

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ASTOR GROUP, INC.,) CASE NO. 07-22176 JPK
) Chapter 11
Debtor.)

ORDER CONCERNING MOTION OF CREDIT UNION SERVICES INC. FOR DECLARATORY
JUDGMENT AND ORDER FOR THE RETURN OF NON-ESTATE PROPERTY {"MOTION"}

The Motion was filed on October 26, 2007 by Credit Union Services, Inc. It seeks essentially three forms of relief, as follows:

1. "A declaratory judgment finding that certain personal property in the possession of Astor Group, Inc. . . is not property of the estate";
2. "Entry of an Order directing the Debtor to transfer and return the non-estate property from the Debtor to CUSI within 10 days of entry pursuant to 11 U.S.C. § 105 and 541 of the United States Bankruptcy Code"; and
3. "Compelling the Debtor to provide adequate protection to CUSI pursuant to § 361 and 363 of the Bankruptcy Code."

The Court first notes that the Motion violates the provisions of N.D. Ind.L.B.R. B-9013-1, which requires that every "motion, or other requests for an order of the court . . . shall be filed separately." The Court next notes that the form of relief designated in subparagraph 1 above is squarely within the provisions of Fed.R.Bank.P. 7001(2) with respect to its requests to determine that the debtor does not have an interest in certain property and Fed.R.Bank.P. 7001(9) with respect to its requests that this determination be made by declaratory judgment. Thus, this remedy must be sought by means of an adversary proceeding. Finally, the Court notes that the relief requested by subparagraph 2 above is squarely within the provisions of Fed.R.Bank.P. 7001(7), and thus requires an adversary proceeding as well.

A proceeding commenced by a motion when an adversary proceeding is required

should be dismissed by the Court independently of a party's request to dismiss, Matter of Perkins, 902 F.2d 1254 (7th Cir. 1990).

The creditor has sought to make use of the "drop dead" procedure provided by N.D. Ind.L.B.R. B-2002-2. Unfortunately, none of the forms of relief requested by the creditor fall within the provisions of that rule, and the Notice filed as docket record entry number 86 on October 26, 2007 is of no effect.

IT IS ORDERED that the Notice filed on October 26, 2007 is of no effect.

IT IS FURTHER ORDERED that the Motion is denied in its entirety, without prejudice to seeking the relief requested by the motion in accordance with the requirements of the Federal Rules of Bankruptcy Procedure and other applicable law.

Dated at Hammond, Indiana on November 9, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
US Trustee
Attorney for Creditor