

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

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In re: :

HMCA (Carolina), INC. : BK No. 90-03402
Debtor Chapter 11

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In re: :

HMCA (PR), INC. : BK No. 90-03403
Debtor Chapter 11

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ORDER (1) DENYING MOTION TO WITHDRAW, and
(2) DENYING REQUEST TO FILE DOCUMENTS UNDER SEAL

In his announcement of withdrawal as counsel for Jose Cruz Arroyo, Rafael Castro Lang, Esq., requests that his papers be filed under seal on the ground that they contain "confidential information" and "privileged attorney client correspondence." Because of allegations regarding attorney-client privilege, the "Motion"¹ and exhibits were accepted for *in camera* inspection. Examination of the materials submitted by Mr. Lang, as well as Arroyo's responses reveal, however, that Mr. Lang's statement that he "is no longer Arroyo's counsel" involves a disagreement over compensation that is rife with disputed issues of fact and credibility that have nothing to do with Lang's duty or ability to

¹ In his pleading entitled "Motion Withdrawing Legal Representation," Mr. Lang has attempted to unilaterally excuse himself from further service in the case - an act that is unauthorized and void. See Puerto Rico Local Bankruptcy Rule 9010-1(d)(3)(A). Therefore, Mr. Lang's pleading will be treated as it should have been designated - a Motion for Leave to Withdraw.

serve as counsel for Arroyo in this proceeding. The Motion also fails to comply with the requirements of Puerto Rico Local Bankruptcy Rule 9010-1(d)(3), i.e., Court permission is required prior to withdrawal.

As for the merits of his request, Mr. Lang's dispute with Arroyo over compensation does not authorize him to reveal, even to the Court, communications protected by the attorney-client privilege. As observed and noted by this Court, the quality of Mr. Lang's representation of Arroyo demonstrates that he is fully able to perform his advocacy skills, separate from personal or financial differences with his client. Mr. Lang is also reminded that his entry of appearance as counsel represents a commitment to the Court that his best effort will be devoted to the merits of the client's cause, to a conclusion, in the absence of extraordinary circumstances. Prior to this dispute, Mr. Lang has obviously been meeting that responsibility, and his present differences with Arroyo do not relieve him of the obligation to continue to do so. Attorney-client issues may be addressed via mediation, by separate litigation, or with appropriate assistance of this Court at the request of the parties. But given the current posture of these proceedings in this 18 year old case, the extraordinary amount of time invested, and the additional delay that would inevitably be caused by his departure, a fee dispute between attorney and client

will not carry the day for Mr. Lang in these circumstances. See *Goldstein v. Albert (In re Albert)*, 277 B.R. 38,46 (Bankr. S.D.N.Y. 2002) ("An attorney who undertakes to represent a client assumes obligations towards his client which are not excused merely because the client is unable to pay fees demanded by the attorney."); *Danvers Savings Bank v. Cuddy (In re Cuddy)*, 322 B.R. 12,19 (Bankr. D. Mass. 2005)("failure to replenish the retainer does not constitute cause for withdrawal"). For these reasons, the Motion to Withdraw as Counsel is **DENIED**.

Additionally, Mr. Lang knows well that the attorney-client privilege belongs not to counsel, but to the client, and, to my knowledge, Cruz Arroyo has not waived the privilege.² Based on the foregoing, the request for documents to be filed under seal is **DENIED** and the Clerk is directed to return, forthwith, all proffered documents to Messrs. Lang and Arroyo.

Dated at Providence, Rhode Island, this 31st day of March, 2008.



Arthur N. Votolato
U.S. Bankruptcy Judge*

*Of the District of Rhode Island, sitting by designation.

² Because there is no need for a substantive ruling as to whether the Motion or the exhibits are protected by the attorney-client privilege, no such determination is made.