

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

	)	CHAPTER 7
	)	
	)	
	)	CASE NO. 04-66430
IN RE:	)	
	)	ADVERSARY NO. 05-6041
JACK HONSE,	)	
MICHELLE HONSE,	)	
Debtors.	)	JUDGE RUSS KENDIG
	)	
	)	
WELLS FARGO FINANCIAL	)	
LEASING, INC.,	)	
Plaintiff,	)	<b>MEMORANDUM OPINION</b>
	)	
vs.	)	
	)	
JACK HONSE,	)	
MICHELLE HONSE,	)	
Defendants.	)	

This matter comes before the court upon an amended motion to withdraw filed by the attorney for Jack and Michelle Honse (hereinafter "Defendants"), Deborah L. Mack on December 21, 2005. Defendants filed their response on January 4, 2006. For the reasons set forth below, the motion to withdraw is **DENIED**.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 157, and the general order of reference entered in this district on July 16, 1984. This is a core proceeding over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2). Venue in this district and division is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

## DISCUSSION

Plaintiff filed their complaint against Defendants on March 25, 2005, objecting to discharge pursuant to 11 U.S.C. § 727(a)(2), 11 U.S.C. § 523(a)(4), and 11 U.S.C. § 523(a)(6). Through Ms. Mack, Defendants filed an answer on May 6, 2005, asserting affirmative defenses, but failing to admit or deny the assertions in the complaint. The answer was subsequently amended on May 12, 2005, and all averments in the complaint were either admitted or denied. A pretrial was held by the court on October 26, 2005, at which time Attorney Mack indicated that she may attempt to withdraw from the case. On December 1, 2005, and December 16, 2005, Attorney Mack attempted to withdraw by giving “notice” of intent to withdraw. These “notices” depart from the correct procedure for requesting permissive withdrawal in the Northern District of Ohio. Local Rule 83.9 provides that “the attorney of record may not withdraw...without first providing written notice to the client and all other parties and obtaining leave of Court.” N.D. Ohio L.R. 83.9<sup>1</sup>. Since she did not comply with the local rule, Attorney Mack was notified by the court that a motion for withdrawal was the proper procedure for attempting to withdraw from a case.

Attorney Mack filed a motion to withdraw as attorney on December 20, 2005, stating that her clients had granted her permission to withdraw from the case. An amended motion to withdraw was filed on December 21, 2005, stating that Attorney Mack wished to withdraw because she was not receiving payment for services rendered<sup>2</sup>. Attorney Mack appeared at a pretrial conference on December 21, 2005, and once again asserted her motion to withdraw, stating that her clients failed to pay her for legal services associated with this bankruptcy case. This motion was taken under advisement at the pretrial.

Defendants filed their response to Attorney Mack’s motion on January 4, 2006. Defendants state in their response that a deposition was held at Attorney Mack’s office regarding this adversary case in June 2005 and that Attorney Mack was informed at this time that Defendants intended to move out of state.<sup>3</sup> Defendants further state that Attorney Mack has failed to inform them of the status of their case, sends them bills without explanation of services, and fails to accept their phone calls or provide them with a breakdown of fees for legal services

---

<sup>1</sup> Ohio Disciplinary Rules governing the conduct of lawyers in Ohio state that “if permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.” Ohio D.R. 2-110(A)(1).

<sup>2</sup> Attorney Mack only filed her motion to withdraw in the adversary proceeding, not in the main case. The court will thus assume that Attorney Mack is not attempting to withdraw from the main case. Further, it is unclear as to whether the payment problems stem from the main case or adversary proceeding.

<sup>3</sup> To date, Attorney Mack has not filed a change of address for Defendants with the court, even though her amended motion to withdraw was sent to an address in Arizona and she stated at the pre-trial that Defendants had moved “out West” in the summer of 2005.

she has provided. Included in Defendants' response is a copy of an e-mail, purportedly from Attorney Mack, stating that Defendants should not contact her, even though the motion to withdraw was still pending. If true, this statement violates N.D. Ohio L.R. 83.9, as an attorney is an attorney of record until the court grants the motion to withdraw. Finally, Defendants state that they have attempted to make several payments to Attorney Mack via UPS. Attorney Mack was given until January 23, 2006, to respond to Defendants' objection. No response was filed.

Numerous courts have held that non-payment of fees is not a stand-alone basis for allowing withdrawal from a case. Goldstein v. Albert (In re Albert), 277 B.R. 38, 46 (Bankr. S.D.N.Y. 2002) ; Cuddy v. Cuddy (In re Cuddy), 322 B.R. 12 (Bankr. D. Mass. 2004) ; In re Egwim, 291 B.R. 559 (Bankr. N.D. Ga. 2003) ; Colter v. Edsall (In re Edsall), 89 B.R. 772, 776 (Bankr. N.D. Ind. 1988) ; In re Meyers, 120 B.R. 751 (Bankr. S.D.N.Y. 1990) ; State of Ohio v. Weinger, 305 N.E.2d 794 (Ohio 1974). In this case, non-payment is the single reason listed in Attorney Mack's amended motion to withdraw.

