

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

IN RE:

**CHARLES F. STEINBERGER
PAMELA J. PERRY**

**Case No. 8:10-bk-19945-KRM
Chapter 7**

Debtors,

Adv. Pro. No. 8:11-ap-00418-KRM

DENISE SUBRAMANIAM,

Plaintiff,

v.

CHARLES STEINBERGER,

**ICANN
INTERNET.BS,
SUSAN K. WOODARD, Chapter 7 Trustee**

Defendants.

**DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND
NUMBERS, INC.'S MOTION FOR STAY OF ADVERSARY
PROCEEDINGS AS AGAINST DEFENDANT ICANN**

By this motion (“Motion”), Defendant Internet Corporation for Assigned Names and Numbers, Inc. (“ICANN”) hereby moves the Bankruptcy Court for the Middle District of Florida (the “Bankruptcy Court”), pursuant to Rule 5011(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order staying all further proceedings with respect to the claims asserted against ICANN (the “ICANN Claims”) in the adversary proceeding captioned *Subramaniam v. Steinberger*, Adv. Proc. 8:11-AP-00418-KRM (the “Adversary Proceeding”) pending a ruling by the District Court for the Middle District of Florida (the “District Court”) of ICANN’s Motion for Withdrawal of Reference as to ICANN Claims. In support of this Motion, ICANN respectfully represents as follows:

1. ICANN and three other defendants were named in a complaint filed by Plaintiff Denise Subramaniam (“Plaintiff”) in the Circuit Court of the State of Oregon for the County of Washington on March 31, 2011, bearing Civil Action No.C11-1899-CV (the “Oregon Action”). On April 26, 2011, Defendant Susan K. Woodard, Trustee for the bankruptcy estate of Defendant Charles F. Steinberger (the “Trustee”), filed a notice of removal directly with the Bankruptcy Court, purporting to remove the entire Oregon Action to the Bankruptcy Court and commencing this Adversary Proceeding.

2. Concurrently with this Motion, ICANN is filing a motion seeking withdrawal of the bankruptcy court reference with respect to the claims asserted against ICANN (the “Withdrawal Motion”), on the separate and independent grounds that: (i) while the District Court has independent federal jurisdiction over the claims against ICANN (on both diversity and federal question grounds), under 28 U.S.C. § 1452, such claims were improperly removed to the Bankruptcy Court by the Trustee and, pursuant to 28 U.S.C. §§ 157(a) and 1334 and the District Court’s Standing Order of Reference, the Bankruptcy Court does not have subject matter

jurisdiction over these non-bankruptcy related claims;¹ and (ii) the requirements for permissive withdrawal of the reference are satisfied under the circumstances of this case.² In the Withdrawal Motion, ICANN further seeks to have the District Court, upon withdrawal of the reference, transfer the ICANN Claims in the interests of justice to the District Court for the District of Oregon (the “Oregon District Court”) to cure the defective removal and lay venue in the court to which these claims were required to be removed under either 28 U.S.C § 1441 or 28 U.S.C. § 1452. ICANN respectfully refers the Bankruptcy Court to the Withdrawal Motion and its supporting Memorandum of Law, concurrently filed herewith, for a complete recitation of the arguments and authorities supporting the requested relief.

3. On this Motion, ICANN requests that the Bankruptcy Court exercise its equitable powers to issue a stay, pursuant to Bankruptcy Rule 5011(c), of any matters in the Adversary Proceeding affecting the ICANN Claims, pending the District Court’s disposition of the Withdrawal Motion. Specifically, ICANN requests that the Bankruptcy Court stay all further proceedings as against ICANN, including any determination of any motions and any discovery or other pretrial obligations with respect to the ICANN Claims until the District Court has ruled on the Withdrawal Motion and determined in what forum the ICANN Claims will proceed. ICANN is not, however, seeking a stay of its obligation to file a responsive motion or pleading to the Complaint. Indeed, ICANN is filing concurrently with this Motion a motion to dismiss (the “Motion to Dismiss”). ICANN requests that the Motion to Dismiss be fully briefed while the Withdrawal Motion is pending, but requests that the Bankruptcy Court refrain from hearing or determining any of the issues presented in the Motion to Dismiss pending the outcome of the

¹ See Order No. 84-MISC-152 (M.D. Fla. Jul. 11, 1984).

