

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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July 9, 2003

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Counsel for Montague S. Claybrook,
Chapter 7 Trustee

**Re: Montague S. Claybrook vs. Nour Management Co.
Adv. Proc. No. 01-1473**

Dear Counsel:

This is with respect to the following pleadings in the
above-captioned adversary proceeding:

(1) Defendant Nour Management Company's Motion for Judgment on the Pleadings (Doc. # 16).

(2) Opening Brief in Support of Defendant Nour Management Company's Motion for Judgment on the Pleadings (Doc. # 17).

(3) Answering Brief of Trustee in Opposition to Motion of Nour Management Co. for Judgment on the Pleadings (Doc. # 18).

(4) Defendant Nour Management Company's Reply Brief in Support of Its Motion for Judgment on the Pleadings (Doc. # 19).

(5) Trustee's Motion to Strike Certain Pleadings of Nour Management Company and Renewed Motion for Default Judgment (Doc. # 20).

(6) Answering Brief of Nour Management Company in Opposition to Trustee's Motion to Strike Certain Pleadings and Renewed Motion for Entry of Default Judgment (Doc. # 21).

(7) Reply Brief in Support of Trustee's Motion to Strike Certain Pleadings of Nour Management Co. and Renewed Motion for Entry of Default Judgment (Doc. # 22).

Plaintiff acknowledges that its complaint is deficient under the standard set forth in Claybrook vs. Southwestern Bell Telephone Company, Adv. Proc. No. A-01-01542 (Bankr. D.Del. April 3, 2002). Nevertheless, Plaintiff suggests that he has furnished "sufficient factual information" to Defendant outside of the complaint. (Doc. # 18 at 6). The Claybrook opinion points out that such conduct does not cure the defects in the complaint.

Consequently, I will grant Defendant's motion to dismiss on the grounds that the complaint fails to comply with Fed. R. Bankr. P. 7008. However, Plaintiff shall have the right to file an amended complaint within 30 days of the date of this ruling.¹

While it appears that Defendant has been dilatory in responding to Plaintiff's motion for default, I am not inclined to grant that motion for a number of reasons: (1) the fundamental pleading deficiency of the complaint, (2) the lack of diligence on the part of Plaintiff in seeking a default judgment, (3) the absence of any serious prejudice to Plaintiff in denying that motion and (4) the other significant defense issues raised by Defendant which warrant a consideration on the merits.

With respect to the other defenses raised by Defendant in its motion to dismiss, I believe that they would be better addressed in the context of a well-pleaded complaint. If an amended complaint is timely filed and served, Defendant is free to file a new motion to dismiss on those other grounds.

For the reasons set forth above, (1) Defendant's motion to dismiss (Doc. # 16) is GRANTED, subject to Plaintiff's right to file an amended complaint within 30 days and (2) Plaintiff's motion to strike and for a default judgment (Doc. # 20) is DENIED.

Very truly yours,

Peter J. Walsh

PJW:ipm

¹Incidentally, I note on page 5 of the April 3, 2002 letter opinion in Claybrook that in the line above the "SO ORDERED" statement the word "transferor" should read "transferee".

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 7
)	
DISCOVERY ZONE, INC., DZ PARTY,)	Case No. 99-941(PJW)
INC., DISCOVERY ZONE (PUERTO)	(Jointly Administered)
RICO), INC., and DISCOVERY ZONE)	
LICENSING, INC.,)	
)	
Debtors.)	
_____)	
)	
MONTAGUE S. CLAYBROOK,)	
Chapter 7 Trustee of Discovery)	
Zone, Inc., DZ Party, Inc.,)	
Discovery Zone (Puerto Rico),)	
Inc., and Discovery Zone)	
Licensing, Inc.,)	
)	
Plaintiff,)	
)	
vs.)	Adv. Proc. No. 01-1473
)	
NOUR MANAGEMENT CO.,)	
)	
Defendant.)	

ORDER

For the reasons set forth in the Court's Letter Opinion of this date, (1) Defendant's motion to dismiss (Doc. # 16) is GRANTED, subject to Plaintiff's right to file an amended complaint within 30 days, and (2) Plaintiff's motion to strike and for a default judgment (Doc. # 20) is DENIED.

Peter J. Walsh
United States Bankruptcy Judge

Dated: July 9, 2003