

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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In re: )  
 )  
MICHAEL R. MASTRO, ) No. 09-16841  
 )  
Debtor. )  
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PARTIAL TRANSCRIPT OF THE DIGITALLY-RECORDED PROCEEDINGS  
BEFORE THE HONORABLE SAMUEL J. STEINER  
JANUARY 29, 2010

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Reported by: Robyn Oleson Fiedler  
CSR #1931

APPEARANCES

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been wrong before, and I may be wrong this time.

But this is a rule 2004 exam. It is fully briefed and ready to argue. I think that there's not very much that we're in disagreement over. But I think that there is one issue that stands out as the focus.

THE COURT: What is the one issue?

MR. BUSH: The one issue is our request to examine Mr. Mastro's post-petition activities. And I'm prepared to address that. That was covered in our motion in our briefs. It's covered in the response of Mastro. And other than that -- and I certainly don't want to overstate the status of it, but I really believe that's the central issue that we have a disagreement on.

THE COURT: Well, Mr. Stehlik, why shouldn't they be able to examine the debtor as to his post-petition activities? How do we know that his present lifestyle isn't sustained by property of the estate which he's hidden away?

MR. STEHLIK: Your Honor, I believe there are less burdensome ways to find that out. I mean, the way they're going about this is presuming that Mr. Mastro is acting improperly, using estate assets improperly. That's the premises for the 2004 motion and order. There's no showing before you that there's any

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--ooOoo--

(Preceding colloquy not included in this transcript regarding the motion for a 2004 examination.)

THE COURT: Now we have this 2004 problem. Now, counsel, this is a discovery problem. I have seen nothing in this paperwork to reflect that either one of you have made an effort to comply with District Court Rule 37(a). So therefore, why don't I just strike this and send you home till you can do it right?

MR. STEHLIK: Perhaps a fresh start would be a good idea, Your Honor. Jerry Stehlik on behalf of Mr. Mastro.

THE COURT: Well --

MR BUSH: Your Honor, if I may be heard?

THE COURT: Yes. Go ahead.

MR. BUSH: This is actually a motion for a rule 2004 exam. This is not a notice of deposition in an adversary proceeding, of which rule 7037 would comply. So I think that with due with respect to you and due respect to the local rules, I think that this falls outside the governance of that rule. But I've

suggestion or any evidence that he's doing this.

I guess I'll hit it back --

THE COURT: What about lavish lifestyle, trips out of the country?

MR. STEHLIK: Let me address that, Your Honor.

THE COURT: A concerted effort by many of his friends and other witnesses not to appear for depositions and so forth?

MR. STEHLIK: I don't know if you've had a chance to read my reply, Your Honor, but I dealt with all of those things fairly directly.

First of all, I'll say that there's a lot of suggestion and innuendo in the trustee's papers that are simply false. The trips to Whistler, there's no such trip. The Mastros haven't been there for ten years. The trip to Colorado happened in January of '09, last year, an entire year ago. The Mastros did go to Italy together in September of '09. Those are the facts.

He's living in his house without paying any rent because it is subject to a deed of trust in favor of the Dorssers Group, which has been challenged by the trustee. The Dorssers Group cannot foreclose on that that deed of trust at the moment. He's not paying any

1 rent. He's not paying any mortgages. The fact that  
2 he's been able to live there is a fortunate  
3 circumstance because of the limbo of the property.

4 So first of all, the assumption that he's  
5 living a lavish lifestyle, I think is inaccurate. He  
6 went to New York to try to find some financing for his  
7 future. The man is entitled to a future, even though  
8 at age 84, I don't know how much more he's going to  
9 have.

10 Why does he have to be out on the street? I  
11 mean, if he was out on the street, is that any  
12 justification, then, for -- should I stand up and say,  
13 well, Your Honor, he's poor and destitute, therefore  
14 they're not entitled to ask these questions? The logic  
15 really doesn't hold up. They either are or aren't, by  
16 virtue of the legal principles involved.

17 And once this debtor, any debtor, passes  
18 through this crucible of disclosure, 341 meetings, at  
19 some point in time they're entitled to go on with their  
20 lives. Why should the trustee get to ask Mr. Mastro  
21 about who he's borrowing money from? Why is that their  
22 business? There has to be some reasonableness to this.

23 THE COURT: Well, you start out with a  
24 premise, this is a major case. It's a complicated  
25 case. And Mr. Mastro is the primary source of

1 information. And it just stands to reason that he's  
2 going to have to be examined a number of times.

3 MR. STEHLIK: I understand that, Your Honor.  
4 I'm really not addressing that specific matter. I  
5 think that there is a procedural aspect of this, which  
6 I also have some concerns about, which is I think  
7 counsel just needs to talk about what's reasonable as  
8 far as the time, place, the date -- none of which -- no  
9 effort has been made in that regard yet, either. But  
10 what we're trying to figure out now is the substantive  
11 scope of what they get to ask about.

12 I think if counsel would take the time to  
13 call my office and discuss dates and those kinds of  
14 things, which I think are just simply professional  
15 courtesy, some of these issues could go away.

16 But today, I think Mr. Bush is correct that  
17 the substantive issue before you is whether they have  
18 carte blanche to ask Mr. Mastro about what he did  
19 yesterday, how he paid his grocery bill yesterday or  
20 today or tomorrow, or not. And it seems to me that  
21 unless there's some basis for them to have a right to  
22 inquire into those matters, they don't have carte  
23 blanche to do that.

24 Yes, it's a big case. Mr. Mastro didn't file  
25 this case. He was forced into this case. I don't know

1 if that makes any difference or not in the analysis.  
2 Probably not. But he's here, not by his own desires.  
3 He didn't come here to seek protection of the court.  
4 He has filed schedules. He has appeared for two first  
5 meetings of creditors.

6 And you know, Your Honor, they did ask him at  
7 the second session, how are you paying your bills. I  
8 believe it was phrased something along those lines.  
9 And he said, I'm borrowing money, and I received some  
10 money from MKM LLC through sales of life insurance  
11 policies. They asked that question; he answered it.  
12 How many more times does he have to answer it? Does  
13 this go on until the case is closed?

14 I understand that you might be sympathetic to  
15 the trustee's suspicions or needs to do their due  
16 diligence. But you also have to be aware that this has  
17 the potential for going on forever. When is it going  
18 to end? When does Mr. Mastro get to say, Okay, I can  
19 go on with my life, and my business affairs are now my  
20 own.

21 THE COURT: Maybe that's when I say so.

22 MR. STEHLIK: Well, I guess that's why I'm  
23 here.

24 But, Your Honor, did you look for what they  
25 asked for? I mean, some of them are borderline

1 ridiculous. Why should he have to list every person  
2 who's visited his home for the last decade from outside  
3 the state of Washington? Why should he have to list  
4 every person he's visited outside of the state of  
5 Washington for the last ten years? I mean, it's crazy.  
6 Why should he have to tell them how he paid his grocery  
7 bill last month? Why should he have to tell them who  
8 he borrowed money from?

9 This whole thing has been turned on its head.  
10 They want to know all of this. They want to know what  
11 his bank account has in it. They want to know every  
12 bank account he's got today. And why is that their  
13 business?

14 There's got to be a more reasonable, measured  
15 approach that satisfies their needs and doesn't invade  
16 Mr. Mastro's privacy. He is not a demon. He's an  
17 individual who has had a horrible thing happen to him.  
18 And many other people have, too. But he's entitled to  
19 some measure of respect and dignity in this process.

20 For the trustee to be able to, ad infinitum,  
21 forever into the future, or whenever they deem it  
22 appropriate or Mr. Rigby decides he wants to do it, ask  
23 about Mr. Mastro's what ought to be private financial  
24 affairs going forward, seems to me to be unreasonable  
25 and unfair. And I think that some limitation needs to

1 be imposed.

2 The reasonable one, to me, would be that they  
3 need to make some showing that there's some connection  
4 between what he has in his bank account today and  
5 pre-petition -- excuse me -- property of the estate.  
6 There's been no showing, other than these rumors that  
7 he's flying around the world and spending a bunch of  
8 money, half of which were not true.

9 So I just think the whole thing has been  
10 poorly handled, approached in a very unprofessional  
11 manner. And I think it can be done with more care and  
12 respect and balance and fairness for all involved.

13 THE COURT: How do you explain the  
14 allegations in the trustee's pleadings which are to the  
15 effect that various parties involved that are related  
16 to the debtor or have had dealings with the debtor, and  
17 who are witnesses, have used the scorched earth policy  
18 to avoid appearing for discovery purposes?

19 MR. STEHLIK: That's an interesting  
20 characterization, Your Honor. I think they're  
21 complaining about the fact that people have long since  
22 moved out of the jurisdiction, or they can't serve  
23 them. My office has nothing to do with that. And as  
24 far as I know, Mr. Mastro has nothing to do with that.

25 Mr. Kenyon, the CFO for Mr. Mastro, was

1 deposed in a 2004 exam over a month ago. And so was  
2 Mr. Mastrandrea, another of Mr. Mastro's business  
3 associates. The people that are here and the people  
4 that know most about Mr. Mastro's affairs are here and  
5 have been talked to informally and formally. I  
6 mentioned that in my reply as well, Your Honor.

7 So the idea that Mr. Mastro is running around  
8 trying to prevent people from testifying is frankly  
9 absurd. He is here. His wife is here. His CFO is  
10 here. His business associate, that he did a lot of  
11 business, is here.

12 THE COURT: And his wife conveniently says,  
13 Oh, I can't possibly come to a deposition. Oh, I can't  
14 possibly be there for another 30 days.

15 MR. STEHLIK: Your Honor, there's more to  
16 that than I'm able to share with you right now. And I  
17 wish I could. It's a sensitive matter. And at the  
18 appropriate time, there may be something before you.  
19 But as I understand it, a deposition has been scheduled  
20 for her and noted by agreement on February 17th.

21 Even since this thing came out, this motion,  
22 there has been a number of items that have been  
23 resolved and set for depositions. The Duvall and Simon  
24 situation, for example, there's a stipulated order. A  
25 stipulated order was already entered by the time they

1 made these complaints about Mr. Mastro supposedly  
2 manipulating discovery where they're going to produce  
3 documents, which I believe the production is today.  
4 And they're going to be deposed on the 9th and 11th of  
5 February. That's already set and done.

6 The fact that -- and I have to say, we had  
7 nothing to do with the scheduling. We had nothing to  
8 do with Mr. Gandara objecting and preserving  
9 attorney/client privilege. Many of these things are  
10 legitimate. But the bull in the china shop approach is  
11 going to invoke -- is going to get some people involved  
12 on issues that had other approaches less drastic and  
13 more reasonable been taken, wouldn't have had to have  
14 been dealt with.

15 So it's not all the blame on the responding  
16 parties. People are taking legitimate positions.  
17 They're taking positions to protect their clients. And  
18 there's nothing wrong with that.

19 But progress is being made. I don't think  
20 this is any different than any other case. Discovery  
21 can be cumbersome. Discovery can be frustrating. But  
22 it's moving forward on the key issues, as far as I can  
23 see.

24 Some of these players -- just to round it out  
25 out. Two players, they cited Danielle Smith. She's a

1 small investor in the Dorssers Group deed of trust.  
2 She was one of the roughly eight or ten people that  
3 were put under the umbrella of the security interest  
4 and the deed of trust that was issued to Dorssers,  
5 which is being challenged in the case. By no means a  
6 big player here. But that's just an aside.

7 THE COURT: Well, Mr. Bush, why should there  
8 be a 2004 exam to find out where the money came from to  
9 pay the debtor's grocery bill? Why should he have to  
10 list everybody that's been a visitor in his home for  
11 the past ten years? Isn't that going a little over  
12 board, that sort of stuff?

13 MR. BUSH: Well, let me address that, because  
14 I don't believe, within the context of this case, that  
15 is overboard. Specifically, the request that they list  
16 people from outside the country who have been in their  
17 home. And that is the one request in their paperwork  
18 that they sort of ridicule us for, say that it borders  
19 on the ridiculous.

20 Remember that by Mrs. Mastro's admission, she  
21 took jewels that are subject of the trust action and  
22 transported them to friends in Italy. We talked to her  
23 lawyer. We said who are -- who had the jewels? Give  
24 us a name. They would not disclose that.

25 So now we're trying to find out who that is.

1 So we could say, Who's your friends, and Mastros could  
2 subjectively decide who they were going to disclose and  
3 who they weren't. So we've decided just to say, Tell  
4 us who's been in your house from outside the country.  
5 Let us know.

6 And this is precipitated --

7 THE COURT: Why don't you ask the debtor  
8 point blank, Who has the jewels?

9 MR. BUSH: Be happy to do that. We have  
10 asked Mrs. Mastro's lawyer that question, and it has  
11 been refused to be answered.

12 So I've got to tell you --

13 THE COURT: On what basis?

14 MR. BUSH: You mean on what basis?

15 THE COURT: Yeah, why --

16 MR. BUSH: It's not our business.

17 THE COURT: Did you ask that in a deposition?

18 MR. BUSH: No. She won't come to a  
19 deposition yet, as you know. We had one scheduled, and  
20 she cancelled it.

21 I want to make sure that the record reflects  
22 a few things. Number one, Mr. Mastro has never been  
23 examined in this proceeding under rule 2004 yet.  
24 Number two, Mr. Mastro has not been deposed in the  
25 adversary proceeding yet. The only examination that

1 There are things in that house -- now, there  
2 were two or three rugs listed as maybe being more than  
3 the exempt value in the schedules. When we sent Tim  
4 Murphy in to value things in the house, he comes back  
5 with things like \$100,000 Chihuly chandelier that is  
6 not scheduled. There is a wine collection with  
7 hundreds of dollars per bottle, several bottles worth  
8 more than husband of dollars, unscheduled.

9 I have to tell you, Your Honor, that during  
10 the gap period -- the gap period was about five weeks  
11 long -- there was \$400,000 transferred to an LLC owned  
12 by Mr. Mastro's son, Michael K. Mastro. \$400,000 in  
13 cash. Yet when this case is converted, there's no  
14 cash. Zero. Zero cash. Why aren't we entitled to see  
15 these post-petition activities and work back from them?  
16 It's much easier and much more efficient. We're left  
17 with no money to do that, so far.

18 We are simply trying to do the job that the  
19 trustee has. And I've got to say that there are so  
20 many red flags here that I believe the only fair  
21 decision is to order the Mastros to produce the  
22 information we seek. There are reasons for that.

23 In the discovery from Mrs. Mastro, she  
24 reveals to us no bank accounts that she has, none. So  
25 that should take away the argument that she is

1 occurred was early in the case at the first meetings of  
2 creditors. And I will tell you, as an officer of this  
3 court, I have never seen so many instructions from  
4 counsel to not answer questions. Some of them are part  
5 of this record. But this spirit of cooperation, and  
6 Mr. Mastro has disclosed everything, is not an idea  
7 that I warmly embrace or accept.

8 The record is clear that there were massive  
9 asset transfers to a trust held in Belize. We are  
10 trying to find out if there's cash there.

11 In this case there have been a number of  
12 Mastro-related parties who have appeared through a  
13 virtual who's who list of Seattle law firms. Those law  
14 firms include Davis Wright, Danielson Harrigan,  
15 Montgomery Purdue, Vandenberg Johnson & Gandara, Michael  
16 Malnati, Bucknell Stehlik. Are these people working  
17 pro bono, do you think? Or do you think they're being  
18 paid? And if they're being paid, where did that money  
19 come from?

20 There were no cash transfers disclosed in the  
21 schedules to parties such as the LCY Trust. We think  
22 that trust has money. We think it's property of the  
23 estate. But we can't get there until we have  
24 Mr. Mastro disclose to us. Now, he says, Oh, I  
25 disclosed everything in the schedules.

1 financing these activities with her separate property.

2 We are just trying to get to the bottom of  
3 what happened to a lot of money, and are there other  
4 assets which weren't scheduled. And we have so many  
5 indications of red flag transactions in this case, of  
6 assets that aren't scheduled, that it's time to have a  
7 fair, honest, court-ordered disclosure of those things.  
8 And that's what we're seeking.

9 Excuse me, Mr. Shulkin, could you keep it  
10 down a little bit? Thank you.

11 We are trying to find out the information we  
12 need for the trustee to do his job. For us to be  
13 accused of the things we're accused of in the  
14 pleadings, abusive discovery, if we are conducting  
15 abusive discovery, they have every right to come before  
16 you and tell you and show you and bring an end to it.  
17 I have not been accused of that, I don't think ever in  
18 front of you for 30 years. And I'm not trying to do  
19 that here. I'm trying to get to the bottom of a  
20 troublesome case in the most efficient way that we can.

21 Thank you.

22 MR. STEHLIK: Your Honor, may I respond  
23 briefly? I'm sorry.

24 THE COURT: It better be real brief.

25 MR. STEHLIK: The moralities of this case can

1 be debated for a long time. The fact of the matter is  
2 discovery ought to taken in an orderly fashion. I  
3 think you head hit the the nail on the head. Questions  
4 can be asked directly about these areas of concerns.  
5 You don't have to open up every aspect of Mr. Mastro's  
6 life with the hopes of perhaps finding something that  
7 you might just be able to ask about directly.

8 Is there money transferred to the trust?

9 Simply question, simple direct question. Was there any  
10 cash transferred to the trust? Yes or no, Mr. Mastro.

11 I am not avoiding having Mr. Mastro appear.  
12 I've offered a date during the week of February 15th.  
13 They have not accepted that date. We are not trying to  
14 avoid having Mr. Mastro testify. We're simply asking  
15 for reasonable protections and reasonable restrictions  
16 on this process. That's all.

