

ORDERED in the Southern District of Florida on 09/03/08



A handwritten signature in cursive script, reading "Raymond B. Ray".

Raymond B. Ray, Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE:

CASE NO. 05-22912-BKC-RBR

CERTIFIED HR SERVICES COMPANY  
f/k/a The CURA GROUP, INC.

CHAPTER 11

Debtor.

\_\_\_\_\_  
JAMES S. FELTMAN, Chapter 11 Trustee  
of CERTIFIED HR SERVICES COMPANY  
f/k/a THE CURA GROUP, INC.

Plaintiff,

vs.

ADV. NO. 07-1271-BKC-RBR-A

DR. LIONEL KOLKER

Defendant.  
\_\_\_\_\_

**ORDER DENYING MOTION TO DISMISS**

THIS MATTER came before the Court for hearing on August 13, 2008, on Defendant Dr. Lionel Kolker's Motion to Dismiss Amended Complaint (the "Motion") (D.E. 57). The Court has reviewed the record in this case, has heard the argument of counsel, and is otherwise fully advised. The Court denies the relief sought.

Federal Rules of Civil Procedure 12(h), as made applicable by the Federal Rules of Bankruptcy Procedure 7012, provides as follows:

A party waives any defenses listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

Defendant previously failed to raise a Fed.R.Civ.P. Rule 12(b)(2) defense of a lack of personal jurisdiction in his Motion to Dismiss Amended Complaint and Impose Sanctions (D.E. 26). In doing so, Defendant waived the right to raise that defense in the current Motion.

In view of the foregoing it is hereby:

**ORDERED** that

1. the Motion (D.E. 57) is **DENIED**.

The Clerk shall furnish copies to:

Harris J. Koroglu, Esq.  
Dr. Lionel Kolker