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U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY: /s/Diana Reaves, Deputy

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	CHAPTER 7
Mac Truong and Maryse Mac-Truong,	Case No.: 03-40283 (NLW)
Debtor.	
Steven P. Kartzman,	Adv. No.: 03-2681
Plaintiff,	
v.	**MEMORANDUM DECISION**
Mac Truong and Maryse Mac-Truong, Sylvaine Decrouy and Hugh Mac-Truong,	
Defendants.	

Before: HON. NOVALYN L. WINFIELD

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

Adam G. Brief, Esq.
Mellinger, Sanders & Kartzman, LLC
101 Gibraltar Drive, Suite 2F
Morris Plains, NJ 07950
Attorneys for Trustee

Mac Truong and Maryse Mac Truong, Pro Se
325 Broadway
New York, NY 10007

William C. Baton, Esq.
Saul Ewing
One Riverfront Plaza
Newark, NJ 07102
Attorneys for Barbara Ostroth

Steven P. Kartzman ("Trustee") as Chapter 7 Trustee for Mac Truong and Maryse Mac

Truong ("Debtors") has moved for an injunction to limit the Debtors' effort to repeatedly litigate matters decided adversely to them. As set forth below, with some modifications, the relief requested is granted.

This court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. § 1334 and § 157(a) and the Standing Order of Reference issued by the United States District Court for the District of New Jersey on July 23, 1984. This motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). The following constitutes the findings of fact and conclusions of law required by Fed. R. Bankruptcy P. 7052.[1]

I.

The instant motion is not the Trustee's first request for a filing injunction. At the Trustee's request, on March 20, 2006 this court entered an order that enjoined the Debtors from filing "any pleadings, motions or cross motions" in bankruptcy case 03-40283 or adversary proceeding 03-2681 without first obtaining leave of the court. This filing injunction was necessitated by the unnecessarily litigious manner in which the Debtors defended the adversary proceeding and attempted to thwart the Trustee's ability to administer the bankruptcy estate.

The adversary proceeding litigation actually began in April, 2004 in the Superior Court of the State of New Jersey, Bergen County, Chancery Division ("State Court Action") on a complaint

[1] Typically, a request for injunctive relief requires commencement of an adversary proceeding under Bankruptcy Rule 7001(7). However, under Bankruptcy Rule 1001 the court may construe the Bankruptcy Rules so as "to secure the just, speedy, and inexpensive determination of every case or proceeding." Because of the excessive litigation history of this case, the concomitant expense to all parties from the protracted litigation that has marked this case, and the fact that the Debtors have had the opportunity to fully respond to this motion, the Court will not require the Trustee to file an adversary proceeding.

filed by Broadwhite Associates ("Broadwhite") to set aside the Debtors' transfer of their property at 327 Demott Avenue, Teaneck, New Jersey (the "Property"). The complaint was premised on the New Jersey fraudulent transfer statute. The complaint alleged that in 1999 the Debtors transferred the Property to Sylvaine Decrouy ("Decrouy"), the sister of Maryse Mac Truong, and that the deed was recorded on January 10, 2000. The complaint further alleged that in June 2001, Decrouy transferred the Property to the Debtors' son, Hugh MacTruong. The Debtors, Decrouy and Hugh MacTruong were named as defendants in Broadwhite's complaint.

Several months after the State Court Action was filed, the Debtors filed their Chapter 7 petition on September 15, 2003. Because of the bankruptcy filing the state court entered an order on September 23, 2003 which (i) dismissed the action as to the Debtors only, and (ii) provided a procedure for restoring the matter to the active trial calendar if relief from the automatic stay was obtained. Six days later, on September 29, 2003, the Debtors removed the State Court Action to the United States District Court for the District of New Jersey. By order of the Hon. William G. Bassler dated October 6, 2003 the litigation was referred to the bankruptcy court and was assigned adversary proceeding number 03-2681.

In January 2004 the Debtors moved before this court to dismiss the complaint. Among the grounds for dismissal the Debtors alleged (i) the matter had been dismissed by the state court and the Rooker-Feldman doctrine precluded continuation of the litigation in bankruptcy court, (ii) the fraudulent conveyance cause of action was barred by the applicable New Jersey statute of limitations, and (iii) the cause of action, if any, belonged to the bankruptcy estate. Opposition to the Debtors' motion was filed by Broadwhite and the Trustee. The court found that the cause of action belonged to the bankruptcy estate, and that the complaint stated a fraudulent conveyance cause of

action. It also determined that the Debtors' grounds for dismissing the complaint were without foundation and entered an order dated May 5, 2004 denying the Debtors' motion to dismiss the complaint.

While the Debtors' motion was pending, the Trustee moved to be added as the party plaintiff and to amend the complaint to allege bankruptcy jurisdictional provisions, to add Bankruptcy Code §§ 544 and 550 as grounds for recovery of the Property, and to clarify the relief sought against Decrouy. The Debtors cross-moved for denial of the Trustee's motion, asserting the following grounds for denial:

a) Not all parties were properly served in the State Court Action, and no summons from the Bankruptcy Court had been served;

b) The State Court Action was dismissed with regard to the Debtors;

c) The discharge order precluded the Trustee from proceeding;

d) The Debtors were not insolvent at the time of the transfers;

e) The New Jersey statute of limitations barred the Trustee from proceeding; and

f) The Trustee failed to serve the Debtors with the application to retain counsel to the Trustee.

On August 27, 2004 the court issued an opinion and order granting the relief sought by the Trustee and denying the Debtors' cross-motion. The court's decision is attached hereto as Exhibit 1.

The Debtors' subsequent motion for reconsideration was denied by Letter Opinion and Order dated November 18, 2004. The court's Letter Opinion is attached hereto as Exhibit 2. Rather than appeal the ruling, the Debtor's filed a new motion for dismissal that repeated their earlier assertions for dismissal. This was denied as well. Undeterred, the Debtors recycled their allegations into a

"Motion for an Order Dismissing Amended Complaint Under Rule 7012(b), and/or For Summary Judgment Under Rule 7056 and/or To Renew Under F.R.Cv.P. 60(b) Defense Motion to Vacate This Court's August 27, 2004 Order Authorizing Substitution of Trustee As Party Plaintiff and Amending Complaint." Because all of these matters had been previously addressed, the court denied this motion as well. Indeed, up to entry of the filing injunction in March 2006 the Debtors repeatedly filed motions which simply restated each of the arguments that the court found meritless. Additionally, in the main case, 03-40283, the Debtors opposed the Trustee's retention of counsel by merely repeating the very same arguments they advanced in adversary proceeding 03-2681. When their objections were overruled by the court, they simply retooled their objections into motions to remove the Trustee. A comprehensive recitation of each motion and its disposition would unreasonably burden this opinion. However, attached to this opinion as Exhibit 3 are the court dockets for the adversary proceeding and main case, which reveal the repetitive and voluminous nature of the filings by the Debtors.

It was also necessary to enter a filing injunction with regard to pleadings filed by Hugh MacTruong. In the adversary proceeding 03-2681, Hugh MacTruong repeatedly advanced arguments identical to those advanced by the Debtors; these were likewise found to be without merit. Additionally in February 2006 Hugh MacTruong filed an action in the Superior Court of the State of New Jersey, Bergen County, Law Division, against the Trustee and his counsel claiming abuse of process. Hugh MacTruong's complaint essentially asserted that the trustee lacked authority to seek recovery of the Property from him and that all of the Trustee's actions were undertaken with the intention to cause harm to him and the Debtors. After the Trustee removed the matter to this court pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027, the Trustee moved to dismiss the

complaint. On April 12, 2006, the Court dismissed the complaint with prejudice inasmuch as the Trustee's prosecution of adversary proceeding 03-2681 is well within the scope of his duties under Bankruptcy Code § 704. Thereafter, at the request of the Trustee, and because Hugh MacTruong's claims were devoid of legal or factual support, the Court entered an order on May 18, 2006 that prevented Hugh MacTruong from filing any papers in any state or federal forum without first obtaining leave of this Court.

