

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                           |   |                             |
|---------------------------|---|-----------------------------|
| IN RE:                    | ) | CHAPTER 7                   |
|                           | ) |                             |
| WILTON B. CARSON, III,    | ) | CASE NO. 06-68324 - MHM     |
| a/k/a WIT B. CARSON, III, | ) |                             |
| SHARON B. CARSON,         | ) |                             |
|                           | ) |                             |
| Debtors.                  | ) |                             |
| <hr/>                     |   |                             |
| ERIC J. WILLIAMS,         | ) |                             |
|                           | ) |                             |
| Plaintiff,                | ) |                             |
| v.                        | ) | <b>ADVERSARY PROCEEDING</b> |
|                           | ) | <b>NO. 07-9050</b>          |
| WILTON B. CARSON, III,    | ) |                             |
| a/k/a WIT B. CARSON, III, | ) |                             |
| SHARON B. CARSON,         | ) |                             |
|                           | ) |                             |
| Defendants.               | ) |                             |

**DISMISSAL ORDER**

Defendants filed a motion to dismiss this adversary proceeding October 8, 2010. Plaintiff failed to file a response; accordingly, the motion is deemed unopposed. BLR 7007-1(c).

Defendants show that by order entered August 18, 2010, counsel for the parties were directed to submit a proposed consolidated pretrial order on or before September 30, 2010. Despite requests from Defendants' counsel, Plaintiff failed to prepare and present a proposed consolidated pretrial order.

Pursuant to Bankruptcy Rule 7016, which incorporates FRCP 16, the court may impose any reasonable order, including sanctions described in Fed.R.Civ.P. 37 if a party

or counsel fails to obey a scheduling or pretrial order, fails to attend conference, attends unprepared, or fails to participate in good faith. To warrant the more severe sanctions available under Fed.R.Civ.P. 16, such as dismissal or default judgment, a clear record of delay or contumacious behavior must be present. *Ford v. Fogarty Van Lines, Inc.*, 780 F.2d 1582 (11th Cir. 1986). *See also Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1537 (11th Cir. 1993) (addressing sanctions under Rule 37).

Defendants have sought dismissal based upon Plaintiff's failure to prosecute this adversary proceeding, which has been pending for more than three and one-half years. Plaintiff failed to oppose dismissal. Accordingly, it is hereby

ORDERED that this adversary proceeding is *dismissed*.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Plaintiff's attorney, Defendants' attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 5<sup>th</sup> day of November, 2010.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE