



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

**Date: September 09, 2009**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE NO. 08-78264

Wesley A. Godwin,

CHAPTER 7

Debtor.

JUDGE MASSEY

\_\_\_\_\_  
Sunrise Bank of Atlanta,

Plaintiff,

v.

ADVERSARY NO. 08-6678

Wesley A. Godwin, III,

Defendant.

\_\_\_\_\_  
ORDER ON MOTION TO STRIKE

Plaintiff moves for an order striking Defendant's answer and entering judgment against him for failure to provide discovery. Plaintiff filed a motion to compel discovery on May 13, 2009, which the Court granted in an order entered on June 8, 2009. That order directed

Defendant to respond to the discovery requests, but it did not direct the production of documents.

The motion to strike indicates that Defendant served responses four days after the deadline.

The primary thrust of the motion is the contention that Defendant has failed to produce documents. Fed. R. Civ. P. 34(b)(1)(B), made applicable by Fed. R. Bankr. P. 7034, states that “The request . . . (B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts.” The problem with the motion to strike is that Plaintiff’s request for production failed to specify a time, place and manner of production. Defendant’s response to the order granting the motion to compel was lackadaisical and untimely, but there is no contention that it failed to address each request or was otherwise not in compliance with Rule 34. Further, it offered production at Defendant’s office. Plaintiff’s observation that copies of documents were not attached to the response misses the point that a response to a request to produce documents is an answer to the request pursuant to which the party indicates the extent to which the party is willing and able to comply with the request. The actual production could be made with a response, but Rule 34 does not require production to be made in that manner, leaving open the question of when and where production would be made.

Under these circumstances, the ultimate sanction of striking Defendant’s answer is unwarranted, notwithstanding that Defendant failed to respond to the motion to strike and was late in serving responses to the discovery requests. Defendant is admonished that this Court’s Local Rule 7007-1(c), applicable to adversary proceedings, states in relevant part that “[f]ailure to file a response shall indicate no opposition to the motion.” The Court may not be so generous the next time Defendant fails to comply with applicable rules or fails to appear at status or other conferences or hearings.

To avoid further delay, the Court will direct the production of documents in accordance with Plaintiff's request and Defendant's response. The motion to strike is DENIED, except that Defendant is ORDERED to produce for inspection and copying at the offices of Plaintiff's counsel on September 23, 2009 at 10:00 a.m., or such other place and time thereafter as Plaintiff's counsel designates in an amendment to its first request for production of documents, all documents in his possession or control described in Plaintiff's first request for production of documents. The Clerk is directed to serve a copy of this Order on Plaintiff's counsel, Debtor/Defendant and Defendant's counsel.

\*\*\*END OF ORDER\*\*\*