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MAR 31 2004
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ O'clock & _____ min. _____ M
MAR 31 2004
BRENDA K. MURPHY, CLERK
United States Bankruptcy Court
District of South Carolina (13)

IN RE:

Alfred Howard Agnew and Renadeane
Thomas Agnew,
Debtors.

Robert F. Anderson, Trustee,
Plaintiff,

v.

Lorraine Williams-Garrett, individually and
d/b/a Williams Farms
Defendant.

Case No. 03-01333-W

Adv. No. 04-80005-W

ORDER

Chapter 7

This matter comes before the Court on the motion of the Plaintiff, Robert F. Anderson, Trustee, to disqualify defense counsel.

The Debtors, Alfred H. Agnew and Renadeane T. Agnew, filed a Voluntary Petition for Relief under Chapter 13 of the Bankruptcy Code on February 4, 2003. The matter was subsequently converted to Chapter 7 on August 15, 2003 and Robert F. Anderson was appointed to act as Trustee. The Debtors are represented by William Reynolds Williams.

On January 8, 2004, the Trustee filed the instant adversary proceeding against Lorraine Williams-Garrett, to sell real property free and clear of co-owners' interests pursuant to 11 U.S.C. Section 363(h). The Complaint alleges that one of the Debtors, Mr. Agnew, and the Defendant, Lorraine Williams-Garrett, were co-owners of real property located in Marion County, South Carolina, at the time the Petition was filed. Ms. Williams-Garrett is the aunt of the Debtor. The property is subject to a mortgage executed by the Debtor and Ms. Williams-Garrett. The note underlying the mortgage was apparently signed only by the Debtor. In his

Complaint, the Trustee requests that the property be sold, with the net proceeds, after the payment of the mortgage and costs of sale, be divided equally between the estate and the Defendant. The Defendant has a right of first refusal on any sale obtained by the Trustee.

The Defendant, represented by the Debtors' attorney, William Reynolds Williams, has filed an Answer to the Complaint, opposing the sale of the property and requesting that the entire amount of the mortgage be paid from the estate's portion of the property. Mr. Williams has also served discovery requests on the Trustee.

The Debtor has a responsibility to cooperate with the Trustee. 11 U.S.C. Section 521(3) provides as follows:

... (3) if a trustee is serving in the case, the debtor shall cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title.

The attorney for the Debtor should counsel the Debtor that it is his responsibility to cooperate with the Trustee in the Trustee's attempts to liquidate the estate for the benefit of creditors. The Defendant's interests lie in minimizing the recovery of the estate to maximize her own interests in the property. Consequently the Debtors' interests and the Defendant's interests are conflicting. Several Courts have ruled that the attorney for the Debtor may not represent the Defendant under these circumstances. *In re Peck Foods*, 196 BR 434 (Bankr. Ct. E.D. Wisc. 1996); *In re Dublin Securities, Inc.*, 214 BR 310 (Bankr. Ct. S.D. Ohio 1997); and *In re Allboro Waterproofing Corp.*, 224 BR 286 (Bankr. Ct. E.D.N.Y. 1998).

However, the potential conflict does not necessarily mean that the attorney must be disqualified from the instant adversary proceeding. As indicated in *In re Allboro, supra.*, the attorney may elect to resign as the attorney for the Debtor.

It is therefore ORDERED, ADJUDGED, and DECREED that the Trustee's Motion to Disqualify is denied, provided that the attorney submit a Stipulation of Substitution of Attorneys, executed by Williams, and the proposed new attorney, on or before April 6, 2004. If such Stipulation is not filed, the Trustee's Motion will be granted and William Reynolds Williams will be disqualified as the attorney for the Defendant.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
March 31, 2004