officers manipulate the docket to attain their objectives? There is evidence that they do (paras.36 below).

4. The court reporter tries to avoid submitting the transcript

26. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the

---

[1] Dr. Cordero stands ready to submit to the Court of Appeals upon its request an affidavit containing more facts and analysis on this issue.

hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript (A-261).

27. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283,286).

28. The confirmation that she was not acting on her own was provided by the fact that the transcript was not sent on March 12, the date on her certificate (A-282). Indeed, it reached Dr. Cordero only on March 28 and was filed only on March 26 (SPA-45, entry 71), a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent.

29. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering

the transcript "to the party or judge" –certainly she did not send it to the party- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.

30. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" spots and it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, would either last long in use? Or was she told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript for vetting by a higher-up court officer before mailing a final version to Dr. Cordero? Do you trust court officers that so handle, or allow such handling of, transcripts? Does this give you the appearance of fairness and impartiality?

5. The bankruptcy court disregarded facts and prejudged issues to deny Dr. Cordero's application for default judgment

31. The bankruptcy court recommended denial of the default judgment application by prejudging that upon inspection Dr. Cordero would find his property in the same condition as he had delivered it for storage 10 years earlier in 1993 (SPA-13). For that bold assumption it not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, as shown in subsection 2 above, Mr. Pfuntner had written that property had been removed without his

authorization and at night from his warehouse premises. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From one who forms anticipatory judgments, would you expect to receive fair treatment or rather rationalizing statements that he was right?

32. Moreover, the court dispensed with even the appearance of impartiality by casting doubt on the recoverability of "moving, storage, and insurance fees …especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property," (SPA-14). How can the court prejudge the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero, since it has never requested disclosure of, let alone held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry? Such a leaning of the mind before considering pertinent evidence is called bias. Would you expect impartiality if appearing as a pro se litigant in Dr. Cordero's shoes before a biased court?

33. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in paragraph "10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers…" (SPA-14). But that suggestion was never made and Dr. Cordero would have had absolutely no motive to accept it if ever made. What else would the court dare say to avoid review on appeal?

6. The Bankruptcy Clerk and the Case Administrator disregarded their obligations in the handling of the default application

34. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added; SPA-76 upon receiving Dr. Cordero's application of December 26, 2002 (SPA-10). Yet, it was only on February 4, 41 later and only at Dr. Cordero's instigation (SPA-15), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay.

35. It is not by coincidence that he entered default on February 4, when the bankruptcy court made its recommendation to the district court. Thereby the recommendation appeared to have been made as soon as default had been

entered.[2] It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.

36. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (SPA-42-entry-51;43-entries-46,49,50,52,53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer.[3] Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it? (25 above).

37. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

7. The district court repeatedly disregarded an outcome-determinative fact and the rules to deny the application for default judgment

38. The district court accepted the recommendation and in its March 11 order denied entry of default judgment on the grounds that it did not involve a sum certain (SPA-16). To do so, it disregarded five papers stating that it did involve a sum certain:

---

[2]. See footnote 1.

[3] See footnote 1.

1) the Affidavit of Amount Due (A-294);

2) the Order to Transmit Record and Recommendation (SPA-12);

3) the Attachment to the Recommendation (SPA-14);

4) the March 2 motion to enter default judgment (A-314,327), and

5) the motion for rehearing re implied denial of the earlier motion (A-342,344-para.6).

39. Dr. Cordero moved the district court to enter default judgment notwithstanding such prejudgment of the outcome of a still sine die inspection (A-314). The district court did not acknowledge that motion in any way whatsoever, but instead accepted the bankruptcy court's recommendation. Moreover, it stated that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate…the Bankruptcy Court is the proper forum for conducting [that] inquest," (SPA-16).

40. Dr. Cordero moved the district court for a rehearing (A-342) of his motion, denied by implication, so that it would correct its outcome-determinative error because the matter did involve a sum certain and because when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.

Likewise, a bankruptcy court that showed such prejudgment could not be the "proper forum" to conduct any inquest (A-342). The district court curtly denied the motion "in all respects," (SPA-19). From a district court merely rubberstamps the bankruptcy court's recommendation without paying attention to its facts, let alone reading papers submitted by a pro se litigant who spent countless hours researching, writing, and revising, would you expect the painstaking effort necessary to deliver justice?

8. The bankruptcy court disregarded Mr. Pfuntner's and his attorney's contempt for two orders, reversed its order on their ex-parte approach, showed again no concern for disingenuous submissions to it, but targeted Dr. Cordero for strict discovery orders

41. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfuntner's warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties (A-365,368). Nonetheless, the court never answered it or informed Dr. Cordero of the most convenient date.

42. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed.

43. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P. (A-372). Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.

44. Dr. Cordero raised a motion on April 3 to ascertain this reversal of the court's position and insure that the necessary transportation and inspection measures were taken (A-378). On April 7, the same day of receiving the motion (SPA-46-entries-75,76) and thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing–as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester (A-386).

45. Then Mr. MacKnight raised a motion (A-389). It was so disingenuous that, for example, it was titled "Motion to Discharge Plaintiff from Any

Liability…" and asked for relief under Rule 56 F.R.Civ.P. without ever stating that it wanted summary judgment while pretending that Plaintiff had not brought that motion before "as an accommodation to the parties." Yet, it was Plaintiff who sued parties even without knowing whether they had any property in his warehouse, nothing more than their names on labels (A-364). Dr. Cordero analyzed in detail the motion's mendacity and lack of candor (A-400). Despite its obligations under Rule 56(g) (SPA-78) to sanction a party proceeding in bad faith, the court disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would you expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

46. Nor did the court impose on Plaintiff Pfuntner and Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court order Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

9. The bankruptcy court's determination not to move the case forward

47. Although the adversary proceeding was filed on September 27, 2002, the court has failed to comply with Rule 16(b) F.R.Civ.P., (SPA-75) which provides that it "shall…enter a scheduling order…" When the court disregard its procedural obligations and allows a case to linger for lack of management, would you expect it to care much for your rights as a pro se litigant who lives hundreds of miles away?

VIII. Summary of the Argument

A. Timely mailing and filing of the notice of appeal

48. Dr. Cordero's timely mailed notice of appeal from the dismissal of his cross-claims against Trustee Gordon should be deemed timely filed in bankruptcy court pursuant to the coherent and consistent scheme generated by the plain language of the Bankruptcy Rules for time-limited notices and papers. The scheme provides thus:

    1) under Rule 9006(f), (SPA-69) when a notice sent by mail triggers a period of time in which to respond with a notice or paper, that period is extended by three days in order to compensate for the time lost during the mail transit of the triggering notice or paper so that the responder may have more time to better prepare his response;

2) under Rule 9006(e), (SPA-69), when that notice or paper is mailed, its service is complete; and

3) since these provisions are found in Part IX-General Provision, and consequently are applicable to the whole Bankruptcy Code and Rules, they take precedence over the filing-within-filing-period exception of Rule 8008(a), (SPA-66), which applies narrowly to some papers served on the district court or the bankruptcy appellate panel, not the bankruptcy court, where the notice of appeal must be filed under Rule 8002 (SPA-64).

B. Failure to apply the legal standards for a dismissal motion

49. Dr. Cordero's cross-claims against Trustee Gordon for defamation as well as negligent and reckless liquidation of Debtor Premier were dismissed without the court applying the legal standards for adjudicating a motion under Rule 12(b)(6) F.R.Civ.P., (SPA-90). Thereunder it should have considered only the legal sufficiency of the complaint –and done so liberally since it was submitted by a pro se litigant- taking its allegations as true and examining them in the light most favorable to the non-movant.

50. Far from it and despite the fact that no discovery had occurred, the court conducted a trial on the merits in light of its own experience on the bench, applied its own notions of defamation rather than the standard of what a reasonable

person would consider injurious to the reputation of another person, and disregarded genuine issues of material fact concerning the Trustee's negligent and reckless liquidation raised not only by Dr. Cordero, but also by the Plaintiff. Given such triable issues of fact, the court could not have dismissed the cross-claims as a matter of law under Rule 56 F.R.Civ.P.

C. Default judgment denied after compliance with statutory requirements

51. Dr. Cordero timely applied for default judgment for a sum certain against Mr. Palmer, whose default was entered by the court clerk. Thereby all the requirements under Rule 55 were fulfilled. Nevertheless, the bankruptcy court recommended that the application be denied and that Dr. Cordero be required to demonstrate his loss. That requirement has no basis in law, for it contradicts the Rule's plain language, and negates the purpose of the warning in the summons.
52. Moreover, the equities favored Dr. Cordero, who had been defrauded by Mr. Palmer. By contrast, the latter, as the Debtor's owner, was already under the court's jurisdiction, having invoked his right under the bankruptcy law only to evade his obligation thereunder to answer a complaint. In addition, Mr. Palmer had a remedy at law under Rule 60(b), (SPA-78) to set aside the judgment. Under those circumstances, there was no justification for the court to become its advocate.

53. Nor can a court interpret and apply a legal provision in a way that contradicts its plain language and defeats the reasonable expectations to which it gives rise. That would amount to usurping Congress' legislative role and depriving people of notice of what the law requires in order to be entitled to its rights.

54. The district court based its acceptance of the recommendation on the clearly erroneous fact that the application did not involve a sum certain. In addition, it charged the bankruptcy court with conducting an inquest into damages. In an adversarial system and a default case where the defendant has not appeared by choice rather than by membership in a class to be protected by the courts, no court can conduct an inquest, which would require it to play multiple conflicting roles; least of all a court that has prejudged the outcome of the inquest, for it cannot be the proper forum to conduct it fairly and impartiality.

D. Court officers' pattern of bias requires removal to impartial court

55. :Both the bankruptcy and the district court together with court clerks, court assistants, and the court reporter have participated in such a long series of events of disregard of facts, law, and rules that so consistently work to the detriment of Dr. Cordero, the pro se litigant that lives hundreds of miles away, that such events cannot be explained as mere coincidence. Rather they must form a pattern of intentional and coordinated wrongdoing. Hard evidence is not legally required to

create the appearance of partiality that in the minds of reasonable persons gives rise to the inference of the court officials' bias and prejudice toward Dr. Cordero. That is enough to warrant recusal.

56. However, given the participation of so many court officers and the coordinated nature of their wrongdoing, disqualification must encompass not only the judges, but also the other court officers; otherwise the reasonable fear of unfair and prejudicial administrative treatment could not be eliminated. Thus, this case should be removed to an impartial district court, such as that of the Northern District of New York.

IX. The Argument

A. The notice of appeal from the dismissal of the cross-claims against Trustee Gordon was timely mailed and should have been deemed timely filed

1. The Supreme Court requires the respect of the plain language of a consistent and coherent statutory scheme such as that formed by the rules on notice of appeal

57. The U.S. Supreme Court stated in its landmark case in the area of timely filing under the Bankruptcy Code, that is, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993)*:

> "Rule 9006 is a general rule governing the computation, enlargement, and reduction of periods of time prescribed in other bankruptcy rules."

58. Likewise, the Supreme Court stated the following rule of statutory construction precisely in another bankruptcy case, namely, *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 240, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989),* :

> "[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."

59. There is such a coherent and consistent scheme of Rules for the construction of what a timely notice of appeal is. It is based on the Rules' plain language. To justly construe the periods for mailing and filing, one must read the rules of the F.R.Bkr.P as well as them and those of the F.R.Civ.P. as forming a whole, as a scheme. Dr. Cordero read them so and reasonably relied on their scheme. This is it:

> 2. Service of notice of appeal under Rule 8002(a) is complete on mailing under Rule 9006(e) and timely if timely mailed although filed by the bankruptcy clerk subsequently

60. Part IX of the F.R.Bkr.P. is titled General Provisions and contains rules of general applicability. Thus, they apply to the rules of Part VIII, which is titled Appeals to District Court or Bankruptcy Appellate Panel. Therein included is Rule 8002(a) with its ten-day period for filing a notice of appeal.

61. The Advisory Committee confirms this plain language scope of application in its Note to Rule 9006(a) (SPA-67)

> "This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in cases under the [Bankruptcy] Code and any litigation arising therein."

62. Just as Rule 6 covers all Civil Rules, so does rule 9006 with respect to all Bankruptcy Rules. Hence, not only Part IX, but also specifically Rule 9006 and its computation of time provisions apply to Rule 8002 and its ten-day period to give notice of appeal.

