

ENTERED ON
~~SEP 06~~ 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DOCKET

IN RE:	)	CHAPTER 7
	)	
AMIN HASSAN f/k/a JAMES JACKSON	)	CASE NO. 04-74199-MHM
	)	
Debtor	)	
	)	
DARGAN BURNS, III, d/b/a	)	
GEORGIA EQUIPMENT COMPANY	)	
a/k/a GEORGIA EQUIPMENT &	)	
FINANCE COMPANY	)	
	)	ADVERSARY PROCEEDING
Plaintiff	)	NO. 04-9205
v.	)	
	)	
AMIN HASSAN	)	
	)	
Defendant	)	

ORDER DENYING MOTION FOR SUBSTITUTION

This adversary proceeding was initially filed by Mr. Dargan Burns, III, *pro se*, on behalf of Georgia Equipment Company. By order entered January 14, 2005, Plaintiff was notified that a party that is a corporation must be represented by a licensed attorney. In response, Plaintiff showed that Georgia Equipment Company is not a corporation, limited liability corporation or partnership but is, in fact, a sole proprietorship owned and operated by Dargan Burns, III. Plaintiff also showed that, in the complaint, he unintentionally modified his registered trade name and, thus, Plaintiff amended the complaint to reflect the identity of Plaintiff as it is set forth in the above-styled caption.

On May 27, 2005, Plaintiff and Defendant filed a stipulated dismissal of this adversary proceeding. Because the original complaint filed by Plaintiff contained an objection to discharge under §727, pursuant to Bankruptcy Rule 7041, notice of the dismissal was provided to the U.S. Trustee, the Chapter 7 Trustee and all creditors, providing any party in interest with an opportunity to be substituted as plaintiff in this proceeding to object to Debtor's discharge. Within the time limit set forth in that order, Dargan Burns, III, filed a Motion for Substitution, seeking to substitute himself as "a member/owner in good standing of Associated Credit Union, on behalf of himself, John Doe, Jane Doe, and other members of the Associated Credit Union."

Both Associated Credit Union and Debtor have filed responses opposing the Motion for Substitution. Associated Credit Union shows that Mr. Burns lacks any authority to represent it in any proceeding. Debtor shows that, in connection with the stipulated dismissal, Mr. Burns executed a General Release relieving Debtor of any debt to Mr. Burns in consideration of the \$1,000 payment made to Mr. Burns in connection with the stipulated dismissal of this adversary proceeding. Therefore, it appears that Mr. Burns lacks standing to proceed in this adversary proceeding on his own behalf, as he is no longer a creditor of Debtor, or on behalf of Associated Credit Union. If, by his motion, Mr. Burns is attempting to establish his right to proceed with a class action against Debtor, he has not shown that he is entitled to such status.

Nevertheless, the court is concerned that the dismissal of this adversary proceeding was accomplished as a result of payment of money to the plaintiff. Discharge is not a commodity subject to negotiation. Such an exchange may be grounds for a criminal action. *See* 18 U.S.C. §152. A creditor may not initiate a §727 proceeding as a tool to negotiate the nondischargeability of a debt; and a debtor may not obtain a discharge by paying a creditor who has filed a §727

proceeding. *Bank One v. Kallstrom*, 298 BR 753 (10th Cir. BAP 2003). See also *In re Maynard*, 258 B.R. 91 (Bankr. D. Vt. 2001); *In re Wilson*, 196 B.R. 777 (Bankr. N.D. Ohio 1996); *Moister v. Vickers*, 176 B.R. 287 (Bankr. N.D. Ga. 1994)(J. Massey).

In light of the serious issues raised by the original complaint and the Motion for Substitution, investigation by the Chapter 7 Trustee or the U.S. Trustee and the filing of a report is appropriate. Accordingly, it is hereby

ORDERED that, within 20 days of the date of entry of this order, either the Chapter 7 or U.S. Trustee shall file a motion to be substituted as plaintiff or a report showing why dismissal of this adversary proceeding is appropriate. Debtor is DIRECTED to cooperate fully and promptly with any request by the Trustee for information.

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

IT IS SO ORDERED, this the 6th day of September, 2005.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE