

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at O'clock & min M
MAY 8 2003
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (5)

IN RE:

Robert L. Johnson a/k/a
James Howell,

Debtor.

Robert L. Johnson a/k/a
James Howell,

Plaintiff,

v.

Bank of Travelers Rest,

Defendant.

C/A No. 02-12454-W

Adv. Pro. No. 03-80212-W

ORDER

ENTERED

MAY 8 2003

K.R.W.

Chapter 13

THIS MATTER comes before the Court upon a Complaint for Contempt (the "Complaint"), a Motion for Contempt (the "Contempt Motion"), and a Motion to Enforce Stay (the "Stay Motion") filed pro se by Robert Lee Johnson (the "Debtor"). In these pleadings, Debtor seeks expedited relief against Bank of Travelers Rest (the "Defendant" or "Bank") for wrongfully seizing money from his bank account in violation of the automatic stay.

Debtor filed a Chapter 13 Petition on October 17, 2002. In the Chapter 13 case, he is represented by Karl P. Jacobsen. The record demonstrates Mr. Jacobsen agreed to compensation in the amount of \$1,400.00 for such representation.

Local Rule 9010-1(d) provides:

Except as may be provided in an attorney's written agreement with the client concerning appeals and adversary proceedings, any 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 client at all hearings and in all matters that arise in conjunction with the

case. Upon motion which details the reasons for the request for withdrawal and which details the portion of any retainer which has been earned, and after notice to the debtor, all creditors and parties in interest and a hearing, the court may permit an attorney to withdraw as attorney of record.

It appears Mr. Jacobsen does not have a written fee agreement that excludes adversary proceedings; therefore, he is responsible for Debtor's representation in this proceeding. While Mr. Jacobsen may expect to be paid for the services which he renders in connection with the proceeding, he may not demand payment or differing compensation terms before appearing or acting on behalf of Debtor in the proceeding. Further, the requirements of the Local Rule are not subject to waiver by Debtor absent approval of the Court. As a result, Mr. Jacobsen's attempt to have Debtor now agree in writing that Mr. Jacobsen has no responsibility in this proceeding is not conclusive of counsel's responsibility. The proper remedy for a debtor's counsel in such a situation is to file a motion to withdraw as counsel. Until such a motion is granted, counsel has full responsibility to represent his or her client.

Local Rule 9010-1(d) was adopted in October 2001, and debtors' counsel should be fully advised of its requirements. The Court should not be required to undertake extra efforts to track down debtors' counsel and compel their compliance with its Local Rules.

The Court notes that the issue of the scope of debtors' counsel representation has arisen recently in a similar context. In a case in which the debtors were prohibited from refiling a Chapter 13 case, counsel agreed to represent the debtors only in a Chapter 7 case even though there was an expectation that the debtors might seek a pro se conversion to Chapter 13 that could potentially violate the prior order. See In re Halley, C/A No. 03-01156-W. Debtor's counsel could not limit her representation to the Chapter 7 case, turn a blind eye, so to speak, when the debtors filed a pro

se motion seeking the conversion of their case, and claim no representation of the debtors in their conversion motion. The Court cannot countenance such a flouting of the Local Rule. Of course, if the debtors insisted upon engaging in this strategy or another course of conduct that counsel felt was improper, counsel could have filed a motion to withdraw as counsel.

The bar of this District should be aware of the requirements of Local Rule 9010-1(d) and be cautioned that failure to comply with or any manipulation of the Rule is considered sanctionable conduct. Therefore,

IT IS ORDERED that Karl P. Jacobsen is recognized and responsible as the attorney for Debtor in this proceeding.

AND IT IS SO ORDERED.

Columbia, South Carolina,
May 8, 2003.


UNITED STATES BANKRUPTCY JUDGE