63. One of those provisions is found in 9006(e). It provides that "service of…a notice by mail is complete on mailing," (SPA-69).

64. The bankruptcy court entered its order dismissing Dr. Cordero's cross-claims against Trustee Gordon on December 30, 2002. In turn, Dr. Cordero mailed his notice of appeal on January 9, 2003. Consequently, the service of that notice was complete on that day. It should also be deemed timely filed on that day.

65. To consider a timely mailed notice of appeal also timely filed is consistent and coherent with Rule 8002(a). This is so because it provides "if a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, [their clerks] shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed

filed with the clerk on the date so noted." Hence, a notice can be deemed filed in the bankruptcy court on a date prior to the date of actual filing by the bankruptcy clerk.

3. The three additional days provision of Rule 9006(f) applies to the notice of appeal

66. There is also Rule 9006(f), which provides that 'when there is a right to do an act within a prescribed time and the paper is served by mail, "three days **shall** be added to the prescribed period,"' (emphasis added; SPA-69)

67. The right here in question is that under Rule 8001(a) Appeal as of right. It is to be exercised, pursuant to Rule 8002(a), within 10 days from the entry of the order appealed from.

68. When the order arrived in New York City after the holiday, Dr. Cordero undisputedly mailed his notice timely on Thursday, January 9, 2003. It is submitted that pursuant to the plain language of Rule 9006(e), his mailing of the notice of appeal completed service on that date.

69. What is more, because the dismissal order had been "served by mail," Rule 9006(f) had added three days to the prescribed ten-day period to appeal from it, to January 12. But since that was a Sunday, under Rule 9006(a) 'the act to be done of filing the notice ran until the end of the next day.' Consequently, by operation of that rule too, Dr. Cordero's notice was also timely filed on Monday, January 13.

4. A coherent and consistent construction of R.9006(a) and (f) does not allow their application to time-from-service provisions but not to time-from-entry-of-order ones

70. This result fulfills Rule 9006(f)'s purpose, which flows from its heading "Additional time after service by mail." It is to compensate a party for time lost in transit when a paper is "served by mail" so that a shorter time does not prejudice the party in the exercise of its right "within the prescribed period" by comparison with a party that is served personally.

71. This purpose is consistent with the broadly worded method of Rule 9006(a) for computing "**any** period of time prescribed or allowed", and that regardless of the nature of "the **act, event, or default** from which the designated period of time begins to run," (emphasis added).

72. Hence, the three additional days provision of 9006(f) applies also to periods that begin to run from the entry of an order, for what matters under it is not whether the paper is entered or served, but rather whether it has been mailed and, thus, time has been lost for which the recipient must be compensated.

73. The inclusion of Rule 8002's ten-day period within the scope of application of Rule 9006(a), (e), and (f) is compelled by the fact that it is not expressly excluded. Indeed, when Rule 9006 wanted to exclude totally or partially any Rule, it did so expressly, as in "(b)(2), Enlargement not permitted," "(b)(3), Enlargement limited," and "(c)(2) Reduction not permitted." It should

be noted that both (b)(3) and (c)(2) make express reference to Rule 8002.

74. Therefore, it would be neither coherent nor consistent to restrict the application of Rule 9006 to other Rules, including 8002, when 9006 expressly provides therefor, and even exclude those Rules altogether from subdivisions (e) and (f) when 9006 does not require to do that at all. As the Supreme Court observed:

> "It is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another;" *BFP v. Resolution Trust Corp., 511 U.S. 531, 537, 128 L. Ed. 2d 556, 114 S. Ct. 1757 (1994).*

75. From this analysis flows the conclusion that Rule 9006 applies to every Rule that it does not exclude expressly. This proposition too is consistent with the statement of the Supreme Court in *Pioneer*, footnote 4:

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

5. Rule 8002(a)'s ten-day period benefits from Rule 9006(f)'s three-additional-days to avoid penalizing parties that must prepare their notice of appeal

76. That Rule 8002(a) must be within Rule 9006(f)'s scope flows from their purpose and plain language. Thus, the Advisory Committee Note for Rule 9006 states that:

> "This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in **cases** under the Code and **any** litigation arising therein (emphasis added).

77. In turn, Rule 6 states in its Note for the 1985 Amendment (SPA-74) that parties "should not be penalized" when they cannot file because of factors, such as weather conditions or non-business days, that reduce their time to act within a prescribed period. The extension of time is needed because:

> **"...**parties bringing motions under **rules with 10-day periods** could have as few as 5 working days to prepare their motions. This **hardship** would be **especially acute in** the case of **Rules** 50(b) [Renewing Motion for Judgment After Trial; Alternative Motion for New Trial] and (c)(2) [New Trial Motion], 52(b) [on motion for the court to amend its findings], and 59(b), (d), and (e) [on motions for new trial and to alter or amend judgment], **which may not be enlarged** at the discretion of the court…(emphasis added).

78. Such is Rule 8002(a), whose ten day period for filing the notice of appeal cannot be enlarged. Under it the factor that can cause 'acute hardship' is the one dealt with by Rule 9006(f), to with, that the notice triggering the running of a prescribed period has been served by mail, thereby shortening the party's time within which to prepare to act. To compensate for the lost time, 9006(f) adds

three days.

79. That Advisory Committee Note makes it quite clear how the 8002(a) notice of appeal comes within the purview of the 9006(f) three-additional-days provision, which is intended in particular for 1) rules with ten-day periods; 2) with no possibility of enlargement at the court's discretion; 3) yet subject to being reduced to as few as 5 working days; and 4) concerning appeals for new trial or 5) to alter or amend judgment.

80. Dr. Cordero, a pro se appellant, was filing a notice of appeal for the first time ever. He had less than 5 working days before the 10-day period, triggered by the entry of the dismissal order on December 30 and including the New Year's Day, ran out on Thursday, January 9. But before he could prepare to act, the order had to arrive in the mail from Rochester. No doubt this constituted the kind of acute hardship that Rule 6 intends to prevent and that Rule 9006(f) lessens by adding three days to the prescribed period. How much more of an acute hardship it would have been if Dr. Cordero had had to mail the notice from New York City so that it would arrive back in Rochester by Thursday the 9th?

6. Since the notice of appeal is to be filed in the bankruptcy court, not the district court or BAP, it is deemed filed when mailed so that the 8008(a) filing-within-filing-period exception is not applicable to it

81. Part IX General Provisions does not contain the notion that a notice must be filed

strictly within the period for filing. It comes from a subdivision of Rule 8008

> "Rule 8008(a) Papers required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel** may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing." (emphasis added)

82. Wait a moment! The notice of appeal is not "required or permitted to be filed with **the clerk of the district court or the clerk of the bankruptcy appellate panel,**" as follows from the last sentence of Rule 8002(a), which considers it a mistake to do so. The filing-within-filing-period requirement of Rule 8008(a) is an exception!

83. Indeed, if the general rule of the F.R.Bkr.P. were that the timeliness of a filing was determined by whether the clerk received and docketed a notice or paper within the fixed filing time, then it would be superfluous for Rule 8008(a) to restate the obvious, for how else could it be?

84. The limited scope of application of the filing-within-filing-period exception is underscored by the fact that it contains an exception within itself: "except that briefs are deemed filed on the day of mailing." As an exception, it must be construed restrictively and applied only when a Rule expressly calls therefor;

otherwise, the exception would gut one of F.R.Bkr.P. "Part IX-General Provisions," namely "Rule 9006. Time." Hence, its provisions on time computation, complete-on-mailing, and three-additional-days are the ones applicable to a notice of appeal from a bankruptcy court order, which is to be both mailed to and filed in bankruptcy court.

85. This exception is further weakened by scooping out of it another exception. Thus, the Advisory Committee Notes state for Rule 8008 as a whole, rather than just its exception, that, "This rule is an adaptation of F.R.App.P. Rule 25." Appellate Rule 25 further narrows the exception by applying the complete-on-mailing provision to the filing of appendixes. Its Notes for 1967 Adoption provide the rationale that supports the rule of general applicability:

> An exception is made in the case of briefs **and appendices** in order to afford the parties the maximum time for their preparation," (emphasis added).

86. That's the rationale for the provision's limited scope: It reduces the necessary time for adequate research and writing as well as sound decision making. All that for no good reason at all. Hasty filings under the duress of time constraints unjustified by law or practice only produce appeals that are ill considered by both counsel and client and that end up clogging the judicial system. That can certainly not be the intent of the judges that administer that system or the drafters in the

Judicial Conference and Advisory Committee, let alone Congress, which would have to provide more funds to run a system overwhelmed by appeals filed just to beat the clock. Under those circumstances, does it sound fair to brand such appeals "superfluous" and sanction counsel for having filed them?

87. Consequently, the ten-day period for filing the notice of appeal with the bankruptcy court under Rule 8002 is not subject to the filing-within-filing-period exception, which applies only to filing with the district court or bankruptcy appellate panel under Rule 8008(a). Instead, it is subject to and benefits from the complete-on-mailing and three-additional-days provisions of Rule 9006, which the Supreme Court in *Pioneer* recognized to be "a general rule" in the bankruptcy context. Since Dr. Cordero mailed his notice within the 10-day period, its filing thereafter by the bankruptcy clerk should have been deemed timely.

7. On the same grounds as well as on factual and equitable grounds, the motion to extend time to file the notice of appeal should have been found timely

88. This Court of Appeals stated in *In re Bell*, *225 F.3d 203*, *209 (2d Cir. 2000)*, that in an appeal from a district court's review of a bankruptcy court ruling, the Court of Appeals' review of the bankruptcy court is "independent and plenary."

89. Thus, the Court should review the order of the bankruptcy court of February 18, 2003 (SPA-9a,22) denying Dr. Cordero's motion to extend the time to file notice

of appeal under Rule 8002(c)(2).

90. Dr. Cordero raised that motion timely on January 27 (A-214) and in addition in the bankruptcy court, not in the district court, he reasonably applied to it both the complete-on-mailing and the three-additional-days provisions of Rule 9006(e) and (f), respectively. Thus, as a matter of law based on the grounds discussed above for the notice of appeal, it should have been held timely filed too.

91. But also as a matter of fact, for even the opposing party, Trustee Gordon, admitted in his brief in opposition to the extension that Dr. Cordero's motion had been timely filed on January 29 (A-235).

92. Yet, the bankruptcy court surprisingly found it to have been filed on January 30, and thereby untimely by one day (SPA-9a). However, the discrepancy between the Trustee's admission against his legal interest and an unreliable docket,[4] created factual doubt that the court should have resolved on equitable grounds in favor of granting the extension, thereby upholding 1) the courts' policy of adjudicating controversies on the merits, and 2) parties' substantial right in having their day in court rather than dismissing both controversies and parties on procedural considerations.

93. This Court has an additional equitable ground to set aside the finding that the filing occurred on January 30, namely, that as part of the pattern of court officers'

---

[4] See footnote 1.

disregard for facts, law, and rules laid out in para.-20 et seq. above, that finding is suspect and must not stand because "refusal to take such action appears to the court inconsistent with substantial justice," as provided under Rule 61 F.R.Civ.P., applicable under Rule 9005 F.R.Bkr.P.

94. Applying that principle is particularly pertinent in the case of pro se litigants because as this Court has stated:

> "A party appearing without counsel is afforded extra leeway in meeting the procedural rules governing litigation, and trial judges must make some effort to protect a party so appearing from waiving a right to be heard because of his or her lack of legal knowledge." *Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 96 (2d Cir. 1993).*
>
> "…pro se litigants are afforded some latitude in meeting the rules governing litigation," *Moates v. Barkley, 147 F. 3d 207, 209 (2d Cir.1998).*

95. This is all the more pertinent in the case of Dr. Cordero because if he "fail[ed] to follow a rule of procedure [it] was a mistake made in good faith" since he relied on the plain language of the Rules and the coherent and consistent scheme that they form and showed respect for the court and the Rules by timely mailing both the notice of appeal and the motion to extend. Hence, the Court should hold that the mistake was made through excusable neglect; otherwise, to

dismiss his notice and deny the motion would frustrate his reasonable expectation, which "would bring about an unfair result;" *Enron Oil, id, at 96*.

B. The court disregarded the standards of law applicable to Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims for defamation as well as negligent and reckless performance as trustee

96. In response to Dr. Cordero cross-claims, Trustee Gordon claimed that even if true, "such claims are not legally sufficient and must be dismissed" (A-137), and the bankruptcy court dismissed them (SPA-1).

97. Whether this dismissal under Rule 12(b)(6) F.R.Civ.P. was improper is reviewed de novo by this Court, *O'Brien v. Alexander, 101 F.3d 1479 (2d Cir. 1996)* and it will affirm it "only if it appears **beyond doubt** that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief" (emphasis added) *Legnani v. Alitalia Linee Aeree Italiane, S.P.A. 274 F.3d 683 (2d Cir. 2001).*

98. Citing *Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)*, the O'Brien Court recognized that the standard for deciding a 12(b)(6) motion is that the factual allegations contained in the complaint are accepted as true and all permissible inferences are drawn in plaintiff's favor.

99. The emphasis added to **"beyond doubt"** is particularly important because it highlights how little the plaintiff is required to show at that early stage of the

proceeding in order to survive a motion to dismiss. Consequently, this Court has stated that a claim must not be dismissed merely because the trial court doubts the plaintiff's allegations or suspects that the pleader will ultimately not prevail at trial, *Leather v. Eyck, 180 F3d. 420, 423, n.5 (2d Cir. 1999)*.

1. The claim of defamation

100. Dismissal in a case of defamation is particularly inappropriate because any alleged privilege against an action in defamation is defeated by a showing of malice and a defamatory motive, which are elements involving state of mind. Without development of the facts through discovery, state-of-mind cases are unsuitable for a 12(b)(6) motion to dismiss, *Pryor v. National Collegiate Athletic Ass'n, 299 F3d. 548, 565 (3d Cir. 2002)*.

101. For the reasons discussed **above** (para**.-30),** Court Reporter Dianetti's transcription of Dr. Cordero's statements at the hearing of the dismissal motion is "unintelligible" (SPA-262). By contrast, her transcription of the court's statements is comprehensible and readily reveal that the court made no effort whatsoever to apply these standards before it opened with its conclusion that "First of all, I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims" (A-274), in bulk fashion, before any analysis.

102. What the court stated in its next breath is even more indefensible, for it constitutes the denial of the fundamental purpose of a system of law:

> First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court.

103. UNBELIEVABLE! A judge that says that because everybody makes defamatory statements, another one does not make any difference so the plaintiff just has to take it and be dismissed. What kind of legal system would we have, not to mention the society we would end up with, if just because everybody commits torts, the courts need not take action to provide redress to a victim?

104. The court's statement is all the more reprehensible because here Trustee Gordon made defamatory statements about…you!, the reader, here in New York City, inquiring about the property that you left in storage hundreds of miles away in Rochester, and for which you have paid fees, including insurance, for almost 10 years, but you are lied to by the people that are supposed to store your property, for it turns out that they do not even know where it is, so they send you to the Trustee, who throws you back at them, and when you find your property through your efforts in another warehouse, the owner will not release it because the Trustee can sue him and he tells you to go get it from the Trustee, except that the Trustee won't even take your calls or answer your letters, and on the third time you call to record a message or ask the secretary, he sends you a letter improper in its tone and unjustified in its content that enjoins you not to call his office any

more and to fend for yourself, so you ask the judge, the one overseeing the Trustee's liquidation of the one who took your money and lost your property, to review the Trustee's performance and fitness as trustee, only to find out that the Trustee writes to the court alleging that you have made more "more than 20 telephone calls" to the Trustee's staff, and you became "very angry" and "belligerent," "became more demanding and demeaning to [the Trustee's] staff" because due to your "poor understanding" you just don't get it that the Trustee has nothing to do with your property, "Accordingly, [the Trustee] do not think that it is necessary for the Court to take any action on [your] application," and the Trustee then sends copies of that description about you to his supervisor at the U.S. Trustee and to other professionals in Rochester.

105. What is your state of mind now? Would you agree with the Court of Appeals that such description of you

> "**may** "induce an evil opinion of [you] in the minds of right-thinking persons," *Dillon v. City of New York, 261 A.D.2d 34, at 38, 704 N.Y.S.2d 1, at 5 (1st Dep't 1999)…*and are therefore **capable** of a defamatory meaning," *Albert v. Loksen, dkt. no. 99-7520 (2d Cir. February 2, 2001)*?, (emphasis added).

106. If you just "may" prove that, then you must survive the dismissal motion given that:

> "the court need only determine that the contested statements "are reasonably susceptible of defamatory connotation." If any defamatory construction is possible, it is a question of fact for the jury whether the statements were understood as defamatory. *Purgess v. Sharrock, 33 F.3d 134, 140 (2d Cir. 1994)," Albert,* id.

107. But the court failed to apply that legal standard…or any acceptable standard since it instead condoned the Trustee's submission to it of defamatory and false statements intended to dissuade it and the his supervisor from reviewing his conduct because "it's all part really of the Trustee just trying to resolve these issues," (A-11,lines-10-12).

2. Negligence and reckless performance as trustee

108. In deciding a 12(b)(6) motion, "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims," *Scheuer v. Rhodes. 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974).*

109. Here it was all the more necessary for the court to allow discovery precisely because the Trustee, who was appointed in December 2001, to liquidate Premier, the moving and storage company, had failed even to identify the contracts between Premier and its clients as income-producing assets of the estate, which

for him to liquidate, he had to inform the clients. Moreover, when the other parties referred Dr. Cordero to the Trustee, the latter provided no information and limited himself to volleying him back to them by his letters of June 10 and September 23, 2002 (A-16,1).

110. Therefore, it was contrary to the facts for the court to state that "the paper work that I read indicated to me he gave you a heads up on that very early on," (A-278,lines-7-8). What paperwork? Is the court referring to the Trustee's letter of June 10 (A-16), sent six months after his appointment and only because Dr. Cordero had called the Trustee, left messages for him, and then wrote asking him to provide the information?

111. Then the court goes on to make an astonishing statement:

> "Here I think you had warning that you need to get real proactive about this, not necessarily from a distance. It would have been nice if you had someone on board here in Rochester for a couple of days really kind of seeing this thing through…" (A-278,lines 18-23).

112. This statement is astonishing because it flies in the face of the facts. Indeed, for all those months during which Mr. Palmer, Premier's owner, and Mr. Dworkin, the manager/owner of the Jefferson-Henrietta warehouse used by Mr. Palmer, lied to Dr. Cordero about his property being safe in that warehouse without ever mentioning that Premier was bankrupt, let alone in liquidation, and once Mr.

Dworkin referred Dr. Cordero to M&T Bank's David Delano and the latter assured Dr. Cordero that he had seen containers with his name in the Jefferson-Henrietta warehouse, what reason was there in the court's mind for Dr. Cordero to go to Rochester? Likewise, after Mr. Dworkin and Mr. Delano referred Dr. Cordero to the Trustee, but the latter would neither take his calls nor answer his letters, what was Dr. Cordero supposed to do in Rochester? And once these characters admitted that they did not know where Dr. Cordero's property was, how did the court expect Dr. Cordero to look for it by going to Rochester?

113. The court's blaming Dr. Cordero for not having gone to Rochester or hire a lawyer there is most astonishing because it knows that the containers labeled with his name were found not even in Rochester, but rather in a close down warehouse in Avon. Its owner is Mr. James Pfuntner, known to the court since…(SPA-26-entry 19)…

114. Does this sound like the discussion of the court's legal standard for deciding a 12(b)(6) motion to dismiss? Of course not!, for the court was instead conducting a trial, one in which Dr. Cordero would not be allowed to engage in discovery or present evidence on issues like:

    1) Why Trustee Gordon failed to perform his duties? Under 11 U.S.C. §704(4), he had to "investigate the financial affairs of the debtor." For its part, the U.S. Trustee Manual, Chapter 7 Case

Administration, §2-2.2.1 requires that "A trustee must also ensure that…records and books are properly turned over to the trustee." One obvious use of those "records and books" is to find out where debtor's assets may be located, such as income-producing contracts. Was the Trustee negligent in not locating them, and if he did, was he reckless in abandoning them to Jefferson-Henrietta Associates (SPA-17,18;34-entry-98), in not liquidating them for the creditors' benefit, and in not contacting Dr. Cordero, a contractual party and "party in interest"?

2) Whether the Trustee discharged his duty under §2-2.1. of the Trustee Manual, which requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case;**" (emphasis added). Was the Trustee negligent or reckless in qualifying Premier as an asset case, only to end up issuing a No Distribution Report? (SPA-31-entries-70-71;34-entries-95,98;36-entry-107;

3) Was Trustee Gordon negligent or reckless in failing to examine Premier's docket (SPA-26-entry-19), which would have led him to discover Premier's use of Mr. Pfuntner's warehouse, and in failing to examine

Premier's records, whereby he would have found out -as did Mr. Carter of Champion (A-48,49;109, ftnts-5-8;352)- that Premier had assets in Mr. Pfuntner's warehouse, including containers covered by storage contracts, such as Dr. Cordero's?

115. In light of these and other genuine issues of material fact, the bankruptcy court could not properly have converted the 12(b)(6) motion into one for summary judgment under Rule 56 F.R.Civ.P., (SPA-90,77) nor did it apply any law whatsoever to justify rendering judgment for the Trustee as a matter of law, *White v. ABCO Engineering Corp., 221 F.3d 293 (2d Cir. 2000)*. Was it for having failed to realize or having tolerated Trustee Gordon's negligence and recklessness that the court dismissed the cross-claims against him, has not required disclosure, and has failed to issue a 16(b) scheduling order, thus leaving the case without management for 10 months?

116. As this Court has stated, in a motion to dismiss, the 'court's clear focus is on the pleadings, not the evidence submitted;'[5] *Manning v. Utilities Mut. Ins, Co., Inc., 254 F.3d 387 (2d Cir. 2001)*. It reviews the dismissal *de novo, Weeks v. New York State (Div. of Parole), 273 F.3d 76 (2d Cir. 2001)*, and not only does it construe the complaint liberally in the light most favorable to the plaintiff, *Connolly v.*

---

[5] None in this case since discovery had not even started and till this day the court has issued no scheduling order.

McCall, 254 F.3d 36 (2d Cir. 2001), but in the case of a pro se litigant, as is Dr. Cordero, this Court also 'applies "a more flexible standard to evaluate the complaint's sufficiency than it would when reviewing a complaint submitted by counsel,"' *Lerman v. Board of Elections, 232 F.3d 135, certiorari denied NYS Bd. of Elections v. Lerman, 121 S.Ct. 2520, 533 U.S. 915, 150 L.Ed.2d 692 (2d Cir. 2000*).

117. It is respectfully submitted that Dr. Cordero's complaint would have been found sufficient if the lower court had 'merely assessed it for the "legal feasibility"' of the claim that Trustee Gordon had been negligent and reckless in liquidating Premier, instead of improperly using the occasion "to assay the weight of the evidence which might be offered in support thereof," *Sims v. Artuz, 230 F.3d 14 (2d Cir. 2000)*.

118. The likelihood of establishing the Trustee's negligence and recklessness is all the greater in light of his comment in his memorandum opposing the motion to extend time to appeal (A-238), that, "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00." There it is! Trustee Gordon had no financial incentive to do his job…nor did he have any sense of duty! What does it reveal about the court, which he knows from his prior appearance before it, that he deemed the court would excuse his hack job on Premier if only it were reminded that he would be paid little, even though he

himself qualified Premier as an asset case?

C. Palmer, owner of the bankrupt Debtor in liquidation, was served, but failed to appear, yet the application for default judgment for a sum certain was denied

1. The coherent and consistent scheme for taking default judgment

119. Rules 7004 F.R.Bkr.P. and 4 F.R.Civ.P. (SPA-64,71) provides that the summons must inform the defendant that his "failure to [appear and defend] **will result** in a judgment by default against" him (emphasis added).

120. The summons issued by the bankruptcy court bore this boldface warning across the page:

> **IF YOU FAIL TO RESPOND TO THIS SUMMONS, *YOUR FAILURE WILL BE* DEEMED TO BE *YOUR CONSENT TO* ENTRY OF A *JUDGMENT* BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT** (emphasis added)

121. For their part, Rules 7055 F.R.Bkr.P. and 55 F.R.Civ.P., (SPA-64,76) provide that if a party fails to appear and that fact is established, "the clerk **shall** enter the party's default" (emphasis added). Moreover, "[w]hen the plaintiff's claim against the defendant is for a sum certain…" and the plaintiff submits an "affidavit of the amount due [the clerk] shall enter judgment for that amount."

122. Only "In all other cases," that is, when the amount is not "for a sum

certain or for a sum which can by computation be made certain," or when the defendant has appeared in the action, would the clerk be unable to enter judgment or carry it into effect. For those cases, Rule 55(b)(2) provides that "the **party entitled** to a judgment by default shall apply to the court therefor," (emphasis added).

123. What is in question is not the plaintiff's entitlement to default judgment, but rather the clerk's ability to enter or carry it into effect because he cannot make the sum certain even by computation. But if the fact of defendant's non-appearance is established and the sum of the judgment is certain, the request for default judgment never gets to the court. The clerk has no margin for discretion, for he "shall enter judgment for that amount."

124. If a non-appearing party has been defaulted, only he can reach the court to oppose default judgment. There he can either show good cause for setting aside the entry of default under Rule 55(c) or, if default judgment has already been entered, contest it under Rule 60(b) (SPA-77).

125. A non-appearing party does not automatically become a member of a class, such as that of infants or incompetent persons, requiring the protection of the court against entry of default judgment. Such party knew that his non-appearance "will result in a judgment by default" and 'he is deemed to have consented to its entry.' By contrast, the plaintiff is "the party entitled to [that] judgment"

against him.

126. Congress chose to approve this coherent and consistent scheme in plain language; 28 U.S.C. §§2074(a) and 2075 (SPA-87). Hence in the words of the Supreme Court in Ron Pair Enterprises, para.-58 above, there is "no need for a court to inquire beyond the plain language of the statute."

2. The legal scheme for default judgment does not allow a court to thwart a plaintiff's right to default judgment for a sum certain with the requirement that he demonstrate damages

127. Therefore, once the plaintiff has fulfilled his obligations as expressed by the plain language of the law, he is entitled to the right that the law has promised him. A court has no power to frustrate his reasonable expectation to his entitlement by substituting itself for Congress in order to unfairly surprise him with an additional obligation of which he received no notice. While the law holds that ignorance of the law is no excuse, the converse is that knowledge of the law and compliance with it is sufficient to obtain the benefit of the law. A court cannot require knowledge of jurisprudence too, much less of that which distorts the scheme of the law.

128. Mr. Palmer failed to answer. Dr. Cordero applied for default judgment against him on December 26, 2002, for the sum certain of $24,032.08 (A-294). Bankruptcy Clerk Paul Warren, though belatedly, entered his default on February

4, 2003. Under the plain language of that warning in the summons and the terms of Rule 55, all the requirements for the vesting in Dr. Cordero of his right to default judgment against Mr. Palmer were met.

129. Yet, the bankruptcy court, without citing any legal basis whatsoever, recommended to the district court that it not enter default judgment, but rather,

> "since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Court's opinion, the entry of the Default Judgment would be premature," (SPA-14-para.-9).

130. The District Court accepted the recommendation and compounded the disregard of the law by disregarding the fact that the application was for a sum certain:

> "Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain" (SPA-16).

131. However, this reason for denying default judgment implicitly contains the grounds for its grant: If the matter involved a sum certain, the plaintiff would have established his entitlement to damages. Well, it is for a sum certain! The court's finding is clearly erroneous and prejudicial, for it is outcome determinative. It constitutes a reviewable abuse of discretion under *Sussman v.*

Bank of Israel, 56 F.3d 450, 456 (2d Cir.), cert. denied, 516 U.S. 916 (1995).

132. Moreover, the requirement that Dr. Cordero demonstrate damages is a question of law, which, even if mixed with facts, this Court reviews *de novo, Davis v. NYV Housing Authority, 278 F.3d 64, certiorari denied 122 S.Ct. 2357 (2d Cir. 2002).*

3. The equities are in favor of Dr. Cordero obtaining default judgment against Mr. Palmer

133. In this case there are also equitable grounds for enforcing the plain language of the law in favor of Dr. Cordero. For one thing, Mr. Palmer has dirty hands for not appearing in bankruptcy court, under whose jurisdiction he is since he sought its protection under the Bankruptcy Code (SPA-24-entry-3;25-entries-12-13) and where he was represented by counsel, Raymond Stilwell, Esq. (SPA-23). Mr. Palmer lied to Dr. Cordero about the safety and whereabouts of his property, which he abandoned, although he kept cashing his storage fees and defrauded him of his insurance fees by providing no insurance coverage. He concealed from Dr. Cordero that Premier was bankrupt and, in fact, already in liquidation, thereby depriving him of an opportunity to take care of his property as appropriate; then, he disappeared. Why should the courts spare him default judgment by denying it to Dr. Cordero, who has complied with all legal requirements for it? This Court can reach this question on review because, as it stated in *In re Nextwave Personal Communications, Inc., 200 F.3d 43, 50 (2d Cir. 1999),* "Our review of the

district court's decision affirming the bankruptcy court orders is plenary."

4. There is no legal basis for the district court to require an inquest into damages nor the procedural set up or practical means for the bankruptcy court to conduct it

134. The district court invoked no basis in law for its appointment of the bankruptcy court to conduct an inquest into damages. There can hardly be any. Indeed, ours is an adversarial system of justice and this is a civil proceeding for default judgment in bankruptcy court, where by definition there is no defendant, no prosecutor, and no jury. Nor is there a written statement on how to conduct the inquest or what standard of 'demonstration' Dr. Cordero must meet, which deprives him of his constitutional right to notice of what the government and its officers require of him and those similarly situated.

135. In practice, with what means would Dr. Cordero prove damages? The court has for the ten months of this case failed to require the parties to provide even initial disclosure –Dr. Cordero disclosed numerous documents with his pleadings and motions- and has not issued even a Rule 16(b) scheduling order for discovery (SPA-75), only two oral orders requiring Dr. Cordero to travel to Rochester to inspect storage containers, while allowing Mr. Pfuntner not to comply with them.

136. When examining whatever it is that Dr. Cordero may be required to submit, the bankruptcy court would have but two choices: approve it, that is, if he can lay his

hands on the required evidence; or question it, in which case the court plays simultaneously the roles of opposing counsel, defendant's expert witness, regulator that makes and applies rules and standards as it goes, fact finder, and judge. That is an impossible role for a court to play efficiently, let alone for these two lower courts to perform impartially and fairly in light of the bias and prejudice with which they have so far treated Dr. Cordero (para.-20 above) The legal basis for freeing him from further abuse at their hands is discussed next.

D. The court officers' pattern of intentional and coordinated acts supporting the reasonable inference of bias and prejudice warrants removal to an impartial court, such as the district court for the Northern District of New York

137. Public confidence in those that administer justice is the essence of a system of justice. Thus, this Court has adopted the test of objective appearance of bias and prejudice: Whether "an objective, disinterested observer fully informed of the underlying facts [would] entertain significant doubt that justice would be done absent recusal." *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).

138. If this objective test for judicial disqualification is met, recusal of the judge is mandated under 28 U.S.C. §455(a), which requires disqualification "in any proceeding in which [the judge's] impartiality **might** reasonably be questioned" (emphasis added; SPA-86). It follows that to disqualify a

judge, an opinion based on reason, not certainty based on hard evidence of partiality, is all that is required and what provides the objectivity element of the test. This is so because, as the Supreme Court has put it, "[t]he goal of section 455(a) is to avoid even the appearance of partiality…to a reasonable person…even though no actual partiality exists because the judge…is pure in heart and incorruptible," *Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860 (1988).*

139. The Supreme Court's construction derives from the legislative intent for §455(a), which Congress adopted on the grounds that "Litigants ought not have to face a judge where there is a reasonable question of impartiality," S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355. Thus, Congress provided for recusal when there is ""reasonable fear" that the judge will not be impartial, id.

140. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Whether the judge is aware of his bias or prejudice is immaterial given that "[s]cienter is not an element of a violation of §455(a)," since the "advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not

depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." *Liljeberg,* at 859-60.

141. The facts stated in 20 above are apt to raise the inference of lack of impartiality and fairness, which is at the heart of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes.

142. The sharing here has been in the bias and prejudice shown by the bankruptcy judge, the court reporter, the clerk of court, the district judge, and even the assistant clerks. Indeed, the latter's participation in one event cannot possibly, let alone reasonably, be explained away by coincidence. Judge for yourself:

143. Dr. Cordero knew that to perfect this appeal, he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. (SPA-81) (SPA-81) by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so conveniently prevented him from refilling his notice of

appeal to the district court (para.-23 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted back in January (A-ii;1-152) was back in bankruptcy court; hence, his Redesignation and Statement was supposed to be sent to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

144. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a letter to District Clerk Rodney Early (SPA-61).

145. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of his notice of appeal to this Court, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as *Cordero v. Palmer*. (Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?)

146. Imagine the shock when Dr. Cordero found out on May 24 that the Court of Appeals docket for his appeal, the record of which the district court had transferred to it on May 19, showed no entry for his Redesignation and Statement.

Worse still, he checked the lower courts' dockets and neither had entered it or even the letter to Clerk Early (SPA-47,55)! He scrambled to send a copy to Appeals Court Clerk Roseann MacKechnie (SPA-60). Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or district courts. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28 (SPA-62).

147. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandych, that they just did not know how to handle a Redesignation and Statement, is simply untenable. Dr. Cordero's appeal cannot be the first one ever from those courts to this Court; those officers must know that they are supposed to record every event in their cases by entering each in their dockets; and **'**certify and send the Redesignation and Statement to the circuit clerk,' as required under Rule 6(b)(2)(B) (SPA-81). Actually, it was a ridiculous excuse!

148. No reasonable person can believe that these omissions in both courts were merely coincidental accidents. They furthered the same objective of preventing Dr. Cordero from appealing. The officers must have known that the failure to submit the Redesignation and Statement would have been imputed to Dr. Cordero and

could have caused this Court to strike his appeal.

149. But there is more. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. (SPA-80,82) consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to this court and, if so, whether they were intentional. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding Pfuntner v. Gordon et al did not carry an entry for the district court's March 27 denial "in all respects" of Dr. Cordero's motion for reconsideration in Cordero v. Gordon. By contrast, it carries such an entry for the district court's denial, also of March 27, of Dr. Cordero motion for reconsideration in *Cordero v. Palmer* (SPA-46-entries-69,66). Also on May 19, the district court certified the record on appeal, but did it fail to send copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal's timeliness? The fact is that this Court's docket for this case, no. 03-5023, as of July 7, 2003 (SPA-62), does not have entries for copies of either of the March 27 decisions, although it carries entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero's notice of appeal to this Court (SPA-21) makes clear that the March 27 orders are the principal orders that he is appealing from (SPA-9,19).

150. Is this evidence that the bankruptcy and district court officers enter in their dockets and send to this Court just the notices and papers that they want? Does this show how they could have manipulated the filing date of Dr. Cordero's motion to extend time to file notice of appeal (para.-25 above) and omit entering and sending his Redesignation of Items and Statement of Issues (para.-143 above)? If those court officers dare tamper with the record that they must submit to the Court of Appeals, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? Will you let them get away with it?

X. Relief sought

151. …if not, you may grant what Dr. Cordero respectfully requests of this Court:

1) To open an investigation into these court officers' pattern of coordinated and abusive conduct in order to determine the officers' impact on this case in particular and on their cases in general and then deal with them in a way that will enhance public confidence in those courts and our system of justice;

2) To transfer this case to another court unrelated to the parties in this case, unfamiliar with the officers in these two courts, and at a distance from all of them, such as the District Court for the Northern District of New York;

which can pick up the case at almost its beginning where it has lingered without management since its filing back in September 2002;

3) To vacate the dismissal of Dr. Cordero's cross-claims against Trustee Gordon and of his notice of appeal from that dismissal, and allow those claims to proceed to discovery and trial; otherwise, to vacate the denial of Dr. Cordero's motion to extend time to file notice of appeal and grant it so that the notice may be filed in the court of transfer;
4) To grant Dr. Cordero's application for default judgment against David Palmer;
5) To grant Dr. Cordero any other relief that to the Court may appear just and fair.

XI. Certificate of Compliance with Rule 32(a) F.R.A.P.

A. Type-volume limitation

This brief complies with the type-volume limitation of F.R.A.P. 32(a)(7)(B) because it contains 13,990 words, excluding the parts of the brief exempted by F.R.A.P. 32(a)(7)(B)(iii).

B. Typeface and type style requirements

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 point normal Times New Roman with quotes in 14 point normal Bookman.

Respectfully submitted on July 9, 2003, Dr. Richard Cordero

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