

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 01-12829-JMD
Chapter 11

River Valley Fitness One, LP,
Debtor

Cioffredi & Associates Physical Therapy, LLC,
Plaintiff

v.

Adv. No. 03-1352-JMD

River Valley Fitness One, LP,
Defendant

William S. Gannon, Esq.
WILLIAM S. GANNON, PLLC
Attorney for Plaintiff

Steven M. Notinger, Esq.
DONCHESS & NOTINGER PC
Attorney for Defendant

MEMORANDUM OPINION AND ORDER

The Court has before it Cioffredi & Associates Physical Therapy's ("Cioffredi")
Complaint for Temporary Restraining Order and Preliminary and Permanent Injunction (Doc. No.
1) (the "Complaint").

The caption of the Complaint suggests that Cioffredi is seeking a temporary restraining
order ("TRO") and a preliminary injunction. However, the prayer for relief in the Complaint does
not request either a TRO or a preliminary injunction. The prayer for relief in the Complaint is

limited to the permanent injunctive relief and costs to which Cioffredi deems itself entitled. The prayer for relief at the end of the Complaint is a necessary element of any complaint. See Fed. R. Civ. P. 8(a). Because the caption on a complaint is not a prayer for relief, the only prayer for relief before the Court is Cioffredi's request for a permanent injunction.

Even if the Court could construe the Complaint as a request for a TRO, the request would be defective. See Fed. R. Civ. P. 65(b). "The applicant for an ex parte restraining order must present to the court, in an affidavit or verified complaint, facts that clearly show irreparable injury." Id. (emphasis added). Cioffredi's Complaint does neither. The Complaint is neither verified nor is there an affidavit attached. Furthermore, the Court cannot glean even an allegation of irreparable injury to Cioffredi. Likewise, if the Court could construe the Complaint as a request for a preliminary injunction, that request would also be defective. See Fed. R. Civ. P. 65(a).

In any event, the proper method to request a TRO or a preliminary injunction is by separate motion.

As a matter of professional practice, counsel who seek temporary relief usually should make a motion for a preliminary injunction separate from the prayer for relief contained in the complaint. In addition to the demands of good practice, Rule 65(a)(2) of the Federal Rules of Civil Procedure seems to require a separate motion for temporary relief when it refers to "an application for a preliminary injunction." See, e.g., Wright & Miller, Federal Practice and Procedure § 2949 (1973) ("The appropriate procedure for requesting a preliminary injunction is by motion....").

James Luterbach Constr. Co., Inc. v. Adamkus, 781 F.2d 599, 603 (7th Cir. 1986).

As Cioffredi has not properly requested any preliminary relief, the Court will consider its request for a permanent injunction in due course, after a full evidentiary hearing.

Accordingly, it is hereby ORDERED:

1. Any request by Cioffredi for a TRO or a preliminary injunction is DENIED without prejudice to a procedurally proper request; and

2. The Clerk of the Court is hereby directed to issue a Summons and Notice of Pretrial Conference in an Adversary Proceeding in due course.

DONE and ORDERED at Manchester, New Hampshire.

Dated: July 29, 2003

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge