

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

LOUIS J. PEARLMAN,

Debtor.

Case No. 6:07-bk-00761-ABB
Chapter 11

SONEET R. KAPILA, TRUSTEE,

Plaintiff,

Adv. Pro. No. 6:08-ap-00157-ABB

v.

MTV NETWORKS COMPANY,

Defendant.

ORDER

This matter came before the Court on the Motion for Reconsideration (Doc. No. 83) filed by the Plaintiff Soneet R. Kapila, Chapter 11 Trustee (“Plaintiff”), seeking reconsideration of the Mediation Order entered on July 15, 2009 (Doc. No. 72). Plaintiff requests Paragraph 4(f) of the Mediation Order be stricken. Paragraph 4(f) provides in part:

Specifically, the parties are encouraged to resolve whether advertising revenue of any kind is a revenue stream to be considered under the January 7, 2000 Letter Agreement (“2000 Agreement”) and under the November 15, 2001 Letter Agreement (“2001 Agreement”) between MTVN and [Trans Continental Television Production, Inc.], and if considered a revenue stream, the types of advertising to be considered . . . Additionally, the mediator will make a determination as to how the formulas in the 2000 Agreement and 2001 Agreement are calculated, including revenues and expenses.

Doc. No. 72, p. 3 ¶4(f). Plaintiff asserts the provision “is erroneous as a matter of law, and in direct violation of Florida law, the Federal mediation process, this Court’s Local Rules and clear public policy.” Doc. No. 83, p. 2.

Much time and effort was expended regarding the Mediation Order. Several hearings were held relating to mediation protocol and the parties presented proposed mediation orders which were carefully considered. The Mediation Order was entered on July 15, 2009 without objection. Plaintiff filed a Notice of Mediation on September 22, 2009 (Doc. No. 81) stating mediation was scheduled for October 13, 2009 “pursuant to this Court’s July 15, 2009 Order.” The mediation was commenced on October 13, 2009 and remains ongoing.

Plaintiff asserts the mediator’s “dual role as both mediator and, in effect, judge, has had a chilling effect.” Doc. No. 83, p. 2. Plaintiff did not seek reconsideration of the Mediation Order within ten days of its entry pursuant to Federal Rule of Civil Procedure 59(b) which is applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 9023. Plaintiff’s Motion is untimely. FED. R. CIV. P. 59(b).

Plaintiff’s assertion the mediator is acting as a “judge” contradicts the plain and unambiguous language of the Mediation Order. The Mediation Order sets forth in Paragraph 1 the mediation is “non-binding.” Paragraph 4(d) sets forth “[a]ll discussions, representations, and statements made during mediation shall be off the record and privileged as settlement negotiations.” Paragraph 4(f) requires the mediator to submit to the Court his recommendations as to the resolution of the advertising revenue issue and how the formulas are to be calculated. The parties, pursuant to Paragraph 4(f), may file objections to the recommendations within ten days of submission.

Plaintiff's Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion (Doc. No. 83) is hereby **DENIED**.

Dated this 2nd day of November, 2009.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge