

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re: Case No. K07-00190-DMD

RANDY GALE FELT,

Debtor.

Chapter 7

**Filed On
9/9/08**

LARRY D. COMPTON, TRUSTEE,

Plaintiff,

v.

SPENCER LAW FIRM, LLC and JOHN
SPENCER, individually,

Defendants.

Adversary No. K08-90018-DMD

MEMORANDUM REGARDING PENDING MOTIONS

The trustee seeks to recover a \$2,000.00 post-petition cash transfer to the Spencer Law Firm, L.L.C. from the debtor Randy Felt. The defendants admit receiving the funds but allege the money transferred came from Felt's girlfriend. The trustee has filed a motion for summary judgment. The trustee's attorney has filed an affidavit in support of the motion that attaches a transcript of Felt's § 341 meeting. The defendants have filed the declaration of John Spencer. In my view, both the affidavit and the declaration contain hearsay that, without live testimony from Felt, would be inadmissible at trial.¹ The plaintiff is not entitled to summary judgment. A material issue of fact remains to be resolved through competent evidence: who was the source of the \$2,000.00 payment made to the defendant Spencer Law Firm.

¹If Felt were to testify, the substance of one or both the affidavit and declaration could be introduced as a prior inconsistent statement under Rule 801(d)(2) of the *Federal Rules of Evidence*.

John Spencer has moved to be dismissed as an individual defendant.

Spencer has cited RCW 25.15.045 in support of his position. The engagement letter and fee agreement are governed by Washington law. The agreement was with the Spencer Law Firm, L.L.C., not John Spencer as an individual. John Spencer should be dismissed as a party.

An appropriate order will be entered.

DATED: September 9, 2008.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: C. Christianson, Esq. (for plaintiff)
J. Spencer, Esq. (for defendants)
P. Gingras, Adv. Case Manager - served 9/9/08 - pg.

09/09/08