

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT

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IN RE:	)	CASE NO.	99-31833
	)		
EDWARD J. WATERS,	)	CHAPTER	7
	)		
DEBTOR.	)		
-----	)		
EDWARD J. WATERS,	)	ADV. PRO. NO.	05-3054
	)		
PLAINTIFF	)	DOC. I.D. NOS.	13, 18
	)		
vs.	)		
	)		
UNITED STATES OF AMERICA,	)		
By Its Agency, the Internal Revenue	)		
Service, RONALD MELE, in his	)		
capacity as IRS Insolvency Group	)		
Manager, and MICHAEL J. DALY,	)		
Chapter 7 Trustee,	)		
	)		
DEFENDANTS.	)		
-----	)		

**MEMORANDUM AND ORDER**  
**RE: MOTION TO DISMISS AND OBJECTION THERETO**

Before the court are: that certain Motion To Dismiss Adversary Complaint (and Request To Require Trustee To Return Refunds to IRS or to Escrow) (A.P. Doc. I.D. No. 13, the “Motion”)<sup>1</sup> filed by the above-captioned defendants the United States of America and Ronald Mele (in his

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<sup>1</sup> Citations herein to the docket of this adversary proceeding appear in the following form: “A.P. Doc. I.D. No. \_\_\_\_.” Citations herein to the docket of the main title 11 case appear in the following form: “Case Doc. I.D. No. \_\_\_\_.”

official capacity as IRS Insolvency Group Manager) (collectively, the “IRS”)<sup>2</sup>; and that certain Plaintiff’s Response Opposing IRS Motions To Dismiss (A.P. Doc. I.D. No. 10, the “Objection”) filed by the above-referenced chapter 7 debtor (“Mr. Waters”).

## **I. BACKGROUND**

Since 1991, Mr. Waters has filed five title 11 cases (including this case).<sup>3</sup> Throughout those cases, there have been two leitmotifs: saving Mr. Waters’ home located at 40 Swift’s Lane, Darien, Connecticut (the “Property”) from foreclosure of a mortgage (the “Mortgage”) thereon; and dealing with Mr. Waters’ state and/or federal tax liabilities. In this case those two themes have converged to produce this unusual adversary proceeding. Relevant facts follow.<sup>4</sup>

At all relevant times, Mr. Waters made his living as an investment banker operating as an employee of and/or through one or more of his wholly-owned corporations.<sup>5</sup> One of those

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<sup>2</sup> An additional defendant is Michael J. Daly in his capacity as chapter 7 trustee (the “Trustee”) for this case. The Motion also seeks dismissal of this adversary proceeding as it relates to the Trustee and seeks certain additional relief as to the Trustee.

<sup>3</sup> Among those title 11 cases are the following:

- this title 11 case filed on December 19, 1997. This case originally was assigned to the Honorable Alan H.W. Shiff but was reassigned to the undersigned by order dated May 6, 1999 and given the above-captioned docket number.
- a chapter 11 case filed in this district on June 2, 2000 (while this case was pending). That case originally was assigned to Judge Shiff but was reassigned to the undersigned by order dated September 26, 2000 and given a new docket number (Case No. 00-34156, the “Prior Chapter 11 Case”). That case was dismissed prior to plan confirmation in accordance with the Stipulation (as that term is defined below).

<sup>4</sup> That factual recitation is based upon the entire record of this case and, where indicated, from the complaint (A.P. Doc. I.D. No. 1, the “Complaint”) initiating this adversary proceeding and is solely for the purposes of this memorandum.

<sup>5</sup> Mr. Waters is an attorney but is not admitted to practice in Connecticut. At various points in this case, Mr. Waters has been represented by different lawyers. At present and except for

corporations is a British Virgin Islands corporation, Cape & Islands Investment Company Limited (the “Corporation”). During the pendency of the Prior Chapter 11 Case and this case, the Corporation received cash payments aggregating approximately \$1 million. In order to settle the dispute with the then holder (the “Holder”) of the Mortgage and Mr. Waters, on or about January 3, 2001 Mr. Waters caused the Corporation to lend approximately \$930,000.00 to Dean 40 Swift, LLC (“Dean 40”). The proceeds of that loan (plus a second loan from a third party, the “Third Party Loan”) were to be used by Dean 40 to acquire all of the Holder’s right, title and interest in the Mortgage. Ultimately, the proceeds of the Dean 40 loan and the Third Party Loan were wired to the Holder’s counsel and the Holder assigned its interest in the Mortgage to Dean 40.

The Dean 40 transaction (described above) may have bought peace with the Holder, but it agitated the IRS and the (Connecticut) state taxing authority (the “DRS”) considerably, one or both of them responding by seeking conversion of this case and the Prior Chapter 11 Case to cases under chapter 7 of the Bankruptcy Code. Those matters (among others) were settled by the entry of a Stipulation and Order (Case Doc. I.D. No. 180, the “Stipulation”) entered in this case and the Prior Chapter 11 Case on July 16, 2001.

The Stipulation provided (in relevant part) for the following:

- The Prior Chapter 11 Case was to be dismissed with a one year bar.
- This case was to be converted to a case under chapter 11 of the Bankruptcy Code (with Mr. Waters as debtor in possession).<sup>6</sup>

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special tax counsel, Mr. Waters is proceeding *pro se*.

<sup>6</sup> That conversion was effectuated by an order entered on July 16, 2001. (*See* Case Doc. I.D. No. 181.)

- Mr. Waters was authorized to market the Property at a price of no less than \$2.075 million and to file by a date certain a motion to sell the Property free and clear of liens.
- The parties agreed that certain disbursements (including, but not limited to satisfaction of the Third Party Loan) could be made from the proceeds of the contemplated sale, with the remaining proceeds to be placed in escrow (the “Escrow”) subject to other relevant provisions of the Stipulation and subsequent court order(s).

The Stipulation also had specific provisions for the payment of prepetition and postpetition

taxes:

- Mr. Waters was required to file certain tax returns by dates certain. (*See* Stipulation ¶ 1.) The taxing authorities could file amended proofs of claim and/or administrative claims within a certain time period and Mr. Waters could file claim objections within a certain time period. (*See* Stipulation ¶¶ 1, 3.)
- “Any taxes reflected as being due on the filed tax returns of the Debtor for the years 1993 through 1996 will be paid out of the . . . [Escrow] in accordance with a confirmed Chapter 11 Plan, as prepetition obligations of the Debtor. Any additional taxes of the Debtor claimed to be due by the IRS and DRS as reflected in their filed amended proofs of claim will also be paid out of the . . . [Escrow] upon their allowance by the Court in accordance with applicable Bankruptcy Code provisions.” (Stipulation ¶ 13.)<sup>7</sup>
- “Any taxes reflected to be due on the filed tax returns of the Debtor for the years 1997 through 2000, and any estimated income taxes due for 2001, will be paid out of the . . . [Escrow] upon approval by and further order of the Court. Any additional taxes of the Debtor claimed to be due by the IRS and DRS as reflected on any filed administrative expense claims will also be paid out of the . . . [Escrow] upon their allowance by the Court in accordance with applicable Bankruptcy Code provisions.” (Stipulation ¶ 14)
- “The Debtor, Dean 40 and . . . [the Corporation] agree that to the full extent of their respective rights, if any, in the escrowed funds, said parties hereby

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<sup>7</sup> The Stipulation contemplated prompt chapter 11 plan confirmation. (*See* Stipulation ¶ 11.)

subordinate such rights to the payment of taxes owed by Edward J. Waters to the IRS and DRS.” (Stipulation ¶ 12, the “Subordination Provision”).<sup>8</sup> Mr. Waters (in his capacity as debtor in possession) filed a motion on August 21, 2001 (Case Doc. I.D. No. 204) to sell the Property free and clear of liens for \$2.075 million in cash consideration. That motion was approved by an order (Case Doc. I.D. No. 215) entered on September 6, 2001. The sale order authorized certain disbursements from the sale proceeds and further directed that the balance of such proceeds (approximately \$1.3 million) be deposited into the Escrow. (See Case Doc. I.D. No. 215 at 4.) The sale of the Property closed on October 26, 2001.<sup>9</sup> The sale of the Property produced a federal gains tax liability (the “Gains Tax”) for the chapter 11 estate in the approximate amount of \$281,000.00.

On December 21, 2001, Mr. Waters filed an Amended Motion for Distribution of Proceeds of Sale of His Residence (Case Doc. I.D. No. 245, the “Distribution Motion”). The Distribution Motion sought distribution from the Escrow to pay certain tax liabilities, accounting fees (to prepare financial statements for the Corporation in order to complete Mr. Waters own tax filings, the “Accounting Fees”) and certain personal expenses. The IRS and the DRS objected to the Distribution Motion. (See Case Doc. I.D. Nos. 237 and 238.) On April 25, 2002, the court entered

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<sup>8</sup> Mr. Waters has asserted in the Distribution Motion (as hereafter defined) and otherwise that he now holds the interests of Dean 40 and the Corporation in and to the Escrow (Distribution Motion ¶ 8; Audio Record of 3/10/04 Hearing at 2:06:17 – 2:06:38) and the court will proceed on that assumption for the purposes of this memorandum only. However, the court notes that Mr. Waters was instructed by the court to follow the assignment procedure of Rule 3001(e) of the Federal Rules of Bankruptcy Procedure (Audio Record of 3/10/04 Hearing at 2:08:22 – 2:09:18) and has failed to do so.

<sup>9</sup> Mr. Waters asserts that the funds deposited in the Escrow are “comprised of . . . [his] post-petition earnings from personal services . . . as ‘executive compensation’ in 2001 . . . from the . . . [Corporation] . . .” (See Complaint ¶ 9.) Consequently, Mr. Waters asserts, those funds are not “property of the estate” pursuant to Bankruptcy Code § 541(a)(6). (See Complaint ¶ 10.)

(on the consent of Mr. Waters, the IRS, the DRS and Dean 40) that certain Amended Order on Debtor's Amended Motion for Distribution of Proceeds of Sale of His Residence (Case Doc. I.D. No. 247, the "Distribution Order.")<sup>10</sup> Among other provisions, the Distribution Order authorized the following distributions: (a) \$130,227.99 to the DRS to pay income taxes, interest and penalties for the years 1992, 1993, 1995, 1996, 1998, 1999 and 2000 and taxes, interest and penalties for capital gains taxes for the years 1988, 1989 and 1990; (b) \$529,520.62 to the IRS for payment of federal income taxes, penalties and interest for the tax years 1993 through 2000 and estimated taxes for 2001; (c) \$128,000 to Mr. Waters (without restriction on use); and (d) \$50,000 to be deposited in a separate interest bearing account to be used by Mr. Waters solely to pay the Accounting Fees.

In April of 2003, something happened which was not expressly provided for by the Stipulation: Mr. Waters filed amended income tax refunds for all tax periods for the years 1993 through 2001.<sup>11</sup> The amended returns for the years 1993, 1994, 1996, 1997, 1999 and 2000 produced tax refunds in the aggregate amount of \$206,275.66 (plus applicable interest, the "Tax Refund") which the IRS first acknowledged by a "Notice of Refund" dated November 18, 2002. The IRS responded to the creation of the Tax Refund by "freezing" it. That "freeze" was to assure payment of prepetition and postpetition tax liabilities of Mr. Waters. The "freeze" also assured payment of the Gains Tax which the IRS asserts Mr. Waters agreed to have paid from the Escrow pursuant to the Subordination Provision. Mr. Waters has challenged the validity and/or enforceability of the Stipulation on various grounds. Mr. Waters has further asserted that, even if

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<sup>10</sup> The Distribution Order is not an amended order.

<sup>11</sup> Mr. Waters asserts that these amended returns were triggered by the financial statements of the Corporation prepared by the accountant to whom he had paid the Accounting Fees. (See Complaint ¶ 11.)

the Stipulation is valid and enforceable, the Subordination Provision cannot be interpreted to apply to the Gains Tax.<sup>12</sup>

Mr. Waters never confirmed a plan in the chapter 11 phase of this case. On February 5, 2004, Mr. Waters (through counsel) filed a motion to convert this case to a chapter 7 liquidation. (*See* Case Doc. I.D. No. 403.) That motion was granted after notice and a hearing and without objection by an order entered on March 11, 2004. (*See* Case Doc. I.D. No. 413.) The Trustee was appointed and, on or about September 20, 2004, made demand on the IRS for some or all of the Tax Refund. The IRS responded in October of 2004 by paying approximately \$114,000.00 of the Tax Refund over to the Trustee (the “Trustee Funds”). The IRS did not seek court authorization for such payment. The Complaint was filed by Mr. Waters *pro se* on March 28, 2005. Mr. Waters received a chapter 7 discharge on May 24, 2005. (*See* Case Doc. I.D. No. 467.)