17 And I am shocked to hear that Mr. Bush is  
18 telling that you Mrs. Mastro "cancelled" the  
19 deposition. There are good reasons for that, and  
20 Mr. Hall knows those reasons. Now, they've been kept  
21 out of the public record for sensitive reasonable  
22 reasons. However, I must say that there are things  
23 that are unknown to you that are not being disclosed  
24 and not being dealt with fairly in this process.

25 THE COURT: How can I make a reasoned ruling

1 if there are facts that I don't know?

2 MR. STEHLIK: Your Honor, that was dealt with  
3 in a discrete manner between counsel. I was privy to  
4 that because I know what's going on between Mr. Gossler  
5 and Mr. Hall. There were medical reasons why that  
6 deposition didn't take place. And as I understood it,  
7 there was an agreement and understanding as to when it  
8 was going to be renoted. And in fact, it has been  
9 renoted for February 17th.

10 These things are going to happen, and we are  
11 all working together at a level to make them happen.  
12 But we're here to make sure that this thing isn't a  
13 free-for-all and that there are reasonable restrictions  
14 on the inquiry. They're going to get their shot at  
15 Mr. Mastro. They've already had six hours of it.  
16 They're going to get more. They're going to get a  
17 deposition in the 2004 arena. They're going to get a  
18 deposition in the adversary proceeding.

19 What I'd like from you and from the court is  
20 the understanding and the help and the protection that  
21 they get one deposition in each case -- that would be a  
22 reasonable restriction -- and that they don't get to  
23 talk about all the things he's done post-petition.

24 If there's some reason, if there's some  
25 direct showing, if there's some inquiry they want to

1 pursue, fine. Did you transfer money to the trust? A  
2 simple straightforward question.

3 THE COURT: Well, I think when this 2004 exam  
4 proceeds, that's going to be one of the questions  
5 that's going to be asked.

6 MR. STEHLIK: And we're not opposing it to  
7 proceed. That's not our problem. That's not a problem  
8 we have.

9 THE COURT: Well, I think there's one thing  
10 you have to keep in mind when you get into these  
11 discovery problems, and that's that I have a very low  
12 explosion point on discovery matters. And you better  
13 keep that in mind.

14 Now, as to the present situation, Mr. Bush,  
15 is there any reason why you can't get together and  
16 agree on a time and a place?

17 MR. BUSH: Sure. That's not our problem at  
18 all.

19 THE COURT: All right.

20 MR. BUSH: That's not our problem.

21 THE COURT: All right. You know, I think  
22 another thing you have to keep in mind -- and I said it  
23 before -- this is a large case. It's a complicated  
24 case. There are all kinds of allegations of  
25 improprieties floating around. Who knows if they're

1 true? Who knows if they're false? But I think not  
2 only does the trustee have a right to investigate them,  
3 put the matters to rest one way or the other, he has  
4 the obligation to do that.

5 So the objection to the 2004 examination of  
6 Mr. Mastro is overruled. And if you have trouble  
7 during the 2004 exam, you may have to call in for a  
8 ruling. But keep in mind, as I said before, I have a  
9 very low explosion point on discovery matters.

10 MR. BUSH: Your Honor, I do have an order  
11 with me. We have placed in this order that the  
12 examination would occur February 10th at our office. I  
13 would like that ordered. However, I will represent to  
14 Mr. Stehlik and to the Court that if there needs to be  
15 a reasonable rescheduling of that, we're willing to  
16 entertain that.

17 THE COURT: All right.

18 MR. STEHLIK: Well, I think I've asked for it  
19 to be set during the week of the 15th, and I haven't  
20 had a response to that.

21 MR. BUSH: I think Mr. Hall will need to look  
22 at his calendar. If that's when it has to be, we'll do  
23 it then. We're trying find a date. That's not our  
24 issue.

25 THE COURT: All right.

CERTIFICATE

ROBYN OLESON FIEDLER certifies that:

The foregoing pages represent an accurate and complete partial transcript of the entire record of the digitally-recorded proceedings before the HONORABLE SAMUEL J. STEINER presiding, in the matter of MASTRO; and

These pages constitute the original or a true copy of the original transcript of the proceedings.

Signed and dated this 9th day of February, 2010.

AHEARN & ASSOCIATES

by |s| Robyn Oleson Fiedler  
ROBYN OLESON FIEDLER, Notary  
Public in and for the State of  
Washington, residing at Buckley.