



IT IS ORDERED as set forth below:

Date: October 18, 2007

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NOS. 04-78434- 04-78436
(Jointly Administered)

Rhodes, Inc.,

CHAPTER 11

Debtor.

JUDGE MASSEY

Joel H. Dugan, as Liquidating Agent for the
Bankruptcy Estates of Rhodes, Inc., *et al.*,

Plaintiff,

v.

ADVERSARY NO. 06-6452

The Alan White Company, Inc.,

Defendant.

ORDER DENYING MOTION TO STRIKE ANSWER
AND NOTICE OF TRIAL

Defendant, which is a corporation, is no longer represented in this adversary proceeding, its counsel having withdrawn with its consent. Prior to the withdrawal of its counsel, Defendant

filed an answer to the complaint, which Defendant's former counsel signed. No attorney has appeared in this adversary proceeding on behalf of Defendant since its counsel withdrew. It is beyond dispute that a corporation may not represent itself in federal court and that an individual, including an officer of a corporate defendant, may not represent the corporation unless that individual is admitted to the bar of the federal court in which the action against the defendant is pending.

Plaintiff moves to strike Defendant's answer, asserting:

10. When Seyfarth Shaw LLP filed the Certificate of Consent withdrawing as counsel to Defendant in this Adversary Proceeding, Defendant was obligated to ensure that it obtained substitute counsel to sponsor its pleadings. It has failed to do so.

11. Defendant's failure in this regard results in its pleadings being sponsored before this Court by the corporation itself. Thus, Defendant's "Answer" is the functional equivalent of a self-filed "Answer" by a corporation, which is improper pursuant to Federal Rule of Civil Procedure 12(f), as made applicable herein by Federal Rule of Bankruptcy Procedure 7012(b), and established by Eleventh Circuit precedent. Palazzo, 764 F.2d at 1385.

Plaintiff's Motion to Dismiss, p. 3.

Plaintiff refers to the answer (with quotation marks) as the "Answer" as if it mutated from a legitimate pleading into something else. Although a corporation may not participate without counsel in litigation in federal court, Plaintiff cites no procedural rule or law requiring a corporation to have counsel to "sponsor" pleadings previously filed by counsel. The answer is not the equivalent, functional or otherwise, of an answer filed by a corporation on its own without counsel because it was filed by an attorney who then represented Defendant in this proceeding.

The facts in *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381 (11th Cir.1985), cited by Plaintiff, differ in crucial respects from the facts here. In that case, two individuals and a corporation sued Gulf Oil Corp. and were represented by an attorney when the case began. Later, the attorney

withdrew, and the district court directed the corporate defendant to obtain counsel in accordance with a local rule. The corporate plaintiff did not do so. The defendant then moved for summary judgment, prompting one of the individuals, who was not an attorney, to file documents on behalf of the corporation in response to the motion. The district court refused to consider the papers filed on behalf of the corporate plaintiff and entered summary judgment for the defendant. The judgment was affirmed on appeal.

The teaching of *Palazzo* is that papers filed by a corporation not represented by an attorney *at the time those papers are filed* will not be considered. The case does not remotely imply, let alone hold, that pleadings filed by an attorney on behalf of a corporation are void or are subject to being stricken merely because the corporation ceases to be represented by counsel and does not obtain substitute counsel.

The effect of striking the answer would have been that Plaintiff could then move for a default judgment. It would be almost as efficient, if not cheaper, for Plaintiff to try the case based on a proffer of facts. Accordingly, the Court is scheduling a trial in this proceeding as set forth below. Defendant will not be permitted to participate in the trial or file any additional pleadings in this adversary proceeding unless it obtains counsel. If Defendant obtains counsel, the Court will not grant a continuance unless counsel for Plaintiff consents.

For these reasons, Plaintiff's motion to strike the answer of Defendant is DENIED.

PLEASE TAKE NOTICE THAT the Court will hold a trial in this adversary proceeding on November 1, 2007 at 9:30 a.m. in Courtroom 1404, U.S. Courthouse, 75 Spring Street, Atlanta, Georgia 30303. The Clerk is directed to serve a copy of this Order and Notice on counsel for Plaintiff and on Defendant.

END OF ORDER