

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
ARTHER LEE CARTER, JR.,) Case No. 10-05030
)
Debtor.)

ORDER DENYING MOTION TO OBTAIN CREDIT

This motion is before the Court on the debtor’s motion to borrow or incur debt *nunc pro tunc* (doc. 89). The Chapter 13 debtor appeared and informed the Court that he had searched online and found a company, Global Financial Credit, LLC, that was willing to make him a “cash advance” against his pending personal injury lawsuit arising out of a December 2014 accident. Debtor was in dire need of funds; he says he did not realize that he needed court approval before borrowing and did not seek any.


A copy of the “cash advance agreement” is attached to the motion. It provides for a “cash advance” of \$1,250, of which \$250 is immediately deducted as a “minimum return fee,” with interest on the \$1,250 to run at 2.99% a month. The document purports to assign an interest in the debtor’s postpetition personal injury claim. That claim is property of his Chapter 13 estate. In re Waldron, 536 F.2d 1239 (11th Cir. 2008).

The Court denies the “motion to borrow” for several reasons. First, an assignment of a personal tort is not permissible under Alabama law. Miller v. Jackson Hospital, 776 So. 2d 122 (Ala. 2000); Lowe v. Fulford, 442 So. 2d 29, 32 (Ala. 1983). Second, the loan seeks to encumber or transfer property of the debtor’s estate, which is subject to the claims of all creditors, without court permission in violation of Bankruptcy Code §§ 362(a)(4) and 363(b)(1). Third, the debtor and the lender did not seek prior court permission to obtain credit as required by Bankruptcy Code § 364. Fourth, the Court finds that the terms of the loan are unreasonable and not in debtor’s best interest.

The debtor has already signed the agreement and received the \$1,000. Debtor's counsel is hereby ordered to file a proof of claim for Global Financial Credit, LLC in the amount of \$1,000.00 unsecured pursuant to Bankruptcy Code §§ 501(c) and 1305(a)(2). This step will allow the debtor to discharge the postpetition debt but will also allow the creditor to participate in any recovery by the estate from the personal injury claim. However, actions to obtain repayment of the debt from any personal injury claim proceeds without further order of this Court are stayed pursuant to Bankruptcy Code § 362(a)(3) and (4).

The clerk's office is requested to mail a copy of this order to Global Financial Credit, LLC, 199 Main Street, 8th Floor, White Plains, NY 10601 and to debtor's personal injury counsel, Josh Stemle, Mike Slocumb Law Firm, 145 E. Magnolia Avenue, Suite 201, Auburn, AL 36830.

Dated: May 28, 2015


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE