

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

JAMES ASHWORTH MCGRAW  
CHERYL LYNN MCGRAW

Case No. 04-11693-MAM-13

Debtors

In Re

JAY LAWRENCE MORRIS

Case No. 04-12209-WSS-13

Debtor

**ORDER GRANTING MOTION TO CLARIFY THE  
COURT'S ORDER OF JULY 31, 2009**

C.M. Smith, Attorney for Debtors James and Cheryl McGraw, Mobile, AL  
William M. Doyle, Attorney for Debtor Jay Lawrence Morris, Mobile, AL  
Jeffery J. Hartley, Attorney for Trustee  
J.C. McAleer, Chapter 13 Trustee

This matter is before the Court on the Chapter 13 Trustee's motion to clarify the Court's order of July 31, 2009. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to issue a final order. For the reasons indicated below, the Court is granting the motion to clarify the order of July 31, 2009.

The facts relevant to this opinion have already been stated in the opinion dated July 31, 2009. They will not be restated here but are incorporated by reference. The Chapter 13 Trustee's concern is how the ruling should be applied to other chapter 13 cases in this district. Should the order be given prospective or retroactive effect?

The Court has reviewed the briefs, reviewed the responses filed by various attorneys and

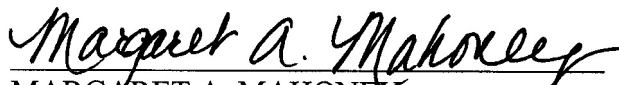
heard the arguments made by counsel. The Court concludes that the order of July 13, 2009 should be applied by the trustee to all cases filed after July 31, 2009. As to cases filed before that date, the order may be applied on a case by case basis if any party in interest raises the issue with the Court and the Court determines that the order should be applied to that case for legal or equitable reasons. The Court will not require the Trustee to apply the July 31, 2009 ruling to any cases filed before August 1, 2009 unless the issue is raised by a party other than the trustee. The Court's decision is based upon the fact that the effect of the July 31, 2009 ruling may be beneficial in some cases for debtors or creditors, but may be harmful in others. The Court expects that parties can examine the facts in each case and make their own independent determinations. No party to these cases and no other attorneys for other debtors or creditors raised any objection to this procedure.

THEREFORE IT IS ORDERED that

1. The motion of the Chapter 13 Trustee to clarify the Court's order of July 31, 2009 is GRANTED to the extent of requiring application of the order to all cases filed on August 1, 2009 and thereafter and allowing application of the order to cases filed before that date for cause shown; and
2. The Chapter 13 Trustee shall email a copy of this order to its database of attorneys practicing in this area as soon as practicable.

Dated: September 18, 2009

  
WILLIAM S. SHULMAN  
CHIEF U.S. BANKRUPTCY JUDGE

  
MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE