

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

HARRY ALEXANDER,
Debtor.

Involuntary Case
Ch. 7 No. 00-10500 (cab)

#192-1

Decision Overruling Objection Without Prejudice

The Debtor, through his attorney, John R. Canney, III, Esq., has filed in this Court an "Objection to the Designation of Items for Inclusion in the Record on Appeal" dated July 11, 2000 ("the objection"). The objection disputes the propriety of the Small Business Administration ("SBA") designating any items for inclusion in the Record on Appeal "on the grounds that the S.B.A. in and of itself is not a party to the appeal."

Pursuant to Bankruptcy Rule 8006, and by inference, Rule 10(e)(3) of the Federal Rules of Appellate Procedure, this objection is properly brought before the U.S. District Court which will hear this appeal. See In Re W.T. Grant Company, 425 F. Supp. 565 (S.D.N.Y. 1976), aff'd, 559 F.2d 1206 (2d Cir. 1977) (construing Bankruptcy Rule 806, the predecessor of the current Bankruptcy Rule 8006, to find that the appellate court is the forum for resolving disputes as to which items are properly included in the record on appeal); In re Chateaugay Corp., 64 B.R. 990 (S.D.N.Y. 1986) (specifying that only issues as to whether particular items were relied upon by the Bankruptcy Court should be resolved by the Bankruptcy Court and all other issues as to which items are properly included in the record on appeal fall under the jurisdiction of the District Court). It is also noteworthy that although there is very little caselaw on this particular question, the *Editor's Comment* to Bankruptcy Rule 8006 provides:

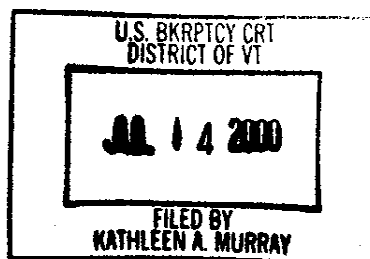
In the event of a dispute between the parties as to whether documents have been improperly designated, because they are irrelevant or as too extensive and burdensome for the appellate tribunal, such dispute should be presented by appropriate motion to the appellate tribunal and determined by that tribunal since it will affect its exercise of appellate jurisdiction, rather than presented to the bankruptcy court for resolution.

Norton Bankruptcy Rules Pamphlet 1999 - 2000 Edition, p. 560 (internal footnote omitted).

Although the Debtor's objection is framed in terms of whether the SBA has standing to add items for inclusion in the record on appeal, it ultimately raises the question of whether the items the SBA seeks to include are properly included in the record. Therefore, this Court finds that if the Debtor wishes to pursue this objection he must do so before the U.S. District Court.

For the reasons set forth above the Debtor's Objection is overruled without prejudice to the Debtor refileing it in the U.S. District Court.

Dated: July 13, 2000





Colleen A. Brown
U.S. Bankruptcy Judge