UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 03-76982
Raliat E. Crowder,	CHAPTER 13
Debtor.	JUDGE MASSEY
Raliat Etmonia Crowder,	
Plaintiff,	
v.	ADVERSARY NO. 06-6067
Altegra Credit Company, et al.,	
Defendants.	

ORDER ON MOTION TO STRIKE ANSWER OF ALTEGRA CREDIT COMPANY

On March 1, 2006, Monica Gilroy and J. Geoffrey Anderson of the firm of McCalla, Raymer, Patrick, Cobb, Nichols & Clark, LLC filed an answer on behalf of all of the Defendants in this adversary proceeding. Subsequently, Plaintiff served discovery requests. Under cover of a letter to Plaintiff's attorney dated April 21, 2006 on the letterhead of McCalla Raymer, LLC, a paralegal forwarded discovery responses, identifying the firm's clients as Wells Fargo Home Mortgage, Inc., and Homecomings Financial Network, Inc. In a letter dated May 30, 2006 to Ms. Gilroy and Matthew Dyer, who is also an attorney with McCalla Raymer, Howard Rothbloom, Plaintiff's attorney, warned that he would file a motion to compel if discovery responses from Defendant Altegra Credit Company were not forthcoming.

In correspondence to Mr. Rothbloom dated June 7, 2006, Sara Capps, still another attorney with the McCalla firm to touch this file, stated:

> As you may recall, we have previously advised that, at the time the Answer to Ms. Crowder's "Complaint to Determine Extent of Line on Real Property" was filed, our client's investigation of the Allegations set forth in the Adversary Complaint was still ongoing. To that extend, we filed a protective Answer on behalf of all the named Defendants in this adversary proceeding. Subsequently, our client advised that we were authorized to respond to Plaintiff's first discovery requests on behalf of only two (2) of the named Defendants: Wells Fargo Bank, N.A. ("Wells Fargo"), successor by merger to Wells Fargo Home Mortgage, Inc. and d/b/a America's Servicing Company ("ASC"), and Homecomings Financial Network, Inc. ("Homecomings").

Ms. Capps further stated in her June 7, 2006 letter to Mr. Rothbloom that "[a]lthough we have not been authorized by our client to respond on behalf of named Defendant Altegra Credit Company ("Altegra')," she would provide the answers anyway. Because the answers were not verified under oath by an officer or other employee of Altegra, the purported responses did not comply with the applicable discovery rules.

Plaintiff moves to strike the answer of Altegra Credit Company and to hold Ms. Gilroy and Mr. Anderson in contempt on the ground that they were not authorized to file an answer for Altegra. Plaintiff cites a Georgia statute, Ga. Code Ann. § 15-19-8, and two Georgia cases for the proposition that an attorney may not act as legal counsel for an entity that has not employed that attorney. This goes almost without saying. Typically, this question surfaces where the client denies the authority of the attorney to settle a claim or to accept service of process. The issue is the scope of the attorney's authority as agent for the client. *Speed v. Muhanna,* 274 Ga. App. 899, 902, 619 S.E.2d 324, 328 (Ga. App. 2005) "(T]he client will be bound by the acts of his attorney within the scope of his apparent authority.") If the attorney lacks apparent or implicit authority to act for an entity, that entity is not bound by the attorney's acts or omissions. The other side of that coin is that if an attorney volunteers to act for an entity but lacks authority to do so, the action of the attorney is

without effect in the absence of ratification of that action by the client. "'Ratification may be made as to either the act of an agent in excess of his or her authority or the act of one who purports to be an agent but is really not'." *MacDonald v. Harris,* 265 Ga.App. 131, 133, 593 S.E.2d 32, 34 (Ga. App. 2003) (quoting 3 AmJur2d, Agency, § 176, p. 570 (2002)).

The principle that lawyers may not appear in cases for parties for whom they are not authorized to do so is implicit in Rule 9011 of the Federal Rules of Bankruptcy Procedure, which provides that when filing a paper, an attorney represents to the Court based on "knowledge, information and belief, formed after an inquiry reasonable under the circumstances" that the allegations and factual contentions made have evidentiary support. Fed. R. Bank. P. 9011(b). No inquiry can be reasonable under the circumstances if the circumstances are that the party does not represent the party for whom the paper is filed.

Furthermore, "[i]t is axiomatic that attorneys owe a duty of candor to the court. Moreover, attorneys also have a duty to deal honestly and fairly with opposing counsel." *Malautea v. Suzuki Motor Corp.*, 148 F.R.D. 362, 374 (S.D. Ga.1991). An attorney who files a paper for a party showing that the attorney is counsel for that party necessarily represents to the court that the attorney is actually employed by that party. If that representation is untrue, the attorney would breach the duty of candor owed to the court and opposing counsel.

Only Defendant Homecomings responded to Plaintiff's motion. It states in its response that it authorized the filing of a "protective" answer on behalf of all Defendants. Homecomings offers defenses to Plaintiff's motion not on its own behalf but on behalf of Altegra and McCalla Raymer, LLC. The defenses are without merit and for the most part miss the point raised by Plaintiff entirely. Nowhere in the response does Homecomings show that it had the authority to employ McCalla Raymer to represent Altegra in this adversary proceeding. In her June 7 letter to Mre.

Rothbloom, Ms Capps implicitly admits that McCalla Raymer had no such authority and filed documents for Altegra only because Homecomings told it to do so.

Altegra has not ratified the answer that McCalla Raymer filed on its behalf. Thus, the answer filed for Altegra is not its answer. Rather, it is what McCalla Raymer imagined would be its answer if Altegra ever decided to answer and to employ McCalla Raymer to file it. Striking the answer filed for Altegra without authorization is appropriate.

There is no such thing as a "protective" answer. Under Fed. R. Civ. P. 7, made applicable by Fed. R. Bank. P. 7007, the pleadings allowed include "a complaint and an answer." An attorney has no business protecting an entity by filing an answer on its behalf if that entity has not authorized the attorney to do so. Ms. Gilroy and Mr. Anderson exercised poor judgment in assuming that Homecomings had authority to authorize the filing of an answer for Altegra without any apparent inquiry. There are some things clients, even good clients, may ask an attorney to do that the attorney must decline in order to uphold his or her professional and ethical obligations to the courts and third parties.

The effect of Ms. Gilroy and Mr. Anderson's failure to observe the "know your client" rule[1] remains to be seen because the Defendant named in the complaint was Altegra Credit Company, but the entity served was Altegra Credit Corporation (see document no. 9), which, it appears, illustrates a breach of the "name your defendant" rule.[2] (The answer was also filed by Altegra Credit Company; see footnote 1.)

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[1] Know who you represent, which an engagement letter should make clear.

[2] If you mean to sue x, name x and not y in the complaint.

Plaintiff seeks sanctions in the form of a fine in the amount of $500 against "the individual attorneys who filed the unauthorized 'protective' answer" but does not name them. Those attorneys were Monica Gilroy and J. Geoffrey Anderson. Plaintiff served a copy of the motion on Gilroy but not Anderson.

Plaintiff bases her demand that Gilroy and Anderson be fined on Ga. Code Ann. § 15-19-9, which provides:

> Any attorney appearing for a person without being employed, unless by leave of the court, is guilty of a contempt of court and shall be fined not less than $500.00.

This statute is designed to enable state courts to discipline attorneys who purport to act for litigants but lack the requisite authority to do so. It has no applicability in federal court. This Court has inherent authority to regulate the conduct of attorneys appearing in this Court and also has authority under Fed. R. Bank. R. 9011 to impose a sanction in the form of payment to the Clerk of Court on litigants and their attorneys for misconduct as set forth in that Rule. But if such sanctions are to be imposed, it is the Court's province, and not that of a party, to initiate such proceedings.

For these reasons, it is

ORDERED that Plaintiff's Motion to Strike Answer Of Altegra Credit Company is GRANTED to this extent: the answer filed on behalf of Altegra Credit Company is STRICKEN. The balance of the motion is DENIED.

Dated: July 7, 2006.

James E. Massey

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE