

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
EDWIN FREDERICK GUTH, III)	Case No. 02-02121-TLM
and DEBRA W. GUTH,)	
)	
Debtors.)	MEMORANDUM OF DECISION
)	
_____)	

The chapter 7 Trustee Lois Murphy (“Trustee”) filed a motion to establish the terms and conditions of a proposed sale of personal property of the estate. *See* Doc. No. 155 (the “Motion”). The Motion came on for hearing pursuant to notice on May 9, 2005. Debtors Edwin and Debra Guth (“Debtors”) appeared *pro se* and objected to the Motion. Their objection was orally stated on the record; no pleading was filed by Debtors in regard to the Motion.

For the reasons set out herein, the Court concludes the objection will be overruled and the Motion will be granted.

BACKGROUND AND FACTS

Debtors filed a petition for chapter 7 relief on July 2, 2002. *See* Doc. No. 1. On November 8, 2002, this Court issued a Memorandum of Decision addressing Debtors’ motion to dismiss their case. *See* Doc. No. 53; *see also* Doc. No. 54

(Order). In significant part, the Memorandum of Decision considered issues raised by Debtors concerning the absence of § 342(b) notice.

Debtors disagreed strongly with the Court's ruling on this issue. *See e.g.* Doc. No. 76 ("Notice of Unlawfully Commenced Chapter 7 Case and Notice of Withdrawal [sic] of Petition"); *see also* Doc. No. 93 (similar "notice"). Debtors also filed a notice of appeal on January 30, 2003. *See* Doc. No. 79. This appeal was dismissed by the United States District Court on March 17, 2003. *See* Doc. No. 86.

Several hearings have been held over the intervening years. The entirety of the record reflects that Debtors, who have represented themselves *pro se* other than for a brief period of time, have been provided multiple opportunities to address issues involving the administration of this bankruptcy case. Often over the Trustee's concerns and objections, Debtors have been granted significant opportunity to provide input regarding the sale of assets, and to renew requests for dismissal of the case. *See e.g.* Doc. No. 95 (minute entry of 5/21/2003, overruling objection to sale to the extent it re-litigated issues resolved in the November, 2002 Decision, but vacating the sale and requiring future sales of personal property to occur only upon prior motion, notice and hearing establishing sales procedures

and terms)¹; Doc. No. 116 (minute entry of 3/1/2004).

Following discussion at yet another hearing, the Court entertained another motion to dismiss the case. *See* Doc. Nos. 116 (minute entry), 124 (motion). That matter was taken under advisement after hearing in July 2004, and resolved by a Memorandum of Decision in September 2004, *see* Doc. No. 139, and an Order entered October 7, 2004, *see* Doc. No. 140 (denying motion without prejudice).

Following an application regarding Trustee's retention of an auctioneer and a hearing on that issue, approved by Order in February 2005, Trustee filed the instant Motion. The Motion sets forth the terms under which the Trustee proposes to go forward with a sale of property of the estate consistent with the prior rulings of the Court and the discussions held on the record in this matter. It is to this Motion Debtors object.

DISCUSSION AND DISPOSITION

At hearing, Debtors raised a number of "points" in opposing Trustee's Motion.

A. Section 342(b) issue

Debtors again raise their arguments concerning the propriety or legitimacy of the bankruptcy case itself given the issues surrounding the § 342(b) notice.

¹ Debtors' filed a notice of appeal regarding this hearing and oral ruling. *See* Doc. No. 99. This appeal was also dismissed by the U.S. District Court for the District of Idaho. *See* Doc. Nos. 111, 112.

These issues were addressed at length in the Court's November 8, 2002 Memorandum of Decision. Just as was the case in May, 2003, disputes over Trustee's sale proposal do not provide an opportunity for a renewed attack on the prior Decision and Order. *See* Doc. No. 95 (minute entry); *see also* Doc. No. 139 (Memorandum of Decision Re: Dismissal, September 28, 2004) at 2-4 (addressing attempted renewal of § 342(b) issues); *accord*, Doc. No. 111 at 2-3 (U.S. District Court ruling addressing Debtors' attempts to again raise and litigate the § 342(b) issue). Debtors had an opportunity to appeal that earlier determination but did not do so in a timely and effective manner. *See* Doc. No. 86. Nothing presented supports resurrection and relitigation of the issues determined by the November 2002 Decision.

B. Court as an adversary

Debtors argue that the Court is their primary "adversary," and Debtors advance a number of related or subsidiary arguments based on this basic proposition.

The characterization of the Court in this fashion flows, first, from the fact that Debtors prior litigation attacked the failure of the Clerk of the Court to provide a § 342(b) notice. The idea appears to be that an attack on the Clerk is *ipso facto* an attack on the Court itself, the very entity that must then resolve the dispute. The Court is, as its November 2002 Decision reflects, sensitive to this

issue.

However, the Court has never taken or treated Debtors' factual or legal contentions as an attack on the Court or its integrity (despite occasionally poor choice of language used in Debtors' oral and written arguments). Rather, it has evaluated the legal consequences of the facts as established by the evidence, including the failure of the Clerk to provide the § 342(b) notice. *See, e.g.*, Doc. No. 53 at 7 (accepting as established for the purposes of the Decision that the clerk failed to provide the notice). The thrust of Debtors' argument is therefore misplaced and in error.

The idea that the Court is an adversary to Debtors also appears to be based on Debtors' strong disagreement with the Court's 2002 ruling and certain of the factual findings there discussed in the course of reaching its legal conclusions on the issue of dismissal. Disagreement is a fact of legal life. Rarely do all litigants agree with all findings and rulings of the Court. But the fact that the Court viewed the facts differently than a party, or reached legal conclusions different from those embraced or desired by a party, does not create a basis for concluding that the Court harbors animosity or bias.

The Court notes there is no recusal motion presented. Even if there were, the Court's judicial rulings, even if they part company with a litigant's views of the facts or legal propositions, are rarely a proper basis for recusal. *See In re*

Jones, 2002 WL 818275 (Bankr. D. Idaho 2002) (addressing recusal standards).

See also *Focus Media, Inc. v. Nat'l Broad. Co. (In re Focus Media, Inc.)*, 378 F.3d 916, 929-31 (9th Cir. 2004) (addressing recusal standards applicable to bankruptcy courts).

After undertaking the independent review of the situation discussed in the precedent, this Court concludes and states that there is no credible basis upon which recusal would be proper and the suggestion of bias or adversariness is rejected.²

C. Lack of jurisdiction

Debtors argue that the Court lacks “jurisdiction” over them or their property, again based upon the absent § 342(b) notice. Such issues were raised and decided adversely to Debtors, either expressly or by implication in the November 2002 ruling.

Further, to the extent a new issue is raised (and is not precluded by earlier rulings or events), the Court concludes Debtors have failed to establish that there is an absence of jurisdiction. To the contrary, jurisdiction expressly exists pursuant to the provisions of 28 U.S.C. § 1334(a) and (e), and the reference of that

² In making their arguments, Debtors also alluded to a “conflict of interest” of their prior Counsel in earlier representing Debtors, and contended that such Counsel made a “tepid” showing in the fall of 2002 and refused to advance arguments Debtors wanted him to advance. Under the circumstances of this case, the Court will not address such issues between Debtors and their former counsel.

jurisdiction to this Court by the District Court pursuant to 28 U.S.C. § 157(a) and (b).

D. Property of the estate

Debtors argue that Trustee has no authority to sell or otherwise deal with any of Debtors' property, contending that Debtors must first "transfer" such property to the Trustee. Debtors believe and argue that such a transfer requires a debtor's prior "informed consent" before it will become effective. They contend the § 342(b) issue nullifies any possibility of such informed consent by them at the time they filed the petition in this case, and that Trustee therefore did not properly obtain control of the estate property.

Property of the estate is governed by § 541 of the Code. Immediately upon the commencement of the case, an estate is created consisting of all legal or equitable interests of a debtor in property as of the date the petition is filed. *See* § 541(a)(1). There is nothing in the Code that conditions the effectiveness of § 541(a)(1) upon a debtor's understanding of, or consent to, its operation.³

The Court has jurisdiction over all property of the estate. 28 U.S.C. § 1334(e). Trustee is not only entitled but required to take possession of property of the estate and to liquidate it for the benefit of creditors. *See* § 704(1). The jurisdiction and property of the estate arguments are not well taken.

³ As with the other objections, Debtors have provided no case law or interpretive authorities supporting their view of this issue.

CONCLUSION

Debtors' objections and arguments to Trustee's Motion fall into two categories. The first consist of arguments, contentions, and issues that have been raised and ruled upon previously, some several times. Raising them yet again does not create a cogent or justiciable objection to Trustee's Motion.

The second group are objections that may be somewhat related to prior issues, but are different in their focus, emphasis, or articulation. They include the arguments that Trustee has no authority to deal with Debtors' property because such property did not become property of the estate due to lack of informed transfer by debtors, and that the Court's jurisdiction is similarly so dependent. Debtors' arguments and objections, to the extent new and not already covered by matters previously submitted to and ruled on by the Court, lack merit and will be overruled.

Trustee's Motion will be granted. Trustee shall submit an appropriate form of order.

DATED: May 17, 2005



A handwritten signature in black ink, appearing to read "Terry L. Myers". The signature is fluid and cursive.

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE

CERTIFICATE RE: SERVICE

A “notice of entry” of this Decision, Order and/or Judgment has been served on Registered Participants as reflected by the Notice of Electronic Filing. A copy of the Decision, Order and/or Judgment has also been provided to non-registered participants by first class mail addressed to:

Edwin F. Guth
Debra W. Guth
1564 Lenz Ln.
Boise, ID 83712

Case No. 02-02121-TLM (Edwin F. Guth)

Dated: May 17, 2005

/s/Jo Ann B. Canderan
Judicial Assistant to Chief Judge Myers