On August 4, 2005, the IRS filed in this adversary proceeding the United States’ Notice of Having Effectuated Certain Setoffs and Statement of Impact on Remaining Liabilities (A.P. Doc. I.D. No. 32, the “Notice”). The Notice notes that the automatic stay with respect to Mr. Waters personally and all property which is not property of the estate terminated upon entry of the chapter 7 discharge. *Cf.* 11 U.S.C. § 362(c).<sup>13</sup> The Notice further states that, in light of the foregoing, the IRS had at least initiated the internal processes to effectuate setoffs against the Tax Refund with respect to claimed tax liabilities for the years 1991 and 1995. Mr. Waters disputes his liability for

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<sup>12</sup> The issues of the validity, enforceability and interpretation of the Stipulation are before the court in other proceedings. (*See* Case Doc. I.D. Nos. 291, 421.) Mr. Waters also alleges that the IRS issued “Notices of Levy” against him in January and February, 2003 “for Estate Taxes due in Bankruptcy without seeking prior approval in Bankruptcy Court.” (Complaint ¶ 24.)

<sup>13</sup> All citations to title 11 of the United States Code are citations to the same as it existed prior to amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

those years and/or disputes whether the IRS has valid rights of setoff with respect to such asserted liabilities.<sup>14</sup>

## **II. THE COMPLAINT AND THE MOTION**

The structure of the Complaint is as follows. The first heading is entitled “Jurisdictional Allegations and Waiver of Sovereign Immunity” and introduces paragraphs 1 through 8 (inclusive). The second heading, “Statement of Facts,” introduces a lengthy statement of alleged facts set forth in paragraphs 9 through 27 (inclusive). The third heading is entitled “Statement of Claims” and introduces five alleged “claims” set forth in paragraphs 28 through 32 (inclusive). The fourth heading is entitled “Demand for Judgment and Relief” (the “Demand”) and introduces numbered paragraphs 33 through 46 (inclusive) which paragraphs are reproduced in Schedule A hereto.

The Motion seeks dismissal as to the IRS of certain aspects of the Complaint for lack of jurisdiction and of the Complaint in its entirety because the Complaint in its entirety “fails to state a claim upon which relief may be granted.” (Motion at 1.) The Motion also seeks dismissal as to the Trustee of the Complaint and further requests “that the Court order the funds held by the Trustee returned to the IRS or to the escrow account, pending final judicial determination of the debtor’s taxes and those of his bankruptcy estate.” (Motion at 2, the “Request.”)

Oral Argument (the “Argument”) has been had on the matter and briefs have been submitted. The matter is ripe for the decision set forth below.

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<sup>14</sup> The IRS also claims outstanding liabilities for the 1998 and 2001 tax years and reserves the right to collect them from the Escrow and/or the Trustee Funds. Mr. Waters alleges that he is owed refunds for those years instead.



### **III. ANALYSIS**

#### **A. Jurisdiction**

At least initially, “the parties . . . [disagreed] with respect to whether the adversary proceeding is appropriately filed in the Bankruptcy Court,” (A.P. Doc. I.D. No. 10.) After briefing and the Argument, the IRS now concedes jurisdiction. (*See* Argument Transcript at 39-40.) However, the parties cannot by agreement confer subject matter jurisdiction upon the court which it does not have and the court has an independent obligation to determine the presence of subject matter jurisdiction. *See, e.g., Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Accordingly, the court will deny for now the Motion as it relates to subject matter jurisdiction without prejudice to the court’s right to revisit the issue later in the proceedings (for example, after issues relating to the Stipulation have been adjudicated).

#### **B. Failure to State a Claim (the Demand)<sup>15</sup>**

##### **1. Complaint ¶¶ 33, 34 and 35**

Complaint paragraphs 33, 34 and 35 fail to present a case or controversy amenable to adjudication. *Cf.* U.S. Const. Art. III, § 2. The IRS concedes that the Tax Refund is a postpetition debt owing to Mr. Waters and is not property of the chapter 7 estate. Whether the foregoing is because Bankruptcy Code § 541(a)(6) applies or for some other reason is not germane to these proceedings as they now stand. Whether Section 541(a)(6) applies may be germane to issues relating to the Stipulation. However, the demands for a declaratory judgment in that regard anticipate that the IRS will raise the Stipulation defensively in its answer to the Complaint. The

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<sup>15</sup> Although usually “claims” are analyzed on a motion to dismiss rather than “demands,” because of the structure of the Complaint the court deems it appropriate to analyze the Motion with respect to each paragraph of the Demand.

court declines to render a declaratory judgment in that posture. *Cf. Public Affairs Associates, Inc. v. Rickover*, 369 U.S. 111, 112 (1962) (discretionary nature of declaratory judgment relief). If the IRS raises the Stipulation properly in its answer to the Complaint, contested issues relevant to the source of the Escrow account may be adjudicated then. With respect to paragraph 35, at the Argument the IRS disavowed reliance on the court's Standing Order #4 dated June 17, 1992 (Krechevsky, C.B.J. and Shiff, B.J.). Accordingly, the validity of Standing Order #4 is not at issue in these proceedings and paragraph 35 of the Complaint fails to present a case or controversy amenable to adjudication.

For the reasons set forth above, the Motion is granted with respect to Demand paragraphs 33, 34 and 35.

**2. Complaint ¶¶ 36, 37, 38, 39, 40, 41, 43, 44, 45, 46**

If the IRS raises the Stipulation defensively in these proceedings (or the Stipulation issues are otherwise adjudicated on the merits) and the validity, enforceability and construction of the Stipulation is adjudicated in the IRS's favor, each of the foregoing paragraphs may be rendered moot in whole or in part. Given the foregoing possibility, the court declines to opine on those paragraphs in the context of a motion to dismiss. Accordingly, the Motion will be denied as to the above-stated paragraphs without prejudice to the IRS's right to seek dismissal of those paragraphs in a more procedurally appropriate posture.

**3. Complaint ¶ 42**

Paragraph 42 seeks a determination that the IRS's turnover of the Trustee Funds to the Trustee was a violation of the automatic stay and is "void." Paragraph 42 further requests that the court order "the Chapter 7 Trustee to immediately turn-over all post-petition tax refunds due the

Debtor, plus accrued interest, which had been turned-over by the IRS to the Trustee as detailed above, amounting to approximately \$114,131.25.” The court declines to rule on paragraph 42 except after a trial on the merits. Accordingly, the Motion will be denied as to paragraph 42.

**4. Dismissal as to the Trustee and the Request**

The IRS’s request that the Trustee be dismissed from this proceeding and the Request are procedurally improper. The Trustee can answer the Complaint himself and assert any valid defenses. If the IRS desires to obtain an order respecting disposition of the Trustee Funds it can assert that request for relief by cross-claim against the Trustee and/or counterclaim against Mr. Waters. Accordingly, the Motion will be denied with respect to the Trustee and the Request.

**IV. CONCLUSION**

For the reasons stated above, the Motion is denied (and the Objection sustained) as to lack of subject matter jurisdiction without prejudice to this court’s right (and duty) to examine the issue at a later time if appropriate. The Motion is granted (and the Objection overruled) as to Complaint ¶¶ 33, 34 and 35. The Motion is denied (and the Objection sustained) with respect to Complaint ¶¶ 36, 37, 38, 39, 40, 41, 43, 44, 45 and 46 without prejudice to the IRS’s right to seek dismissal of those paragraphs in a more procedurally appropriate posture. The Motion is denied (and the Objection sustained) with respect to Complaint ¶ 42. The Motion is denied (and the Objection sustained) with respect to dismissal of the Trustee as a party defendant and also is denied with respect to the Request.

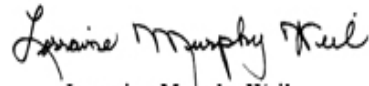
The court has determined that it would be preferable to adjudicate the issue of the validity, enforceability and construction of the Stipulation either prior to or concurrently with these proceedings. Accordingly, a separate order will issue scheduling an on-the-record status conference

with the IRS, the DRS, the Trustee and Mr. Waters to consider the appropriate procedure for adjudicating such issue.

**SO ORDERED**

Dated: December 13, 2005

BY THE COURT

A handwritten signature in cursive script that reads "Lorraine Murphy Weil".

Lorraine Murphy Weil  
United States Bankruptcy Judge

## SCHEDULE A

### Demand For Judgment And Relief

WHEREAS

33. The Plaintiff demands that this Court enter a declaratory judgment that the individual income taxes [1993 thru 2001] paid by the Debtor/Plaintiff on April 15, 2002 in accordance with the Stipulation and pursuant to an Order of this Court, were paid from funds held in the Escrow Account comprised entirely of post-petition wages paid to the Plaintiff/Debtor on October 26, 2001 as executive compensation by Cape & Islands Investment Company Limited for his personal services as Chairman, President & Chief Executive Officer.

34. The Plaintiff demands that this Court enter a declaratory judgment that since the payments of the Debtor/Plaintiff's federal income taxes for tax years 1993 thru 2001 [made on April 15, 2001 pursuant to Court Order] were paid from the Debtor's post-petition wages received for personal services [as noted above] that any overpayments/refunds for these tax returns are post-petition refunds of the Debtor; and further, that these post-petition refunds are not part of the Debtor's Chapter 7 Estate pursuant to 11U.S.C. §541(a)(6). [*In re Christie*, 233 B.R. 110 (BAP 10th Cir. 1999); *Kokoszka v. Belford*, 417 U.S. 642 (1974) affirming on appeal the Second Circuit Court of Appeals, *In re Kokoszka*, 479 F. 2d 990 (2d. Cir. 1973); *In re Segal*, 382 U.S. 375 (1966); *In re Lines*, 400 U.S. 18 (1970); and *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934).]

35. The Plaintiff also demands that this Court enter a declaratory judgment that "Standing Order #4 of the Bankruptcy Court District of Connecticut" violates 11 U.S.C. §362(d) and the due process rights of all Debtors since it allows relief from the automatic stay without motion, notice, or hearing; and further, that it violates 11 U.S.C. §553(a), and is overly broad. [See: *In re Willardo*, 67 B.R. 1014 (Bankr. W.D. Mich. 1986); and *In re Internal Service Liabilities And Refunds In Chapter 13 Proceedings*, 30 B.R. 811 (D.M.D. Tenn. 1983).]

36. The Plaintiff demands that this Court enter a declaratory judgment that the actions of the IRS in imposing indefinite "V-Freezes" and/or "Code 520 Freezes" on the Plaintiffs "Master Tax Transcripts", which prevents the payment of all post-petition income tax refunds due the Plaintiff [as noted herein] without seeking a "lift of stay" from this Court, are impermissible "setoffs" and withholdings; and are willful violations of 11 U.S.C. §362(a)(1),(5), and (6); §105; and §553; and are willful violations of Plaintiff's procedural and property "due process" rights under the Fifth Amendment to the U.S. Constitution.

37. The Plaintiff demands that this Court enter a declaratory judgment that the actions of the IRS in the withholding/seizing [of] all post-petition tax refunds due the Plaintiff [as noted herein] in setoff/withholding against all IRS Proofs of Claims against the Plaintiff for pre-petition tax years, and in setoff/withholding against Administrative Expense Claims of the Chapter 7 Estate, including the alleged setoff rights against these Administrative Expense Claims asserted under the Stipulation which are yet to be determined by this Court, without seeking a "lift of stay" from this court, are prohibited seizures/setoffs/withholdings; and are willful violations of 11 U.S.C. §362(a)(1 ),(5), and (6); §105; and §553; and 26 U.S.C. §6402, §6213, and §6501 [where applicable]; and are willful violations of Plaintiff's procedural and property "due process" rights under the Fifth Amendment to the U.S. Constitution.

38. The Plaintiff demands that this Court enter a declaratory judgment that the actions of the IRS in the withholding/seizing/setoff of all post-petition tax refunds due the Plaintiff until the "final Order of the Bankruptcy Court", and until a resolution of "all tax claims", and until the resolution of the alleged subordination claims under the Stipulation, and until a resolution of the validity of the Stipulation has been determined by this Court, without seeking a "lift of stay" from this Court, are prohibited setoffs/withholdings and willful violations of 11 U.S.C. §362(a)(1),(5), and (6); §105, §553; and violations of 26 U.S.C. §6402, §6212 and §6213; and are willful violations of Plaintiff's procedural and property "due process" rights under the Fifth Amendment to the U.S. Constitution.

39. The Plaintiff demands that this Court enter a declaratory judgment that the actions of the IRS in issuing "Notices of Levy" against the Plaintiff of Estate Tax Claims without seeking a "lift of stay" from this

Court, is a willful violation of 11 U.S.C. §362(1), (5), and (6); §105; and §553; and the Plaintiff's procedural and property "due process" rights under the Fifth Amendment to the U.S. Constitution.

40. In addition to the determinations and Orders of this Court already requested hereinabove, the Plaintiff demands the Court to enter a declaratory judgment that: (a) the IRS is subject to the Bankruptcy Laws of the United States, and in particular subject to Bankruptcy Code §553 [*See: In re Chateaugay, supra*], and (b) that consequently, any rights of the IRS under 26 U.S.C. §6402 are subject to 11 U.S.C. §553 and §362; and (c) any rights of the IRS under Standing Order #4 of the Bankruptcy Court District of Connecticut are subject to 11 U.S.C. §362 and §553.

41. The Plaintiff also demands that this Court Order the IRS to make immediate payment of all post-petition tax refunds due the Debtor, plus accrued interest [pursuant to 26 U.S.C. §661 and §6621] for his tax returns 1993 thru 2001, amounting to approximately \$94,745.34 [or as determined by this Court], as currently held by the IRS.

42. The Plaintiff also demands that this Court enter a judgment that the "turn-over" of tax refunds due Debtor by the IRS to the Chapter 7 Trustee, without seeking Court approval, was a violation of 11 U.S.C. §362(a)(1),(5), and (6), and §105; and is therefore "void" [see: *In re 48th Street Steakhouse, Inc.*, 835 F.2d 427 (2d Cir. 1987)]; and for the Court to Order the Chapter 7 Trustee to immediately turn-over all post-petition tax refunds due the Debtor, plus accrued interest, which had been turned-over by the IRS to the Trustee as detailed above, amounting to approximately \$114,131.25.

43. The Plaintiff also demands that this Court enter Orders imposing Sanctions for any delays by the IRS and/or the Chapter 7 Trustee in making the immediate payments of all post-petition tax refunds as Ordered by this Court, in order to assure compliance with the Orders of this Court.

44. The Plaintiff requests all damages, including attorney fees, which have been incurred by the Plaintiff as a consequence of the activities of the IRS, as asserted and as will be proven; and requests all other damages to which the Plaintiff is entitled.

45. The Plaintiff requests this Court to enter Orders holding the IRS in Contempt of Court and to assess and award penalties and fines for contempt, including the award of all attorney fees [including, but not limited to, the legal fees of the Plaintiff as an attorney and a Member of the New York Bar who has been forced to act Pro Se as a consequence of the prohibited seizures of his post-petition tax refunds preventing him from retaining the services of an attorney to represent him in bringing this action] pursuant to 11 U.S.C. §362(h) and §105.

46. The Plaintiff requests this Court to award sanctions and actual damages, including attorney fees, amounting to no less than \$500,000.00; and any other damages the Court determines should be awarded Plaintiff commensurate with the actual damages suffered by the Plaintiff; and such other and further relief the Court deems appropriate, including the "determinations" and "Orders" [including the turnover of post-petition tax refunds due Debtor/Plaintiff amounting to \$206,275.66 plus accrued interest] requested by the Debtor in this Adversary Proceeding. [See: *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1105 (2d Cir. 1990); *Fleet Mortgage Group, Inc. v. Kaneb*, 196 F.3d 265, 270 (1st Cir. 1999); and *In re Holden*, 258 B.R. 323 (D. VT 2000).]