Not For Publication

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	)	CASE NO.	01-35558 (LMW)
THOMAS W. THORNDIKE,	)	CHAPTER	7
DEBTOR.	)	DOC. I.D. NOS.	45, 48, 51, 52

APPEARANCES

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MEMORANDUM OF DECISION RE: MOTIONS FOR SANCTIONS

Lorraine Murphy Weil, United States Bankruptcy Judge

The matters before the court are the above-referenced motions for sanctions (and objections thereto) seeking the imposition of sanctions against the above-referenced debtor (the "Debtor") and/or his chapter 7 counsel, Frederick A. Dlugokecki, Esq., for certain actions taken (or allegedly taken) by one or both of them in this chapter 7 case. These matters are each a "core proceeding"

within the purview of 28 U.S.C. § 157(b) and over which this court has jurisdiction under 28 U.S.C. §§ 1334(b) and 157(b) and that certain Order dated September 21, 1984 of the District Court (Daly, C.J.).[1] This memorandum constitutes the findings of fact and conclusions of law mandated by Rule 7052 of the Federal Rules of Bankruptcy Procedure (made applicable here by Rule 9014 of the Federal Rules of Bankruptcy Procedure).

I. BACKGROUND[2]

This chapter 7 case was commenced by a voluntary petition (included in Doc. I.D. No. 1, the "Petition") dated November 20, 2001 and filed on November 21, 2001 (the "Petition Date"). The Debtor filed his original schedules and statement of financial affairs (collectively, the "Schedules") at the same time. (*See* Doc. I.D. No. 1.) The Petition was executed by the Debtor and by Attorney Dlugokecki as attorney for the Debtor. (*See id.*)

The Debtor avers in the Schedules his interest in certain assets including a "Fee Simple ½ with [former] spouse" interest in a certain "residence" located at 51 Wood Lot Lane, Southbury, CT 06488 (the "Property"). (*See* Doc. I.D. No. 1 (Schedule A - Real Property).)[3] The Schedules do not

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[1] That order referred to the "Bankruptcy Judges for this District" *inter alia* "all proceedings arising under Title 11, U.S.C. . . . ."

[2] The facts stated throughout this memorandum are taken from the entire record of this chapter 7 case, the record in *Wolcott Machinery & Tool, Inc. et al. v. Thomas W. Thorndike*, Adv. Proc. No. 02-3030 (LMW) (the "Discharge Proceeding") and documents annexed to that certain Request for Judicial Notice in Support of Motions for Sanctions Document I.D. No. [sic] 45 and 48(Doc. I.D. No. 61, the "Request"). References herein to the docket of this chapter 7 case appear in the following form: "Doc. I.D. No. ___." References herein to the docket of the Discharge Proceeding appear in the following form: "Disch. Pro. Doc. I.D. No. _____." The parties have agreed that the record of the Discharge Proceeding is admissible here. The Request was granted after a hearing and without objection by order entered on May 25, 2005. (*See* Doc. I.D. No. 74.)

[3] The address shown for the Debtor in the Petition is not that of the Property. (*See* Doc. I.D. No. 1.)

state any interest in Cornerstone Financial Services, LLC ("Cornerstone"). Among other secured claims allegedly extant in respect of the Property, the Schedule D (Secured Claims) of the Schedules states a secured claim arising out of an attachment in respect of the Property by John P. Sullivan, the movant herein (the "Movant"). (*See* Doc. I.D. No. 1 (Schedule D (Creditors Holding Secured Claims).) In Schedule C (Property Claimed as Exempt), the Debtor claimed as exempt (among other alleged assets) his purported one-half interest in the Property (under Section 52-352b(t) of the Connecticut General Statutes (the "Homestead Exemption")).[4] On February 6, 2002, the Debtor filed amended Schedules A and C with Summary of Schedules. (*See* Doc. I.D. No. 9, collectively, the "Amended Schedules.") The Amended Schedules restated the claimed Homestead Exemption and increased the stated value of the Property.

The original plaintiffs (collectively, the "Plaintiffs")[5] in the Discharge Proceeding obtained an order permitting them to conduct an examination of the Debtor under oath pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure by order dated January 4, 2002. (*See* Doc. I. D. No. 8.) That examination (the "Rule 2004 Examination") was conducted on January 29, 2002.[6] The chapter 7 trustee filed a report of no distribution in this case on February 13, 2002. (*See* Doc. I.D. No. 10.) On February 15, 2002, the Debtor filed a motion to avoid judicial liens on the Property

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[4] Section 52-352(b) provides for a "homestead exemption" under Connecticut law. *See* Conn. Gen. Stat. § 52-352b(t). To qualify as a "homestead," real property must be "owner-occupied real property . . . used as a primary residence," Conn. Gen. Stat. Ann. § 52-352a(e) (West 2005). The Debtor elected his "state list" of exemptions pursuant to Bankruptcy Code § 522(b)(2). (*See* Doc. I.D. No. 1 (Schedule C - Property Claimed as Exempt).)

[5] The Movant intervened as a party plaintiff in the Discharge Proceeding after trial but before judgment. (*See* Disch. Pro. Doc. I.D. No. 73.)

[6] A portion of the transcript (the "Rule 2004 Transcript") of that examination is annexed to the Request as Exhibit H.

pursuant to Bankruptcy Code § 522(f). (*See* Doc. I.D. No. 11, the "Section 522(f) Motion.") The Section 522(f) Motion was signed by Attorney Dlugokecki as counsel for the Debtor and was supported by an affidavit (the "Affidavit") of the Debtor. (*See id.)* The Plaintiffs and another lienor (but not the Movant) filed objections to the Section 522(f) Motion. (*See* Doc. I.D. Nos. 17 and 18, collectively, the "Section 522(f) Objections.") The Movant subsequently filed an objection to the Homestead Exemption. (*See* Doc. I.D. No. 19, the "Exemption Objection.")[7]

On March 21, 2002, the Discharge Proceeding was commenced by a complaint filed on March 21, 2002. (*See* Disch Pro. Doc. I.D. No. 1.) That complaint was amended (*see* Disch. Pro. Doc. I.D. No. 38) and trial thereon was had on February 25, 2003 and February 27, 2003.[8] On June 29, 2004, this court issued a judgment (Disch. Pro. Doc. I.D. No. 78) and a related memorandum of law (Disch. Pro. Doc. I.D. No. 77, the "Decision") denying the Debtor his discharge under Bankruptcy Code § 727(a) for knowingly and fraudulently making a "false oath" in the Schedules by failing to disclose therein his interest in Cornerstone.[9]

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[7] The Exemption Objection alleged that the Debtor did not reside at the Property but did not address the issue of whether the Debtor owned an interest in the Property.

[8] Among other allegations, the amended complaint claimed that the Debtor had knowingly and fraudulently made "false oath[s]" within the purview of Bankruptcy Code § 727(a)(4) with respect to the Schedules because of his failure to disclose his interest in Cornerstone therein, and that the Debtor also had made a false oath in the Affidavit with respect to his ownership and occupation of the Property. (*See* Disch. Pro. Doc. I.D. No. 38.) Attorney Dlugokecki was not counsel of record for the Debtor in the Discharge Proceeding; the Debtor appeared therein through other counsel unrelated to Attorney Dlugokecki. Transcripts of the trial (the "Trial") in the Discharge Proceeding appear in the record of the Discharge Proceeding as Disch. Pro. Doc. I.D. Nos. 40 and 41. References herein is made only to the transcript (Disch. Pro. Doc. I.D. No. 40) of the February 25, 2003 proceeding and appear in the following form: "First Trial Transcript at __."

[9] The court did not consider allegations in respect of the Affidavit.

The Section 522(f) Motion, the Section 522(f) Objections[10] and the Exemption Objection came on for a hearing on July 21, 2004.[11] Attorney Dlugokecki (appearing on the Debtor's behalf) withdrew the Section 522(f) Motion on the record. (*See* Audio Record at 1:18:43 – 1:18:47.) Attorney Dlugokecki also stated that he "had no basis" for resisting the Exemption Objection (*see* Audio Record at 1:18:57 – 1:19:02) and the Exemption Objection was sustained by order entered on July 22, 2004 (*see* Doc. I.D. No. 43).

On July 28, 2004, the Movant filed two motions: a Motion for Sanctions Bankruptcy Fraud; Concealment and False Oaths [sic] (Doc. I.D. No. 45, the "First Motion"); and a Motion for Sanctions (Doc. I.D. No. 48, the "Second Motion"). On August 3, 2004, the Debtor filed two objections: an Objection to Motion for Sanctions Pursuant to Document ID. [sic] No. 45 (Doc. I.D. No. 52, the "First Objection"); and Objection to Motion for Sanctions Pursuant to Document ID. [sic] No. 48 (Doc. I.D. No. 51, the "Second Objection"). On August 4, 2004, Peter L. Ressler, Esq. filed an appearance for the Debtor in this case. (*See* Doc. I.D. No. 53.)[12]

A hearing (the "Hearing")[13] on these matters was convened on March 15, 2005. The Movant and Attorney Dlugokecki each appeared *pro se*.[14] Attorney Ressler appeared on behalf of the Debtor

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[10] The Plaintiffs did not prosecute their objection to the Section 522(f) Motion.

[11] References herein to the audio record of that hearing appear in the following form: "Audio Record at __:__:__."

[12] Each of the objections referred to above was filed on the Debtor's behalf by Attorney Ressler. Attorney Dlugokecki has not withdrawn as counsel for the Debtor. However, Attorney Dlugokecki represents only himself in these proceedings.

[13] A transcript (the "Hearing Transcript") of the Hearing appears in the record of these proceedings as Doc. I.D. No. 70.

[14] The Movant has represented himself throughout this case. The Movant is a law school graduate but not a member of any bar.

(who did not otherwise appear). Notwithstanding that the Hearing was scheduled to be an evidentiary hearing, neither side produced testimonial evidence and the Movant relied upon the record in this case, the record in the Discharge Proceeding and the documents annexed to the Request. After hearing the arguments of the parties, the court took the matter under advisement.

II. ADDITIONAL RELEVANT FACTS

The Debtor's wife (Therese E. Thorndike) filed for divorce in January of 2000. (Decision at 10.) Prior to that time the Debtor and his wife had held joint title to the Property. (*See* Request, Exhibit E (the "Separation Agreement") at 9.) The Debtor's marriage was dissolved on or about October 17, 2001. (Decision at 12.) At about the same time, the Debtor entered into the Separation Agreement dated October 17, 2001. (*See* Request, Exhibit E.) Paragraph 13 of the Separation Agreement provided (in relevant part) as follows:

> The Husband agrees that he will immediately give, transfer and convey to the Wife all of his right, title and interest in and to the . . . [Property]. Said conveyance is to be by the usual form of Quit Claim Deed utilized in Connecticut. In consideration of said transfer, the Wife shall assume and hold the Husband harmless from the first mortgage . . . and second mortgage . . . associated with said premises. The Husband shall assume and hold the Wife harmless from . . . [certain judicial liens including the liens of the Plaintiffs and Mr. Sullivan]. The Husband shall procure releases of all such encumbrances within one hundred twenty (120) days of this date.

(Request, Exhibit E at 9.)

The Debtor executed the required Quit Claim Deed (the "Quit Claim Deed") on or about October 31, 2001. (*See* Plaintiffs' Trial Exhibit E (recorded copy of Quit Claim Deed).) The Quit Claim Deed was then transmitted to the Debtor's divorce attorney. (*See* First Trial Transcript at

183-85 (testimony of the Debtor).)[15] On November 20, 2001 (the day before the Petition Date), the Quit Claim Deed to Ms. Thorndike was recorded in the Southbury land records. (*See* Plaintiffs' Trial Exhibit E (recorded copy of Quit Claim Deed).)

The Debtor testified at the Rule 2004 Examination that he no longer owned an interest in the Property. (*See* Rule 2004 Transcript at 55: 2 – 4 (testimony of the Debtor).) Attorney Dlugokecki appeared at the Rule 2004 Examination as counsel for the Debtor. (*See* Rule 2004 Transcript at 2.) At the Hearing, Attorney Dlugokecki admitted during the course of his remarks that he did not contact the Debtor's divorce counsel to ascertain the status of the Property until after the Amended Schedules had been filed and Attorney Dlugokecki had signed and filed the Section 522(f) Motion. (*See* Hearing Transcript at 13.)

