

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

In re:

Case No. 96-00805-8P1
OPTICAL TECHNOLOGIES, INC.
Case No. 96-01200-8P1
RECOMM ENTERPRISES, INC.
Case No. 96-01201-8P1
RECOMM OPERATIONS, INC.
Case No. 96-01202-8P1
RECOMM INTERNATIONAL DISPLAY CORP.
LTD.
Case No. 96-01203-8P1
AUTOMATED TRAVEL CENTER, INC.
Case No. 98-02134-8P1
RECOMM INTERNATIONAL DISPLAY CORP.
Case No. 98-02135-8P1
RECOMM INTERNATIONAL DISPLAY, LTD.
Case No. 98-02136-8P1
RECOMM INTERNATIONAL CORP.

Debtors. _____ /

FINOVA CAPITAL CORPORATION,

Plaintiff,

vs.

Adv. Proc. No. 04-579

ROY A CARROLL, INDIVIDUALLY and
DOING BUSINESS AS ANIMAL CARE
CLINIC

Defendants. _____ /

**ORDER ON DEFENDANTS' MOTION TO
DISMISS OR IN THE ALTERNATIVE MOTION
TO ABATE VERIFIED COMPLAINT FOR
DECLARATORY RELIEF**

(Doc. No. 6)

THE MATTER under consideration in these confirmed Chapter 11 cases of Optical Technologies, Inc., and its several affiliates, collectively referred to as the RECOMM Debtors, is Defendants' Motion to Dismiss or in the Alternative Motion to Abate Verified Complaint for Declaratory Relief filed by Roy A. Carroll, Individually, and Doing Business as Animal Care Clinic, the Defendants named in the above-captioned adversary proceeding.

In support of their Motion, the Defendants contend that this Court should grant their Motion to

Dismiss or in the Alternative Motion to Abate Verified Complaint for Declaratory Relief since there is litigation currently pending between the parties in a state court in which the same issues are involved. Moreover, they point out that the very same issues are currently before the Eleventh Circuit Court of Appeals in other adversary proceedings in this case and to continue this adversary proceeding would be a waste of judicial resources.

In opposing the Motion to Abate, Finova contends that since there are already appeals pending from this Court's decisions which deal with the identical issues any order to abate this adversary proceeding would be an impermissible interference with the jurisdiction of the District Court. The District Court has entered an Order reversing this Court's decision granting a Motion for Summary Judgment in other adversary proceedings, and an appeal of ~~Case No. 98-02136-8P1~~ ~~Case No. 98-02135-8P1~~ before the Eleventh Circuit Court of Appeals. This, however, in no way prohibits this Court from entering appropriate orders in this or any other of the adversary proceedings filed in this case which have yet to reach the District Court.

The record reveals that on June 22, 2004, this Court entered an Order in a similar Adversary Proceeding (No. 02-1604) filed by Finova against other entities in which the Court deferred ruling on a Motion to Dismiss and granted a Motion to Abate which abated all further actions in that adversary proceeding until the resolution of the several appeals currently pending before the Eleventh Circuit Court of Appeals which involve the identical factual and legal issues as the current matter.

The Court has heard argument of counsel, considered the Motion and the record and based on the foregoing is satisfied that for the sake of judicial economy and for the sake of avoiding the possibility that the Eleventh Circuit will decide contrary to what this Court may decide which would, no doubt, spawn additional wasteful appeals, it is appropriate to deny the Motion to Dismiss, without prejudice, and to grant the Alternative Motion to Abate.

Accordingly it is

ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss be, and the same is hereby, denied without prejudice. It is further

ORDERED, ADJUDGED AND DECREED that the Alternative Motion to Abate be, and the same is hereby, granted and all matters in this Adversary

Proceeding shall be held in abeyance pending a final determination by the Eleventh Circuit Court of Appeals on the matter involving the Order of the District Court which reversed this Court's Order granting Summary Judgment in favor of Defendants involved in numerous adversary proceedings filed by Finova in this Bankruptcy Case.

DONE AND ORDERED at Tampa, Florida,
on March 17, 2005.

/s/ Alexander L. Paskay
ALEXANDER L. PASKAY
United States Bankruptcy Judge