Beginning in 2006, the Debtors focused much of their efforts on the appellate process - appealing various decisions rendered in the main bankruptcy case and in the adversary proceeding. As has been true with regard to the Debtors' various motions, the appeals have also been found to be either procedurally or substantively deficient. Since 2006, the Debtors have filed eleven appeals, nine of which have been either dismissed or determined adversely to the Debtors. The two most recent appeals have not yet been considered by the district court.

However, the litigation in the bankruptcy courts did not abate. In October 2006 the court granted the Trustee's motion for summary judgment, avoiding the transfer of the Property from the Debtors to Decrouy, and the transfer from Decrouy to Hugh Mac Truong.

Approximately one month later the Trustee was before the court again to request amendment of the summary judgment orders to include subsequent transferees. It appears that just before the Trustee filed his summary judgment motion Hugh MacTruong deeded the property to an entity known as MT-EARS LLP.[2] The existence of this entity was never revealed to the Trustee or the court either while the motion was pending or at the hearing. Further, several days after the hearing on the summary judgment motion, on October 16, 2006, MT-EARS LLP conveyed title to the

[2]According to formation documents the Trustee obtained from the State of New Jersey the general partners of MT-EARS LLP are Mac Truong and Maryse MacTruong.

Property to an entity known as To-Viet-Dao LLP. Mac Truong executed the deed as the general partner for MT-EARS LLP. The deed to To-Viet-Dao was recorded on October 27, 2006. The Trustee only learned of these transfers as a result of a title search. On December 7, 2006, based on the record before it, the court entered a supplemental order granting summary judgment avoiding the transfer to MT-EARS LLP and the subsequent transfer to To-Viet-Dao LLP. Additionally, in order to foreclose any further transfers of the Property, the court entered an order enjoining the Debtors, the adversary defendants, or any entity acting on their behalf from further transferring the Property.[3]

Because of the surreptitious transfer of the Property to To-Viet-Dao, and to ensure the Debtors' cooperation with the Trustee, the court entered an order on December 7, 2006 that required the Debtors to provide the Trustee, his representatives, and any prospective purchaser with access to the Property. Regrettably, the Debtors' cooperation was not forthcoming and on February 15, 2007, the Court entered an order that (i) required the Debtors to vacate the Property by April 1, 2007 and (ii) authorized the Trustee, with the assistance of the U.S. Marshal, if necessary, to take possession of the Property.

Presumably because (i) the Debtors were not finding the courts in the District of New Jersey to be hospitable and (ii) they sought to delay their removal from the Property, the Debtors caused To-Viet Dao LLP ("To-Viet-Dao")to file a Chapter 13 petition in the Bankruptcy Court for the Southern District of New York on March 15, 2007.[4] Despite this court's avoidance of the transfer

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[3]The December 7th order, as well as the earlier orders granting summary judgment were appealed by the Debtors. The summary judgment orders were affirmed by the Hon. Garrett Brown on July 5, 2007.

[4]The Chapter 13 Case was subsequently converted to a Chapter 11 case because a limited liability company is not eligible for Chapter 13 relief.

of the Property, the To-Viet-Dao petition scheduled the Property as an estate asset. Based on the To-Viet-Dao bankruptcy, the Debtors informed the Trustee that the automatic stay in the To-Viet-Dao bankruptcy prevented the Trustee from continuing his efforts to sell the Property. Further, in July 2007, on an affirmation of Maryse Mac Truong, To-Viet-Dao obtained entry of an Order to Show Cause for the Trustee to demonstrate why he should not be stayed from proceeding against the Property, and for a determination of the ownership of the Property. The Trustee filed extensive papers in opposition, including Judge Brown's opinion, which upheld the bankruptcy court's orders that avoided the transfers of the Property. After reviewing the Trustee's papers and relying in significant measure on Judge Brown's opinion, the Hon. James M. Peck found that To-Viet Dao had no interest in the Property. Judge Peck specifically noted that Judge Brown's affirmance of the bankruptcy court's orders setting aside the transfers of the Property occurred eight days before To-Viet Dao filed its request for an Order to Show Cause. *See* Ex. 4 *infra* at 8. Judge Peck was understandably concerned that the affirmation in support of the Order to Show Cause did not fully set out the proceedings that occurred in the New Jersey case. He stated:

> At the time that the affirmation in support of order to show cause was presented to this Court on Friday, July 13th, the affirmation, which speaks for itself, made no reference to the various court orders including the memorandum decision of Chief Judge Brown relating to this property. As a result, this Court was misled and based upon the history of this litigation, this Court believes intentionally misled by an affirmation that failed to include material information that was necessary in order to make the affirmation clear and understandable.
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> The relief requested is not obtainable as a matter of law. It is apparent based upon this record that at the time To-Viet-Dao, LLP commenced a Chapter 13 case in March of 2007, the transfer of 327 Demott Avenue, Teaneck, New Jersey to this debtor had already been avoided and set aside by final orders of the bankruptcy court for the District of New Jersey. Those orders, to the extent appealed to the District Court, have now been affirmed.

> There are serious questions of misconduct here; misconduct, misrepresentation, and bankruptcy abuse for which the individual responsible should be held accountable.

Ex. 4 at 11. At the conclusion of the hearing, the To-Viet Dao bankruptcy case was dismissed with prejudice and a one-year nationwide injunction against further filings was entered. *Id.* at 19.

Just one day after the hearing before Judge Peck, on July 19, 2007, Mac Truong filed an individual Chapter 13 petition in the Bankruptcy Court for the Southern District of New York.[5] The case was assigned to Judge Peck, who scheduled a Case Management Conference, at which Mac Truong was required to appear and give testimony as to whether his Chapter 13 case was filed in good faith. After consideration of Mac Truong's testimony, the papers filed by the Trustee and the United States Trustee, Judge Peck dismissed Mac Truong's Chapter 13 case with prejudice and with a one-year nationwide injunction prohibiting further filings by Mac Truong and Maryse MacTruong. *See* Ex. 5 *infra* at 34, 38.

Thereafter, at the Trustee's request, this court issued an order on July 30, 2007, which confirmed that the summary judgment orders as well as the order directing the removal of the Debtors from the Property remained in effect. This court deemed it necessary to issue such an order because of the Debtors' contentions that (i) Judge Peck's dismissal of Mac Truong's Chapter 13 case also resulted in a dismissal of the Chapter 7 case pending before this court and (ii) the purported dismissal of the Chapter 7 case nullified the order which directed the removal of the Debtors from the Property.

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[5]On the same date that Mac Truong filed his Chapter 13 case in New York, he filed in the New Jersey bankruptcy court a document captioned "Notice of Withdrawal of Joint Chapter 7 Petition," which contained language purporting to make the withdrawal effective immediately. By correspondence dated July 20, 2007 this court informed Mr. Truong that a motion on notice to all parties was required for dismissal of the Debtors' case and that his notice was deficient and would not be acted upon by the court.

Despite all of the Debtors' legal maneuvering the removal of the Debtors took place without incident on August 3, 2007. On the morning of August 3rd, the U.S. Marshals, accompanied by members of the Teaneck Police Department, entered and secured the Property after Mac Truong left the premises.

However, the Trustee's removal of the Debtors from the Property did not end the Debtors' litigation efforts. Rather, it appears to have triggered the Debtors' most recent spate of litigation in non-bankruptcy court venues. Just five days after the Debtors were removed from the Property, Mac Truong filed a complaint in the United States District Court for the Southern District of New York requesting a declaratory judgment that the Trustee lacked authority to administer the Property and requesting $5,000,000 in damages for robbery or conversion of assets. On August 20, 2007 the Debtor's complaint was dismissed by the Hon. Laura Taylor Swain based on Mac Truong's failure to obtain leave of court to file the complaint, as required by an order of the Hon. Shira Scheindlin dated June 27, 2006. *See, Ex.6 infra.*

Judge Scheindlin's order was a product of a suit commenced by Mac Truong against the Departmental Disciplinary Committee for the First Judicial Department ("Committee") and others for the alleged violation of his rights to due process and freedom, as well as defamation and libel. Judge Scheindlin not only dismissed the complaint but also enjoined Mac Truong from filing another complaint because of his "history of vexatious and frivolous litigations. *Ex. 6 at 17.*

Even this disciplinary matter has a history in this court before it reached Judge Scheindlin. Just prior to the Debtor's filing bankruptcy case 03-40283, Truong was suspended from the practice of law, as reflected in an order issued by the Appellate Division, First Department. *See, In Re Truong*, 2 A.D. 3d 27, 768, N.Y.S. 2d 450 (1st Dept. 2003)(per curiam). In November 2003 Truong

removed the disciplinary proceeding to the bankruptcy court purportedly pursuant to 28 U.S.C § 1452. However, on a motion for remand brought by counsel for the Committee this court remanded the disciplinary proceeding by order dated February 18, 2004. The court's decision was grounded in the fact that the plain language of 28 U.S.C. § 1452 excepts from removal a governmental unit's action to enforce its police or regulatory power. Ultimately, Truong was disbarred as set forth in a 2005 opinion and order from the Appellate Division, First Department. *See, In re Truong*, 22 A.D. 3d 62, 800 N.Y.S. 2d 12 (1st Dept. 2005).

Searching for another venue in which to press his arguments regarding the Trustee's administration of the bankruptcy case, on September 7, 2007 Mac Truong filed criminal complaints against the Trustee and Barbara Ostroth ("Ms. Ostroth") with the Teaneck Police Department. The complaints focused on the alleged misconduct by the Trustee and Ms. Ostroth with regard to the Property. It accused the Trustee and Ms. Ostroth of illegal possession of the Property, theft of personal property and unlawful breaking and entering. After conducting a probable cause hearing on September 19, 2007 the Teaneck Municipal Court dismissed the complaint for lack of probable cause.

Undeterred by the dismissal of the above described complaint, Mac Truong again filed a criminal complaint against the Trustee, this time adding Adam Brief ("Mr. Brief"), the Trustee's counsel, as a defendant. The primary claim in this complaint was that the Trustee and Mr. Brief offered "a false instrument for filing". The allegedly false instrument was the Trustee's motion to dismiss the September 2007 complaint, which stated that Mac Truong left the property of his own accord, and that no forcible entry onto the Property was required. On November 28, 2007 the

Teaneck Municipal Court once again dismissed all charges for lack of probable cause.[6]

Unbowed by his lack of success in Teaneck Municipal Court, Mac Truong filed criminal charges against the Trustee in the Municipal Court of Newark and the Municipal Court of Parsippany-Troy Hills. The complaint in the Newark court also named as a defendant Bruce Etterman ("Mr. Etterman"), special counsel for the Trustee. The Trustee moved to dismiss the charges in both courts, but as of the hearing date on the Trustee's motion to enlarge the filing injunction, the matters had not been heard.

The frivolous and vexatious nature of the criminal charges cannot be overstated. The charges against the Trustee and Mr. Etterman are emblematic of Mac Truong's cavalier approach to both the facts and the law. As part of his submission to the Third Circuit in connection with one of the Debtors' appeals, Mr. Etterman included as an exhibit the schedule of unsecured creditors that the Debtors filed with their bankruptcy petition. Mac Truong asserts that the schedule is a false statement because he and his wife have received their Chapter 7 discharge. By his analysis the elimination of personal liability for their debts thereby eliminates their creditors and there is no basis for the Trustee to continue his efforts to sell the Property. This analysis of the Bankruptcy Code is flawed and his motions and cross-motions to dismiss his case or remove the Trustee on this basis have been rejected by this court on various occasions.[7] Accordingly, Mac Truong's criminal charges

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[6]The Trustee advises that Mac Truong also filed a second complaint against Ms. Ostroth which was likewise dismissed by the Teaneck Municipal Court for lack of probable cause.

[7]Bankruptcy Code § 101(10)(A) defines a creditor as an entity that has a claim against the debtor that arose at or before the order for relief. By the Debtors own admission on their schedules they had creditors when they filed for bankruptcy. Additionally the court's claim register of filed proofs of claim reveal claims amounting to $785,096.25. Finally, Bankruptcy Code § 727(b) makes it plain that the discharge merely discharges a debtor from personal liability on claims that arose before the petition date it does not eliminate the existence of creditors, whose claims can be satisfied from funds in the bankruptcy estate if the Trustee finds

lack foundation.

It is important to understand that the litigation history just recited is only the most recent history. The litigation that precipitated both the present case and the Debtors' prior Chapter 11 case, 00-37093, actually began in the 1990's. In approximately 1997 Mac Truong filed suit against several defendants over the ownership of various investment accounts maintained at Charles Schwab & Co. The matter was fully litigated in the Supreme Court of the State of New York, County of New York and determined adversely to Mac Truong. Mac Truong's efforts to relitigate the matter in the United States District Court for the Southern District of New York were also unsuccessful. In 2003, Judge Sidney Stein enjoined the Debtors from further litigation against these defendants due to the Debtors harassing and vexatious litigation tactics. *See* Ex. 7, 8 *infra*. Debtors' efforts to further relitigate these matters in this bankruptcy court were also rejected by the court. *See* Ex. 9 *infra*.

Truong followed the same pattern with regard to his landlord/tenant dispute with Broadwhite. In 1995 Broadwhite commenced an action in the Supreme Court of the State of New York, County of New York, against both Debtors essentially for breach of lease and nonpayment of rent. Eventually a bench trial was held before the Justice Harold Tompkins. On January 6, 2000, Justice Tompkins rendered an oral decision granting judgment in favor of Broadwhite, and on January 20, 2000 an order was entered against the Debtors in the amount of $356,509.83.[8] Debtors appealed Justice Tompkins's decision and on May 7, 2002 the trial court's decision was affirmed by the Appellate Division. The Debtors thereupon moved for reargument, or alternatively, leave to appeal

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assets.

[8]The Judgment in this case caused Broadwhite to institute the suit for fraudulent transfer that was removed to this court by the Debtors.

to the Court of Appeals for the State of New York. That motion was denied in October 2002. However, even before the appeal of Justice Tompkins's decision could be decided by the Appellate Division, the Debtors sought to overturn the state court judgment by commencing suit against Justice Tompkins and others in the United States District Court for the Southern District of New York. Both that complaint and the amended complaint were dismissed for lack of subject matter jurisdiction. As part of the order dismissing the amended complaint, the Hon. Shira A. Scheindlin directed that the Debtors were enjoined from filing any new lawsuits related to the Broadwhite state court action without prior leave of court. *See* Ex. 10 *infra*. Regrettably, Judge Scheindlin's injunction only temporarily ended Mac Truong's litigation. As we know, once Broadwhite began its efforts to enforce its judgment the Debtors filed for bankruptcy in the District of New Jersey and all of the events described above began to unfold.

II.

The authority of a district court to restrict the activity of abusive litigants is well recognized. *Abdul-Akbar v. Watson*, 901 F.2d 329, 332-33 (3d Cir. 1990); *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989); *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986)(en banc); *In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984); *In re Green*, 669 F.2d 779, 785 (D.C. Cir. 1981)(the right of access to the courts is neither absolute nor unconditional).

This ability to restrict a litigant's access to the court is frequently grounded in the court's inherent authority to manage its jurisdiction and in the All Writs Act. That statute provides in pertinent part that "the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and

principles of law." 28 U.S.C. § 1651(a). The Third Circuit has succinctly summarized the reasoning for reliance on the All Writs Act as follows:

> It is well within the broad scope of the All Writs Act for a district court to issue an order restricting the filing of meritless cases by a litigant whose manifold complaints raise claims identical or similar to those that already have been adjudicated. The interests of repose, finality of judgements, protection of defendants from unwarranted harassment, and concern for maintaining order in the court's dockets have been deemed sufficient by a number of courts to warrant such prohibition against relitigation of claims. (citations omitted).

In re Oliver, 682 F.2d 443, 445 (3d Cir. 1982). Thus, in *Oliver* the court agreed with the First and District of Columbia Circuits that "a continuous patterns of groundless and vexatious litigation can, at some point, support an order against further filings of complaints without permission of the Court." *Id.* at 446.

Oliver was also quick to point out that (i) litigiousness alone is not an adequate basis for an injunction that restricts access to the court, and (ii) since such an order is an extreme remedy it should be used only in extreme circumstances. *Id.* At 445-46. Thus, the court must be careful to tailor the remedy so that access to the court is not unreasonably burdened.

In determining whether to issue a filing injunction the court must determine "if a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties." *Safir v. U.S. Lines, Inc.*, 792 F. 2d 19, 24 (2d Cir. 1986). Plainly, the Debtors have demonstrated an inclination for repetitive and vexatious litigation and it is doubtful that they will desist. They have repeatedly attempted to relitigate in this bankruptcy court and in the District Court for the Southern District of New York matters that were commenced in the mid 1990's and fully litigated in the state courts of New York. When faced with rulings that displeased them, they peppered this court with repeated motions for reconsideration or renewed motions for summary

judgment, all without setting forth any new facts or law to support them. Likewise, the District Court for the District of New Jersey has been barraged with appeals. Some of the appeals have been dismissed due to procedural failures by the Debtors, and others have been decided adversely to the Debtors. Their litigiousness has cause Judges Scheindlin and Stein of the Southern District of New York, and this court to issue filing injunctions designed to prevent the flow of frivolous pleadings produced by the Debtors.

Moreover, the Debtors' filings have been characterized by misstatements of fact and mischaracterizations of law as amply demonstrated in the exhibits attached to this opinion. The Debtors' most recent filings with the Teaneck Municipal Court alleging that the Trustee and Ms. Ostroth were acting unlawfully in marketing and entering onto the Property demonstrate that in all likelihood the Debtors will continue to cast about for new venues to relitigate matters. They are also illustrative of the lack of foundation for the Debtors' court filings. As is readily evident in the record of this bankruptcy case, this court unwound the fraudulent transfers and revested the property in the bankruptcy estate. This ruling was affirmed, the Trustee was empowered by this court to take possession of the Property after the Debtors' refusal to cooperate with the Trustee, Ms. Ostroth was retained by court order to market the Property, and in selling the Property the Trustee was fulfilling his obligations under Bankruptcy Code § 704. The Debtors, as participants in each and every matter before this court have full knowledge of these facts. Moreover, the unfounded allegations in Teaneck Municipal Court are particularly egregious given the fact that Mac Truong is an attorney by training, though now disbarred.

All of this endless litigation has produced needless expense and delay to the bankruptcy estate. Additionally the allegations against the Trustee and his professionals have unnecessarily

forced them to incur the cost of personally defending themselves. Seeing no end in sight, the Trustee now asks the court to expand the filing injunction it entered on March 20, 2006. Under the terms of that filing injunction the Debtors were enjoined from any filings in the main bankruptcy case or adversary proceeding 03-2681 without first obtaining leave of court. The filing injunction required the Debtors to submit their proposed document together with a certification stating that (i) the document contained new claims, issues and/or facts that had never before been raised and disposed on the merits by any federal court, (ii) the Debtors believed the facts to be true, (iii) that they had no reason to believe that the claims were foreclosed by controlling law, and (iv) the Debtors acknowledge that they may be held in contempt of court if anything in the certification was willfully false. The order also provided that it will remain in effect until both the bankruptcy case and the adversary proceeding are closed. The court believes that this filing injunction comports with the requirements of Abdul-Akbar v. Watson, Matter of Packer Avenue Associates, 884 F.2d 745, 748 (3d Cir. 1989) and In re Oliver.

The Trustee now seeks to enlarge the filing injunction to enjoin the following:

> Mac Truong, Maryse Mac-Truong and any individual or entity acting on their behalf shall be and hereby are permanently enjoined from filing any pleadings, motion, cross-motion, complaint, application, or any other paper in any administrative agency, municipal, state or federal court nationwide related to the bankruptcy case bearing Case No. 03-40283; the adversary proceeding bearing Adversary Proceeding No. 03-2681; or any appeal from either matter, or which seeks the imposition of liability, whether administrative, civil or criminal, against Steven P. Kartzman, Esq., Adam G. Brief, Esq., the firm of Mellinger, Sanders & Kartzman, LLC, any present, past or future employee of Mellinger, Sanders & Kartzman, LLC, Richard B. Honig, Esq., Bruce S. Etterman, Esq., the firm of Hellring, Lindeman Goldstein & Siegel, LLP, and any present, past or future employee of Hellring, Lindeman Goldstein & Siegel, LLP, Barbara Ostroth, Coldwell Banker, and any present, past or future employee of Coldwell Banker, or any other professional retained by the Trustee

> in the main bankruptcy case or the adversary proceeding, without leave of this Court.

As with the current filing injunction, the proposed filing injunction requires that a written certification be submitted with the proposed document. The Trustee requests that the certification include statements that (i) the new claims, issues or facts are not barred by principles of claim or issue preclusion, (ii) the requesting party believes that the claims can withstand a motion to dismiss, and that the claims are not violative of a court order. Further, the Trustee asks that "[i]f papers are filed in the absence of leave from this court, the clerk of the respective court is authorized and directed to immediately and summarily strike the filing upon receipt of a copy of this Order." Finally, the Trustee proposes that this court retain jurisdiction to enforce the injunction and impose sanctions.

For the most part, the factual record supports the expanded filing injunction requested by the Trustee. In particular, the court finds it appropriate to require the Debtors, whether acting individually, jointly or by proxies, to seek leave of this court prior to commencing any new actions in any tribunal that arise out of or relate to bankruptcy case 03-40283 or 03-2681, that seek relief against the Trustee and his court authorized professionals who have assisted him in the administration of this case. Notably, this relief is not without precedent. The Second Circuit in *In re Anthony R. Martin-Trigona v. Lavien, et al. (In re Martin-Trigona),* 737 F.2d 1254, 1263 (2d Cir. 1984) found that to protect federal jurisdiction it was appropriate to "shield federal litigants, their counsel, court personnel, their families and professional associates from Martin-Trigona's vexatious litigation in all courts, state or federal." As in the *Martin-Trigona* case, these Debtors have engaged in meritless litigation and have forced the Trustee and his professionals to defend themselves in various fora. Accordingly, to protect the bankruptcy court's jurisdiction, it is essential to shelter

from harassment those individuals whose services are essential to the functioning of the bankruptcy system.

To the extent the Trustee proposes to require the Debtors and their proxies to obtain leave of this court before they file any further pleadings, motions of other papers in matters currently pending in other courts or agencies, this court believes that it lacks the authority to grant such relief. Such an injunction exceeds the gatekeeping function of a filing injunction and actually impinges on the authority and jurisdiction of other courts. However, to the extent that a motion is pending in any non-bankruptcy forum, the Debtors must submit the expanded filing injunction and this opinion with all of its exhibits, along with any motion or pleading it files.

Similarly, this court finds that the Debtors cannot be required to seek leave of this court prior to filing an appeal. Particularly if an appeal is taken from an order of this court, it is inappropriate for it to decide whether the appeal has sufficient merit. Likewise, it would be an unwarranted intrusion for this bankruptcy court to interfere with the appellate process of another court. However, the Debtors shall be required to submit with the appeal a copy of the expanded filing injunction and this opinion with all of its exhibits.

The court has taken the unusual step of appending exhibits to its opinion in order to evidence the Debtors' practice of relitigating matters. The requirement that the Debtors submit the expanded filing injunction and the opinion in connection with a motion for reconsideration or an appeal is intended to provide the other tribunals with the Debtors' litigation history, and thus a greater context for consideration of the specific issue before them.

CONCLUSION

The factual record before the court reveals that the Debtors have engaged in duplicative and vexatious litigation, and that they are likely to persist in such conduct. As a result, enlargement of the March 20, 2006 filing injunction is warranted.