

SOUTHERN DISTRICT OF NEW YORK

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In re:	:	
	:	Chapter 13
JOHN A. TARTAGLIA,	:	
	:	Case No. 00 B 10358 (ASH)
Debtor.	:	

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JOHN A. TARTAGLIA,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Adv. Proc. No. 00-2278A
JOSEPH CELENTANO, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**A P P E A R A N C E S :**

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**ADLAI S. HARDIN, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

**MEMORANDUM AND ORDER DENYING MOTION FOR REARGUMENT**

Debtor-plaintiff (“Tartaglia”) has moved for reargument and reconsideration of this Court’s Memorandum and Order Abstaining from Hearing Controversy and Denying Motion to Reopen dated July 5, 2006 (the “July 5 Memorandum”). Defendants Joseph Celentano, *et al.* (collectively

“Celentano”) opposed Tartaglia’s original Motion to Reopen and oppose the instant Motion for Reargument.

I have reviewed Tartaglia’s nine-page affidavit and four exhibits in support of this Motion, Joseph Celentano’s fourteen-page affidavit and eight exhibits in opposition, and Tartaglia’s fifteen-page affidavit together with twelve exhibits and affidavit of Anthony John Rupert Howorth in reply. Nothing in these submissions changes the fundamental factual and legal predicates for my July 5 Memorandum, although I reiterate here what I said in the July 5 Memorandum, that nothing contained herein shall be deemed findings of fact for collateral estoppel purposes.

Reduced to essentials, this is a contract dispute between a suspended attorney, Tartaglia, and his former client, Joseph Celentano. The dispute arises out of Celentano’s successful attempt to defraud his creditors by secreting out of the country \$300,000 which he had received upon the sale of certain real estate. Upon the advice and material assistance of Tartaglia, the \$300,000 was transferred from Tartaglia’s escrow account through an intermediary in the Bahamas ultimately to one David G. Johnstone in the United Kingdom. After years of litigation in Britain, Celentano apparently has recovered from Johnstone a sum in excess of \$400,000, which is being held by Celentano’s British Solicitor.

The only connection between the Tartaglia/Celentano dispute and this Court is the fact that the contract which Tartaglia seeks to enforce against Celentano was a written Stipulation which was “so ordered” by this Court during the bankruptcy proceeding. But the Stipulation and the parties’ dispute concerning it have absolutely no present significance from a bankruptcy point of view.

Tartaglia’s Chapter 13 plan was confirmed by order dated November 15, 2000. It appears that Tartaglia’s creditors were paid in full or, in any event, that he completed all payments required of him under the Plan, that Tartaglia was granted a discharge in 2001 and that his Chapter 13 case was closed in 2002.

Although Celentano originally filed a claim in Tartaglia’s bankruptcy case, as a consequence of the agreements embodied in the two stipulations between Tartaglia and Celentano in the bankruptcy case, Celentano withdrew his claim and was no longer a creditor of Tartaglia. Rather, it is

Tartaglia who now claims an entitlement to a portion of the monies recovered by Celentano from David G. Johnstone which are now held by Celentano's British Solicitor. Assuming (without deciding) that this claim constitutes an asset of Tartaglia's, it is of no consequence from a bankruptcy perspective because Tartaglia's creditors were satisfied under his completed Chapter 13 Plan and he has been granted his discharge.

Finally, it bears repeating that the Stipulation, although "so ordered" by this Court, constitutes no more nor less than a contract governed by state law, not bankruptcy law.

Under all the circumstances, it is doubtful that this Court has jurisdiction over this contract dispute (although the Court would have jurisdiction if the dispute had any significance from a bankruptcy perspective). But even if the Court does have jurisdiction from a technical point of view, I decline to exercise it. This is a contract dispute which must be decided under state law, and which implicates no issues under bankruptcy law. The facts giving rise to the parties' Stipulation long predate Tartaglia's bankruptcy filing. No outcome of this contract dispute can have any possible impact on Tartaglia's bankruptcy or his creditors.

In short, this contract dispute is not an appropriate controversy to be adjudicated in a bankruptcy court. The dispute can and should be adjudicated in any federal or state court having jurisdiction over the parties.

Although opposing Tartaglia's initial Motion to Reopen and the instant Motion for Reargument, Celentano points out that Celentano's British Solicitor has refused to release the funds which Celentano successfully recovered in his United Kingdom litigation against David G. Johnstone. It appears that Tartaglia has threatened to sue the British Solicitor if he releases the funds held in escrow to Celentano or Celentano's New York attorneys without paying to Tartaglia that portion of the funds which Tartaglia claims is his due. In opposing the instant Motion for Reargument, Celentano asks this Court to "issue an Order that the money currently being held in escrow by the Celentano Defendants [sic] Attorney in the U.K. Action, British Solicitor, Peter Johnson, be released to a New York State Attorney Escrow

Account maintained by the Celentano Defendants' Attorneys, McMillan, Constabile, Maker & Perone, LLP."

Having declined to reopen Tartaglia's bankruptcy case on the ground that this Court has no jurisdiction with respect to the Tartaglia/Celentano dispute or, in the alternative, having abstained from any jurisdiction the Court may have with respect to that dispute, I decline to issue any such order as is now requested by Celentano. If the British Solicitor requires the comfort of a court order before he releases the funds, Celentano is free to seek such an order in a British court or in a federal or state court with plenary jurisdiction over the parties in this country.

Dated: White Plains, NY  
November 13, 2006

/s/ Adlai S. Hardin, Jr.  
U.S.B.J.