

The Honorable Paul B. Snyder
Chapter 15
Hearing Date: July 6, 2006
Hearing Time: 9:00 a.m.
Hearing Location: Tacoma
Response Date: June 30, 2006

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

Petition of HO SEOK LEE as Court-Appointed
Manager of YOUNG CHANG CO. LTD,

Debtor in Foreign Bankruptcy.

Case No. 06-40043

Chapter 15

SAMSONG'S RESPONSE TO
MOTION FOR PERMANENT
INJUNCTION

Samsung Mfg. Co. ("Samsung"), appearing specially in these proceedings, submits this opposition (the "Opposition") to Ho Seok Lee's ("Lee") Motion for Permanent Injunction ("Motion"). By filing this Opposition, Samsung does not consent to personal jurisdiction, and reserves all objections and defenses based on lack of jurisdiction.

I. FACTS

On January 13, 2006, Lee, on behalf of Young Chang Co. Ltd. ("Young Chang"), filed a Chapter 15 Petition seeking recognition of Young Chang's foreign bankruptcy proceedings pending in Korea. On May 25, 2006, this Court entered its Order Granting Recognition of Foreign Main Proceeding. On May 30, 2006, Lee filed a Motion for Permanent Injunction seeking permanent injunctive relief against Samsung and its subsidiaries.

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II. ARGUMENT

A. The Motion is Procedurally Defective

The Motion requests relief pursuant to 11 U.S.C. § 1521(a)(1) and (2). 11 U.S.C. § 1521(e) provides that “[t]he standards, **procedures**, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).” (emphasis added).

The procedure for seeking injunctive relief in Bankruptcy Court is clear. Federal Rule of Bankruptcy Procedure 7001(7) specifies that “a proceeding to obtain an injunction or other equitable relief” is an adversary proceeding. Thus, under FRBP 7001(7), a party requesting injunctive relief must do so in the form of an adversary proceeding, rather than by filing a motion. See *In re Zale Corp.*, 62 F.3d 746, 762 (5th Cir. 1995)(“Under Rule 7001, an injunction requires an adversary proceeding”); see also *In re Lyons*, 995 F.2d 923, 924 (9th Cir. 1993)(recognizing that proceedings described in FRBP 7001 can only be commenced by initiation of an adversary proceeding).

Despite the fact that § 1521(e) and FRBP 7001(7), read together, clearly mandate that Lee commence an adversary proceeding to request permanent injunctive relief on behalf of Young Chang, Lee nevertheless seeks relief in the form of a motion. Lee’s Motion for Permanent Injunction should be denied for failure to comply with § 1521(e) and FRBP 7001(7).

Not surprisingly given the recent enactment of Chapter 15, Samsong has found no case law addressing a request for permanent injunctive relief under § 1521. The only case addressing a similar issue, albeit under former § 304, was *In re Rukavina*, 227 B.R. 234 (Bankr.S.D.N.Y. 1998). In addressing whether a petitioner’s request for preliminary injunctive relief made simultaneously with the filing of a petition under former § 304 must be made via filing an adversary proceeding, the Court in *Rukavina* held that because FRBP 1018 does not list FRBP 7001 as one of the rules applicable to “proceedings relating to a contested petition

1 commencing a case ancillary to a foreign proceeding”, a party need not commence an adversary
2 proceeding to request injunctive relief.

3 *Rukavina* is distinguishable from the case at hand for at least two reasons. First, it was
4 decided prior to enactment of § 1521(e), and to the extent that it was properly decided, it
5 nevertheless has been legislatively overruled by § 1521(e). Second, *Rukavania’s* holding is not
6 warranted by FRBP 1018. FRBP 1018 is specifically designed to ensure that much of Part VII
7 of the Federal Rules of Bankruptcy Procedure applies to “proceedings relating to a contested
8 petition commencing a case ancillary to a foreign proceeding”, i.e. the process of the
9 recognition of a contested petition for recognition is to be done by way of an adversary
10 proceeding. Therefore, FRBP 1018 by its express terms only applies to the process by which a
11 contested petition is recognized, and clearly does not create an exception to the general rule that
12 injunctive relief must be granted only by way of an adversary proceeding. *In re Zale Corp.*; 62
13 F.3d 746, 762 (5th Cir. 1995); *In re Lyons*, 995 F.2d 923, 924 (9th Cir. 1993).

14 **III. CONCLUSION**

15 Based on the foregoing, Samsung requests that the Motion be denied.

16 DATED this 30th day of June, 2006.

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