

ENTERED

NOV 30 2007

K.R.W.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

FILED
at ___ O'clock & ___ min. ___ M

NOV 30 2007

**United States Bankruptcy Court
Columbia, South Carolina 29201**

In re,

MILENA N. ENGH,

Debtor(s).

Milena N. Engh, Benjamin R. Engh,
Francesca A. Engh, Damon E. Rake, Maya L.
Rake, Rolf P. Lynton, Harriett R. Lynton,

Plaintiff(s),

v.

EMC MORTGAGE CORPORATION,
Cyprex Services, E.R.V. Bidding, Inc.,
Charley Newman, REO Services, Harold
Spires,

Defendant(s).

C/A No. 04-00128-JW

Adv. Pro. No. 07-80018-JW

Chapter 13

JUDGMENT

Based on the Findings of Fact and Conclusions of Law as set forth in the attached
Order of the Court, James E. Chaffin, Jr.'s Motion to be Relieved as Counsel is denied
without prejudice.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 30, 2007

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MILENA N. ENGH,

Debtor(s).

Milena N. Engh, Benjamin R. Engh, Francesca A. Engh, Damon E. Rake, Maya L. Rake, Rolf P. Lynton, Harriett R. Lynton,

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (17)

C/A No. 04-00128-JW

Adv. Pro. No. 07-80018-JW

Chapter 13

ORDER

This matter comes before the Court upon the Motion to be Relieved as Counsel (the "Motion") filed by James E. Chaffin, Jr. ("Chaffin").¹ Chaffin has appeared in the above-referenced adversary proceeding on behalf of Milena N. Engh, Benjamin R. Engh, Francesca A. Engh, Damon E. Rake, Maya L. Rake, Rolf P. Lynton, Harriett R. Lynton (collectively, the "Plaintiffs"). The Plaintiffs filed an objection to Chaffin's Motion. The Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, which is made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7052.²

¹ The Motion was filed by Chaffin and Douglas N. Truslow ("Truslow"). Truslow was relieved as counsel by separate order.

² To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

FINDINGS OF FACT

1. On September 15, 2006, Plaintiffs each entered into separate Professional Retainer Agreements (collectively, the “Agreements”) with Chaffin, wherein the parties agreed that Chaffin would represent Plaintiffs in an adversary proceeding in the United States Bankruptcy Court for the District of South Carolina to recover damages in connection with an alleged violation of the automatic stay under 11 U.S.C. § 362. The Agreements provided that Plaintiffs would pay Chaffin a contingent fee of one-third of any amounts recovered as a result of the adversary proceeding.

2. On September 24, 2006, Chaffin commenced an adversary proceeding on behalf of the Plaintiffs by filing a complaint with the Bankruptcy Court. The adversary proceeding was assigned Adversary Proceeding Number 06-80181 and was associated with the chapter 13 bankruptcy filing of Milena N. Engh, Case Number 04-00128, which had been voluntarily dismissed on February 20, 2004.

3. On September 25, 2006, an Order Striking Complaint was incorrectly entered by the Clerk’s Office on the grounds that the main case, Case Number 04-00128, had been dismissed.

4. By order entered on December 5, 2006, the Court allowed Plaintiffs to file the adversary proceeding without reopening Case Number 04-00128.

5. On January 10, 2007, Chaffin instead filed a complaint on behalf of the Plaintiffs in the Court of Common Pleas of Richland County, South Carolina.

6. On March 2, 2007, EMC Mortgage Corporation, a defendant in the case, removed the case to the Bankruptcy Court and the case was assigned adversary proceeding number 07-80018.

7. Since the removal of the adversary proceeding, Chaffin has conducted discovery on the Plaintiffs' behalf and made efforts to prepare this case for trial.

8. At some point during his investigation of the Plaintiffs' claims, Chaffin reached an impasse with the Plaintiffs and could not agree on the proper course for this adversary proceeding.

9. On October 2, 2007, Chaffin filed the Motion seeking the entry of an order authorizing his withdrawal as counsel for the Plaintiffs.

10. On October 22, 2007, Plaintiffs filed an objection to the Motion contending that they have a contract with Chaffin and that relieving him as counsel so close to trial would prejudice Plaintiffs' case.³

11. On October 23, 2007, the Court conducted a hearing on the Motion. At the hearing, Chaffin informed the Court that he believed the Plaintiffs no longer valued his opinion and that they had an entirely different valuation of their claims. Plaintiffs claim that they would be prejudiced if Chaffin was permitted to withdraw because they are so close to the end of their case and that they believe no other attorney would be willing to accept their case under the same terms.

12. On October 24, 2007, the Court received correspondence from Chaffin requesting that the Court hold in abeyance its ruling on the Motion as "there are discussions underway which may make it possible for the relationship to continue."

³ The final pre-trial conference had been scheduled for November 27, 2007, but has now been continued to allow for mediation.

13. On October 26, 2007, the Court entered an order requiring the parties to engage in mediation to avoid prejudice and delay to the parties and to aid in the efficient resolution of this adversary proceeding.

14. On November 6, 2007, the Court received correspondence from Chaffin requesting that the Court go forward with its ruling on the Motion.

CONCLUSIONS OF LAW

Generally, state law governs the practice of law within a state's borders except to the limited extent necessary for the accomplishment of federal objectives. Brown v. Goode, Peterson & Hemme (In re Brown), 270 B.R. 43, 47 (Bankr. D.S.C. 2001). Even though this Court looks to state law to resolve issues regarding the practice of law before it, attorneys are also bound by the requirements of the Local Rules addressing practice before this Court. Accordingly, Chaffin must also obtain leave of the Court in order to withdraw as counsel under Local Bankruptcy Rule 9010-1(d), which provides:

[A]ny attorney who files documents for or on behalf of a debtor or party in interest shall remain the responsible attorney of record for all purposes including the representation of the party at all hearings and in all matters that arise in conjunction with the case. The Court may permit counsel to withdraw from representation of a party upon motion which details the reason for the request for withdrawal and indicates the consent of that party or upon notice and an opportunity for hearing to that party and any trustee appointed in the case.

Rule 1.16(b) of the South Carolina Rules of Professional Conduct provides that a lawyer may withdraw from representing a client if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement or other good cause for withdrawal exists. S.C. RULES OF PROF'L CONDUCT R. 1.16(b)(4) & (7); see also In re Anonymous Member of the Bar, 298 S.C. 239, 240, 379 S.E.2d 723, 723

(1989) (“An attorney will usually have to establish good cause for withdrawal.”) In making a decision regarding an attorney’s motion to withdraw under state law, a court must examine the following factors: (1) the timing of the motion; (2) the reason for which the withdrawal is sought, (3) any prejudice the withdrawal may cause to the parties; and (4) any interference with the orderly administration of justice. See Lucas v. State, 352 S.C. 1, 7, 572 S.E.2d 274, 277 (2002); see also 7A C.J.S. *Attorney & Client* § 270 (2007).

1. Timing of the Motion

Plaintiffs’ case has taken a tortuous route through the bankruptcy and state court system, having been initially filed in September of 2006 in the bankruptcy court, dismissed, filed in state court and finally removed to the bankruptcy court in March of 2007. This adversary proceeding is now nearing its conclusion, as it had been scheduled for a final pre-trial conference on November 27, 2007. The Court has also ordered mediation to be completed prior to December 1, 2007, which could result in a resolution of the matter. The Court finds that this factor weighs in favor of a denial of the Motion.

2. Reason for Withdrawal

Chaffin has informed the Court that he believes withdrawal is necessary because Plaintiffs no longer value his opinion and have an entirely different valuation of their claim. Chaffin has recommended that the Plaintiffs settle this case, but the Plaintiffs are not willing to settle for the amount he recommends. Plaintiffs concede that the relationship has soured and that they have asked Chaffin for the name of his malpractice carrier, but nevertheless assert that Chaffin’s motion should be denied because they have a contract with Chaffin, they would be prejudiced if he were permitted to withdraw because their case is close to

trial, and “there is neither time to employ and inform new counsel, nor funds with which to hire new counsel.” The Court finds that this factor weighs in favor of denial of the Motion.

3. *Prejudice to the Parties*

It appears that granting the Motion would cause prejudice to the Plaintiffs because they would be required to find new counsel and could have difficulty finding an attorney who will take their case at such a late stage in the litigation on the same terms. A lengthy continuance of the trial would most likely be required to enable their new counsel to become familiar with the case and prepare for trial. Any continuance granted may also be prejudicial to the remaining defendants who have been incurring costs and are ready for trial and the conclusion of this adversary proceeding. Chaffin has not presented a reason for withdrawal that is sufficient to overcome the prejudice that would be caused to all the parties if he were permitted to withdraw at this time. The Plaintiffs refusal to settle in accordance with Chaffin’s recommendations is insufficient. Accordingly, the Court finds that this factor weighs in favor of denial of the Motion.

4. *Interference with the Orderly Administration of Justice*

It appears that allowing Chaffin to withdraw during this late stage of the adversary proceeding would result in further delay and would interfere with the administration of justice. The Court has already amended the scheduling order twice in order to postpone the trial of this adversary proceeding. The Court finds that this factor also weighs in favor of denial of the Motion.

Based on its examination of the foregoing factors and the requirements of LBR 9010-1(d), the Court believes that the circumstances in this case that warrant refusal of Chaffin’s request to withdraw. Therefore, it is hereby

ORDERED that James E. Chaffin, Jr.'s Motion to be Relieved as Counsel is denied without prejudice.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 30, 2007


UNITED STATES BANKRUPTCY JUDGE