

IT IS ORDERED as set forth below:



Date: August 14, 2013

A handwritten signature in black ink, appearing to read "W. Homer Drake".

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

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBERS</b>
	:	
JAMES ROBERT AKINS,	:	BANKRUPTCY CASE
	:	NO. 13-10817-WHD
Debtor.	:	
	:	
	:	
CHERYL D. AKINS,	:	ADVERSARY PROCEEDING
	:	NO. 13-1024
Plaintiff,	:	
	:	
v.	:	
	:	
JAMES ROBERT AKINS,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

This matter comes before the Court on a Motion and Combined Brief for Order Authorizing Bankruptcy Rule 2004 Examination (hereinafter the "Motion") filed by James Robert Akins (hereinafter the "Defendant"). The Defendant requests that the Court grant his

Motion, permitting him to conduct a Rule 2004 examination of Cheryl D. Akins (hereinafter the "Plaintiff") and authorizing him to command the production of certain documents supporting the Plaintiff's complaint. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(A) & (J), § 1334.

On March 29, 2013, the Defendant voluntarily filed for relief under Chapter 7 of the United States Bankruptcy Code.<sup>1</sup> On June 7, 2013, the Plaintiff commenced the instant adversary proceeding, seeking to have a debt owed to her by the Defendant declared nondischargeable pursuant to 11 U.S.C. §§ 523(a)(5) and (a)(15). The Defendant answered the Motion on July 3, 2013, and the Plaintiff filed a Motion for Summary Judgment on August 12, 2013. Subsequent to Plaintiff's Motion for Summary Judgment, the Defendant moved the Court for permission to conduct a 2004 examination and authorization to command the production of documents pursuant to Rule 9016 of the Bankruptcy Code.

In accordance with the "pending proceeding" rule, the Defendant may not obtain a Rule 2004 examination. The purpose of a Rule 2004 examination is to discover the condition of the estate and the extent and whereabouts of any property, thereby facilitating the recovery of estate assets for the benefit of creditors. See In re Simms, 2012 WL 2930048, \*1 (Bankr. N.D.Ga. 2012) (Diehl, B.J.) (citing In re Coffee Cupboard, Inc., 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991)).

However, once an adversary proceeding has commenced, Bankruptcy Rules 7026

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<sup>1</sup> 11 U.S.C. § 101 *et. seq.*

through 7037, which adopt various discovery provisions of the Federal Rules of Civil Procedure, apply, and Rule 2004 should not be used to examine a party in interest. 9 COLIER ON BANKRUPTCY ¶ 2004.01[1] (Alan N. Resnick & Herny J. Sommers eds., 16th ed.). Although there may be some leeway in the context of a contested matter,<sup>2</sup> this Court has long held that the application of the Federal Rules of Bankruptcy Procedure 7026 through 7037 "mandatorily supplant[s] the applicability of Rule 2004 by triggering the discovery system found in the Federal Rules of Civil Procedure." In re M4 Enter., Inc., 190 B.R. 471, 475 (Bankr. N.D.Ga. 1995) (Drake, B.J.); see also In re Simms, 2012 WL at \*1. To do otherwise would result in the potential circumvention of the procedural safeguards inherent in the discovery process. See In re Simms, 2012 WL at \*1 (citing In re Washington Mutual, Inc. 408 B.R. 45, 50-51 (Bankr. D.Del. 2009)).

Accordingly, it is

**ORDERED** that Defendant's Motion for a Rule 2004 examination and authorization to command production of documents pursuant to Rule 9016 is **DENIED**.

The Clerk is **DIRECTED** to serve a copy of this Order on the Plaintiff, Defendant, respective counsel, and the Trustee.

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<sup>2</sup> See In re M4 Enter., Inc., 190 B.R. 471, 475 (Bankr. N.D.Ga. 1995) (Drake, B.J.) (finding that Bankruptcy Rule 9014's language that the Federal Rules of Civil Procedure shall apply in contested matters "unless the court otherwise directs" causes the discovery rules to be the "preferable default, from which the Court may deviate at its discretion").

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