III. THE MOTIONS AND OBJECTIONS

A. The First Motion and the First Objection

The First Motion seeks an imposition of sanctions purportedly pursuant to 18 U.S.C. §§ 152 and 157 against only the Debtor for his "[c]oncealment [a]nd [f]alse oaths" in connection with his failure to disclose his ownership in Cornerstone. The First Motion also seeks "an order directing Debtor to pay reasonable costs and fees associated with this Motion," (First Motion at 1-2).

[15] At the Hearing, Attorney Dlugokecki suggested that the Debtor's divorce attorney held the Quit Claim Deed "in escrow" for a time. (*See* Hearing Transcript at 13.)

The First Objection states in relevant part:

> The debtor believes that the Court's adjudication with regard to the § 727 Complaint is a sufficient sanction. Additionally, the debtor wishes to contest the allegations made by the Movant.

(First Objection at 1.)

B. <u>The Second Motion and the Second Objection</u>

The Second Motion seeks an imposition of sanctions pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure with respect to the Schedules, the Amended Schedules and the Section 522(f) Motion and their respective allegations of the Debtor's ownership and occupation of the Property. The Second Motion also seeks "an Order from this Court directing the Debtor to pay the reasonable costs and attorney's fees associated with this Motion, in addition to those costs and fees associated with . . . [the Exemption Objection]," (Second Motion at 1-2). The Second Motion seeks such imposition of sanctions against the Debtor and "any/or other individuals this Court deems responsible for the violations of . . . Rule 9011," (Second Motion at 1). The Second Motion further states that "[p]rocedurally, this Motion is filed pursuant to the 'safe harbor' notice exception to Rule 9011(c)(1)(A)," (Second Motion at 2). Because Attorney Dlugokecki is the only other individual named in the Second Motion and because he signed the Section 522(f) Motion, the court has treated Attorney Dlugokecki as a target of the Second Motion and he has participated in that capacity in these proceedings.[16]

The Second Objection is substantially identical to the First Objection.

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[16] *See, e.g.*, Doc. I.D. No. 66 (Pretrial Order in respect to First Motion, Second Motion, First Objection and Second Objection).

IV. ANALYSIS

A. The First Motion and the First Objection

"Parties subjected to potential sanctions must receive specific notice of the conduct alleged to be sanctionable and the authority under which the sanctions are being considered." *Northeast Alliance Federal Credit Union v. Garcia (In re Garcia)*, 260 B.R. 622, 632 (Bankr. D. Conn. 2001) (Dabrowski, C.B.J.). *Accord Martens v. Thomann*, 273 F.3d 159, 177-78 (2d Cir. 2001); *Ted Lapidus, S.A. v. Vann*, 112 F.3d 91, 96-97 (2d Cir. 1997). The three sources of a bankruptcy court's authority for imposition of sanctions are: Rule 9011; 28 U.S.C. § 1927 and 11 U.S.C. § 105 (*i.e.*, the court's inherent authority to curtail abusive litigation practices). *Garcia, supra. See also In re Ames Dept. Stores, Inc.*, 76 F.3d 66, 70 (2d Cir. 1996). The First Motion cites as its authority for imposition of sanctions 18 U.S.C. §§ 152 and 157. Neither of those sections of title 18 is valid authority for this court's imposition of sanctions. On that ground alone, the First Motion must be denied and the First Objection sustained.

However, even if the First Motion did cite valid authority for the imposition of sanctions upon the Debtor and sanctions might otherwise be warranted, the result would be no different. That is because the imposition of sanctions is discretionary with the court under all three sanction schemes. *See, e.g.*, section IV.B, below(discussion of Rule 9011(c)).[17] Here, the Debtor has received the ultimate sanction for failing to disclose his interest in Cornerstone: he has been denied his bankruptcy discharge. In light of the foregoing, the court declines to impose further sanctions upon the Debtor.

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[17] Section 1927 does not apply to represented parties in any event. *In re Banco Latino Int'l.*, 309 B.R. 390, 392 (Bankr. S.D. Fla. 2004). *See also Garcia*, 260 B.R. at 632 n.23.

