

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**

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PARIS & SONS INC.

Bankruptcy No. 98-02475-C

*Debtor(s).*

Chapter 11

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MIDWEST AGRICULTURE WAREHOUSE  
CO. et al

Adversary No. 99-9098-C

*Plaintiff(s)*

vs.

R.I.C. ENTERPRISES LTD.  
et al

*Defendant(s)*

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**ORDER RE STATUS AFTER CHAPTER 11 DISMISSAL**

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This matter came before the undersigned on May 31, 2000 for a status conference. The following appeared at the hearing:

Wes Huisinga and Steve Pace for Plaintiff Midwest Agriculture Warehouse Co. ("UAP")  
Dan Childers for R.I.C. Enterprises, Ltd.  
Martin McLaughlin for the Small Business Administration ("SBA") and the  
Environmental Protection Agency ("EPA")  
Greg Epping for Creditor Timothy Terry  
Fred Morris for the individual Paris family defendants.

After hearing argument of counsel, the Court took the matter under advisement.

**STATEMENT OF THE CASE**

On May 16, 2000, the Court dismissed the underlying Chapter 11 bankruptcy case, In re Paris & Sons, Inc., No. 98-02475-C. At that time, the Court set the status conference herein and requested the parties to address the following matters:

1. The propriety of retaining jurisdiction of this matter, in whole or in part, after dismissal of the underlying Chapter 11 case.
2. Jurisdiction of the Bankruptcy Court over the matters raised in the Complaint, specifically issues relating to environmental liability.
3. Authority under the Bankruptcy Code to grant the requested relief, specifically requests for injunctions against assessment of environmental liability by the EPA and DNR.

4. Possibility of transfer of the case to the U.S. District Court, or withdrawal of the reference under 28 U.S.C. §157(d).

This adversary proceeding raises issues of the rights of secured creditors in property of the Chapter 11 Debtor. It also attempts to enjoin state and federal environmental regulatory agencies from imposing liability against Debtor's real property in the future. Apparently, Plaintiff is attempting to maximize its security interest in Debtor's property by barring future environmental liability, thus increasing the property's marketability and value. The Court questions whether it has the authority or the jurisdiction to grant injunctions against state and federal agencies from imposing future environmental liability.

In filing this adversary proceeding, UAP anticipated the Court would determine the extent and priority of liens and interests in Debtor's property and approve a sale or liquidation of the property in the Chapter 11 case. Now that the Chapter 11 case is dismissed, UAP continues to desire that the issues in this adversary be resolved as quickly as possible.

In light of the dismissal of the Chapter 11 case, UAP wishes to have the opportunity to attempt to transfer this proceeding to the U.S. District Court. It requests 30 days in which to determine the correct procedure for effecting such a transfer, e.g. filing a motion for the District Court to withdraw the bankruptcy reference.

The defendants also wish to have the issues resolved as quickly as possible. The individual Paris family defendants assert that wherever this proceeding ends up, they want the court to immediately set a trial setting conference and discovery deadlines.

Creditor Terry seeks dismissal of the adversary proceeding as it relates to his rights as a secured creditor. He wishes to proceed in Iowa District Court to foreclose on his security interests in Debtor's personal property. R.I.C. concurs with Terry's position. Terry questions whether the U.S. District Court has jurisdiction over the proceeding considering the lack of diversity of citizenship of the parties.

The SBA holds a lien on Debtor's real and personal property. It states that it will be selling its secured claim by the end of the summer unless a buyout occurs first. The EPA states it asserted no claim in the Chapter 11 case. It would defer to the rights of the Iowa Department of Natural Resources as the local agency regarding any determination of environmental liability. The EPA asserts the U.S. District Court is the more appropriate forum to determine the issues raised in this proceeding. If this action moved to state court, both the SBA and the EPA would request removal to the U.S. District Court.

The Iowa DNR filed an answer in this adversary proceeding and received notice of the Status Conference. It did not appear for the hearing, however. The DNR filed a contingent claim in the Chapter 11 case. In its answer herein, the DNR asserts its sovereign immunity. It also states that, although it has no monetary claim against Debtor for environmental liability at present, it has statutory rights to recover costs in the future against current and prospective purchasers and to place liens against the real property if it incurs future costs.

### **CONCLUSIONS OF LAW**

The parties candidly report that it appears there is no authority addressing the jurisdiction of this Court to issue injunctions against the EPA and the DNR to bar assessment of future environmental liability. Likewise, they have found no cases addressing transfer of a bankruptcy adversary proceeding to the District Court after the underlying bankruptcy case is dismissed.

In its ruling dismissing the underlying Chapter 11 case, this Court noted that, as a general rule, related proceedings ordinarily should be dismissed following the termination of the underlying case. In re Paris & Sons, Inc., No. 98-02475-C, slip op. at 3 (Bankr. N.D. Iowa May 16, 2000) (citing In re Porges, 44 F.3d 159, 162 (2d Cir. 1995)). A bankruptcy court may use its discretion to hear an adversary proceeding, even if it originated in a subsequently dismissed bankruptcy case. In re Morris, 950 F.2d 1531, 1535 (11th Cir. 1992). In exercising this discretion, the court considers four factors: (1) judicial economy, (2) convenience to the parties, (3) fairness, and (4) comity. Porges, 44 F.3d at 163; Morris, 950 F.2d at 1535.

The Court previously noted that, generally, the district court has jurisdiction over environmental actions involving the EPA, as well as over bankruptcy proceedings. See In re Cuyahoga Equip. Corp., 980 F.2d 110, 114 (2d Cir. 1992). In In re Chateaugay Corp., 193 B.R. 669, 673 (S.D.N.Y. 1996), the district court considered whether to withdraw the bankruptcy reference under 28 U.S.C. §157(d) in an adversary proceeding addressing the dischargeability of liability under CERCLA for release of hazardous substances. Litigation of a bankruptcy claim under CERCLA could well result in withdrawal of the bankruptcy reference if it requires substantial interpretation of CERCLA. City of New York v. Exxon Corp., 932 F.2d 1020, 1026 (2d Cir. 1991); see also Security Farms v. International Bhd. of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) (stating efficiency can be enhanced by withdrawing the reference where non-core issues predominate). Some courts have found that the bankruptcy court lacks subject matter jurisdiction to preside over an adversary proceeding where the debtor is seeking to enjoin a government agency's exercise of its police and regulatory power. See In re Hansen, 164 B.R. 482, 486-87 (D.N.J. 1994); see also In re Professional Sales Corp., 56 B.R. 753, 764 (N.D. Ill. 1985) (noting that whatever authority §105(a) gives a bankruptcy court to enjoin regulatory action, it cannot be used to expand a debtor's property rights beyond what they would be outside bankruptcy; the district court vacated the bankruptcy court's order which had the effect of suspending the EPA's limits on the debtor's future use of its real property).

## CONCLUSIONS

The Court concludes no cause exists to maintain this adversary proceeding in bankruptcy court. The underlying Chapter 11 case has been dismissed and this proceeding will have no effect on administration of a bankruptcy estate. Substantial issues exist regarding this Court's authority to consider the issues presented or grant the relief requested. Other forums, state or federal, are available for the resolution of the parties' rights. The parties will gain no substantive benefit from remaining in bankruptcy court as this Court may not expand property rights beyond those existing outside bankruptcy.

Pursuant to the foregoing, the U.S. District Court may have jurisdiction over the matters presented or cause to withdraw the bankruptcy reference. UAP has indicated a desire to explore that possibility. As such, the Court will delay dismissal of this proceeding for 30 days to give UAP the opportunity to file a motion to effect a transfer of this proceeding to U.S. District Court.

WHEREFORE, Plaintiff has 30 days from the date of this Order within which to file a motion to effect a transfer of this proceeding to the U.S. District Court.

FURTHER, if Plaintiff fails to file such motion within 30 days, this proceeding will be dismissed without further notice or hearing.

SO ORDERED this 5th day of June, 2000.

Paul J. Kilburg  
Chief Bankruptcy Judge