



IT IS ORDERED as set forth below:

Date: July 15, 2008

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. 08-72770

First Centurion Receivables Management, Inc.,

CHAPTER 11

Debtor.

JUDGE MASSEY

First Centurion Receivables Management, Inc.,

Movant,

v.

CONTESTED MATTER

Diversified Technologies, LLC, Robinson
Personnel, and Citibusiness Card,

Respondents.

ORDER DENYING AMENDED MOTION TO APPROVE USE OF CASH COLLATERAL

Debtor filed a motion for an order approving use of cash collateral on July 9, 2008 and, curiously, set a hearing on the motion for August 12, 2008. The delay in having a hearing is curious because Debtor may not use cash collateral without the Court's permission, unless all

creditors with an interest in such cash collateral have granted permission, in which case the Court's permission would not be needed. The motion alleges in paragraph 5 as follows:

Pursuant to 11 U.S.C. §§363 and 552(b), Debtor proposes to use property of the estate herein, consisting of cash collateral, including, but not limited to, accounts receivables, which is collateral for the debts owed to Diversified Technologies, LLC, Robinson Personnel, and Citibusiness Card, and rents, which are derived from a commercial lease.

The motion cannot be granted because it was not properly served on the three entities alleged to have an interest in cash collateral.

A motion to use cash collateral is a contested matter. Bankruptcy Rule 9014 provides that a motion initiating a contested matter must be served in the manner provided for a summons and complaint in Bankruptcy Rule 7004. Bankruptcy Rule 7004(c) provides:

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)--(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

The certificate of service attached to the motion does not describe service that meets the requirement of Bankruptcy Rule 7004(b)(3). Instead, it shows that Debtor's counsel served the motion on each of the Respondents without directing the service to a named officer, general agent or agent for service of process. It is disturbing that Debtor's counsel failed to understand and execute this fundamental procedure properly and raises the question whether the Court should grant Debtor's application to employ him as counsel for the Debtor in Possession. Further, the motion approve use of cash collateral did not have a proper style for a contested matter, showing the Movant and the Respondents. The motion refers to one of the Respondents as "Citifinancial

Card,” which is undoubtedly not the proper legal name of whatever entity that Debtor intended to serve. The certificate of service refers to “Citibusiness,” which is presumably not the same entity as Citifinancial Card, and not to “Citifinancial Card.”

None of the Respondents is listed as a secured creditor in Schedule D. All are listed as unsecured creditors in Schedule F. If none of them has an interest in cash collateral as defined in section 363(a) of the Bankruptcy Code, the motion would unnecessary and inappropriate. Any Respondent that has a security interest in cash collateral should have been listed in Schedule D. (The Court also notes that the Statement of Financial Affairs is incomplete and partially incorrect.)

Normally, motions to use cash collateral are filed on an emergency basis. This is because section 363(c)(2) provides:

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

Debtor is presently forbidden to use cash collateral unless it has the permission of every creditor with an interest in such cash collateral. If Debtor is using cash collateral in which a creditor has an interest without the permission of that creditor, the Court may either dismiss this case or appoint a trustee.

Accordingly, the motion to approve use of cash collateral is DENIED without prejudice, and Debtor is ORDERED to cease using cash collateral if it has in fact been doing so. The U.S. Trustee is requested to turn his attention to this case immediately. The Clerk is directed to serve a copy of this Order on Debtor, Debtor’s counsel, the entities shown on the certificate of service attached to the motion and the United States Trustee.

END OF ORDER