IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	) Chapter 11
	)
THE SCO GROUP, INC., *et al.*,	) Case No. 07-11337 (KG)
	) (Jointly Administered)
Debtors.	)
	) **Related Docket Nos.: 942**

MEMORANDUM ORDER

Wayne R. Gray ("Mr. Gray" or "Movant") has moved to lift the automatic stay pursuant to 11 U.S.C. § 362(d) (the "Motion"), in Movant's words, to "permit the Debtor" to participate in pending litigation[1] and an appeal.[2] The basic problem with the Motion is that the Chapter 11 Trustee[3] does not wish to participate and Mr. Gray lacks standing to compel his participation. Mr. Gray's effort is confounding to the Court because he invested considerable time and money in an obviously ill-founded, losing effort. The Court is willing to give Mr. Gray the benefit of the doubt that he filed and proceeded with the Motion in the good faith belief that he is entitled to the relief. The Court is nevertheless fully satisfied that Mr. Gray is completely wrong.[4]

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[1] *Gray v. Novell, Inc., et al.*, Case No. 8:06-cv-01950-VMC-TGW (U.S.D.C. Middle Dist. Fla.)

[2] *Gray v. Novell, Inc., et al.*, App. No. 09-11374-cc (11th Cir.).

[3] The Court appointed Edward Cahn to serve as Chapter 11 Trustee (the "Trustee") by Order, entered August 25, 2009 (D.I. 900).

[4] "The law is that which is boldly asserted and plausibly maintained," Thompson Marsh. Here, the Movant takes a bold position but the Motion is implausible.

JURISDICTION

This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate upon which the Court is considering the Motion is 11 U.S.C. § 362(d).

RELEVANT FACTS

Movant sought to register a trademark, "iNUX," on the Principal Register of the United States Patent Office. X/Open Company Limited ("X/Open") opposed Mr. Gray's application, claiming that it, X/Open, legally owned the UNIX trademarks and Mr. Gray's "iNUX" trademark was confusingly similar. Thereafter, Mr. Gray filed the Federal Action, naming Debtors ("SCO") and X/Open as defendants. He claimed that Novell, Inc. ("Novell"), who Mr. Gray also sued, had earlier sold the UNIX trademarks to SCO's predecessor. In the Federal Action, SCO moved to dismiss the Federal Action, which the court granted. SCO then filed for bankruptcy. The court in the Federal Action subsequently granted summary judgment to Novell and X/Open and Mr. Gray filed the Appeal. The Eleventh Circuit Court of Appeals stayed the Appeal because of SCO's bankruptcy. SCO has not participated in the Appeal.

DISCUSSION

Movant argues that the Trustee's inaction in the Federal Action and the Appeal is tantamount to the Trustee's abdication of his responsibility to maximize the value of the estate. Mr. Gray argues that the Trustee's refusal to participate in the Federal Action and the Appeal places SCO's stockholders and creditors at risk. Movant spends almost the entire Motion, in great detail, trying to prove the merits of his claim that SCO owns the UNIX Trademarks and that Novell therefore could not have licensed them to X/Open.

The fact is that Mr. Gray is neither a stockholder nor a creditor of SCO and therefore he lacks any standing whatsoever to argue what is in the best interest of those constituencies – particularly because Mr. Gray is seeking to protect his own interests, not those of the creditors - stockholders. His "concern" about SCO's best interest is patiently disingenuous. The law is very and consistently clear: relief pursuant to Section 362(d) is available only to debtors and creditors. *See In re Comcoach Corp.*, 698 F.2d 571, 573 (2d Cir. 1983). There, as here, the moving party had no claim against the debtor because it had no right to relief arising from a breach of performance. Here, SCO and Mr. Gray do not have a contractual relationship. The court in *Comcoach* thus held that "the [movant] possesses no claim against the debtor or the estate, lacks 'creditor' status, and can't move to lift the automatic stay." *Id.* at 574.

If Mr. Gray had standing, would the Court lift the automatic stay? The answer requires an analysis contained in the applicable case law. The Movant has the burden of establishing that cause exists to lift the stay. *In re Rexene Prod. Co.*, 141 B.R. 574, 577 (Bankr. D. Del. 1992). "Cause" is predicated on an analysis of factors:

(1) prejudice to debtor were the court to lift the stay;

(2) balance of hardships; and

(3) the probable success on the merits if the court lifts the stay.

Id. at 576

The prejudice to Debtors' estate would be substantial and irreversible. The Trustee has very limited resources with which he is trying mightily to maintain SCO's business operations and to evaluate other litigation which, in the Trustee's words, "the resolution of which undoubtedly will determine the fate of the Debtors' reorganization." Objection at 6. In contrast, the Federal Action has no significance to Debtors' effort to reorganize. Only Mr. Gray will benefit from a successful conclusion to his litigation.

The balance of hardships weighs heavily on the Trustee's side in opposing the Motion. For one thing, the Trustee's participation in the Federal Action is unnecessary for Movant to prove his case. The court dismissed SCO from the Federal Action and yet the litigation continued to summary judgment. There is thus no prejudice to Mr. Gray from the Court's denying the Motion. Mr. Gray can continue to prosecute his claims against Novell and X/Open and, if successful, obtain complete relief. At the same time, the burden to the

Debtors' estate in having to participate in the Federal Action and/or appeal is enormous – the cost and the distraction at this pivotal time when the Trustee is evaluating complex litigation of immeasurable importance to Debtors' estate are determinative.

The last factor for evaluating "cause" to lift the automatic stay is Movant's probability of success in the pending litigation. Here, the Court has the benefit of the rulings in the Federal Action where the court granted SCO's motion to dismiss and granted the other defendants' motions for summary judgment. The rulings leave little doubt that Movant's likelihood of success in the Florida Action is low.[5]

For the foregoing reasons, the Motion is denied.

Wilmington, DE
November 25, 2009

Kevin Gross
KEVIN GROSS, U.S.B.J.

[5] The futility of Mr. Gray's efforts is pronounced. If successful in the Appeal and the Federal Action, Mr. Gray will have established that SCO owns the Trademarks and Mr. Gray will have to deal with SCO, which has made it clear that they will not do business with Mr. Gray.