



IT IS ORDERED as set forth below:

Date: April 14, 2010

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
JAMES STEVEN THOMPSON	:	BANKRUPTCY CASE
ELIZABETH JANE THOMPSON,	:	NO. 09-12106-WHD
	:	
Debtors.	:	
_____	:	
	:	
ROLAND BEAUVAIS, JR.,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 09-1104
v.	:	
	:	
JAMES STEVEN THOMPSON	:	
ELIZABETH JANE THOMPSON,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Currently before the Court is the "Motion to Set Prompt Hearing," filed by Roland Beauvais, Jr. (hereinafter the "Plaintiff") in the above-captioned adversary proceeding. This

matter arises in connection with a complaint filed by Michael C. Gibbons, as "attorney-in-fact," on behalf of the Plaintiff, against James and Elizabeth Thompson (hereinafter the "Defendants"). The Complaint, which is captioned as a complaint to determine the dischargeability of a particular debt allegedly owed by the Defendants to the Plaintiff, actually requests relief from the automatic stay to permit the Plaintiff to pursue a claim against the Defendants for unpaid wages in a state court in Tennessee. In the Complaint, the Plaintiff asserts that the purpose of pursuing such litigation would be to establish the Plaintiff's contention that such wages are not dischargeable. The Plaintiff, however, fails to elaborate upon the legal basis for such contention.

If the Complaint is construed as a motion for relief from the automatic stay to permit the Plaintiff to pursue a potentially nondischargeable claim in another forum, this Court must deny such relief. There is no apparent basis alleged in the Complaint for any court to determine that unpaid wages are a nondischargeable debt. If the Plaintiff can plead facts that would permit a finding that the wage claim is nondischargeable, it is more likely than not that only this Court would have jurisdiction to consider whether the debt is nondischargeable. Accordingly, lifting the automatic stay in the Defendants' main bankruptcy case to permit the action to proceed in the state court would be a waste of the Defendants' resources.

More importantly, the Complaint itself is defective. The Complaint is signed by Michael Gibbons, who does not appear to be an attorney. A litigant in federal court has the right to proceed as his or her own counsel. 28 U.S.C. § 1654. In a bankruptcy proceeding,

a "debtor, creditor, equity security holder, indenture trustee, committee, or other party may . . . appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court." Fed. R. Bankr. P. 9010(a). Thus, a party may represent himself or he may be represented by counsel. A party, however, may not be "represented" in a court proceeding by a non-lawyer. *See, e.g. Devine v. Indian River County School Board*, 121 F.3d 576 (11th Cir. 1997), *cert. denied*, 522 U.S. 1110 (1998); *Herrera-Venegas v. Sanchez- Rivera*, 681 F.2d 41 (1st Cir. 1982); *Weber v. Garza*, 570 F.2d 511 (5th Cir. 1978).

The Court has seen no evidence that Michael C. Gibbons is an attorney licensed to practice in this Court. The Plaintiff is not entitled to have an unlicensed lay person represent him in this adversary proceeding, as it would constitute the unauthorized practice of law. Because the Complaint has been signed neither by the Plaintiff nor by an attorney, as required by Bankruptcy Rule 9011, the Court will deny his motion to set a prompt hearing.

Finally, even if the Complaint were construed as a request for a determination by this Court as to whether the unpaid wage claim is nondischargeable and even if the Complaint were not defective, the Complaint is lacking sufficient facts to state a claim for relief. The Complaint, unless amended, is, therefore, vulnerable to being dismissed for failure to state a claim for relief, pursuant to Rule 12(b)(6), should a motion for such relief be filed by the Defendants. Further, although it appears from the filing of the request to set a hearing, that the Plaintiff has completed all necessary discovery, the discovery period has not yet expired and will not do so until April 19, 2010. *See* BLR 7016-1(b)(2). The Defendants also have

twenty-one (21) days from the end of the discovery period during which to file a motion for summary judgment. *See* BLR 7056-1(b). Until such time has passed, or all parties have informed the Court that discovery has been completed and no dispositive motions will be filed, it is not appropriate to schedule a trial on the Complaint. Further, a pre-trial conference must be held and a consolidated pre-trial order prepared prior to the setting of a trial date.

For all of the reasons stated above, the Plaintiff's Motion must be, and hereby is, **DENIED.**

END OF DOCUMENT