The Movant is prosecuting a prepetition claim against the Debtor in Connecticut Superior Court. (*See* Request, Exhibit C.) The Movant claims that the Debtor is repeating his bankruptcy pattern of conduct in the state court proceedings. (*See* Request, Exhibit D.) The court recognizes that "whether the person has engaged in similar conduct in other litigation" is one factor to consider in deciding whether to impose sanctions. *See* Fed. R. Civ. P. 11 advisory committee notes, 1993 amendments. As evidence of the alleged misconduct, the Movant relies on the fact that the Debtor scheduled the Movant's prejudgment attachment in the Schedules without stating that the underlying debt was disputed as to liability (*see* Schedules (Schedule D - Creditors Holding Secured Claims)) while continuing to dispute the existence of any liability to the Movant in the state court litigation (*see* Request, Exhibit D). The court is not persuaded by the foregoing that the Debtor is seriously misbehaving in the state court. Moreover, the state court has ample means of controlling parties in proceedings before it. *See, e.g.,* Practice Book 1998 § 10-5 (1998) ("Untrue Allegations or Denials"). Accordingly, under the circumstances presented here, the court declines to impose sanctions upon the Debtor beyond denial of his discharge.

B. The Second Motion and the Second Objection

1. Rule 9011

Rule 9011 provides in relevant part as follows:

> (a) **Signature.** Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name . . . .
>
> (b) **Representations to the Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b) . . . .

Fed. R. Bankr. P. 9011.

Rule 9011 is substantially similar to Rule 11 of the Federal Rules of Civil Procedure. *See In re Garcia*, 260 B.R. at 633 n. 24. "The burden of proof is on the Rule 11 . . . [respondent] to establish objective reasonableness and adequate pre-filing investigation once a *prima facie* showing of sanctionable conduct has occurred." *Vandeventer v. Wabash National Corp.*, 893 F.Supp. 827, 840 (N.D. Ind. 1995). Sanctions under Rule 9011(c) are discretionary with the court. 10 Alan N.

Resnick and Henry J. Sommer, *Collier on Bankruptcy* ¶ 9011.07[1], at 9011-19 (15th ed. rev. 2002).[18]

> Bankruptcy Rule 9011 was amended in 1997 in order to bring it in conformance with Rule 11's earlier 1993 revision. [That revision contains (among other provisions) a notice provision in Rule 9011(c)(1)(A) which is] [c]ommonly known as the "safe-harbor provision" . . . .
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> . . .
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> . . . The safe-harbor provision of Bankruptcy Rule 9011 provides that the motion may not be filed with the court until at least twenty-one days after service of the motion on the offending party. "If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion should not be filed with the court." Fed. R. Civ. P. 11 Advisory Committee Notes, 1993 Amendments . . . . The safe-harbor provision is a mandatory procedural prerequisite and sanctions imposed without compliance are improper.

In re Szabo Contracting, Inc., 283 B.R. 242, 256 n.2 & 258 (Bankr. N.D. Ill. 2002). *See also Martens v. Thomann*, 273 F.3d at 178. Rule 9011 provides for one exception to the "safe harbor" notice requirement: the "safe harbor" notice requirement does "not apply if the conduct alleged is the filing of a petition in violation of subdivision (b)," Fed. R. Bankr. P. 9011(c)(1)(A).

2. <u>The Second Motion</u>

The "safe harbor" notice provision of Rule 9011(c)(1)(A) has not been complied with here. Accordingly, the Movant can prevail here (if at all) only if the "safe harbor" exception for the Petition itself is established. As noted above, the Second Motion concedes the foregoing. *See* section III.B, *supra.*

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[18] Prior to the 1997 amendments to Rule 9011, Rule 9011 sanctions were mandatory once the court determined that a Rule 9011(b) violation had occurred. *White v. Mitchell (In re Hardee)*, 165 F.3d 18, 1998 WL 766699, at *5 n.2 (4th Cir. 1998) (unpublished decision). The 1997 amendments made such sanctions discretionary with the court. *Id.*

The Movant attempts to bring the Second Motion within the purview of the "safe harbor" exception by construing the term "petition" broadly to include the Schedules (which were filed at the same time as the Petition), the Amended Schedules and perhaps even the Section 522(f) Motion. However, for the reasons set forth below, the court concludes that the term "petition" cannot be construed that broadly in Rule 9011.

The Advisory Committee Notes to the 1997 amendments to Rule 9011 state the reason for the exception for the petition from the "safe harbor" notice provision:

> The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

Fed. R. Bankr. P. 9011 advisory committee note, 1997 amendments. The same considerations do not apply to schedules and the like. Moreover, Rule 9011(a) treats the "petition" separately from a "list, schedule, or statement, or amendment thereto . . . ," Fed. R. Bankr. P. 9011(a), as do the Official Forms, *compare* Official Form 1 (Voluntary Petition) *with* Official Form B6 (Schedules). Accordingly, the Schedules, the Amended Schedules and the Section 522(f) Motion are each outside the purview of the "safe harbor" notice exception applicable in respect of the Petition.

To say that the Schedules are not themselves within the purview of the "safe harbor" notice exception does not render the Schedules totally irrelevant for present purposes. Inaccurate schedules may be evidence that the petition was "presented for an[] improper purpose," Fed. R. Bankr. P. 9011(b)(1) (*i.e.*, the petition was a "bad faith" filing). The court will consider that possibility below.

When the Debtor signed the Petition, he represented to the court that the Petition was being filed in good faith. *See* Fed. R. Bankr. P. 9011(b). When Attorney Dlugokecki signed the Petition, he was deemed to have represented to the court that the Petition was filed in good faith "to the best of . . . [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . ," Fed. R. Bankr. P. 9011(b). Because the Second Motion addresses (in pertinent part) only the improper scheduling of the Property, the court concludes that the Movant has failed to make out a *prima facie* case of a Rule 9011(b)(1) violation (*i.e.*, filing of the Petition in bad faith).[19] With respect to the Debtor's improper scheduling of a nonexistent interest in the Property, the court notes that a title search would have supported the Debtor's position until the day before the Petition Date.[20] The court is unpersuaded that the Debtor and/or Attorney Dlugokecki knew when the Petition was filed that the Quit Claim Deed had already been released by the Debtor's divorce attorney and had been recorded by (and presumptively delivered to) the Debtor's former wife. *Cf. Resqnet.Com, Inc. v. Lansa, Inc.*, 382 F. Supp. 2d 424, 453 (S.D.N.Y. 2005) ("Rule 11 does not require a plaintiff to know at the time of pleading all facts necessary to establish the claim.") (citation and internal quotation marks omitted). Perhaps the Debtor and Attorney Dlugokecki might be faulted for not making a prepetition inquiry of the Debtor's divorce lawyer

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[19] Even if the court found the Petition to have been a bad faith filing by the Debtor in respect of his concealment of his interest in Cornerstone, as explained above the court believes that the Debtor's loss of his bankruptcy discharge because of that concealment pursuant to Bankruptcy Code § 727(c) is a sufficient sanction under these circumstances.

[20] Failure of a putative exemptioner actually to occupy the subject premises as of the petition date is not necessarily fatal to the homestead exemption. *Cf. In re Herd*, 176 B.R. 312, 314 (Bankr. D. Conn. 1994) (Krechevsky, B.J.) (citing cases). However, failure of the putative exemptioner to hold *any* interest in the subject property as of the petition date *is* fatal to the exemption. *See In re Kujan*, 286 B.R. 216, 220-222 (Bankr. D. Conn. 2002).

concerning the status of the Quit Claim Deed. However, the court does not deem such a failure to be sufficiently serious to warrant sanctions.

On the other hand and as noted above, at the Rule 2004 Examination the Debtor admitted in Attorney Dlugokecki's presence that the Debtor no longer owned any interest in the Property. The court is troubled that thereafter the Debtor continued to advocate the Homestead Exemption (by filing the Amended Schedules), and Attorney Dlugokecki subsequently filed the Section 522(f) Motion (with a supporting affidavit of the Debtor) apparently without making any inquiry concerning the Debtor's ownership of an interest in the Property as of the Petition Date. If such facts had been presented to the court in compliance with the "safe harbor" notice provision of Rule 9011(c)(1)(A), the court might have been inclined to impose sanctions with respect to the Amended Schedules and/or the Section 522(f) Motion and Affidavit. However, because the "safe harbor" notice provision applied to the foregoing, imposition of sanctions in respect of the foregoing would be procedurally improper and would constitute an abuse of this court's discretion. *Cf. Szabo, supra. See also Martens, supra.*

V. CONCLUSION

For the reasons set forth above, an order will enter denying the First Motion and the Second Motion and sustaining the First Objection and the Second Objection.

BY THE COURT

Dated: October 26, 2005

Lorraine Murphy Weil
United States Bankruptcy Judge