UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

In re:	)	
Michele Moore,	)	Case No. 04-24651
Debtor.	)	

TRANSCRIPT OF DIGITAL PROCEEDINGS

BEFORE THE HONORABLE KAREN A. OVERSTREET

FEBRUARY 15, 2006

RULING ONLY

Transcribed from digital recording by:
Shari L. Ahearn, CCR

1 APPEARANCES

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SEATTLE, WASHINGTON; FEBRUARY 15, 2006

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THE COURT: Well, I think we stop here, Mr. Jump, because I agree with the Government. I just don't think there is any standing here. And as much as I know the attorneys would like to resolve the issue, and even I might like to resolve the issue, I do not think this is the case.

I actually want to read into the record, too, the cases that I rely on that deal with standing, because I think they are important, and I think they are fairly clear. Although, I will preface my remarks by saying this: In the area of environmental law, it seems to me that the Supreme Court can find standing when it wants to decide the issue and won't find standing when it doesn't. And, frankly, those cases can be unhelpful because they're so bizarre, in some ways, to me.

In this particular case, I'm looking at the three factors that you are required to prove in order to show standing, and I don't see that those factors have

1 been met here. The cases that I looked at -- I started
2 with Warth v. Seldin, which is a Supreme Court case,
3 looking at case or controversy. And I looked a lot at
4 Lujan v. Defenders of Wildlife, which I think the
5 Government cited, and is one of the leading cases on it.
6 Under those cases, the first thing I have to
7 find is that the debtor is asserting her own rights. I
8 think it's very clear to me that the rights that are
9 really at issue here are Mr. Jump's. There are two
10 cases that the Government cited that I think are on
11 point. One is Warth v. Seldin, that I mentioned, 422
12 U.S. 490. The other is a Ninth Circuit case, Lee v.
13 Oregon, 91 F.3d 1240.
14 Both cases make it clear that a plaintiff --
15 let's forget about the fact -- I'm ignoring the fact
16 that we're not in an adversary proceeding when I think
17 we should be, because I think the bankruptcy rule
18 clearly requires that, but I've ignored that
19 technicality. These cases hold that the plaintiff must
20 assert her own legal rights and interests and cannot
21 rest her claim on the legal rights of third parties,
22 absent evidence that there is some hindrance to the
23 third party's ability to protect his own interest. We
24 certainly don't have that here. Lawyers, including
25 Mr. Jump, are certainly free to go attempt to protect

1 their own rights.
2 I think when it comes to a declaratory ruling,
3 like has also been requested here, I have to find some
4 dispute which affects the behavior of the defendant
5 towards the plaintiff. If I ignore the fact that we're
6 not in an adversary proceeding where I don't have a,
7 quote, defendant, end quote, and I assume, for purposes
8 of the argument, that my defendant here is the U.S.
9 Trustee, I don't see any evidence that the U.S. Trustee
10 is poised here to do anything. I don't see here that
11 the State of Washington, as an enforcing agency for
12 lawyers in the State of Washington, is poised to do
13 anything.
14 I'm looking for obligations or restrictions
15 that these statutes impose on Ms. Moore. As far as I
16 can tell, the only restriction imposed on her is that
17 she listened to some disclosures, which we all have
18 differing opinions about. Whether they're true, whether
19 they reflect the law accurately or not, is not the
20 issue. The only obligation on her is that she sit and
21 listen to them.
22 In this particular case, she was asked to sign
23 a statement that she had listened to them, but that's
24 not required by the statute. So I think this is really
25 more of an attempt by Ms. Moore to raise concerns about

1 obligations and restrictions that are imposed on
2 debtors' attorneys.
3 Second, she's got to show an actual injury.
4 All I see in her declaration is that she did not
5 appreciate the disclosures or Counsel's unwillingness to
6 discuss the issues. She thought the disclosures were
7 absurd, confusing, demeaning, and highly misleading.
8 I don't regard any of those as an injury. And
9 as was pointed out in oral argument, in paragraph 14 of
10 her declaration specifically, she received the legal
11 advice that she needed.
12 Under the test, I'm supposed to find that there
13 is an invasion of a legally protected interest which is
14 concrete and particularized and actual or imminent, not
15 conjectural or hypothetical. And I don't see any
16 legally protected interest of hers that has been
17 invaded.
18 Now, Mr. Jump has argued that she's the one
19 with the First Amendment right. I don't see that in the
20 cases. But I'll admit that I am not an authority on the
21 First Amendment, and I have not researched whether the
22 recipient of the speech has their own separate First
23 Amendment right.
24 I agree with what has been said here today;
25 that her declaration -- there's no evidence here that

1 she did not receive the speech that she needed and the
2 advise that she required.
3 I don't see any causal connection because
4 there's no injury. It's interesting that when you look
5 at these cases on causal connection, it seems to me that
6 they're really talking about the U.S. Trustee having
7 actually taken some action. Although, this language
8 from one of the cases came out, to me: Where the
9 existence of one or more of the essential elements of
10 standing depends on the unfettered choices made by
11 independent actors not before the Courts, and whose
12 exercise of a broad and legitimate discretion the Courts
13 cannot presume either to control or to predict, it then
14 becomes the burden of the plaintiff to adduce facts
15 showing that those choices have been or will be made in
16 such a manner as to produce causation and permit
17 redressability of injury. That comes from the Lujan v.
18 Defenders of Wildlife case as well.
19 I don't really have anybody before me. What I
20 have from the U.S. Trustee -- and I take them to be the
21 defendant -- the U.S. Trustee's Office says, This is a
22 case where we would not take any action. We do not
23 believe that the advice Mr. Jump gave about refinancing
24 runs afoul of the statute.
25 I don't have any evidence that any action is

imminent or going to be taken. That still would impact Mr. Jump, not Ms. Moore. There's no evidence that there's anything in the statute that would allow the U.S. Trustee to do anything to or about Ms. Moore.

I'm going to deny the motion on the grounds of standing. I would ask you, Ms. Sowles, to prepare an order that just incorporates my oral ruling on the record.

MS. SOWLES: Okay.

THE COURT: I suppose, if you are going to order it, you can do so. But I think I put in my oral rulings the findings that I would make.

All right. Mr. Jump, you can take a look at the order that she prepares. If it's not to your liking, you can note it up for a hearing.

MR. JUMP: Thank you, Your Honor.

THE COURT: All right. Thank you.

C E R T I F I C A T E

I, Shari L. Ahearn, hereby certify that:

the foregoing pages represent an accurate and complete transcription, to the best of my ability, from the digitally recorded proceedings before The Honorable U.S. Bankruptcy Judge presiding in the aforementioned matter;

and that these pages constitute the original or a true copy of the transcript of the digitally recorded proceedings.

Signed and dated this 13th day of March, 2006.

by: /s/ Shari L. Ahearn
Certified Court Reporter
CCR# 2396