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**United States Bankruptcy Court
Eastern District Of Washington**

In Re:

DAVID WALLACE BAYS,

Debtor(s).

Main Case Number: 01-05127

LINDA BAYS; KELLY CASE ,

Plaintiff(s),

vs.
DAVID BAYS; DOUG
LAMBARTH and JANE DOE
LAMBARTH; JOE ESPOSITO
and JANE DOE ESPOSITO;
GARY STENZEL and JANE DOE
ESPOSITO; PAUL BASTINE and
JANE DOE BASTINE; JOE
WITTSTOCK and JANE DOE
WITTSTOCK; DAVID HARDY
and JANE DOE HARDY;
SPOKANE COUNTY COURT,

Defendant(s).

**Adversary
Number:**

A03-00237

FILED

JAN 11 2008

**T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

**DECISION RE: SUBSTANTIAL ABUSE OF
BANKRUPTCY LAWS**

This matter comes before the court upon Motions for Summary Judgment. The Plaintiffs Linda Bays and Kelly Case, have filed an adversary proceeding containing multiple counts. The Court in an attempt to simplify the matter, has decided that hearings on the summary judgment motions would be conducted separately count by count.

A hearing was conducted on December 13, 2007 on the motions relating to the count described by the plaintiffs as "Substantial Abuse of the Bankruptcy Laws." At that time the court heard argument on the motions on that topic from Linda Bays, Kelly Case, David Bays,

1 Douglas Lambarth and Joseph Esposito. This written opinion deals with the summary
2 judgment motions brought by those five parties.

3 The record in the case is extensive. The court has in discussing the facts and
4 procedure made numerous references to documents filed with the court in the parties various
5 cases. A Reference Code is attached as an appendix to this decision as an aid to find the
6 referenced documents in court files.

7 The court will commence its decision on the matters with a chronological review of the
8 facts and relevant pleadings.

9

10

FACTS AND PLEADINGS

11

12 1. David and Linda Bays were married on March 23, 1998. [LB X 19(17)]

13 2. On April 19, 2000, David Bays was advised by University Legal Assistance that a
14 Chapter 7 bankruptcy "will not resolve your problems". [LB A #465 (BB)]

15 3. In April 2001, David Bays files for dissolution of his marriage to Linda Bays in Pend
16 Oreille County under cause No. 01-3-00023-3. David Bays was represented by Douglas
17 Lambarth, Linda Bays by Gary Stenzel.

18 4. On April 16, 2001, Gary Stenzel met with Douglas Lambarth at Linda Bays home
19 in Kettle Falls, Washington for the purpose of inspecting the premises and property. During
20 this inspection, Mr. Lambarth took pictures of the property in the house. [LB X4(9)].

21 5. On June 8, 2001, the Pend Oreille Superior Court entered a restraining order in the
22 dissolution proceeding. [LB X4(1)]. Among other things the order provided for Linda Bays to
23 make arrangements to deliver David Bays' personal property to him, which he was to pick up
24 by June 22, 2001. Both Linda and David were restrained from transferring property.

25 6. On June 15, 2001, Lambarth's law office sent Gary Stenzel a fax [LB X4(4)]. The
26 fax advised that David Bays would be at the Kettle Falls house to pick up his separate property
27 on June 20th. It also provided that "If it is impossible to remove all of the property designated

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1 by Mr. Bays on that date, he will return to the Kettle Falls house at 11:00 a.m. on Friday, June
2 22nd to pick up the remainder.

3 7. On June 19, 2001, the Lambarth law office confirmed that David had arranged for
4 a truck and helpers to pick up David's personal property on June 21st. [LB X4(7)]. It also
5 intimated that it might not be possible to complete the pickup in one day.

6 8. On June 20, 2001, David Bays files for bankruptcy relief under Chapter 13. This
7 case was assigned to Judge Patricia C. Williams. His attorney was Douglas Lambarth. [DB
8 CT # 1]. Schedules or statement of affairs were not filed at this time.

9 9. On July 9, 2001, David Bays converted his Chapter 13 case to a Chapter 7 case.
10 [DB CT # 6].

11 10. On July 9, 2001, David Bays filed his schedules. [DB CT # 7]. The "Summary of
12 Schedules" reflects assets of \$13,389.00 and liabilities of \$60,157.84.

13 11. On July 9, 2001, David Bays filed his Statement of Affairs. [DB CT # 8]. In
14 responses of question 4 in the Statement of Affairs asking the debtor to list all suits to which
15 he was a party within the last year the debtor responded by referencing a suit by American
16 Express against him in Superior Court of Stevens County. The debtor did not reference his
17 dissolution proceeding filed in April of 2001 in Pend Oreille County, three months previously.

18 12. July 9, 2001 is the date of application listed on the Certificate of Title to the 1961
19 Valiant which places title of the vehicle in Sherrie Bays, David Bays' daughter. [LB X12 (9)]

20 13. On July 9, 2001, Douglas Lambarth filed a "Compensation Statement of Attorney
21 for the Debtor" in the David Bays bankruptcy case. This indicates that Lambarth was neither
22 promised nor paid any compensation for his services rendered or to be rendered in this case.
23 [DB CT # 10].

24 14. Immediately following conversion of the case to one under Chapter 7, Joseph
25 Esposito was appointed and qualified as the Chapter 7 trustee in David Bays' case. Mr.
26 Esposito also applied to be appointed attorney for the trustee. [DB CT # 14].

27 15. Although Linda Bays was not listed as a creditor in David Bays' bankruptcy and

1 accordingly not been sent notice, she had somehow found out about the proceeding. [DB Ct
2 #66(¶2)]. On July 30, 2001, Linda Bays writes a letter to Trustee Esposito. [LB X 7(1)]. In
3 this letter she advises that she and David are parties to a divorce proceeding in Pend Oreille
4 County. In this letter she refers to numerous items of personal property omitted from David's
5 bankruptcy schedules including but not limited to a valuable antique pot belly stove, stock in
6 Montana Power, numerous vehicles including a mint condition 1961 Valiant, to mention but
7 a few of the items omitted.

8 16. The First Meeting of Creditors was conducted on August 7, 2001. It was presided
9 over by Trustee Esposito. [DB CT # 19]. Linda Bays was in attendance. David Bays was
10 examined and deficiencies were found in his bankruptcy schedules and statement of affairs.

11 17. On August 7, 2001, after the First Meeting of Creditors, Trustee Esposito wrote a
12 letter to Douglas Lambarth stating David Bays schedules appear "totally inaccurate" citing
13 failure to list "all sorts of property" and failure to disclose transfers to his children. [LB X7 (2)].

14 18. On August 8, 2001, Trustee Esposito filed an "Objection to Exemptions". [DB CT
15 # 16]. The objection asserted "the value of goods set forth in (sp) incomplete, all assets are
16 not disclosed and the value of the items set forth are understated."

17 19. On August 16, 2001, Douglas Lambarth sent a fax to Esposito wherein he
18 furnished information from Sherrie Bays and requested information from Esposito "so as to
19 expedite the amendment of schedules." [LB X7(4)].

20 20. On August 22, 2001, Linda Bays wrote a letter to Esposito about David's assets.
21 In that letter she included copies of titles of eight vehicles in which David had an interest. The
22 first of those vehicles referenced was "(1) Ply Valiant (the classic he transferred)". [LB X7(8)].
23 In David Bays schedules filed July 9, 2001, he had listed two vehicles, a 1988 Chevrolet S-10
24 pickup and a 1989 Dodge Van at a combined value of \$2500. [DB CTII 7].

25 21. On August 24, 2001, Douglas Lambarth filed a "Debtor's Motion to Dismiss and
26 Notice" seeking to dismiss David Bays bankruptcy case "on the basis that the debtor has no
27 access to records and property which is the subject of the bankruptcy and, therefore, is unable

1 to proceed further in this manner.” [DB CT #21].

2 22. On September 6, 2001, Trustee Esposito filed “Objection to Debtor’s Motion to
3 Dismiss and Notice”. [DB CT # 23]. This objection provided:

4 The basis of this Motion is that the Trustee has incurred costs and fees in
5 connection with these proceedings. Said costs and fees were caused by the
6 Debtor’s failure to accurately prepare schedules. The further basis for this
7 Motion is that there are assets in this Estate, preferential and fraudulent
8 transfers and that to dismiss this case would be detrimental to creditors.

9 23. On September 12, 2001, Gary Stenzel wrote a letter to Joe Esposito. [LB X7(10)].
10 In that letter Stenzel advised that Linda Bays had withdrawn her objection to dismissal of
11 David Bays case. Stenzel acknowledges that there were irregularities in this case, the
12 possibility of referral to the U.S. Attorneys Office, and the appropriateness of the bankruptcy
13 and that Esposito could pursue those matters as he sees fit.

14 24. On September 26, 2001, Esposito wrote a letter to Lambarth, indicating that he
15 would withdraw his objection to David Bays motion to dismiss if David Bays would pay
16 Esposito \$450.00 as a reasonable fee for Esposito’s inconvenience and time. If there was no
17 payment, Esposito would proceed to set the matter for hearing. [LB X9 (1)].

18 25. On October 4, 2001, Lambarth’s law office wrote Esposito accepting Esposito’s
19 offer to withdraw his objection if he received \$450.00 in compensation for time spent on the
20 matter. David Bays’ check for \$450.00 was enclosed. [LB X9(2)].

21 26. On October 19, 2001, Lambarth wrote a letter to Esposito inquiring why the case
22 had not been dismissed since the \$450.00 had been paid. [LB X9(3)].

23 27. On October 23, 2001, Esposito wrote Lambarth a letter explaining that he had to
24 give notice before the case could be dismissed.

25 28. On October 24, 2001, Trustee Esposito filed with the court “Notice to Creditors and
26 other interested parties” wherein he advised the creditors in David’s case that unless an
27 objection was filed he would accept the \$450.00 held in his trustee account in compensation
28 for his work on the case and withdraw his objection to David Bays’ Motion to Dismiss. [DB CT
#25]. In this notice Esposito advised that Linda Bays had complained about the accuracy of

1 the schedules, that he Esposito was unsure about the nature and extent of debtors assets,
2 that there were potential fraudulent conveyances and/or preferential transfers, and that the
3 debtor has not listed all his assets in his schedules. Esposito further advised he was uncertain
4 as to whether there were sufficient assets to pay all creditors. The notice also advised that
5 both David and Linda Bays has requested that the bankruptcy be dismissed.

6 29. On November 8, 2001, Linda Bays filed an objection to the dismissal of David Bays
7 case. [DB CT # 29]. In a statement under penalty of perjury attached to this pleading, Linda
8 Bays outlines her allegations including that she was intentionally not notified of David's
9 bankruptcy, that there were substantial assets omitted by David, including "a classic
10 automobile valued at \$12,000", that Douglas Lambarth knew the extent of David's assets
11 having come to Linda's house and taken pictures of them yet omitted including them in the
12 bankruptcy schedules which Lambarth prepared and filed, and that the actions outlined in her
13 statement were sanctionable as fraud, perjury, suborning perjury, and should be reported to
14 the federal prosecutor.

15 30. On November 16, 2001, Joe Esposito wrote a letter to Gary Stenzel, Linda Bays'
16 attorney. [LB X 9(6)]. In it he provided Stenzel with a copy of an objection to dismissal.
17 (Presumably Linda's Objection DB CT # 29). It then continued:

18 I thought you wanted this bankruptcy dismissed so that all creditors could be
19 paid as part of the divorce proceeding and all property not accounted for in the
20 bankruptcy could be disbursed to the parties. I was under the impression there
21 were sufficient assets to pay creditors.

22 Please respond within five (5) days of receipt of this letter. If you wish
23 to file a withdrawal of the objection, that would be fine.

24 31. On December 18, 2001, Esposito wrote a letter to Douglas Lambarth advising
25 Lambarth that Linda Bays had filed an objection to dismissal of David's case [LB X9(7)] and
26 as a consequence Esposito was "required to proceed." Esposito returned the \$450.00 he had
27 previously received.

28 32. On January 8, 2002, Esposito wrote a letter to Gary Stenzel, Linda Bays' attorney.
[LB X9(11)]. Esposito indicates that he had been contacted by Lambarth who was going to

1 note for hearing David Bays Motion to Dismiss. To assist him in defending against this Motion,
2 Esposito requested additional information about the assets which David Bays owned and
3 were not scheduled. He also requested information about transfers made by David to his
4 children, including a gun collection that Esposito believed was transferred to his son. In
5 summation "I need to know all unscheduled real estate and personal property that was in
6 existence on the date of the Petition and all property that remains post Petition as well as
7 information concerning transfers."

8 33. On April 15, 2002, Gary Stenzel and Douglas Lambarth were advised by the
9 Spokane County Clerk's Office that a status conference in the Bays dissolution case was
10 rescheduled for June 20, 2002. [LB X9(8)].

11 34. On April 16, 2002 Lambarth wrote a letter to Esposito [LB X9(8)]. It forwarded a
12 letter concerning the Bays dissolution. It requests that Esposito schedule a hearing on
13 Esposito's withdrawal of his objection to dismissal. Lambarth forwarded a letter from Linda
14 Bays to David Bays, which suggested to Lambarth that Linda would not continue to object to
15 the dismissal of David's bankruptcy case.

16 35. On June 14, 2002, David Bays filed his amended schedules in his case [DB CT #
17 32]. The "Summary of Schedules" reflects assets of \$350,050.00, liabilities of \$74,974.00.

18 36. On June 14, 2002, David Bays filed his amended statement of affairs in his case.
19 [DB CT #33]. These amended schedules now reflected the dissolution proceeding between
20 David and Linda. This amended statement, now lists a transfer of the 1961 Plymouth Valiant
21 to David's daughter, Sherrie Bays in February of 2001, the value of which is placed at
22 \$2,900.00.

23 37. On June 14, 2002, David Bays filed a motion for stay relief enabling the Pend
24 Oreille Superior Court to proceed with the dissolution action and "thereby permit the state
25 court to determine the distribution of property and allocation of the debt of the parties." [DB CT
26 # 36].

27 38. On July 2, 2002, Linda Bays acting as Overseer of the Linjericks Society filed an

1 objection to David's motion for stay relief. [DB CT #42]. The objected is based in part on the
2 allegation that it "will deny adequate protection to All the creditors and will also prolong the
3 bankruptcy." It also is based on the debtor's and his attorneys "knowingly committed
4 bankruptcy fraud on the first set of schedules."

5 39. On July 2, 2002, Linda Bays filed a "Motion for Court to Order Appraisal of Debtors
6 Personal Property, Rolling Stock and Order Investigation as to Debtors transfer and Non-
7 Disclosure of Personal Assets" [DB CT # 43]. On this same day Linda Bays also filed a 45
8 page document. [DB CT # 44]. This document contained six pages of declaration and 39
9 pages of supporting materials. In this declaration she disputes the accuracy of David's
10 amended schedules and provides her own account of how David came to hold the vendor's
11 interest in the Kettle Falls residence, apparently to thwart attorney John Troberg who "planning
12 on taking me to court for my house so the paperwork was changed." Linda Bays continued
13 her objection to the lift stay motion as "just another scheme to avoid accountability."

14 40. On July 9, 2002, Lambarth noted the stay relief hearing for July 16, 2002 before
15 Judge Klobucher. [DB CT # 48].

16 41. On July 16, 2002, Judge Klobucher heard the stay relief motion and granted the
17 relief requested. [DB CT # 50].

18 42. On August 1, 2002, Judge Klobucher signed the "Order Granting Debtor's Motion
19 for Relief from Stay" drafted by Esposito. The order allowed the state court to proceed with
20 the marital dissolution action. It provided:

21 The U.S. Bankruptcy Court will retain exclusive jurisdiction of the property of the
22 estate and the same will be administered in accordance with the Bankruptcy
23 Code. The state court may determine the nature of any specific property, i.e.
24 whether it constitutes separate property of the husband, separate property of the
25 wife or community property. The state court may divide community property
26 between the husband and wife but that division will only be effective as to any
27 property of the estate remaining after administration by this court. The state
28 court may determine all other matters and enter final orders regarding child
support, custody, the decree of dissolution etc. The state court may determine,
as between the husband and the wife, the primary liability for or a duty to hold
harmless from community obligations, but all community obligations and
separate obligations of the wife will be part of the administration of this
bankruptcy proceeding.

1 The parties to the dissolution proceeding are requested to request the
2 Superior Court Trial Judge to enter findings which detail all property to which the
3 debtor has an interest, and the value thereof as of the date of debtors petition
4 in Bankruptcy e.g. June 20, 2001.

