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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re
ADVANCED TISSUE SCIENCES, INC.,
Debtor.

Bankruptcy No. 02-09988-
JM11

Adversary No. 07-90017

JOHN T. FREEMAN, Trustee of the
ATS Liquidating Trust, and BHGV
LLC.,
Plaintiffs,
v.
Inamed, LLC,
Defendant.

MEMORANDUM DECISION

The plaintiffs, John T. Freeman, trustee of the ATS Liquidating Trust ("Trustee"), and BHGV LLC. ("Plaintiffs"), filed this adversary proceeding on January 17, 2007, seeking declaratory and injunctive relief and monetary damages. On that same date, the Plaintiffs moved for a preliminary injunction.

The dispute in this case arises from the filing of a lawsuit by defendant Inamed ("Defendant") in state court wherein ATS Liquidating Trust ("Trust") was named as a defendant. The Plaintiffs contend that

1 the state lawsuit against the Trust is void because the Trustee cannot
2 be sued without leave of the Court. They also contend that paragraph
3 7.2 of the Confirmed Plan of Reorganization acted as a stay against
4 such a lawsuit until the Plan is consummated. Inamed counters that
5 it has not named the Trustee, but instead has named the Trust as a
6 defendant.

7 Inamed's distinction lacks merit. The Trust cannot act except
8 through the Trustee. Therefore, naming the Trust as a defendant in
9 the state court lawsuit is effectively the same as naming the Trustee
10 as a defendant. The Trustee cannot be named as a defendant absent
11 leave of the Court. Barton v. Barbour, 104 U.S. 126 (1881); In re
12 Crown Vantage, Inc., 421 F.3d 963 (9th Cir. 2005).

13 Furthermore, the exception to that rule, as found in 28 U.S.C.
14 § 959(a), is inapplicable. Pursuant to that statute, a trustee may
15 be sued without leave of the Court "with respect to any of their acts
16 or transactions in carrying on business connected with such property."
17 A liquidation of estate assets does not qualify as the carrying on of
18 business under that statute. Crown Vantage, 421 F.3d at 972
19 (liquidating trustee appointed pursuant to confirmed plan of
20 reorganization was not operating the business previously conducted by
21 the debtor; he was liquidating the assets of the estate).

22 Before this Court, Inamed argued that its claims against the
23 Trust arose with respect to business carried on by the Trust, as
24 opposed to the liquidation of assets. However, Inamed represented to
25 the state court that the Plan of Reorganization "provided for the
26 creation of the Trust to liquidate the Debtors' remaining assets post-
27 confirmation and distribute the proceeds to the Debtors' creditors and
28 former shareholders in accordance with the Plan." Since the

1 activities of the Trustee involve a liquidation of assets, 28 U.S.C.
2 § 959(a) does not apply.

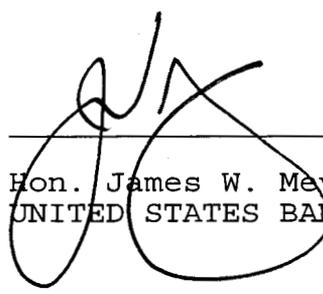
3 Additionally, Inamed is in violation of Paragraph 7.2 of the
4 Confirmed Plan which imposed a stay to the "extent found in Section
5 362(a)." Inamed contends that the stay would no longer be in effect
6 pursuant to Section 362(c), but nothing in the Plan incorporated
7 Section 362(c). The Plan simply described the extent and scope of the
8 stay by making reference to Section 362(a).

9 The state court action against the Trust is void. Additionally,
10 absent leave from this Court, Inamed is enjoined from any further
11 proceedings in state court against the Trust or the Trustee. This
12 decision does not affect Inamed's rights as against BHGV. This
13 Memorandum is limited to issues raised regarding the request for
14 injunctive relief. Counsel shall secure a hearing date for any
15 additional relief that has not been addressed in this Memorandum.

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Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE