

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:07-bk-06656-ABB
Chapter 7

LAURA BEATRIZ FILIPEK-NIEVES,
Debtor.

_____ /
WENG WONG,

Plaintiff,

vs.

Adv. Pro. No. 6:08-ap-00043-ABB

LAURA BEATRIZ FILIPEK-NEIVES,
Defendant.

_____ /
ORDER

This matter came before the Court on the Motion to Strike (Doc. No. 6) filed by the Plaintiff Weng Wong requesting the Defendant Laura Beatriz Filipek-Neives' Motion for an award of attorney's fees contained in her Answer (Doc. No. 4) be stricken. An evidentiary hearing was held on August 4, 2008 at which the Plaintiff, the Defendant, and their respective counsel appeared.

This adversary proceeding involves the dischargeability of obligations arising from the parties' divorce. The Defendant asserts she does not have the financial resources to pay counsel and the "Court has discretion to award attorney's fees and costs." A litigant may recover attorney's fees and costs only where such an award is provided for by enforceable contract or statute. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 257 (1975).

The parties' Property Settlement Agreement dated October 16, 2006 ("PSA") contains three provisions addressing attorney's fees. Paragraphs 19 and 26 provide, in an action to enforce the provisions of the PSA, "the prevailing party" is entitled to costs and "reasonable attorney's fees." Paragraph 23 provides, in the event of a default, the non-defaulting party is entitled to reimbursement of

"attorney's fees" incurred as a result of the default.

No final determination has been rendered in this adversary proceeding. The Defendant is not a "prevailing party" as required by Paragraphs 19 and 26 of the PSA. The Defendant has not established a default has occurred pursuant to Paragraph 23. The Defendant's request for an award of attorney's fees and costs is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion (Doc. No. 6) is hereby **GRANTED** and the Defendant's Motion for an award of attorney's fees and costs is hereby **DENIED** without prejudice.

Dated this 7th day of August, 2008.

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