5 43. On September 5, 2002, Lambarth filed a notice of hearing on his motion for
6 dismissal of David Bays case [DB CT # 53].

7 44. On September 23, 2002, Gary Stenzel filed a "Notice of Immediate Withdrawal" as
8 attorney for Linda Bays in the Bays dissolution action. [DB CT #66 (A)].

9 45. On September 24, 2002, Judge Williams heard the David Bays' motion to dismiss
10 and denied the motion [DB CT # 56]. Linda Bays was not present at this hearing but Gary
11 Stenzel was in attendance. Linda Bays asserts that Stenzel misinformed the Bankruptcy
12 Court that she still objected to dismissal of David's case. [DB CT # 66].

13 46. On September 27, 2002, Judge Bastine conducted a pre-trial hearing in the Bays
14 dissolution. In attendance were Linda Bays, Gary Stenzel, and Douglas Lambarth. At this
15 hearing it was confirmed that Gary Stenzel had withdrawn as attorney for Linda Bays in the
16 dissolution. Linda Bays asserted she did not fire him but that he had withdrawn. The court
17 indicated the matter was set for trial and that it would not be continued. [DB Ct # 66(G)].

18 47. Linda Bays served on Lambarth a document dated September 29, 2002 captioned
19 "Motion for Judge Bastine to Disqualify Himself and for Judge Ellen Clark to Resume this case
20 She was Assigned to." Among the reasons cited by Ms. Bays for the disqualification were "Not
21 only is he prejudice (sp) and bias (sp), he has personal knowledge of the facts that he claims
22 can be disputed in the divorce. Judge Bastine does not have jurisdiction under Title 26 to
23 attempt to pierce the Corporation veil, but his (sp) made it very clear he still will hear these
24 issues." [LB CT # 4 (XD p.30)] .

25 48. On October 1, 2002, Linda Bays filed her own Chapter 7 case, # 02-07687. She
26 was representing herself pro se. [LB CT # 1]. Judge Patricia Williams was assigned the case.
27 Linda Bays paid no filing fee but filed an application to pay the filing fee in installments. [LB
28 CT # 2]. Linda Bays explains this filing "I was sick and getting sicker from the stress I was
under knowing I was being deprived of a fair divorce trial." (DB CT # 66 (¶ 11)).

1 49. On October 2, 2002, David Bays through his attorney, Douglas Lambarth filed an
2 emergency motion to lift the stay in Linda Bays bankruptcy. [LB CT # 4]. He sought an
3 expedited hearing on his stay relief matter so that the dissolution proceeding set for trial on
4 October 7, 2002 could proceed as scheduled. Lambarth alleged that Linda's bankruptcy had
5 been filed to avoid the October 7, 2002 trial date. [LB CT # 5].

6 50. On October 2, 2002, a discharge was entered in David Bays bankruptcy case. [DB
7 CT # 58].

8 51. On October 3, 2002, Jack Reeves, the trustee originally appointed to act in the
9 Linda Bays case declined to serve because of a conflict of interest. [LB CT # 13].

10 52. On October 4, 2002, Judge Williams heard David Bays motion for immediate relief
11 from stay, [LB CT # 16] and entered an order granting immediate stay relief. [LB CT # 17].

12 After granting the stay relief request the order continued:

13 The U.S. Bankruptcy Court will retain exclusive jurisdiction of the property
14 of the estate and the same will be administered in accordance with the
15 Bankruptcy Code. The state court may determine the nature of any specific
16 property, i.e., whether it constitutes separate property of the husband, separate
17 property of the wife or community property. The state court may divide
18 community property between the husband and wife but that division will only be
19 effective as to any property of the estate remaining after administration by this
20 court. The state court may determine all other matters and enter final orders
21 regarding the decree of dissolution, etc. The state court may determine as
22 between the husband and wife, the primary liability for or a duty to hold harmless
23 from community obligations, but all community obligations and separate
24 obligations of the husband and wife will be part of the administration of the
25 bankruptcy proceedings currently pending.

26 The parties to the dissolution proceeding are requested to request the
27 Superior Court Trial Judge to enter findings which detail all property to which the
28 debtor has an interest, and the value thereof as of the date of the debtors'
petition in bankruptcy, eg., June 20, 2002.

53. On October 7, 2002, the dissolution proceeding went to trial without Linda Bays or
anyone representing her interests.

54. On October 8, 2002, the U.S. Trustee's office filed an "Appointment of Successor
Trustee" in Linda Bays case. [LB CT # 20]. Joe Esposito was appointed.

55. On October 11, 2002, Lambarth sent a letter to Esposito forwarding copies of
Lambarth's proposed Findings of Fact, Conclusions of Law and Decree of Dissolution in the

Decision /10
01/11/08

1 Bays' dissolution case and asking for comments. [LB X 22(1).] It included the following
2 language:

3 Since you are now the trustee in both cases, you should be in a unique
4 position so as to proceed with your duty to address the property issues as now
5 presented for the bankruptcy court consideration.

6 56. On October 16, 2002, Linda Bays filed schedules and statement of affairs in her
7 bankruptcy. [LB CT # 24 & 25]. The Summary of Schedules indicated assets of \$90,600.00
8 and liabilities of \$201,681.17.

9 57. On October 23, 2002, Esposito sent a letter to Lambarth. [LB X 22(2)]. The letter
10 provided in part:

11 On review of your Findings of Fact and Conclusions of Law, I think the
12 finding that you should propose and the Order arising therefrom should recite
13 that the Deed from David Bays to Linda Bays which is in the form of a Deed
14 fulfilling her duties under the Ferguson Real Estate Contract should be void and
15 David Bays should be allowed to be treated as the Contract Seller under the
16 Ferguson Contract which should be reinstated in first position.

17 58. On October 23, 2002, Esposito sent a letter to Robert D. Miller, Jr., Assistant
18 United States Trustee for the Eastern District of Washington. [AP 480 (XB)]. In that letter he
19 enclosed a "Declination to Act as Trustee" in Linda Bays case. "After discussing this matter
20 with you and upon reflection, I believe I have a conflict of interest As you know I am the
21 trustee of David Bays Chapter 7 Bankruptcy Estate. . . . The acquisition of the vendor's
22 interest in the contract and subsequent Deed by David Bays which is the form of a contract
23 fulfillment deed is a transfer which I need to avoid. David Bays needs to have his equitable
24 interest under the vendor's interest in the contract restored to him." Esposito enclosed with
25 this letter a copy of a complaint he had drafted as trustee in Linda Bays case seeking to set
26 aside fraudulent transfers relating to the Kettle Falls real estate. The defendants were the
27 Linjerick Society, an unincorporated Religious Family of God, Overseers of Linjerick Society,
28 an unincorporated corporation sole, Kelly Case and Mary King. (This complaint was
29 apparently never filed.)

30 In this letter Esposito also identified another potential fraudulent transfer relating to the
31 Republic real estate.

32 Decision /11
33 01/11/08

1 He also revealed that he had "been working very closely with Doug Lambarth who
2 represented David Bays in the dissolution proceeding. I have also had numerous discussions
3 with attorney John Troberg in Colville."

4 In the final paragraph of the letter Esposito request "Would you please pass all this
5 information on to the successor Trustee."

6 59. On October 24, 2002, Joe Esposito filed a "Declination to Act as Trustee" in Linda
7 Bays case [LB CT # 32]. The reason stated was:

8 There is a conflict of interest with respect to representing the Estate of David
9 Bays against property fraudulently conveyed by Linda Bays because the parties
10 have different creditors who will be affected by the outcome of any fraudulent
11 conveyance act.

12 60. On October 24, 2002, Robert D. Miller (Jake) Assistant U.S. Trustee wrote a letter
13 to Linda Bays in response to her letter of October 14, 2002 [AP 480 (C)] "in which you accuse
14 David Bays of failing to list numerous items of personal property on her schedule of assets in
15 his 2001 bankruptcy." Mr. Miller then reviewed the numerous allegations made by Linda Bays.
16 Mr. Miller concluded that he did not believe the allegations made against David Bays "provide
17 a sufficient basis for an action by the United States Trustee."

18 61. On October 25, 2002, Lambarth sent a letter to Judge Bastine, with a copy to Linda
19 Bays forwarding proposed finding of facts, conclusions of law and decree. [LB X 22(3)].
20 Lambarth advised the Judge:

21 After discussion with Mr. Esposito in the pending bankruptcy cases, he
22 has proposed that certain corrections should be made that again seem to have
23 been oversights on my part.

24 Accordingly, I have made corrections in the findings and conclusions on
25 page 6, paragraph 28, page 11 new paragraphs 6 and 7; and, at Exhibit A-1;
26 and, the addition of the \$30,000 for home additions on Exhibit B have all been
27 amended.

28 I have sent copies of the above amended proposed findings, conclusions,
and decree to Ms. Bays this day for her reference.

62. On October 28, 2002, Tony Grabicki was appointed Successor Trustee in the Linda
Bays case [LB CT # 33].

63. On October 30, 2002, Judge Bastine signed and entered Findings of Fact,
Decision /12
01/11/08

1 Conclusions of Law, a Decree of Dissolution in the Bays' divorce case. [LB CT # 35 & 34
2 respectively]. These documents include provisions apparently suggested by Esposito in his
3 October 23, 2002 letter. These provisions include the following Conclusions of Law:

4 (6) The real estate contract dated October 5, 1987, between Fergusons, as
5 sellers, and Symonds, as purchasers, filed in the Stevens County Auditor's
6 office on October 8, 1987, at Vol. 116, pages 1904 through 1913, should be
7 reinstated and be held to be fully enforceable.

8 (7) The deed and seller's assignment of real estate contract dated June 15,
9 1999, whereby David W. Bays acquired the Ferguson vendor's interest in the
10 original real estate contract between Fergusons, as sellers, and Symonds, as
11 purchaser, filed in the Stevens County Auditor's office on June 18, 1999, at file
12 #1999-0107377, and located in Vol. 237, pages 0998 through 1001, should be
13 reinstated and declared to be fully enforceable as a first lien on the real property
14 described therein in the amount of \$69,038.36, including interest to October 30,
15 2002.

16 [LB Ct # 35].

17 Identical language is included in the final Decree at (10) & (11). [LB Ct # 34].

18 64. On October 31, 2002, Lambarth sent copies of the Superior Court findings of fact,
19 conclusions of law and decree to Esposito and to Jake Miller, Assistant United States Trustee
20 for the Eastern District of Washington. [LB X 22(4)]. He also advised that Linda Bays had filed
21 a CR 60 motion for reconsideration and a new trial as well as a motion to appeal Forma
22 Pauperis. Hearing on those matters were set for December 5, 2002.

23 65. On November 1, 2002, Lambarth filed certified copies of the Decree of Dissolution
24 and Findings of Fact entered by the Superior Court in the Bays dissolution case on October
25 30, 2002. [DB CT # 61 & 62]; [LB CT # 34 & 35].

26 66. Between December 5, 2002 and January 31, 2003, Judge Bastine denied Linda
27 Bays' post trial motions. Linda Bays filed appeals to these rulings.

28 67. On December 30, 2002, John Troberg filed an adversary proceeding against Linda
Bays in her bankruptcy case. This adversary proceeding was # A02-00250-W1G. This
adversary proceeding sought a determination that a judgment entered on October 5, 1995 in
Stevens County Superior Court in the case of Linda Erickson v. John Troberg et al was not
dischargeable. [Tro A #1]. The state court's judgment was for sanctions awarded against

1 Linda Erickson.

2 68. On January 30, 2003, the Bankruptcy Court clerk's office issued a "Notice of Intent
3 to Dismiss Case for Non-Payment of Installment Fee" in Linda Bays' bankruptcy case. [LB ct
4 # 36].

5 69. On February 11, 2003, Tony Grabicki, the Trustee in Linda Bays' case filed an
6 objection to the clerk's motion saying in part: "the undersigned trustee believes that there may
7 be assets available for the administration and ultimate distribution to creditors in this case and,
8 therefore, the motion to dismiss should be denied." [LB ct # 43].

9 70. On February 11, 2003, Linda Bays also objected to dismissal of her case. [LB ct
10 # 44].

11 71. On February 13, 2003, Gary Stenzel filed a "Notice of Withdrawal" wherein he
12 stated his intent to withdraw as attorney for Linda Bays Debtor." [LB ct # 45].

13 72. On February 13, 2003, Trustee Esposito filed a "Motion to Modify the Automatic
14 Stay Pursuant to 11 U.S.C. 362(d) for Order of Abandonment and to Confirm Dissolution
15 Decree" [LB ct # 46]. In this motion the Trustee sought 1 to obtain relief from stay so that
16 Esposito as the trustee in David Bays case could proceed to forfeit Linda Bays vendee's
17 interest in the real estate contract on the Kettle Falls residence; 2 to obtain leave to abandon
18 David Bays' household items in the possession of Linda Bays; and 3 entry of an order
19 "confirming, ratifying and approving" the Findings of Fact and Conclusion of Law of the Pend
20 Oreille Superior Court in the Bays dissolution.

21 73. On February 18, 2003, Linda Bays filed a "Notice and Declaration that Linda Bays
22 Withdraws All Objections to Dismissal of Debtor's Bankruptcy" in the David Bays case. [DB
23 ct # 66]. In this document (some 44 pages with exhibits), Ms. Bays declares that her attorney
24 Gary Stenzel was not authorized to appear at the September 24, 2002 hearing on her behalf
25 and object to the dismissal of David Bays' bankruptcy case. This declaration is based in part
26 on the "Notice of Immediate Withdrawal" filed by Mr. Stenzel in the Pend Oreille Court's
27 dissolution action. [DB ct # 66(A)].

28 Decision /14
01/11/08

1 74. On February 20, 2003, Trustee Esposito filed his response to Linda Bays'
2 Withdrawal of Objection. [DB ct # 67]. In this response the Trustee, notes that since the
3 original notice was given the Pend Oreille Court had tried the dissolution matter. As a result
4 "[I]t is clear that there are assets available for creditors, which the Trustee is obligated to
5 liquidate." The Trustee also cites his "substantial legal expense, which does not justify
6 dismissal at this time."

7 75. On February 21, 2003, Linda Bays filed her objection to Trustee Esposito's motion
8 for stay relief along with a statement and exhibits, her filings total 44 pages. [LB ct # 57].

9 76. On February 26, 2003, Kelly Case filed his objection to the Trustee's stay relief
10 motion. [LB ct # 58]. Among other statements included in this objection is the following:

11 I happened to know that the estate of David Bays has enough assets to liquidate
12 to pay the debts. I also know that Joe Esposito has refused to execute on the
13 assets of the David Bays estate. I was at the first meeting of creditors on
14 August 7, 2001 when Mr. Esposito had the first meeting of the creditors for the
15 David Bays estate. Mr. Esposito specifically told David Bays and his attorney,
16 Doug Lambarth that he was not going to use my mothers home as an asset in
17 the David Bays estate since it was not his property. Mr. Esposito only changed
18 his mind after he found out about the contract between me and my mother and
19 that I held the deed as security... I ask this court to protect my creditor's interest
20 in this estate.

21 77. On February 27, 2003, the court heard the Clerk's motion for dismissal for Linda
22 Bays failing to pay the filing fee in her case. [LB ct # 63]. At this hearing, Mr. Troberg advised
23 the court that Judge Williams had a conflict because of prior litigation with Linda Bays. Judge
24 Williams recused herself in all cases and adversary proceedings involving either of the Bays.

25 78. On February 28, 2003, the Bays cases and their respective adversary proceedings
26 were transferred to Judge Rossmeissl. [LB ct # 63; DB ct # 69].

27 79. The Clerk's Motion to Dismiss for Nonpayment of the Filing Fee was rescheduled
28 for hearing before Judge Rossmeissl on March 12, 2003. [LB ct # 70]. The Linda Bays case
was dismissed for failure to pay the filing fee at the rescheduled hearing. [LB ct # 71].

80. On July 22, 2003, Trustee Esposito filed a "Motion for Abandonment of Personal
Property" in David Bays' case. [DB ct # 71]. Among the property specifically identified to be
abandoned were the following:

Decision /15
01/11/08

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<u>Item</u>	<u>Value</u>
miscellaneous Household Furniture	\$1000
Personal Property located at 6198 Nichols Road Kettle Falls, WA	Value unknown
Tractor, riding lawnmower, rototiller	value unknown

Notice of this motion was given the same day. [DB ct # 73]. The parties notified were given 15 days to object to the requested abandonment. [DB ct # 72].

81. On August 11, 2003, the Court entered an "Order Granting Abandonment of Personal Property." [DB ct # 75].

82. On October 16, 2003, Linda Bays and the Overseer of the Linjerick Society filed a "Complaint for Damages and Injunctive Relief" in the Superior Court of Stevens County. This case was against defendants Lambarth, Esposito, Stenzel, Bastine and John and Jane Does, defendants. [AP # 1].

83. On October 17, 2003, Trustee Esposito filed a Notice of Removal of the Stevens County case to this court. This matter was assigned #A 03-00237-RIE, the current adversary proceeding before this court. [AP # 1].

84. On December 10, 2003, Douglas Lambarth filed a "Notice of Intent to Withdraw as Attorney of Record" for David Bays in his bankruptcy case. [DB ct # 78].

85. On May 23, 2005, Linda Bays filed a "Motion to Move Debtor's Personal Property" in David's case. [DB ct # 81]. By this motion Linda Bays sought to get David Bays to move his personal property from the Kettle Falls premises. She also sought to charge rent for storage of the personal property.

86. On August 10, 2005, David Bays acting through his lawyer Patrick Harwood, filed documents in opposition to Linda Bays' motion for removal of personal property. [DB ct # 85, 86].

87. On August 16, 2005, the Motion for Removal of Personal Property came on for
Decision /16
01/11/08

1 hearing before this court. [DB ct # 89]. The court did not rule on the rent issue.

2 88. On August 18, 2005, this court entered an order directing the Trustee and the
3 Debtor to remove the personal property by September 2, 2005. [DB ct # 90].

4 89. On February 16, 2006, the Court of Appeals of Washington, Division 3, rendered
5 its decision denying Linda Bays' appeal from the dissolution judgment. 2006 WL 281143 [AP
6 # 280].

7 90. On January 31, 2007, the Supreme Court of Washington issued an order denying
8 Linda Bays' Petition for Review of the Court of Appeals' Decision. [AP # 287]

9
10 DISCUSSION

11
12 I. Linda Bays v. David Bays - Substantial Abuse of the Bankruptcy Laws

13 A. Summary of Contentions Against David Bays.

14 The court having provided an extensive review of the facts and pleadings, now turns
15 to a brief summary of Linda Bays' allegations against David Bays.

16 Linda Bays contends that at all times relevant to these matters, David Bays' assets
17 substantially exceeded his liabilities. David sought legal advice and was advised by University
18 Legal Services that filing bankruptcy would not solve his problems. She contends that David
19 purposefully ran up their bills before he filed bankruptcy. When he did file bankruptcy he
20 purposefully misrepresented his assets to be \$13,389.00 with liabilities of \$60,157.84. David
21 purposefully failed to disclose numerous assets and fraudulent transfers to his children.
22 David purposefully failed to give notice to her of the bankruptcy in the hopes that she would
23 not find out about it. When Linda did find out and appeared at the first meeting of creditors
24 it became clear that David's schedules and statement of affairs were "totally inaccurate".
25 David was ordered by the trustee to file amended schedules and statements. Instead David
26 sought to avoid full disclosure by moving to dismiss the case. When this attempt to dismiss
27 was objected to, David finally filed amended schedules and statements which reflected assets

1 of \$350,000.00 and liabilities of \$74,974.00. These amended schedules were filed nearly a
2 year after the filing of the case, ten months after he had been ordered to do so by the trustee.
3 Linda alleges David manipulated the bankruptcy system to the extent that she was deprived
4 of her separate property in the dissolution proceeding and that this was achieved by David,
5 Douglas Lambarth, David's lawyer, and David's bankruptcy trustee, Joe Esposito acting in a
6 criminal conspiracy against her. Linda Bays argues that this litany of contentions constitutes
7 what she describes as "substantial abuse of the Bankruptcy Laws."

8 The court will attempt to analyze Linda Bays' contentions against David Bays to
9 determine if they are actionable under specific provisions of the Bankruptcy Code.

10 B. 11 U.S.C. §707(b).

11 This Code section appears closest by its language to the terms of Ms. Bays' allegations.
12 This sections provisions (which were applicable at all times relevant to the case) provide:

13 (b) After notice and hearing, the court, on its own motion or on a motion
14 of the United States trustee, but not at the request or suggestion of any party in
15 interest, may dismiss a case filed by an individual debtor under this chapter
16 whose debts are primarily consumer debts if it finds that the granting of relief
17 would be a substantial abuse of the provisions of this chapter. There shall be
18 a presumption in favor of granting the relief requested by the debtor. . . .

19 This provision allows the court to dismiss a bankruptcy case "if it finds that granting of
20 relief would be a substantial abuse of the provisions of this Chapter".

21 It is important to note that a motion to dismiss brought pursuant to this section may be
22 made only by the Court or the United States Trustee. It may not be brought "at the request
23 or suggestion of any party in interest". Neither the Court nor the United States Trustee has
24 made such a motion in this case. Although the United States Trustee was urged by Linda
25 Bays to move to dismiss the case, it declined to take such action.

26 In any event the specific remedy provided by §707(b) is dismissal of the case. It would
27 be inappropriate to dismiss this case at this time.

28 Thus, §707(b) does not provide a statutory basis for Linda Bays cause of action against
David Bays.

C. 11 U.S.C. §727.

1 The Code section contains a number of grounds upon which a debtor might be denied
2 a discharge. These grounds include:

3 1) the debtor, with intent to hinder delay or defraud a creditor or an officer of the estate
4 has transferred or concealed property of the debtor within one year of the filing of the
5 bankruptcy; or thereafter. [§727(a)(2)]

6 2) the debtor knowingly and fraudulently made a false oath; [§727(a)(6)]

7 3) the debtor refused to obey a lawful order of the court. [§727(a)(6)]

8 A number of Linda Bays allegations would arguably give rise to grounds for denial of
9 a discharge to David Bays. However, an objection to a debtor's discharge must be brought
10 no later than sixty days after the date set for the creditors meeting. Linda Bays, if she had
11 standing, could have filed an objection to David Bays' discharge, but she failed to do so. She
12 thereby lost her right to object to David's discharge. B.R. 4004(a).

13 David Bays' discharge was entered in this case on October 2, 2002.

14 The Bankruptcy Code provides in certain circumstances a discharge may be revoked
15 when it was obtained by fraud and the objecting creditor did not know of the fraud until after
16 the granting of the discharge. [11 U.S.C. §727(d)(1)]. Such relief must be sought within one
17 year of the granting of the discharge. [11 U.S.C. §727(e)(1)].

18 Linda Bays knew of the omitted property and incorrect schedules, early on in this case.
19 She appeared at David's meeting of creditors where these omissions were discussed. She
20 did not bring an adversary proceeding to object to David's discharge.

21 Nor after the discharge was granted did she bring an action to request a revocation of
22 David's discharge within one year of that discharge on October 2, 2002. This adversary
23 proceeding was filed on or about October 15, 2003.

24 Thus Linda Bays is barred from objection to, or revoking David Bays' discharge entered
25 in this case.

26 D. The Dissolution Case.

27 Linda Bays alleges that David Bays manipulated the bankruptcy system in a way that

1 enabled David Bays to deprive her of her property in the dissolution case.

2 David Bays sought and obtained stay relief from the bankruptcy court so that the Pend
3 Oreille dissolution proceeding could proceed. This court's order dated August 1, 2002
4 granting stay relief provided in part:

5 The U.S. Bankruptcy Court will retain exclusive jurisdiction of the property of the
6 estate and the same will be administered in accordance with the Bankruptcy
7 Code. The state court may determine the nature of any specific property, i.e.,
8 whether it constitutes separate property of the husband, separate property of the
9 wife or community property. The state court may divide community property
10 between the husband and wife but that division will only be effective as to any
11 property of the estate remaining after administration by this court. The state
12 court may determine all other matters and enter final orders regarding child
13 support, custody, the decree of dissolution, etc. The state court may determine
14 as between the husband and wife, the primary liability for or a duty to hold
15 harmless from community obligations, but all community obligations and
16 separate obligations of the wife will be part of the administration of this
17 bankruptcy proceeding.

