

Adversary Proceeding Stays In Nicole Energy Ch. 11

By **Tina Peng**

Law360, New York (May 21, 2009) -- A district court judge has again declined to withdraw the reference of an adversary proceeding in the Chapter 11 bankruptcy proceedings of Nicole Energy Services Inc.

District Judge George Smith of the U.S. District Court for the Southern District of Ohio on Tuesday denied the motion, noting that the court had denied a motion with the same aim in 2007.

Freddie Fulson, who owns Nicole Energy Services, and Nicole Energy Marketing Inc. had sought withdrawal of the adversary proceeding from the U.S. Bankruptcy Court for the Southern District of Ohio, as well as dismissal of the adversary proceeding and damages of \$50 million, according to the March motion.

Columbia Gas of Ohio and related entities in 2003 filed an involuntary Chapter 7 bankruptcy proceeding naming Nicole Energy Services as the debtor, according to Judge Smith's opinion. Fulson initially contested the Chapter 7 proceeding but later filed a voluntary Chapter 11 petition, and the two proceedings were consolidated into a voluntary Chapter 11, according to the opinion.

Larry McClatchey, in his capacity as trustee, filed an adversary proceeding against several of Fulson's other companies, alleging they engaged in a related series of transactions from 1989 to 2003 that could not be unraveled or separated, according to the opinion.

He asked the bankruptcy court to order a substantive consolidation of all the entities and designate one or more of them as a successor-in-interest to the debtor, according to the opinion.

He alternatively requested that the bankruptcy court “undo certain alleged preferential transfers or fraudulent conveyances between the debtor and one or more of the defendants,” according to the opinion.

Fulson contended that the district court should withdraw the adversary proceeding from the bankruptcy court, arguing that McClatchey had failed to prosecute his claim for substantive consolidation and caused the proceeding to lie dormant for more than a year, according to the opinion.

The district court ruled that permissive withdrawal of the adversary proceeding was inappropriate and would “contravene the orderly and efficient administration of this case” because the bankruptcy court is so familiar with the parties and transactions involved.

It further ruled that McClatchey had suggested in his objection to an earlier motion to withdraw the reference that it was likely that the adversary proceeding's claims would be addressed during the course of liquidating NES' assets in the consolidated bankruptcy case.

After a Wednesday hearing on approval of the proposed plan of liquidation's disclosure statement, McClatchey would be in a position to determine whether to pursue his claims for substantive consolidation in the adversary proceeding, the opinion said.

The bankruptcy court on Wednesday did approve the disclosure statement, and the case will now move forward toward confirmation of that plan, McClatchey said.

Fulson's most recent attempt to withdraw the reference from the bankruptcy court was "both procedurally improper and substantively unsupported, and we're pleased the district court agreed that was the case," McClatchey said.

Fulson said he planned to appeal the district court's decision Tuesday "because the judge addressed issues in the denial that don't make sense."

"We believe it's nothing but fraud, a violation of our civil rights," he said.

Fulson said he had appealed the case to the U.S. Supreme Court, alleging collusion between McClatchey and the district and bankruptcy court judges, and has filed a civil rights complaint with the Office of the Attorney General as well.

Fulson represents himself.

McClatchey is represented by Kegler Brown Hill & Ritter LPA.

The case is In re: Nicole Energy Services Inc., debtor v. Larry J. McClatchey, plaintiff v. Nicole Energy Marketing Inc. et al., defendant, case number 06-cv-0162, in the U.S. District Court for the Southern District of Ohio.