



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.	:	
_____	:	
	:	
MICHAEL C. GIBBONS,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 09-1106
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 Michael C. Gibbons (hereinafter the "Plaintiff") in the above-captioned adversary proceeding. The

Plaintiff filed what is captioned as a complaint to determine dischargeability of a particular debt on November 30, 2009, and the Defendants filed an answer to the Complaint on December 30, 2009. The Complaint, however, 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.

If the Court construes the Complaint as a request for a determination by this Court as to whether the unpaid wage claim is nondischargeable, 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). Additionally, the Defendants 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.

At such time as the Defendants' opportunity for filing a dispositive motion expires, or all parties notify the Court of their desire to proceed with a pre-trial conference, the Court will schedule the pre-trial conference. At this time, the Plaintiff's Motion will be **DENIED**.

END OF DOCUMENT