

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
PAUL A. POINTER) CASE NO. 08-21118
GINA M. POINTER,)
) Chapter 7
Debtors.)

ORDER REGARDING MOTION FOR SANCTIONS
PURSUANT TO 11 U.S.C. § 362(k) ["MOTION"]

The motion, filed on May 1, 2008, seeks certain relief purportedly pursuant to 11 U.S.C. § 362(k). The prayer for relief in the Motion requests two different forms of relief. First, the Motion requests that the Court enter an order pursuant to 11 U.S.C. § 362(k) which is in the nature of an injunction. 11 U.S.C. § 362(k) authorizes an action for damages; an action for injunctive relief is a remedy not provided for by that statute, and in fact a remedy which must be sought by an adversary proceeding pursuant to Fed.R.Bankr.P. 7001(7). The second part of the Motion's request for relief is within the scope of 11 U.S.C. § 362(k), and is subject to being pursued my means of a contested matter pursuant to Fed.R.Bankr.P. 9014.

The problem which arises is that the debtor has sought relief by means of a motion which the Court cannot grant. If the Court denies the Motion to the extent of the requested injunctive relief, the Order entered by the Court will resolve less than all of the issues as to the defendant, Jeremy S. Collins, and will not constitute a final judgment with respect to that requested relief [Fed.R.Bankr.P. 9014; Fed.R.Bankr.P. 7054(a)/Fed.R.Civ.P. 54(b)]. This manner of dealing with the Motion creates procedural difficulties which do not need to exist.

In essence, because the Motion seeks alternative forms of relief – one of which may be sought by the initiation of a contested matter by motion, but the other of which may only be sought by means of an adversary proceeding – the Motion violates N.D.Ind.L.B.R. B-9013-1(a). In the interest of effective administration of the matters sought to be addressed by the Motion,

the Court finds that the Motion should be denied in its entirety without prejudice. The debtors may file a motion exclusively seeking relief pursuant to 11 U.S.C. § 362(k), and may file a separate adversary proceeding with respect to the injunctive relief requested by the present Motion. As an aside, because 11 U.S.C. § 362(a) already operates as a statutory injunction to preclude the actions alleged to have been engaged in by the Motion's target, the Court questions whether a separate adversary proceeding would add anything to the injunctive effect already imposed by 11 U.S.C. § 362(a).

Based upon the foregoing, the Court finds that the Motion should be denied without prejudice.

IT IS ORDERED that the Motion is Denied, without prejudice to the filing of subsequent actions in accordance with applicable law and rules.

Dated at Hammond, Indiana on June 4, 2008.

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

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee