

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF: )  
 )  
ANNARE L. LOUBSER ) CASE NO. 03-40519  
 )  
 )  
Debtor )

**DECISION AND ORDER**

At Fort Wayne, Indiana, on September 23, 2005.

On August 31, the debtor filed a motion for enforcement of § 362, seeking relief as a result of alleged violations of the automatic stay committed by “creditors Hoover and Pala.” Although debtor is represented by counsel in her underlying chapter 13 bankruptcy case – Mr. Charles Traylor – Mr. Traylor did not sign the motion. As a result, on September 9, the court issued an order indicating that the motion would be stricken unless, within 8 days of that date, it was signed by debtor’s counsel as required by Bankruptcy Rule 9011(a). On September 16, debtor filed a response to the order to show cause and in it she complained about Mr. Traylor’s failure to respond to her inquiries, suggesting that she would like to exercise her right to discharge Mr. Traylor and that he withdraw.

If the debtor wants to terminate Mr. Traylor’s services she has an absolute right to do so and the court suggests that he act upon her instructions and file the appropriate motions to withdraw from this case. Doing so will not, however, cure all of the problems associated with debtor’s motion for enforcement. Instead, it would only allow the court to overlook the fact that Mr. Traylor has not signed that document, thereby permitting it to turn its attention to the more substantive portions of the request. When the court does so, it concludes that it can not possibly be granted because it

is procedurally improper.

Bankruptcy Rule 7001 requires an adversary proceeding in order to recover money or property from an entity other than the debtor and to obtain injunctive, equitable or declaratory relief. That appears to be precisely the type of relief the debtor has sought by her motion. Furthermore, this court has previous held that actions which seek to enforce the automatic stay, or which seek damages as a result of its violation, must be filed as an adversary proceeding. They can not be prosecuted through the less formal procedures associated with contested matters. Matter of Rimsat Limited, 208 B.R. 910 (Bankr. N.D.Ind 1997). Thus, while the court can perhaps overlook the failure of debtor's counsel to sign her motion for enforcement, the court is not willing to overlook debtor's failure to initiate an adversary proceeding in order to seek that relief. Debtor's motion for enforcement is therefore DENIED, without prejudice to an adversary proceeding.

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court