² Pursuant to Bankruptcy Rule 5011(a) and Local Rule 5011-1, the Withdrawal Motion is required to be heard by the District Court.

Withdrawal Motion. ICANN has additionally conferred with counsel for both the Trustee and the Debtor-Defendant and has confirmed that neither opposes the issuance of a stay of all matters affecting the ICANN Claims, pending the District Court's disposition of the Withdrawal Motion.³

4. A determination as to whether a stay is proper pending a decision on the Withdrawal Motion is the same as on any motion for stay, namely, the movant must demonstrate (i) the likelihood of prevailing on the merits in the District Court, (ii) that the movant will suffer irreparable harm if the stay is denied, (iii) that the other parties will not be substantially harmed by the stay, and (iv) that the public interest will be served by granting the stay. *See* 5 Collier on Bankruptcy ¶ 5011.03[2][b] (2011).

5. Here, each of the factors considered in deciding whether a stay should issue weighs strongly in favor of granting the requested relief:

- a. ICANN is highly likely to succeed on the merits of the Withdrawal Motion because, as is discussed at length therein, while the District Court possesses independent subject matter jurisdiction over the ICANN Claims asserted in the Adversary Proceeding, the Bankruptcy Court has no subject matter jurisdiction over the ICANN Claims since they are unrelated to these bankruptcy proceedings. To be clear, the removal statute relied on by the Trustee, 28 U.S.C. § 1452, only permits the removal of “*any claim or cause of action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of*

³ It is ICANN's understanding that the only remaining non-debtor defendant, Defendant Internet.bs, has not been served with the Complaint by Plaintiff and is therefore not yet implicated in these proceedings.

this title.” 28 U.S.C. § 1452(a) (emphasis added); *see* Memorandum of Law in support of Withdrawal Motion (“Memo”). In addition, the requirements for permissive withdrawal are clearly met with respect to the ICANN Claims. *See Id.* at 14-17.

- b. There is a risk of irreparable harm to ICANN if a stay of the proceedings as to ICANN is not granted since any action taken by the Bankruptcy Court with respect to the ICANN Claims is without proper jurisdiction and could result in protracted litigation and appeals.⁴
- c. As reflected by the other defendants’ non-opposition, no other parties to the Adversary Proceeding will be harmed by granting this Motion because ICANN is requesting only a stay as to proceedings affecting the ICANN Claims, and not a stay of the bankruptcy case or even the entire Adversary Proceeding. As stated above, ICANN is concurrently filing its Motion to Dismiss in accordance with the post-removal procedures required by Bankruptcy Rule 9027(g) and seeks to have adjudication of that motion await the District Court’s ruling with respect to the forum in which the ICANN Claims will be heard. This relief serves the interests of all parties, since there will be no delay of the briefing of the Motion to Dismiss and the papers will be reviewed and decided only by a court determined to have proper subject matter jurisdiction.

⁴ In addition, ICANN could be severely prejudiced if the Bankruptcy Court were to act precipitously and remand this Adversary Proceeding while the Withdrawal Motion is pending, since such an action could act to deprive ICANN of a federal forum. Notwithstanding the Bankruptcy Court’s lack of jurisdiction in whole or in part over this Adversary Proceeding, the District Court has independent subject matter jurisdiction and is therefore the proper forum to decide how to redress the issues created by the Trustee’s improper removal of the ICANN Claims and will also serve to ensure that ICANN’s right to remain in a federal forum is preserved. *See* Memo. at p. 10-14 & 18-20.

d. Finally, it is in the public interest to grant this Motion because, as fully set out in the Withdrawal Motion, any action taken by the Bankruptcy Court without jurisdiction to do so will be arguably null and void.

