



**IT IS ORDERED as set forth below:**

**Date: July 30, 2009**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: R08-42126-PWB
	:	
SHELIA LESTER BURGESS,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

**ORDER AND NOTICE**

This case came before the Court for hearing on confirmation of the Debtor's plan on June 24, 2009. Although this case has been pending for one year, it remains unconfirmed.

Aside from any objections to confirmation, one of the chief problems is the unresolved status of the counsel of record. Berry & Associates filed this case on behalf of the Debtor on July 7, 2008. The Rule 2016(b) Statement of Compensation reflects that the Debtor agreed to pay Berry & Associates \$5,000.00, although the most recent amended plan reflects a fee of \$2,500.00. The Rule 2016(b) Statement does not reflect exclusion of any services; therefore, the Court presumes that the fee contemplated payment for all services to be rendered by Berry & Associates during the

pendency of the case.

On June 4, 2009, Terri L. Brown entered an appearance in the case on behalf of the Debtor. Ms. Brown has not filed a Statement of Compensation reflecting her fee arrangement.

When the case came before the Court for a continued confirmation hearing on June 24, 2009, the Court gave three instructions: (1) the attorneys were to file a stipulation regarding who is the lead counsel in the case within ten days; (2) Ms. Khristie Kelly was to file an amended plan; and (3) Ms. Kelly was to serve a notice of the rescheduled confirmation hearing on August 12, 2009 to parties in interest. To date, the attorneys have failed to comply with any of the instructions.

As to who is the lead counsel in this case, instead of filing a stipulation within 10 days, Berry & Associates filed a motion to withdraw as counsel a month after the hearing. The motion states that “Debtor has informed Counsel that she no longer wishes Berry & Associates to represent her in this matter; further, Debtor has retained new counsel to represent her in this matter, said Counsel having filed a Notice of Appearance in this matter.”

Bankruptcy Local Rule 9010-2(b), NDGa, requires an attorney wishing to withdraw to file a motion that: (1) states that the attorney has given the client ten days’ prior notice of the attorney’s intention to request permission to withdraw; (2) specifies the manner of such notice; and (3) includes a copy of the notice. The attorney must serve the motion on the client, opposing counsel, and the United States Trustee. There is nothing attached to the motion to indicate that any prior notice was given to the Debtor. Nor is there anything attached to the motion, such as correspondence from the Debtor, to support the representation that the Debtor has terminated Berry

& Associates' services.<sup>1</sup>

Although Terri L. Brown has entered an appearance in this case, this fact alone is insufficient to relieve Berry & Associates of its responsibility to comply with the Local Rules since there appeared to be some dispute at the June 24 hearing as to who was the lead counsel in this case. If the Debtor has fired Berry & Associates and hired Ms. Brown instead, the motion to withdraw should not have been necessary. The Local Rule contemplates situations like this and does not require a motion to withdraw if a Certificate of Consent, signed by the client, the withdrawing attorney, and the substituting attorney, if one has been selected by the client, is filed with the Court. (It should be served on parties who would otherwise be served with a motion to withdraw.) The requirement of the client's signature could be met by attaching a separate document signed by the client stating her consent to the withdrawal.

In the circumstances of this case, withdrawing counsel and new counsel could have submitted a Certificate of Consent in accordance with the Local Rule. If new or withdrawing counsel had wanted an Order entered to confirm the substitution (although the Local Rule does not require one), a proposed order based on the Certificate could have been submitted. This procedure would have solved the problem simply and quickly. Instead, counsel, and perhaps the client, have operated without communicating with each other, resulting in unnecessary delay and work.

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<sup>1</sup>The limbo-like state of this case creates significant problems. On July 29, 2009, this case came before the Court for hearing on a motion for relief from stay filed by U.S. Bank National Association with respect to the Debtor's interest in real property located at 14 Stallion Lane, Hiram, Georgia. Neither the Debtor nor Ms. Brown appeared, most likely because the Debtor now lists a mailing address of Vancouver, Washington, and it does not appear that Ms. Brown was served with the notice of hearing. The Debtor's plan does not provide for surrender of the property; it provides for cure of arrears owed to two lenders. The Courtroom Deputy's notes indicate that Ms. Kelly announced that she had no opposition to the motion, notwithstanding the representation that the Debtor has terminated her services and she is seeking to withdraw as counsel.

Since the attorneys have been incapable of resolving this by means of a stipulation, the Court must require compliance with the Local Rules. Accordingly, the motion of Berry & Associates to withdraw as counsel for the Debtor is denied without prejudice.

As to Ms. Kelly's failure to re-notice the confirmation hearing or file an amended plan, there is no explanation. Five weeks later, it simply has not been done. Since the attorneys cannot seem to perform the basic task of re-noticing this hearing, the Court will re-notice the confirmation hearing to all parties in interest by separate notice. The Court will take up the matter of the failure to amend the plan at that time.

No attorney fees have been paid to any attorney representing the Debtor. The existence of dual counsel complicates the fee issue because there is nothing in the record to instruct the Court, creditors, or the Chapter 13 Trustee how the payment of fees shall be allocated (if they are to be allocated at all). A more fundamental issue, perhaps, is the reasonableness of any fee to be paid in this case. *See* General Order No. 6-2006; 11 U.S.C. § 330(a)(1)(A); and Rule 1.5 of the Georgia Rules of Professional Conduct. Based on the foregoing, it is

**ORDERED** that the motion to withdraw of Berry & Associates is denied without prejudice. It is

**FURTHER ORDERED** that within 10 days of the entry date of this Order Terri L. Brown shall file a statement of compensation as required by 11 U.S.C. § 329 and Rule 2016(b) of the Federal Rules of Bankruptcy Procedure. It is

**FURTHER ORDERED** that to the extent Berry & Associates seeks compensation in this case, it shall file a fee application and schedule the matter for hearing contemporaneous with the August 12, 2009 confirmation hearing using the Court's self-calendaring procedures. It is

**FURTHER ORDERED** that the Chapter 13 Trustee shall not disburse any fees to any

attorneys in this case pending further order of the Court. It is

**FURTHER ORDERED** that Khristie Kelly and Terri Brown shall appear at the confirmation hearing on **August 12, 2009**, at **9:30 a.m.** in Courtroom 342, U.S. Courthouse, 600 East First Street, Rome, Georgia, and provide a report to the Court regarding the actions taken by each of them with respect to this case since the June 24, 2009 hearing.

End of Order

Distribution List

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