



IT IS ORDERED as set forth below:

Date: April 27, 2009

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. 08-75357

Constance Roberts,

CHAPTER 7

Debtor.

JUDGE MASSEY

ORDER DENYING APPLICATION TO EMPLOY RALPH GOLDBERG

Debtor filed this Chapter 7 case on August 7, 2008. Ralph Goldberg signed the petition as her attorney and thereby made an appearance in the case. On August 11, 2008, Debtor filed an application to employ Mr. Goldberg in connection with a Truth-in-Lending claim asserted in adversary proceeding no. 08-6464, which Mr. Goldberg filed on her behalf three days earlier. The application to employ Mr. Goldberg states incorrectly that Debtor filed a Chapter 13 case. This error does not matter because the chapter of the Bankruptcy Code under which the case was filed is immaterial to the theory of the application. The theory is that a bankruptcy court has authority to approve and must approve a debtor's selection of an attorney. The theory is wrong.

A debtor in a bankruptcy case (as opposed to a debtor in possession in a Chapter 11 case) is free to employ any professional that the debtor chooses to employ for any purpose, including prosecution of a cause of action that the debtor is entitled to pursue. The Bankruptcy Code contains no provision requiring or permitting the court to approve a debtor's selection of an attorney. Section 327 dealing with the employment of professionals concerns only professionals that a trustee seeks to employ. The Court does have authority, however, over a debtor's transactions with attorneys. 11 U.S.C. § 329. A fee arrangement between a debtor and an attorney should be disclosed in a disclosure statement filed pursuant to Bankruptcy Rule 2016(b).

Because court approval of Ms. Roberts' counsel is not required, her application to employ Ralph Goldberg as her counsel is DENIED as unnecessary and not within the authority of the court.

END OF ORDER