

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
4 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

5
6 **Filed On**
7 **4/22/10**

10 Case No. A09-00484-HAR

In Chapter 7

11 In re MICHAEL CROPLEY LASHBROOK
12 and SANDRA JOY LASHBROOK,

13 Debtor(s)

14 MICHAEL CROPLEY LASHBROOK and
15 SANDRA JOY LASHBROOK,

Adv Proc No A10-90009-HAR

16 Plaintiff(s)

**MEMORANDUM REGARDING ORDER
17 STRIKING COMPLAINT**

18 v.

17 WILLIAM BARSTOW, III, trustee;
18 JEFFREY G. PASCO, dba Beluga Realty;
19 and KAY S. HUFF, dba Beluga Property
20 Management,

21 Defendant(s)

22 The plaintiffs' 42 page complaint does not comply with Fed. R. Bankr. P. 7008, which
23 incorporates Fed. R. Civil P. 8(a). The rule states, among other things, that a claim for relief should
24 contain "a short and plain statement of the claim that the pleader is entitled to relief;" The
25 Lashbrooks' complaint is prolix, confusing, garrulous, and unnecessarily full of irrelevant evidentiary
26 conclusions. It would be extremely burdensome to require the defendants to parse the complaint to
27

1 determine what was being claimed and what they are required to answer.¹ The complaint is “verbose,
2 confused and redundant.”²

3 Therefore, on its own motion, the court will strike the complaint, without prejudice to the
4 filing of a short, plain complaint requesting relief. *I suggest the Lashbrooks also study the Barton*
5 *Doctrine which require leave of the court to sue a trustee.*³

6 I take at face value the Lashbrooks’ anguish at their financial distress and its effect on their
7 three young children and themselves. I am also aware the federal trial courts are supposed to cut *pro*
8 *se* litigants some slack in judging their compliance with federal procedures. This does not give the *pro*
9 *se* litigant a free pass to ignore the rules.⁴

10 And, the Lashbrooks, too, should understand that the trustee, William Barstow, has a duty to
11 see what estate assets can be turned into cash for the benefit of the creditors. He is not bound to
12 accept the low values the debtors may have placed on their assets, and indeed is entitled to believe
13 they are undervalued. The very intensity of debtors’ denial is perhaps fuel for his skepticism. Even if
14 he is wrong, it is his duty and right to explore the facts.

15 I discern the key themes in the complaint as follows:

- 16 ■ **Plaintiffs claim that the trustee has missed the Fed. Rule B. Proc 4003(c) deadline to**
17 **object to the debtors’ claim of exemption of the 41 acre trailer park.** The exempt amount
18 was listed as \$0, and the federal exemption under 11 USC § 522(d)(5) is \$1,075 + \$10,125 =
19 \$11,200 for each debtor. The issue of whether or not the debtors are limited to \$22,400 or the
20 trustee has lost the unstated equity which might exist in the trailer court is currently before the
21

22 ¹Agnew v Moody, 330 F2d 868, 870 (9th Cir 1964).

23 ²Corcoran v Yorty, 347 F2d 222, 223 (9th Cir 1965).

24 ³In re Castillo, 297 F3d 940, 945 (9th Cir 2002) 3 Collier on Bankruptcy, ¶ 323.03[3][a] [15th ed. rev.
25 2010].

26 ⁴Stanley v Goodwin, 475 FSupp 1026, 1032-33 (D Hawaii 2006).

1 Supreme Court of the United States in Schwab v Reilly. The bankruptcy website for the
2 American Bankruptcy Institute summarizes the matter as follows:

3 Schwab v. Reilly (08-538)⁵

4 Decision: Pending
5 Issue:

6 In this case, the Court addressed the meaning of its decision in *Taylor v. Freeland &*
7 *Kronz*, 502 U.S. 638 (1992), which has been construed in contradictory ways by courts.
8 Specifically, the Court considered the following two questions:

9 When a debtor claims an exemption using a specific dollar amount that is equal to the
10 value placed on the asset by the debtor, is the exemption limited to the specific amount
11 claimed, or do the numbers being equal operate to "fully exempt" the asset, regardless
12 of its true value?

13 When a debtor claims an exemption using a specific dollar amount that is equal to the
14 value placed on the asset by the debtor, must a trustee who wishes to sell the asset
15 object to the exemptions within the thirty day period of Rule 4003, even though the
16 amount claimed as exempt and the type of property are within the exemption statute
17 and thus the claimed exemption does not appear improper on its face?

18 Oral Arguments: Nov. 3, 2009

19 We should have a decision within the next month or so.

- 20 ■ **Plaintiffs allege a number of improprieties in the way the trustee, his attorneys, and agents**
21 **are going about their jobs, and allege that the trustee is not providing information.** For
22 example, the Lashbrooks state that:

23 — Barstow is not authorized to operate the trailer park business under 11 USC §§ 704(a)(8),
24 721. *Good point.*

25 The trustee has been filing reports under Rule 2015(a)(3). If court approval is necessary, it
26 should be sought. Coincidentally, the trustee may be using some entity's cash collateral
27 without its specific authorization or court approval. 11 USC § 363(c)(2).

28 — A real estate broker has not been authorized. 11 USC § 327. *Good point.*

⁵Schwab v Reilly, 129 SCt 2049 (2009) (granting cert).

