

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>188-00819</u>
COLONY PLACE COMPANY)	
)	
Debtor)	
)	
JAMES D. WALKER, JR., TRUSTEE)	
)	
Plaintiff)	
)	
vs.)	Adversary Proceeding
)	Number <u>188-0083</u>
LANDOR CONDOMINIUM CONSULTANTS,)	
INC., DORIS BIRD HARRISON,)	FILED
D. LANDRUM HARRISON AND)	at 5 O'clock & 00 min P.M.
COLONY PLACE CONDOMINIUM)	Date 2-28-89
ASSOCIATION, INC.)	
)	
Defendants)	

ORDER

James D. Walker, Jr., trustee in the underlying Chapter 7 case has brought this adversary proceeding against the above named defendants seeking recovery of property of the estate pursuant to 11 U.S.C. §547, §548 and §549 as well as state law theory of recovery. In response and without benefit of counsel defendants filed responsive pleadings including answer and counterclaim. The trustee filed responses to the counterclaim. Subsequent to the filing of the responsive pleadings by

defendants, the clerk notified

corporate defendant Landor Condominium Consultants, Inc. (Landor) that the corporation may not appear pro se in a case before this court referencing In re: Las Colinas Development Corp. 585 F.2d 7 (1st Cir., 1978) and Advisory Committee Notes (1983) to Bankruptcy Rule 9010. In response to the notice from the clerk, Landor Condominium Consultants, Inc. applied to this court for leave to appear pro se. In the application to proceed pro se and responsive pleadings to the complaint, the pleadings were executed:

Landor Condominium Consultants, Inc., pro se
by: (Signature of D. Landrum Harrison)
as its president

In the application to proceed pro se, Landor asserts that it is a corporation in good standing under the Georgia Business Corporation Code and has filed its responsive pleadings pro se by and through its president, D. Landrum Harrison, who is also named as a defendant in the action. Landor contends that it and its owners are without funds with which to employ a licensed attorney to represent them in these proceedings.

The application asserts that the requirement that this corporate defendant obtain counsel before it may proceed in this case works a denial of access to justice and that this court has discretion in permitting corporations to appear on their own

behalf. In the matter of Holliday's Tax Services, Inc. 417 F.Supp. 182 (E.D. N.Y. 1976). The trustee filed a response to the application correctly framing the issue as "whether the corporation can be

represented in an adversary proceeding by one of its principals."

A corporation is a fictional legal person and as such cannot proceed pro se. Pro se is defined as "for himself; in his own behalf; in person appearing for one's self, as in the case of one who does not retain a lawyer and appears for himself in court." Black's Law Dictionary (5th Ed. 1979). As Landor cannot proceed pro se, in reality it seeks to proceed through its president. The defendant Landor relies upon the provisions of 28 U.S.C. §1654 which provides "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectfully, are permitted to manage and conduct causes therein", this statute guarantees persons access to the courts. This fundamental right of access to the courts was deemed by the court in In the matter of Holliday's Tax Services, Inc., supra as fundamentally more important than a requirement that corporate entities be represented by counsel.

Controlling authority in this circuit has determined that 28 U.S.C. §1654 does not apply to corporate entities. Corporations are fictional legal persons and cannot appear for themselves.

They must appear through representatives whether those representatives be officers, directors agents or as required by this court as attorneys licensed to practice before this court. Palazzo vs. Gulf Oil Corporation 764 F.2d 1381 (11th Cir., 1985), rehearing denied 775 F.2d 304, cert. denied 106 Sup. Ct. 999; see also, In re: K M.A, Inc 65 F.2d 389 (5th Cir., 1981). In K.M.A the court unequivocally established that a corporation is a fictional legal person which can only be represented by licensed counsel. As in the case now before this court, this prohibition applies even when the person seeking to appear on behalf of the corporation is the president and major stockholder of the corporate entity. The Palazzo court while citing with approval the In re: K.M.A., Inc. decision arguably could be construed to retreat from an absolute prohibition against corporations appearing through representatives other than licensed counsel in asserting that no injustice resulted from requiring the corporation to retain counsel. This position could be construed to mean that where an injustice would result from requirement to retain counsel, the requirement of licensed counsel could be waived; however, this is not the meaning of Palazzo. The inquiry is not whether the rule itself "causes an injustice" but whether the procedures utilized in enforcing the rule results in an injustice. In Palazzo, the court cited the many opportunities afforded by the district court for the corporate entity to retain counsel and that the failure to follow

through upon these repeatedly admonitions which resulted in the dismissal of pleadings was not an injustice. The rule is clear. Corporations are fictional legal entities which may proceed in this court only through licensed counsel. The requirements in applying the rule are clear. The court must afford the corporate entity ample opportunity to secure

counsel before rendering the harsh remedy of dismissal of pleadings.

IT IS THEREFORE ORDERED that application of Landor Condominium Consultants, Inc. to proceed "pro se" through its president D. Landrum Harrison is denied. Further ORDERED that Landor Condominium Consultants, Inc. and Colony Place Condominium Association, Inc. each shall retain counsel to represent them in this proceeding. The failure of counsel licensed to practice before this court to enter an appearance on behalf of either defendant within thirty (30) days of the date of this order shall result in an immediate order dismissing the answer and counterclaim filed and the entry of default as to such unrepresented corporate defendant.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 28th day of February, 1989.