18 The parties to the dissolution proceeding are requested to request the
19 Superior Court Trial Judge to enter findings which detail all property to which the
20 debtor has an interest, and the value thereof as of the date of debtors petition
21 in Bankruptcy e.g. June 20, 2001.

22 These types of provisions are common in cases where the parties are in bankruptcy at
23 the same time their dissolution is pending. The Bankruptcy Court gives the state court
24 permission to determine the respective rights of the two spouses as between themselves.
25 A corollary of such orders is that the state court decision will bind the issues between the
26 parties and the bankruptcy estate. Accordingly the state court is directed to make findings
27 that will facilitate the administration of the bankruptcy court. There is nothing nefarious in this
28 practice.

When Linda Bays filed her own bankruptcy on October 1, 2002, after her efforts to
postpone the trial of the dissolution proceeding set for October 7, 2002 had failed, David Bays
sought stay relief. This matter was heard as an emergency matter given the eminence of the
dissolution trial. The bankruptcy judge granted the stay relief requested. Her order issued on
October 4, 2002 contained provisions similar to those previously included in the August 1,
2002 stay relief order. None of this is out of the ordinary practice in such situations.

David Bays attorney Douglas Lambarth consulted with David's bankruptcy trustee, Joe

Decision /20
01/11/08

1 Esposito concerning the wording of the findings of fact, conclusions of law and decree of
2 dissolution. As was envisioned in both the stay relief orders, there was a legitimate interest
3 on the part of the trustee to insure that the findings, conclusions and decree be worded in such
4 a way as to facilitate administration of the estate. David Bays was under some obligation to
5 assist the trustee in the administration of his estate. It would be natural and appropriate for
6 the debtor and the trustee to cooperate with each other in circumstances where their
7 respective interests coincided.

8 Linda Bays is extremely unhappy with the results of the dissolution. She feels that they
9 improperly deprived her of rights. She voiced these complaints to the trial judge, the Court of
10 Appeals and finally to the Washington State Supreme Court. She lost in each of those
11 forums. The rights to property between Linda Bays and David Bays were conclusively and
12 finally decided in the State Court judgment. This court is bound by the state court judgment
13 on these issues. This court is required to give that state court judgment full faith and credit in
14 this case. 28 U.S.C. §1738. Linda Bays can not now challenge the propriety of the judgment
15 entered in the dissolution case. She is bound by that judgment and can not argue that it was
16 erroneous. Her rights in the property dealt with in the dissolution as to David Bays have been
17 legally and finally established. Her argument that it was all a product of David Bays'
18 misconduct is too late having been already decided against her.

19 E. David Bays Retention of Property.

20 Linda Bays points out that David Bays has been able to retain most of his personal
21 property despite his bankruptcy and that this is inappropriate and unlawful. The court notes
22 that Mr. Esposito filed a motion for abandonment by the estate of much of David Bays
23 personal property on July 22, 2003. No objection was made to this motion by Linda Bays at
24 that time. She can not complain now that an order approving the abandonment was entered.

25 F. Criminal Activities.

26 Linda Bays makes a number of allegations about activities that constitute criminal
27 conduct, including false oaths, concealing property from the estate and concealing transfers

1 to his relatives. Ms. Bays brought these matters first to the attention of the Trustee and then
2 to the attention of Robert D. Miller, Jr., Assistant United States Trustee from the Eastern District
3 of Washington. The United States Trustee Office is a part of the United States Department
4 of Justice, and tasked with monitoring criminal activity in bankruptcy cases. In re Castillo 297
5 F.3d 940 (9th Cir. 2002). Mr. Miller reviewed Ms. Bays' allegations and concluded that "they
6 did not provide a sufficient basis for action." No criminal prosecution was undertaken against
7 David Bays. This decision was within the prosecutorial discretion of United States Trustee's
8 Office.

9 G. Is "Substantial Abuse of the Bankruptcy Laws" a cause of action?

10 Reading through Ms. Bays' very substantial pleadings and supporting materials, one is
11 left with the impression that she is urging the court to fashion a remedy to provide her relief
12 for the wrongs she has allegedly received at the hands of David Bays, Mr. Lambarth, Mr.
13 Esposito and others. The court has examined the specific allegations that arguably relate to
14 Bankruptcy Code provisions and found that the acts complained of are not actionable, at least
15 not at this late stage of the litigation. Ms. Bays argues that the facts in this case justify an
16 extension of the statutory remedies specifically available in the Bankruptcy Code, relying
17 perhaps on the court's equitable powers contained in 11 U.S.C. §105.

18 A similar argument was made to the court in the case of Walls v. Wells Fargo Bank,
19 276 F.3d 502 (9th Cir. 2002). The Ninth Circuit Court of Appeals denied the parties' invitation
20 to expand rights beyond the specific provisions of the Code, saying in part:

21 Walls suggests that §105 may be used to create substantive rights in the
22 Code, therefore a private right of action is appropriate because §105 empowers
23 the bankruptcy court to use "any" means necessary to advance the purpose of
24 the Code. However, to create a new remedy would put us in the business of
25 legislating. We agree with the Sixth Circuit's view in Pertuso v. Ford Motor
26 Credit Co., 233 F.3d 417, 423 (6th Cir. 2000), that it is not up to us to read other
27 remedies into the carefully articulated set of rights and remedies set out in the
28 Bankruptcy Code. As that court put it, "[t]he 'provisions of this title' simply
denote a set of remedies fixed by Congress. A court cannot legislate to add to
them." Pertuso, 233 F.3d at 423 (quoting Kelvin v. Avon Printing Co., 1995 WL
734481 at *4 (6th Cir. 1995) (unpublished)). In any event, §105(a) authorizes
only such remedies as are "necessary or appropriate to carry out the provisions
of this title."

1 See also Grupo Mericano de Desarrollo, et al v. Alliance Bond Fund Inc., et al, 527 U.S.
2 308 (1999) (sharply limited federal court's ability to enlarge equitable powers.)

3 This court does not have the power to fashion a special remedy beyond those remedies
4 already specified in the Code and related statutes.

5 H. Conclusion: Linda Bays v. David Bays

6 Linda Bays has no cause of action against David Bays. Summary Judgment should
7 be granted to David Bays and against Linda Bays on her cause of actions for "Substantial
8 Abuse of the Bankruptcy Laws".

9
10 II. Linda Bays v. Joseph Esposito- Substantial Abuse of the Bankruptcy Laws

11 Linda Bays complains that a number of actions taken by Joseph Esposito, the Trustee
12 in David Bays bankruptcy case, have been improper and illegal and that these actions amount
13 to "substantial abuse of the bankruptcy laws."

14 The activities complained of, all arise out of performances of his duties as a bankruptcy
15 trustee. The court will examine the specifics of these complaints.

16 A. Failure to Adequately Act Upon Discovery of Inaccuracy in David Bays Schedules
17 and Statement of Affairs

18 Shortly after the conversion of David Bays' chapter 13 case to one under chapter 7, and
19 the appointment of Joe Esposito as Trustee, Linda Bays was in communication with Mr.
20 Esposito. She advised him of multiple inaccuracies in David's schedules and statement of
21 affairs. Mr. Esposito questioned David Bays about these inaccuracies at the first meeting of
22 creditors and confirmed that were inaccurate. He directed David Bays and his attorney
23 Douglas Lambarth to correct these inaccuracies. David Bays and Lambarth responded to the
24 Trustee's objection by moving to dismiss the case. Esposito objected to the case being
25 dismissed under the circumstances that there were assets in case, the debtor had made
26 preferential and fraudulent transfers and that dismissal of the case would be detrimental to the
27 creditors. Ultimately the case was not dismissed and David Bays filed amended schedules

1 and statement of affairs. These amended schedules reflect radical differences from the
2 originals. The original schedules reflect assets of \$13,389.00 and liabilities of \$60,157.84.
3 The amended schedules reflect assets of \$350,050.00 and liabilities of \$74,974.00. Although
4 there is some questions as to why it took from August 7, 2001, the date of David's first meeting
5 of creditors to June 14, 2002 to provide the amended pleadings, they were provided.

6 B. The Trustee's Handling of David Bays' Motion to Dismiss

7 As noted in the previous section, David Bays and his counsel, responded to the
8 Trustee's request for accurate schedules by moving to dismiss the case. This response
9 naturally produced suspicion and an objection by the Trustee. Shortly after the Trustee filed
10 his objection to dismissal, Gary Stenzel, Linda Bays' lawyer wrote the Trustee advising him
11 that Ms. Bays no longer objected to dismissal of the case, although acknowledging that there
12 had been irregularities which the Trustee could pursue if he saw fit. Mr. Esposito then wrote
13 Mr. Lambarth a letter suggesting a willingness to withdraw his objection to dismissal of David's
14 case if he was compensated \$450.00 for his time expended. Lambarth readily agreed and
15 forwarded the money. Esposito noticed his intention to withdraw his objection to dismissal,
16 disclosing the circumstances that he was being compensated \$450.00 for his time spent on
17 the matter. He also disclosed doubts about the accuracy of the filed schedules, possible
18 undisclosed assets, potential voidable transfers and uncertainty of whether there were
19 sufficient assets to pay the creditors.

20 Linda Bays filed an objection to Esposito's notice, alleging fraud, perjury and
21 concealment of assets. When Esposito received Linda Bays' objection he wrote to her
22 attorney Stenzel expressing confusion about Linda's position, Esposito being under the
23 impression that Linda was in favor of dismissal of David's case. In light of Linda's objection,
24 Esposito returned the \$450.00 he had received and been holding in his trust account.
25 Apparent confusion continued for some time over Linda Bays' position on dismissal of David's
26 case. Ultimately when Judge Williams heard David's motion for dismissal it was denied. Gary
27 Stenzel was present at that hearing and Linda Bays alleges Stenzel misinformed the court that

1 she still objected to dismissal of David's case.

2 Given the changes in position taken by Linda Bays on this issue, it is difficult to fault Mr.
3 Esposito for his handling of the dismissal issue. Indeed given the amended schedules which
4 reflected substantial assets in David's estate for payment of his creditors, it appears it would
5 have been questionable for the Trustee to favor dismissal of the matter. Mr. Esposito's
6 request for compensation for his time expended in the matter was fully disclosed to the
7 creditor. Such a fully disclosed position in these circumstances is neither unusual nor
8 improper.

9 C. The Trustee Position Regarding Stay Relief

10 David Bays moved for relief from stay so that he could proceed with the Pend Oreille
11 Court's dissolution case. Linda opposed this motion. The matter was heard before Judge
12 Klobucher and stay relief was granted. The order granting relief was drafted by Trustee
13 Esposito. It provides that the state court can decide the issues between David and Linda in
14 the dissolution case. The bankruptcy court however retained jurisdiction over the assets of
15 the bankruptcy estate and their administration for the benefit of creditors.

16 Mr. Esposito's actions in not opposing this stay request and participation in the
17 preparation of the order were appropriate in the circumstances of this case. The disputes
18 between David and Linda had to be resolved before the bankruptcy case could move forward.
19 The state court was the appropriate forum for deciding the dissolution issues. It was important
20 that the parties and the state court understood and acted in accordance with the terms of the
21 stay relief order. Mr. Esposito had a legitimate interest in the terms of the order facilitating his
22 administration of the bankruptcy estate.

23 D. Conflict of Interest- Trustee in Both David and Linda's Cases

24 Joe Esposito was appointed Trustee in David Bays' chapter 7 case on July 9, 2001, and
25 has served in that capacity ever since.

26 On October 1, 2002, Linda Bays filed her own chapter 7 case. Jack Reeves was
27 originally appointed as chapter 7 Trustee but he declined to serve on October 3, 2002. The

28
Decision /25
01/11/08

1 United States Trustee's Office appointed Mr. Esposito as successor Trustee on October 8,
2 2002. By that time the court had granted an emergency stay relief request to enable the
3 dissolution trial to proceed which in fact had proceeded on October 7, 2002. By October 23,
4 2002, Mr. Esposito had declined to serve as Trustee in Linda Bays case in that he believed
5 he had a conflict of interest.

6 It does not appear that Mr. Esposito did anything inappropriate in the short time in
7 which he was Trustee in both the Bays cases. It was appropriate that he decline to serve as
8 Trustee in Linda's case.

9 E. Esposito's Participation In Suggesting Terms to be Included in the Dissolution
10 Findings Conclusions and Decree

11 Mr. Esposito's participation in suggesting language to be included in Superior Court
12 findings, conclusions and decree is understandable given the posture of the case and the
13 bankruptcy estate's interest in its outcome. The superior court's ruling would define the extent
14 of the bankruptcy estate's interest in the Bays property. Mr. Esposito had a legitimate interest
15 in the extent of those rights for the estate's benefit as suggested by the terms of the stay relief
16 orders. Since the estate would be enforcing the rights found by the dissolution court, he had
17 a legitimate interest that the rights were defined in such a way as to facilitate administration
18 of the estate in realizing those rights. The suggestion that David Bays' vendors interest in the
19 Kettle Falls property be reinstated would benefit the estate. The superior court accepted these
20 suggestions in its ruling and that acceptance has been reviewed and affirmed on appeal. The
21 propriety of those ruling as they effect Linda and David Bays' interests is not open to challenge
22 at this time by Linda Bays.

23 F. Failure to Administer David Bays' Personal Property

24 Linda Bays alleges that David Bays had sufficient separate personal property to pay
25 his debts. She alleges that the Trustee should have focused his attention on the collection
26 and disposition of those assets before turning to property in which she claims an interest. It
27 is unclear what value could have been realized for the estate if that course of action had been

1 persuaded. Much of that property was abandoned by the Trustee as burdensome to the
2 estate without objection by Linda Bays. Linda Bays made clear at the time of hearing this
3 matter that she was personally asserting her claims not on behalf of the estate. It is not clear
4 to the court that she personally has a standing to assert a cause of action against the Trustee
5 for his conduct in administering the estate.

6 G. Failure to Criminally Prosecute

7 Linda Bays asserts that David Bays and Douglas Lambarth actions in this case violate
8 the criminal statutes of the United States and should have prosecuted as crimes. It is clear
9 from the record that Trustee Esposito reported their conduct to the United States Trustee's
10 Office, a dimension of the United States Department of Justice. It is also clear that Linda Bays
11 was in direct contact with Mr. Robert Miller complaining of the conduct of the defendant and
12 his attorney in this matter. The U.S. Trustee's Office concluded that her allegations were an
13 insufficient basis for prosecution. This decision was within the discretion of the U.S. Trustee
14 Office. Mr. Esposito can not be held accountable for the U.S. Trustee's decision not to
15 prosecute.

16 H. Failure to Object to Discharge

17 Linda Bays faults the Trustee for failing to object to David Bays' discharge. She was
18 the source of the information about David's concealed assets and untruthful statements in the
19 schedules. She was aware of these matters from early on and was the person who advised
20 the Trustee of the problems in the case. She did not object to the discharge herself. The
21 discharge was entered. She did not seek to timely revoke the discharge. The Trustee should
22 not be liable to her, for what she herself could have done but failed to do. Linda Bays had
23 much more incentive to take these actions than the Trustee.

24 It is not clear such actions would have benefitted the estate. The amended schedules
25 reflect \$275,000.00 of net equity in the defendants estate after payment of the creditors.
26 Objecting to the debtor's discharge would have served no purpose for the estate, since the
27 creditors would be paid in full in any event.

1 I. Failure to Bring § 707(b) Motion

2 The Trustee may bring an action to dismiss a case for substantial abuse (see page
3 above). This is a matter within the discretion of the Trustee. Mr. Esposito's decision not to
4 make such a motion is supported by the facts of the case.

5 J. "Substantial Abuse of the Bankruptcy Laws" A Cause of Action?

6 Once again Linda Bays asserts that all of the Trustee's actions taken together
7 constitutes some grounds for relief. As the court has discussed above, the court does not
8 have the power to fashion a remedy beyond those specified in the code and related statutes.

9 K. Trustee's Immunity

10 In the case of In re Cochise College Park, Inc. 703 F.2d 1339 (9th Cir. 1983) the court
11 stated a bankruptcy trustee:

12 ...[H]as a duty to treat all creditors fairly and to exercise that measure of
13 care and diligence that an ordinarily prudent person under similar
14 circumstances would exercise. *Weaver*, 680 F.2d at 461; *Sherr*, 552
15 F.2d at 1374; *In re Johnson*, 518 F.2d 246, 251 (10th Cir.), *cert. denied*,
16 423 U.S. 893, 96 S.Ct. 191, 46 L.Ed.2d 125 (1975). Although a trustee
17 is no liable in any manner for mistakes in judgment where discretion is
18 allowed, *Mosser v Darrow*, 341 U.S. 267, 273-74, 71 S.Ct. 680, 683, 95
L.Ed. 927 (1951); *Weaver*, 680 F.2d at 461; *Sherr*, 552 F.2d at 1375, he
is subject to personal liability for not only intentional but also negligent
violations of duties imposed upon him by law, see *Mosser*, 341 U.S. at
272, 274, 71 S.Ct. At 682, 683; *Johnson*, 518 F.2d 246, 251; *cf. Leonard*
v Vrooman, 383 F.2d 556, 561 (9th Cir. 1967) (trustee is personally liable
for acts which either are not taken in good faith or are unreasonable).

19 703 F.2d at 1357. [See also In re Continental Coin Corp. 2007 WL 4415498 (Bkrtcy CD Cal.
20 2007) for an excellent discussion of Trustee Immunity].

21 In this case all of the actions of Mr. Esposito's complained of above were taken within
22 the scope of his authority as Trustee in the case. The actions complained of by Linda Bays
23 all fall within the Trustee's discretion in handling the matter and were reasonable in the
24 circumstances.

25 Although Linda Bays alleges that Mr. Esposito's actions were done in bad faith there
26 is no objective evidence that supports those allegations. Ms. Bays' belief alone is not
27 sufficient.

1 Ms. Bays is suing in her personal capacity, not on behalf of the bankruptcy estate. A
2 number of the actions complained of, the failure to pursue the transfer of the 61 Valiant or to
3 liquidate David Bays' personal property for example might if proven be grounds for the estate
4 to assert a claim against the Trustee for negligent performance of duties which harmed the
5 estate. In such an action the issue would be whether the Trustee acted within reasonable
6 business judgment. If there was recovery it would be for the benefit of the estate. The
7 existence of such a possibility does aid Linda Bays in her personal suit against the Trustee.

8 L. Conclusion: Linda Bays v. Esposito

9 Linda Bays has no cause of action against Joe Esposito. Summary judgment should
10 be granted to Joe Esposito and against Linda Bays on her cause of action for "Substantial
11 Abuse of the Bankruptcy Laws."

12
13 III. Linda Bays v. Douglas Lambarth- Substantial Abuse of the Bankruptcy Law

14 A. Summary of Contentions against Douglas Lambarth

15 Linda Bays contends that Douglas Lambarth, David Bays' attorney, should never have
16 put David into bankruptcy. David had been previously advised it wouldn't do him any good in
17 solving his problems. David's assets substantially exceeded his liabilities. Lambarth was
18 aware of the extent of David's assets before the filing of the bankruptcy but failed to list those
19 assets in the bankruptcy schedules and statement of affairs. Douglas Lambarth failed to list
20 Linda Bays in David's filings in order to conceal the bankruptcy from her. When the failure to
21 disclose assets and the transfers to family members were discovered, Lambarth rather than
22 correcting the inaccurate filings moved to dismiss the bankruptcy. Lambarth manipulated the
23 bankruptcy case with stay relief motions which allowed David to take advantage of Linda in
24 the dissolution proceeding thus depriving her of her property. Linda Bays alleges that these
25 activities constitute to a conspiracy against her.

26 B. Criminal Liability

27 The acts complained of were all brought to the attention of the United States Trustee's

1 Office. After investigation and review, the United States Trustee declined to take action.

2 C. "Substantial Abuse of the Bankruptcy Law" A Cause of Action?

3 The acts complained do not constitute grounds under specific Bankruptcy Code
4 provisions for an independent cause of action against a debtor's lawyer. As mentioned above,
5 the court is not at liberty to create a cause of action when the Code fails to do so.

6 D. Legal Malpractice

7 Ms. Bays questions the quality of the legal work performed by Mr. Lambarth for his
8 client David Bays. She is not suing on behalf of the bankruptcy estate, but rather on her own
9 personal behalf.

10 State law determines whether an attorney owes a duty to a party. Ms. Bays' complaint
11 against Mr. Lambarth is a legal malpractice suit. All of the allegations against Mr. Lambarth
12 are directed against his capacity as Mr. Bays' attorney during both the dissolution and
13 bankruptcy proceeding.

14 Washington State has clearly established the elements necessary to a legal
15 malpractice claim.

16 To establish a claim for legal malpractice, a plaintiff must prove the following
17 elements: (1) the existence of an attorney-client relationship which gives rise to
18 a duty of care on the part of the attorney to the client; (2) an act or omission by
the attorney in breach of the duty of care; (3) damage to the client; and (4)
proximate causation between the attorney's breach of the duty and the damage
incurred.

19 Hizey v. Carpenter, 119 Wash. 2d 251, 261 (1992). If a plaintiff is not the attorney's client or
20 in privity with the attorney's client, in order to have a cause of action for malpractice the
21 plaintiff must show some other basis upon the attorney owed the plaintiff a duty. Stangland
22 v. Brock, 109 Wash. 2d 675, 680 (1987).

23 An attorney owes no duty to a third party in an adversarial relationship. Bowman v.
24 Two, 104 Wash. 2d 181, 188 (1985). The Washington Supreme Court has clearly stated that
25 "[e]xistence of a duty to an adversary party beyond the courtesy and respect owed all
26 participants in the legal process...would interfere with the undivided loyalty an attorney owes
27 a client and would diminish an attorney's ability to achieve the most advantageous position for

1 a client. Id. At 189.

2 E. Conclusion: Linda Bays v. David Lambarth

3 Linda Bays has no cause of action against Douglas Lambarth. Summary Judgment
4 should be granted to Douglas Lambarth against Linda Bays on her cause of action for
5 "Substantial Abuse of the Bankruptcy Law."

6
7 IV. Kelly Case v. David Bays, Douglas Lambarth and Joseph Esposito- Substantial
8 Abuse of the Bankruptcy Law

9 Kelly Case's allegations of substantial abuse of the bankruptcy laws against the above
10 defendants are in essence the same as Linda Bays' allegations. The court finds those
11 allegations groundless and that summary judgment should be entered against Kelly Case and
12 in favor of David Bays, Douglas Lambarth and Joseph Esposito on the "Substantial Abuse of
13 the Bankruptcy Laws" cause of action.

14 Kelly Case's allegations of slander of title against the defendants will be dealt with in
15 the next round of summary judgment hearings.

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18 SUMMARY OF DECISION

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20 1. Summary Judgment should be entered in favor of David Bays and against Linda
21 Bays on her "Substantial Abuse of the Bankruptcy Law" cause of action.

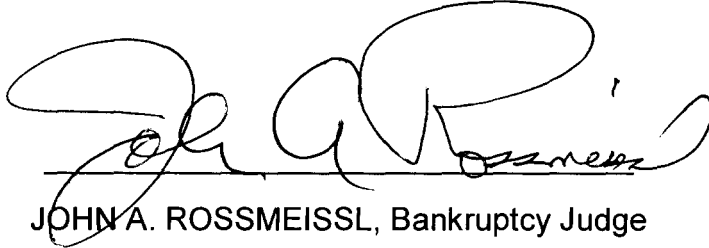
22 2. Summary Judgment should be entered in favor of Joseph Esposito and against
23 Linda Bays on her "Substantial Abuse of the Bankruptcy Law" cause of action.

24 3. Summary Judgment should be entered in favor of Douglas Lambarth and against
25 Linda Bays on her "Substantial Abuse of the Bankruptcy Law" cause of action.

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4. Summary Judgment should be entered in favor of David Bays, Joseph Esposito and Douglas Lambarth against Kelly Case on his "Substantial Abuse of Bankruptcy Law" cause of action.

DATED this 11 day of January, 2008



JOHN A. ROSSMEISSL, Bankruptcy Judge

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APPENDIX

REFERENCE CODE

[AP 480 (XB)]	Adversary Proceeding No. 03-00237 - Docket No.
[DB CT # 1]	David Bays Bankruptcy 01-05127, Docket No.
[LB A #465 (BB)] No.,	Adversary proceeding 03-00237 - Docket No. 465, Appendix Document No.
[LB CT # 1].	Linda Bays Bankruptcy 02-07687, Docket No.
[LB X 19(17)]	Adversary proceeding 03-00237 - Docket No. 377-388, Exhibit No., Document No.
[Tro A #1]	Adversary proceeding 02-00250 - Docket No.