

**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. 04-455

PRYCE'S PHARMACY INC.
and FRANK Y. PRICE

Defendants. /

**ORDER ON MOTION FOR
RECONSIDERATION OF ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
ABATE COMPLAINT FOR DECLARATORY
RELIEF**

(Doc. No. 11)

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 a Motion for Reconsideration of the Order Denying Defendants' Motion to Dismiss or Abate Complaint for Declaratory Relief (Doc. No. 9) filed by Pryce's Pharmacy, Inc., and Frank Y. Pryce, the Defendants named in the above-captioned adversary proceeding.

In support of their Motion, the Defendants contend that this Court should have exercised discretion and should have granted Defendants' Motion to Dismiss or in the Alternative Motion to Abate Verified Complaint for Declaratory Relief (Doc. No. 6), especially 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 and to continue this adversary proceeding would be a waste of judicial resources.

The Motion, while it is titled a Motion for Reconsideration of the Order Denying Defendants' Motion to Dismiss or Abate Complaint for Declaratory Relief, it is silent of any persuasive argument that the Order was improper as a matter of law. They urge abatement of this adversary proceeding, rather than dismissal for failure to state a claim for ~~Case No. 98-02136-8P1~~ granted.

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 this Order is currently 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.

Based on the foregoing, this Court 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 not to reconsider the Order which denied the Motion to Dismiss, but it

is appropriate to reconsider its decision on the Motion to Abate.

Accordingly it is

ORDERED, ADJUDGED AND DECREED that the Motion for Reconsideration of Order Denying Defendants' Motion to Dismiss or Abate Complaint for Declaratory Relief be, and the same is hereby, granted. It is further

ORDERED, ADJUDGED AND DECREED that upon reconsideration, the Defendants' Motion to Dismiss Verified Complaint for Declaratory Relief is again denied, without prejudice. It is further

ORDERED, ADJUDGED AND DECREED that the Defendants' alternate 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