

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
ROSE ROMANO, ) CASE NO. 07-23061 JPK  
 ) Chapter 7  
Debtor. )

ORDER CONCERNING FURTHER  
PROCEEDINGS IN RELATION TO CONTESTED MATTER

On March 6, 2013, a telephonic preliminary pretrial conference was held pursuant to the court's record No. 118 order with respect to the contested matter formed by the Chapter 7 Trustee's record No. 49 motion to approve a compromise and the debtor's record No. 53 objection to that motion. The hearing was conducted telephonically. The debtor appeared by counsel Stuart K. Jones; the Chapter 7 Trustee Kenneth A. Manning appeared personally; the City of Hammond appeared by attorneys John McCrum and Brian DeHem.

At the preliminary pretrial conference, a significant amount of time was devoted to the court's record No. 114 judgment entered on February 15, 2013,<sup>1</sup> and the effect of that judgment in relation to further proceedings in this contested matter. Attorney Jones stated that the debtor, Rose Romano, may file a notice of appeal with respect to the record No. 114 judgment. Attorney Jones repeatedly referred to what he described as the "collateral appeal doctrine" – despite the court's repeatedly advising Attorney Jones that the doctrine to which he was referring has no application whatsoever to the matters before the court, or to any matter in relation to his potential appeal of the record No. 114 judgment. For the purposes of elucidation of all involved, here is how matters play out:

1. The subject of the record No. 114 judgment is a separate contested matter, initiated by the debtor's record No. 86 motion. This contested matter is a contested matter

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<sup>1</sup> The memorandum of decision which explained the basis upon which that judgment was entered is stated in record No. 112.

entirely separate from the contested matter relating to the Trustee's motion to compromise and the debtor's objection to that compromise. The record No. 114 judgment entered by the court is a final appealable order with respect to the separate contested matter. Because of that, the "collateral appeal doctrine" [see, *In re Firstmark Corporation*, 46 F.3d 653 (7<sup>th</sup> Cir. 1995)] has no application whatsoever to any matter before the court. Because the contested matter resolved by the record No. 114 judgment is a "stand alone" proceeding, and the record No. 114 judgment resolved all issues as to all parties with respect to that proceeding, it is not "an interlocutory judgment order or decree" subject to Fed.R.Bankr.P. 8001(b)/Fed.R.Bankr.P. 8003/28 U.S.C. § 158(a)(3). Moreover, because the record No. 114 judgment resolved all issues as to all parties with respect to the contested matter to which it related, Fed.R.Bankr.P. 7054/Fed.R.Civ.P. 54(b) has no applicability: It is not necessary for the court to certify the finality of anything with respect to the record No. 114 judgment – it is a "stand alone" final judgment on its own.

If Rose Romano appeals the record No. 114 judgment, what will be called into play is the effect of that appeal on proceedings in the contested matter arising from the Trustee's motion to compromise. The court, as stated repeatedly at the March 6, 2013, telephonic conference, deems any potential appeal result to be so integrally related to issues arising with respect to in the motion to compromise contested matter that further proceedings in the motion to compromise contested matter should be suspended pending finalization of the appeal of the record No. 114 judgment. The court has determined that on its own. The court's determination makes unnecessary any resort to Fed.R.Bankr.P. 8005 to seek a stay pending appeal of the record No. 114 judgment in relation to further proceedings in the contested matter concerning the Trustee's motion for compromise and the debtor's objection thereto, a motion which would have no legal efficacy anyway. If the debtor files a notice of appeal with respect to the record

No. 114 judgment, the court will not undertake further proceedings in the “compromise” contested matter until that appeal has been finally resolved at its highest possible level.

During the March 6, 2013, conference, the court referred to 28 U.S.C. § 158(d)(2), to which the court was repeatedly met with contentions from Attorney Jones about the “collateral appeal doctrine.” What the court was attempting to communicate to the parties was that the United States Bankruptcy Court for the Northern District of Indiana will not act on its own motion pursuant to 28 U.S.C. § 158(d)(2)(a) to seek direct appeal to the United States Court of Appeals for the Seventh Circuit, thus bypassing the ordinary appeal route to the United States District Court for the Northern District of Indiana. The court does not believe that the United States Court of Appeals for the Seventh Circuit will exercise its discretion under 28 U.S.C. § 158(d)(2)(A) to accept a direct appeal in this case, and further proceedings in relation to a direct appeal would only cause more delay. This court will absolutely oppose any request for a direct appeal to the United States Court of Appeals for the Seventh Circuit concerning the record No. 114 judgment, to the extent that the court has the authorization to do so.

The court agrees with the Chapter 7 Trustee and with the City of Hammond that setting a trial/final evidentiary hearing on the motion to compromise contested matter should be effected at this time. In the event that Rose Romano chooses to appeal the record No. 114 judgment, the trial setting will be eviscerated, and further proceedings with respect to trial of that contested matter will be subject to further order of the court. However, the trial/final evidentiary hearing will nevertheless be set.

IT IS ORDERED that a final evidentiary hearing/trial will be held concerning the contested matter arising from the Trustee’s record No. 49 motion and the debtor’s record No. 53 objection, to commence at 9:30 A.M., on April 18, 2013. The court has reserved two days for this trial.

IT IS FURTHER ORDERED that any motions in relation to anything in relation to the foregoing trial shall be filed, together with a memorandum of law in support of any such motion, by April 1, 2013.

IT IS FURTHER ORDERED that in the event Rose Romano files a notice of appeal pursuant to Fed.R.Bankr.P. 8001 et seq in relation to the record No. 114 judgment, the trial setting is cancelled (and so is the motion deadline established in the immediately preceding paragraph). In the event of ultimate finalization of any such appeal, the court will then set a preliminary pretrial conference in relation to the compromise contested matter.

Dated at Hammond, Indiana on March 13, 2013.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee  
Attorney John McCrum  
Attorney Brian DeHem