

2-12-04

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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|----------------|---|-------------------|
| IN RE: | : | CASE NO. 03-80092 |
| | : | |
| KEITH A. HOFF, | : | CHAPTER 7 |
| | : | |
| Debtor. | : | JUDGE MASSEY |
| | : | |

**ORDER DENYING APPLICATION TO EMPLOY THE ROBERTS
LAW FIRM, P.C., JOHN C. ROBERTS AND BRANDY C. SNYDER
TO REPRESENT DEBTOR IN STATE COURT LITIGATION**

On January 13, 2004, Debtor Keith Hoff filed an application to employ The Roberts Law Firm, P.C., John A. Roberts and Brandy C. Snyder to represent the Debtor in litigation pending in the State Court of Fulton County Georgia against an entity described as Bob Davis Auto. The claim against Bob Davis Auto is described in the application as an "alleged breach of contract where the potential for monies owed to the debtor currently exists." The application further states that the law firm and the Debtor have no objection to representing the Trustee in that matter. Finally, the application states that the claim against Bob Davis Auto is listed in Schedule B.

The claim against Bob Davis Auto has never been listed in Schedule B, unless the reference to a \$1,500 account receivable was meant to refer to that claim. The last amendment to Schedule B eliminated that asset and asserted that the Debtor had no accounts receivable or other assets, except for an automobile. The lawsuit was disclosed in the Debtor's Statement of Financial Affairs.

This claim does not belong to Mr. Hoff but rather is property of his bankruptcy estate. Needless to say, the Trustee represents the estate. Undoubtedly, the law firm and the Debtor have

no objection to representing the Trustee, but that statement is meaningless in the absence of an application by the Trustee to employ the law firm as special counsel. Until the Trustee abandons this assets or the estate is closed, only the Trustee is authorized to deal with this claim, and the Debtor lacks standing in the state court to prosecute or to settle the claim. Mr. Roberts and Ms. Snyder should not have been taking any action with respect to this action in the state court after the petition date. The Trustee or the United States Trustee should immediately investigate this claim by obtaining a copy of the complaint and discussing the matter with the attorney for the defendant. The Trustee should also determine whether the account receivable referred to in Schedule B before it was amended is related in any way to this claim and is requested to file a report on this matter.

Accordingly, it is

ORDERED that the application of Debtor to employ The Roberts Law Firm, P.C., John A. Roberts, and Brandy C. Synder to represent Debtor in litigation in state court against Bob Davis Auto is DENIED.

The Clerk is directed to serve a copy of this Order on the Debtor, Debtor's counsel, the Chapter 7 Trustee and the United States Trustee.

This 11th day of February 2004.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE