

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:

THOMAS J. CALABRESE and
KAREN E. CALABRESE,

DEBTORS.

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CASE NO. 06-31855 (LMW)

CHAPTER 7

DOC. I.D. NOS. 115, 124

APPEARANCES

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Chapter 7 Trustee

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BRIEF MEMORANDUM AND ORDER
RE: MOTION TO DISMISS AND FURTHER HEARING THEREON

Lorraine Murphy Weil, Chief United States Bankruptcy Judge

WHEREAS, on February 8, 2010, the above-referenced joint debtors filed (through counsel) a Motion To Dismiss (Doc. I.D. No. 115, the “Motion to Dismiss”) this chapter 7 case based in relevant part on the allegation that the debtor Thomas Calabrese (“Mr. Calabrese”) was incompetent

at the time (*i.e.*, October 27, 2006) he executed the petition (the “Petition”) which commenced this chapter 7 case;

WHEREAS, Mr. Calabrese received a chapter 7 discharge in this case on September 14, 2007. (*See* Doc. I.D. No. 45, the “Discharge.”);

WHEREAS, on June 4, 2010, the chapter 7 trustee (the “Trustee”) filed that certain Objection to Motion To Dismiss (Doc. I.D. No. 124, the “Objection”) with respect to the Motion To Dismiss;

WHEREAS, an evidentiary hearing (the “Hearing”) was held on the Motion To Dismiss and the Objection on June 8, 2010. At the Hearing, the Trustee orally moved the court to appoint the co-debtor, Karen E. Calabrese (“Mrs. Calabrese”), as Mr. Calabrese’s “next friend” to execute the Petition on Mr. Calabrese’s behalf *nunc pro tunc* to the commencement of this case. In response, counsel for Mr. Calabrese advised the court that Mrs. Calabrese would refuse such appointment.¹ It also was implied at the Hearing that Mr. Calabrese is willing to relinquish the Discharge as a consequence of the granting of the Motion To Dismiss;²

WHEREAS, Mr. Calabrese (among other persons) testified at the Hearing. An expert witness, Jay Lasser, MD, also testified (the “Expert Testimony”) as to Mr. Calabrese’s lack of capacity;

WHEREAS, at the conclusion of the Hearing, the court took the Motion To Dismiss and the Objection “under advisement;”

¹ In any event, the court questions whether Mrs. Calabrese would be an appropriate representative for Mr. Calabrese.

² The court does not now address whether such is legally possible.

WHEREAS, based upon the court's observation of Mr. Calabrese on the stand and the court's assessment of his testimony, the court finds and/or concludes that Mr. Calabrese was incompetent to authorize the filing of the Motion To Dismiss and is incompetent to prosecute it. That limited finding/conclusion is further supported by the Expert Testimony offered in support of the Motion To Dismiss;

NOW, THEREFORE, for the reasons set forth above, the court schedules below a further hearing (the "Further Hearing") with respect to this matter to consider whether it would be appropriate to appoint a guardian ad litem³ in this case to determine what is in the best interests of Mr. Calabrese and to act for him and on his behalf in this case (including, without limitation, with respect to the Motion To Dismiss);⁴ and it is further

ORDERED that the Further Hearing hereby is scheduled (on a non-evidentiary basis) for July 7, 2010 at 11:30 a.m.

Dated: June 22, 2010

BY THE COURT


Lorraine Murphy Weil
Chief United States Bankruptcy Judge

³ See *In re Benson*, No. 10-64761-PWB, 2010 WL 2016891 (Bankr. N.D. Ga. Apr. 30, 2010) (appointing a guardian ad litem for an incompetent debtor).

⁴ The merits of the Motion To Dismiss and the Objection hereby are reserved and the matter no longer is "under advisement" but, rather, is continued as set forth herein.