

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE:)	
)	
SUZANNE COLEMAN MULLINS)	CASE NO. 05-73530
)	
Debtor)	
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SINGER ASSET FINANCE, CO., LLC.)	
)	MOTION FOR SPECIFIC
Movant)	PERFORMANCE
)	
v.)	
)	
SUZANNE COLEMAN MULLINS)	
)	
Respondent)	

DECISION AND ORDER

At Roanoke in said District this 21st day of August, 2008:

This matter is before the court on a motion for specific performance by Singer Asset Finance, Co., LLC (herein "Movant"). The court has reviewed the relevant facts and the Movant's arguments and briefs filed in support thereof. For the reasons stated below, the Movant's motion is dismissed without prejudice.

BACKGROUND

Suzanne Coleman Mullins (herein "Debtor") filed for bankruptcy protection pursuant to Chapter 7 of the United States Bankruptcy Code on September 12, 2005. On January 10, 2006, the Movant obtained relief from the stay to enforce a judicial lien against the Debtor's real estate. The Debtor's case was then converted to Chapter 13 on August 15, 2006, and a

Chapter 13 plan filed.

While in Chapter 13, the Debtor filed a motion to reimpose the stay with regard to the real estate the Movant acquired relief to pursue. At an August 15, 2007 hearing on confirmation of the amended plan and Debtor's motion to reimpose the stay, counsel for the Debtor explained that the Debtor and Movant had "reached a substantial accommodation ... that basically allows the non-debtor spouse to fund a complete accord of [sic] satisfaction with Singer Asset that will dispense with their claim in its entirety at a significant discount." (Confirmation Hr'g 3, Aug. 15, 2007). In the "Other Provisions" section of the form continuance order entered as a result of the August 15, 2007 hearing, it was explained that "[t]he objection to confirmation by Singer Asset Finance Co., LLC, is withdrawn. Debtor's Motion for Valuation re Singer Asset Finance Co., LLC, is withdrawn. Debtor's motion to reimpose automatic stay is withdrawn. The motion for distribution is continued to October 3, 2007, at 9:00 a.m." The continuance order was signed as having been seen and agreed to by counsel for the Movant prior to entry.

Following entry of the order withdrawing the Movant's objection, the Movant was unable to secure the necessary signatures on the proposed settlement agreement. Thus, it appears that the parties never achieved contractual agreement in writing. On January 9, 2008, the Movant filed this motion for specific performance of the terms of the settlement agreement announced in open court.

DISCUSSION

The remedy of specific performance sounds in equity. A proceeding to obtain an injunction or other equitable relief is an adversary proceeding. Fed. R. Bankr. P. 7001(7). An

adversary proceeding is commenced by filing a complaint, not by filing a motion. F. R. Bankr. P. 7003. Many courts have determined, though, that compliance with the requisites of an adversary proceeding may be waived as long as the party deemed to have waived his rights was apprised of and had a chance to address all the issues being decided. See e.g. In re Service Merchandise Co., Inc., 256 B.R. 755, 765-66 (Bankr. M.D. Tenn. 2000); In re Enfolinc, Inc., 233 B.R. 351, 353 (Bankr. E.D. Va. 1999); In re Robinson, 217 B.R. 527, 530 (Bankr. E.D. Tex. 1998).

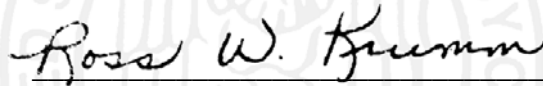
In the case at issue, it does not appear that the relevant parties have waived the commencement of an adversary proceeding. In fact, the court is unsure from whom the Movant is seeking specific performance of the settlement agreement. By the terms of the settlement agreement, to the extent the court has been made aware of the terms, the non-debtor spouse was to pay a certain amount of money in exchange for the Movant dropping its objection to confirmation of the Debtor's plan, among other things. The court can only assume that the Movant is seeking performance of the terms of the settlement agreement by the non-debtor spouse, over whom the court has no personal jurisdiction.

Due to the procedural defect noted above that has not been waived by the relevant parties and the potential jurisdictional issue, it is:

ORDERED

That the Movant's motion for specific performance is dismissed without prejudice.

Copies of this order are directed to be sent to the Debtor, Suzanne Coleman Mullins, 5240 Dresden Ln., Roanoke, VA 24012; to counsel for the Movant, John S. Edwards, Esquire; and to the Chapter 7 Trustee.



Ross W. Krumm

Ross W. Krumm
United States Bankruptcy Judge

