

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: Joseph Melendez) Case No. 15-16614
Debtor.) Chapter 13 Proceedings
) Judge Pat E. Morgenstern-Clarren

MOTION TO REVOKE ORDER OF CONFIRMATION

Now comes CRAIG SHOPNECK, the duly appointed and qualified Standing Chapter 13 Trustee (“Trustee”) herein, by and through counsel, and hereby moves this Honorable Court to revoke the confirmation order in the above-captioned case pursuant to Section 1330 of the Bankruptcy Code.

In support of his motion the Trustee makes the following representations to the Court:

1. The debtor filed a petition under Chapter 13 of Title 11, U.S.C. on November 18, 2015. The case was confirmed by this Court on February 19, 2016. The confirmed plan calls for the payment to unsecured creditors of \$179.00 or 1% of allowed claims, whichever is greater.
2. On or about May 13, 2016 the Trustee received an anonymous communication that stated that the Debtor operated an “allegedly profitable and successful photography endeavor” under the pseudonym *Seph Lawless*, and that he has authored many successful books, among other allegations. Nothing regarding the Debtor’s photography endeavors or his books is listed in the Debtor’s original schedules.
3. The Trustee conducted an investigation and was able to verify that the Debtor is a wellknown photographer operating under the pseudonym *Seph Lawless*, and that he is the author of several books. The Trustee also discovered that the Debtor is the plaintiff in a lawsuit filed in Cuyahoga County Common Pleas Court on February 9, 2016, in which the

Debtor is seeking damages in excess of \$25,000.00. Even though the lawsuit states that it is based on activities that took place as far back as March or April of 2015, there is no cause of action listed in the Debtor's schedules.

4. On June 2, 2016 the Trustee conducted an examination of the debtor under Bankruptcy Rule 2004 pursuant to an order issued by the Court on May 17, 2016. At that examination the Debtor confirmed that he did operate a photography endeavor under the pseudonym *Seph Lawless*, that he had published as many as ten books (the first as far back as 2014), that he was the plaintiff in a lawsuit in which he sought damages in excess of \$25,000.00, and that none of this information was disclosed in his schedules.¹

5. Section 1330 of the Bankruptcy Code states that an order of confirmation can be revoked within 180 days of its entry if it can be shown that the confirmation order was procured by fraud. The Trustee believes that the Debtor's failure to disclose his photography endeavors, his book publishing, and his cause of action should have been easily ascertained during the intake process and that the failure to disclose these items must thus be considered fraud which, when combined with the fact that the Debtor's failure to disclose these items deprived the Trustee of an opportunity to fully and thoroughly investigate the debtor's financial affairs and could have possibly lead to the proper amount not being paid to unsecured creditors, justifies the revocation of the order confirming this case under Section 1330 of the Bankruptcy Code.

¹ The Trustee acknowledges that Schedule B was amended on May 23, 2016 to include some omitted assets. Not all omitted assets are disclosed in the amended schedules, however, and the fact that the schedules were amended postconfirmation has no bearing on any fraud that may have been committed before the case was confirmed.

6. As the order confirming the case at bar was entered on February 19, 2016, the Trustee's motion is being filed less than 180 days after the entry of the confirmation order and thus the Trustee's Motion is timely.

WHEREFORE your Trustee, being a proper party in interest, hereby moves this Honorable Court to grant his motion and revoke the order of confirmation in the case at bar pursuant to Section 1330 of the Bankruptcy Code for the reasons cited.

Respectfully submitted,

/S/ Philip D. Lamos

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CERTIFICATE OF SERVICE

I certify that on June 28, 2016, a true and correct copy of Trustee's Motion was served:

Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

Melissa L. Resar, Attorney, on behalf of Debtor, at mresar@ohiolegalclinic.com

And by regular U.S. mail, postage prepaid, on:

Joseph A. Melendez, Debtor, Cleveland, OH 44102

/S/ Philip D. Lamos

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