UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
DRAGAN KUCANIN,	)	CASE NO. 07-20674 JPK
	)	Chapter 7
Debtor.	)	
**********		
STACIA L. YOON, TRUSTEE,	)	
Plaintiff,	)	
v.	)	ADVERSARY NO. 07-2075
BOMED INVESTMENT &	)	
MANAGEMENT, INC.,	)	
Defendant.	)	

ORDER FOR HEARING

This adversary proceeding was initiated by a complaint filed on July 12, 2007, in which the sole relief requested by the plaintiff was that the Court "order the Defendant, Bomed Investment & Management, to turnover the requested documents to the Trustee and any other documents that may be in their possession that the Trustee discovers may lead to an asset of this estate". The Clerk entered an entry of default on December 6, 2007, in response to which the plaintiff filed a Motion for Judgment, which includes a request that the Court enter a monetary judgment against the defendant. The proposed form of Judgment submitted by the plaintiff also includes a provision for the entry of a monetary judgment.

First, the utilization of an adversary proceeding for the turnover of the documents apparently sought by the Trustee is not necessary: 11 U.S.C. § 542(e) provides ample authority for the use of simple turnover motion to obtain the documents which the Trustee apparently seeks to obtain by means of the adversary proceeding. Fed.R.Bankr.P. 7001(1) requires the use of an adversary proceeding to recover property, i.e., in this context, the debtor's records in the hand of a third party.[1] However, the Court does not read the complaint

[1] Even if the subject of the action is the turnover of the debtor's "recorded information . . . relating to the debtor's property or financial affairs", unless the documents sought have a separate significance as intangible property interests of the debtor apart from the function of

to seek to compel the turnover of even records of the debtor, but rather to seek to compel turnover of records concerning the debtor's financial affairs which are in fact records of the defendant. The plaintiff, having chosen the more complicated procedure of an adversary proceeding, is now stuck with that choice.

Secondly, the complaint does not in any manner seek a monetary judgment against the defendant, and thus the relief requested by the Motion for Judgment, memorialized in the Judgment form tendered by the plaintiff, cannot be granted. *See*, Fed.R.Bankr.P. 7005; Fed.R.Civ.P. 5(a). In other words, one cannot expand upon the relief requested by a complaint by seeking a default judgment for relief not requested by a complaint.

Third, a judgment must be self-contained, and its terms cannot be defined by a document outside of the judgment itself. Thus, the last paragraph of the tendered form of Judgment is not in proper form, as the judgment itself must delineate the documents specifically designated in the complaint.

IT IS ORDERED that a hearing will be held on **February 15, 2008, at 9:00 A.M.** with respect to the relief requested by the Motion for Judgment. The plaintiff has established grounds for entry of a default judgment with respect to the complaint as it was filed; however, the Court is concerned that the plaintiff is somewhat confused as to the scope of a judgment which may be granted with respect to the averments of this complaint.

Dated at Hammond, Indiana on January 30, 2008.

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

Distribution:
Attorneys of Record

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merely recording information, (e.g., stock certificate)a turnover motion is all that is required.