

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

In re:

BARBARA J. GRASSO,

Debtor.

Case No. 00-10131-RGM
(Chapter 11)

MEMORANDUM OPINION

Barbara J. Grasso, the debtor-in-possession, filed a motion seeking to obtain possession of two Bernese Mountain dogs apparently in the possession of the co-owner of the dogs, Donna Millman. She asserts that she has exclusive breeding rights to the dogs and that the breeding season is fast approaching. She, therefore, asked that an expedited hearing be held on the motion.

Section 542(a) of the United States Bankruptcy Code provides that an entity or an individual who has possession, custody or control of property that a chapter 11 debtor may use, sell or lease under §363 of the United States Bankruptcy Code or that the debtor may exempt “shall deliver” the property to the debtor. This motion seeks to enforce that right. An action brought under §542 is governed by Rule 7001 of the Federal Rules of Bankruptcy Procedure and must be brought as an adversary proceeding and not as a motion. An adversary proceeding provides additional rights and protections to a defendant. Consequently, the request for an expedited hearing on the motion cannot be granted and the motion must be dismissed without prejudice to the right of the debtor to file an adversary proceeding seeking appropriate relief. The debtor may request an expedited hearing in the adversary proceeding.

The motion implies that there is an action now pending in a state court on the same matter. While it is not necessary for the debtor to remove that claim to the bankruptcy court, 28 U.S.C. §1452 provides for the removal of certain state court litigation to the bankruptcy court. Consequently, the debtor may either file a new action in the bankruptcy court as an adversary proceeding or remove the state court proceeding to this court pursuant to 28 U.S.C. §1452.

Alexandria, Virginia
March 8, 2000

signed Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

copies to:

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