There are several considerations that underlie these opinions. The first is the reluctance of courts to allow limited representation in bankruptcy cases. Given the numerous difficulties that may arise in a bankruptcy case, courts are concerned that attorneys will agree to represent debtors or defendants without delineating a minimum level of representation. See In re Castorena, 270 B.R. 504, 526-7 (Bankr. D. Idaho 2001). "When accepting an engagement to represent a debtor in relation to a bankruptcy proceeding, an attorney must be prepared to assist that debtor through the normal, ordinary and fundamental aspects of the process." Id. at 530. The normal process includes issues such as filing petitions, attending hearings, consultation for reaffirmation agreements, redemption agreements, and other similar tasks. Id. Applying this reasoning to an adversary case, normal issues that may arise include filing an answer, conducting discovery, preparing for trial, conducting a trial, along with entertaining settlement discussions.

The second consideration is the "paramount obligation of the attorney-client relationship." In re Edsall, 89 B.R. at 773. Once an attorney agrees to represent a client, the overarching goal of the representation is to protect the client. Id. This goal is furthered by the fact that once an attorney accepts representation, he or she has certain duties to a client. In re Pair, 77 B.R. 976, 978 (Bankr. N.D. Ga. 1987). These duties do not "evaporate" simply because an attorney has not received full payment for their services. In re Albert, 277 B.R. at 46.

One exception to the general rule that attorneys cannot withdraw for simple non-payment by clients exists where the "attorney demonstrates that, taking into account considerations of fairness, reasonableness, and proper protection of the debtor's rights based on the circumstances of the case, continued representation imposes an unreasonable burden on counsel that justifies withdrawal." In re Egwim, 291 B.R. at 562. If an attorney seeks to utilize this exception, he or she should "demonstrate that a reasonable arrangement for the debtor's payment of fees is not possible and that...counsel has consulted with the debtor to minimize the adverse effects of the

withdrawal<sup>4</sup> and has taken actions to protect the debtor's rights." Id. at 579.

Attorney Mack has failed to demonstrate that this exception applies in the instant case. Her amended motion simply states that she "is not receiving payment for services rendered." When the court gave Attorney Mack the opportunity to respond to Defendants' objection to further explain why this representation may impose a hardship, no response was filed. In Attorney Mack's original disclosure of compensation in the Chapter 7 case, she states that her fee of \$750.00 does not include adversary proceedings. It is logical to conclude that Defendants were charged an additional fee for this adversary proceeding, thus reducing the likelihood that this is an unreasonable financial burden on Attorney Mack. Further, there is no indication that Attorney Mack attempted to establish a reasonable payment plan with Defendants. Rather, at the December 21, 2005, pre-trial, Attorney Mack stated that Defendants sought to pay her \$50 per month. Defendants represent that they have endeavored to pay at least part of their bill from Attorney Mack and Attorney Mack has not refuted this representation. In fact, Attorney Mack stated at the pre-trial that Defendants did pay her \$100, but that this amount was "not sufficient." Based on Defendants' assertion that Attorney Mack has failed to provide them with details of the pending adversary, the adverse effects of withdrawal have not been minimized and the Defendants rights are not being properly protected. Thus the exception does not apply in this case.

In conclusion, the assertion of non-payment of fees, without more, does not constitute sufficient grounds from which an attorney can withdraw from a case. Further, Attorney Mack has failed to demonstrate that continued representation presents her with an unreasonable burden and that she has properly protected Defendants' rights.

Accordingly, the motion to withdraw is **DENIED**.

A separate order is issued herewith.

**/s/ Russ Kendig**

**Judge Russ Kendig**  
**U.S. Bankruptcy Judge**

**FEB 3 - 2006**

---

<sup>4</sup> In order to properly protect the rights of the client, an attorney seeking to withdraw should explain to the client "substantive issues involved in the adversary proceeding and the procedural requirements for proceeding from that point on, including critical matters such as allegations of the complaint, possible legal and factual defenses" and numerous other key components to an adversary proceeding. Id. at 578.

Service List

Michelle & Jack Honse  
747 E. Saddle Way  
Queen Creek, AZ 85242

Deborah Mack  
P.O. Box 486  
Mansfield, OH 44901

Charles Lease  
Ricketts Co LPA  
580 S. High St.  
Third Floor  
Columbus, OH 43215