



**IT IS ORDERED as set forth below:**

**Date: May 21, 2013**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

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

In re

MORAN LAKE CONVALESCENT  
CENTER, LLC,

Debtor.

Case No. 10-43405-MGD

Chapter 7

In re

GEORGE DALYN HOUSER,

Debtor.

Case No. 10-43407-MGD

Chapter 7

TRACEY L. MONTZ, as Trustee of Moran Lake  
Convalescent Center, LLC and George D. Houser,

Plaintiff,

v.

Consolidated Adversary Proceeding  
Nos. 12-4069

|                                   |   |
|-----------------------------------|---|
| ROSWELL HOLDINGS, LLC; ROSWELL    | ) |
| HOLDINGS MORTGAGE, LLC; SAS-MORAN | ) |
| LAKE HOLDING COMPANY, LLC;        | ) |
| SAS-MORAN LAKE, INC.; SAS-MOUNT   | ) |
| BERRY, INC. and RICHARD W.        | ) |
| WOLFE,                            | ) |
|                                   | ) |
| Defendants.                       | ) |

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## ORDER

This matter is before the Court on the Chapter 7 Trustee’s Motion for an Order Determining that Attorney Client Privilege Has Been Waived with Respect to (I) Documents Voluntarily Produced by Roswell Holdings, LLC and Roswell Holdings Mortgage, LLC and (II) Information Shared with Third Parties (“Motion”) (Docket No. 42). Defendants, Roswell Holdings, LLC and Roswell Holdings Mortgage, LLC, (collectively, “Roswell”) filed a Brief and Corrected Brief in Opposition to the Motion. (Docket No. 48, 50). The Trustee filed a Reply in Support of the Motion. (Docket No. 59). Defendants, Richard W. Wolfe and SAS-Moran Lake Holding Company, LLC, (collectively, “Wolfe parties”) filed a Response to the Motion (“Response”). (Docket No. 61). Roswell filed a Reply to the Response. (Docket No. 68).

This Order relates to the Response. The Response asserts that the Wolfe parties and Roswell were jointly represented by Lee Bagel of the Bagel Law Firm, LLC (“Bagel”), and as a result, the attorney-client privilege does not apply to communications between the co-clients, made in the course of joint representation. The Wolfe parties state that they made informal requests to Roswell and Bagel for documents relating to a loan sale agreement, but that both Roswell and Bagel have declined to supply the requested documents on the basis that the documents are either protected by the attorney-client privilege or that Bagel did not represent the Wolfe parties. The Wolfe parties also state that they

have made no formal discovery requests but assert that if they made formal discovery requests, and if Roswell and/or Bagel objected, then they would anticipate filing a motion to compel. As a result, they argue they have “standing to intervene” in the pending discovery dispute between Roswell and the Chapter 7 Trustee.

The Wolfe parties’ “Response,” if intended to be a motion to intervene, is procedurally improper as it does not comply with Federal Rule of Bankruptcy Procedure 7024(c). Furthermore, the issue raised by the Wolfe parties is not ripe. Article III of the Constitution requires that Courts determine only “cases and controversies.” U.S. Const. Art. III, § 2. To comport with this requirement, courts have developed justiciability doctrines “to insure the judiciary’s role is appropriately limited.” *In re Gordon*, 465 B.R. 683, 695 (Bankr. N.D. Ga. 2012). One of those doctrines is ripeness, “which seeks to separate matters that are premature for review, because the injury is speculative and never may occur from those cases that are appropriate to be decided at that time.” *Id.* (internal citations omitted).

The issues raised in the Response, even if procedurally proper, are not ripe for review. As admitted by the Wolfe parties, they have not made formal discovery requests and therefore the review they seek is premature and the injury they seek to redress is speculative. Additionally, both the legal theory and some if not all of the facts at issue in the discovery dispute between the Trustee and Roswell are different from those asserted by the Wolfe parties.

Accordingly, it is hereby

**ORDERED** that Richard W. Wolfe and SAS-Moran Lake Holding Company, LLC may not intervene in the pending discovery dispute between Roswell and the Chapter 7 Trustee, evidenced by Docket Nos. 42, 48, 50 and 59.

The clerk shall serve a copy of this Order upon Plaintiff and Plaintiff’s counsel and the

parties on the attached Distribution List.

**END OF DOCUMENT**

Distribution List

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