

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

In the Matter of: : Chapter 7
: :
MORGAN PHILLIP DRIGGERS, JR., :
and BARBARA ANN DRIGGERS, :
: :
Debtors : Case No. 04-30321 RFH
: :
: :
COMMERCE DRYWALL, INC., :
: :
Plaintiff :
: :
vs. :
: :
MORGAN PHILLIP DRIGGERS, JR., :
aka LOGANVILLE DRYWALL, INC. :
and BARBARA ANN DRIGGERS fka :
BARBARA M. LOVELACE, :
: :
Defendants : Adversary Proceeding
: No. 04-3024

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCE:

Defendants: James R. Argo, Jr.
260 Constitution Blvd.
Lawrenceville, Georgia 30045

MEMORANDUM OPINION

Morgan Phillip Driggers, Jr., aka Loganville Drywall, Inc., and Barbara Ann Driggers, fka Barbara M. Loveless, Defendants, filed a Motion to Dismiss on July 26, 2004. Commerce Drywall, Inc., Plaintiff, did not file a response.¹ The Court, having considered the Motion to Dismiss and the record, now publishes this memorandum opinion.

On May 5, 2004, Penni Ganyard filed on Plaintiff's behalf this adversary proceeding. Plaintiff is a corporation. Ms. Ganyard is not a licensed attorney. The Chief Deputy Clerk of this Court sent a letter dated May 11, 2004, advising Ms. Ganyard that a corporation must be represented by an attorney in federal court. Defendants filed on June 4, 2004, a response to Plaintiff's complaint.

A pretrial conference was held on July 22, 2004. No one made an appearance on behalf of Plaintiff. Defendants, in their Motion to Dismiss, urge the Court to dismiss this adversary proceeding because Plaintiff's complaint was not filed by an attorney.

“The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. “ Fed. R. Civ. P. 17(b). See Fed. R. Bankr. P. 7017 (Rule 17 applies in adversary proceedings.)

“In [Georgia], only a licensed attorney is authorized to represent a corporation in a proceeding in a court of record, including any proceeding that may be transferred to a

¹ The Court sent a letter dated July 29, 2004, advising Plaintiff that its response should be received within twenty days.

court of record from a court not of record.” Eckles v. Atlanta Technology Group, Inc., 267 Ga. 801, 485 S.E. 2d 22, 26 (1997).²

The Georgia Court of Appeals has held that an answer to a complaint filed by a non-attorney on behalf of an individual defendant does not constitute an answer to the complaint or an appearance by the defendant. Mine Chen v. Alexander Terry Assoc. Inc., 228 Ga. App. 345, 491 S.E. 2d 834, 835 (1997).

“[A] corporation may appear in the federal courts only through licensed counsel.” Rowland vs. California Men’s Colony, 506 U.S. 194, 202, 113 S. Ct. 716, 721, 121 L. Ed. 2d 656 (1993).

See United States v. High Country Broadcasting Co., 3 F. 3d 1244, 1245 (9th Cir. 1983), cert. denied 513 U.S. 826, 115 S. Ct. 93, 103 L. Ed 2d 44 (1984)) (perfectly appropriate to enter default judgment when corporation fails to obey court order to retain counsel); K.M.A., Inc. vs. General Motors Acceptance Corp., (In re K.M.A., Inc.) 652 F. 2d 398 (5th Cir. Unit B, 1981) (corporation’s notice of appeal would be dismissed unless attorney files an appearance on behalf of corporation within thirty days).

Turning to the case at bar, Plaintiff’s complaint was not filed by a licensed attorney. Plaintiff did not appear at the pretrial conference. Plaintiff did not respond to Defendants’ Motion to Dismiss. The Court is persuaded that Defendants’ motion

² A United States Bankruptcy Court is a court of record.

should be granted.

An order in accordance with this memorandum opinion shall be entered this date.

DATED this 31st day of August, 2004.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court