6. Under these circumstances, ICANN requests that the Bankruptcy Court stay all further proceedings as against ICANN, including any determination of any motions and any discovery or other pretrial obligations with respect to the ICANN Claims until the District Court has ruled on the Withdrawal Motion and determined in what forum ICANN Claims should properly proceed.

DATED: May 20, 2011

Respectfully submitted,

By: /s/ Maria Ruiz

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Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been provided by regular U.S. Mail or the Court's CM/ECF system on the 20th day of May, 2011, to: Charles F. Steinberger and Pamela J. Perry, 19302 69th Avenue East, Bradenton, FL 34211; Christopher D. Smith, Esq., 5391 Lakewood Ranch Blvd., #203, Sarasota, FL 34240; Denise Subramaniam, 2850 SW Cedar Hills Blvd. #351, Beaverton, OR 97005 and at 13865 SW Walker Road, Beaverton, OR 97005; Susan K. Woodard, Trustee, P.O. Box 7828, St. Petersburg, FL 33734-7828; Herbert Donica, Counsel for Trustee, 106 S. Tampania Ave., Suite 250 Tampa, FL 33609 and Internet.bs Corp., c/o Ernesto Gongora, CTO, 98 Hampshire Street, N-4892 Nassau, The Bahamas.

/s/ Maria H. Ruiz _____
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UNITED STATES BANKRUPTCY COURT
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ICANN
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SUSAN K. WOODARD, Chapter 7 Trustee

Defendants.

**[PROPOSED] ORDER STAYING ADVERSARY PROCEEDING AS TO DEFENDANT
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, INC.**

The Court, having considered Defendant Internet Corporation for Assigned Names and Numbers, Inc.'s ("ICANN") Motion for Stay of Adversary Proceeding as Against Defendant ICANN, all briefing submitted in support thereof and there being no opposition from the other defendants, and just cause shown therefor,

IT IS HEREBY ORDERED as follows:

1. All further proceedings with respect to the claims asserted against ICANN in the adversary proceeding captioned *Subramaniam v. Steinberger*, Adv. Proc. 8:11-AP-00418-KRM, including any determination of any motions and any discovery or other pretrial obligations affecting the claims asserted against ICANN, are hereby stayed pending the District

Court for the Middle District of Florida's ruling on ICANN's Motion for Withdrawal of Reference (the "Withdrawal Motion").

2. Briefing on ICANN's Motion to Dismiss will continue while the Withdrawal Motion is pending, but this Court will refrain from hearing or determining any of the issues presented in the Motion to Dismiss pending the outcome of the Withdrawal Motion.

3. Nothing in this Order shall be construed as affecting any rights or defenses ICANN may have with respect to the jurisdiction of this Court to determine the claims against ICANN.

DONE and **ORDERED** in the Chambers at Tampa, Florida, on _____.

K. Rodney May
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing proposed order has been provided by regular U.S. Mail or the Court's CM/ECF system on the 20th day of May, 2011, to: Charles F. Steinberger and Pamela J. Perry, 19302 69th Avenue East, Bradenton, FL 34211; Christopher D. Smith, Esq., 5391 Lakewood Ranch Blvd., #203, Sarasota, FL 34240; Denise Subramaniam, 2850 SW Cedar Hills Blvd. #351, Beaverton, OR 97005 and at 13865 SW Walker Road, Beaverton, OR 97005; Susan K. Woodard, Trustee, P.O. Box 7828, St. Petersburg, FL 33734-7828; Herbert Donica, Counsel for Trustee, 106 S. Tampania Ave., Suite 250 Tampa, FL 33609 and Internet.bs Corp., c/o Ernesto Gongora, CTO, 98 Hampshire Street, N-4892 Nassau, The Bahamas.

/s/ Maria H. Ruiz _____

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