

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
PATRICIA A. MORRIS,)
)
)
DEBTOR.) RE: Doc. I.D. No. 25

MEMORANDUM ON MOTION FOR SANCTIONS

I. INTRODUCTION

The instant bankruptcy case presents the final chapter of an abusive bankruptcy agenda constructed and orchestrated by the Debtor and her attorney for the purpose of frustrating a creditor's right to possession of real property in accordance with state law. As explained in more detail hereafter, the Debtor's and her attorney's conduct, related to the serial filing of five bankruptcy petitions, all singularly intended to delay and obstruct lawful eviction proceedings, warrants the imposition of sanctions against both attorney and client.

II. PROCEDURAL BACKGROUND

On October 19, 2004 (hereafter, the "Petition Date"), the Debtor, Patricia A. Morris (hereafter, the "Debtor"), commenced this bankruptcy case by filing a voluntary petition (hereafter, the "Petition") under Chapter 13 of the Bankruptcy Code. Following a December 23, 2004 hearing (hereafter, the "Initial Hearing") on U.S. Bank National Association's, as Trustee (hereafter, the "Bank") Motion to Dismiss with Prejudice and Sanctions (hereafter, the "Initial Motion"), Doc. I.D. No. 13, the Court entered an Order Dismissing Case with Two-Year Bar, Doc. I.D. No. 23, *inter alia*, precluding the Debtor from being a debtor under Title 11, United States Code, at any time during the two-year period following that date.

While the Initial Motion also requested sanctions and specified conduct alleged to

be sanctionable, Initial Motion, ¶¶ 1 -29, it declared no authority under which the sanctions were to be considered. At the Initial Hearing, after the Court noted that 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*, citing, In re Ames Dept Stores, 76 F.3d 66, 70 (2d Cir.1996) ("In as much as different sanction mechanisms - such as Fed. R. Civ. P. 11 (and its counterpart in bankruptcy proceedings, Bankruptcy Rule 9011), 28 U.S.C. § 1927, or the court's inherent authority to curtail abusive litigation practices - involve different substantive standards, we have repeatedly required courts to specify the source of their authority to impose sanctions.") (citations omitted),¹ the Bank's attorney stated the statutory authority upon which he relied on the record. The Court then advised Debtor's counsel, Attorney Joseph Rigoglioso, that unless he accepted the Bank's counsel's oral representations as to the authority under which the sanctions were sought as sufficient, and waived any right to further notice, the Court intended to dismiss the Initial Motion (as to its sanctions component) without prejudice. Attorney Rigoglioso declined to waive any rights, and the Court dismissed the remaining sanctions component of the Initial Motion without prejudice in accordance with its earlier record comment.

On December 29, 2004, the Bank filed a Motion for Sanctions (hereafter, the

¹ For example, significant differences exist between Rule 11 and Section 1927.

For instance, Rule 11 sanctions may be imposed on both counsel and client, while § 1927 applies only to counsel. A Rule 11 violation must be based on signed pleadings, motions, or other papers. Section 1927 violations do not hinge on the presence of a paper. Rule 11 may not be employed to sanction obnoxious *conduct* during the course of the litigation; whereas § 1927 applies to the unreasonable and vexatious multiplication of court proceedings. Rule 11 requires only a showing of objective unreasonableness on the part of the attorney or client signing the papers, but § 1927 requires more: subjective bad faith by counsel.

United States v. Int'l Brotherhood of Teamsters, 948 F.2d 1338, 1345-1346 (2d Cir. 1991).

“Motion”), Doc. I.D. No. 25, which, *inter alia*, specified conduct alleged to be sanctionable, Motion, ¶¶ 1 -31,² and declared Fed. R. Bankr. P. 9011(c), 28 U.S.C. §1927, 11 U.S.C. §105(a), and the Court’s inherent power, as authority under which the sanctions were requested and to be considered. A hearing on the Motion was held on January 27, 2005 (hereafter, the “Hearing”), at which Attorney Rigoglioso, and counsel for the Bank, appeared.

III. FACTUAL BACKGROUND AND FINDINGS³

The following facts are uncontested and/or derived from (i) representations and exhibits introduced in evidence at the Initial Hearing and the Hearing, and (ii) the files and records of the instant bankruptcy case and related cases.

1. Prior to July 22, 2003, the Bank held a first mortgage (hereafter, the “Mortgage”) on real property theretofore owned by the Debtor and known as 131 Lexington Avenue, New Haven, Connecticut (hereafter, the “Property”).

2. As a result of a default due to non-payment, the Bank commenced an action to foreclose the Mortgage in the Superior Court for the Judicial District of New Haven at New Haven, Connecticut (Docket No. CV-0460692 S).

3. On May 19, 2003, the Superior Court entered a judgment of strict foreclosure.

4. Pursuant to said judgment, title to the Property vested in the Bank on July 22, 2003.

5. The Bank subsequently initiated a summary process action in the New Haven

²The conduct alleged sanctionable in the Motion tracks the conduct alleged sanctionable in the Initial Motion.

³For convenience certain conclusions of law and reference to legal authority is included herein.

Housing Court (Docket No. NHSP-076208) against the Debtor and others (identified as “John Doe”, “Jane Doe” and “Pat Doe”) by issuance of a Notice to Quit dated August 8, 2003.

6. On September 26, 2003, the Clerk of the New Haven Superior Court issued an execution for ejectment in the foreclosure action, and an eviction was scheduled for October 24, 2003.

7. On October 10, 2003, the Debtor, by and through Attorney Rigoglioso, filed a Chapter 13 petition commencing Case Number O3-35054 (LMW) (hereafter, the “First Bankruptcy Case”),⁴ thereby staying both the execution for ejectment and summary process action by operation of the automatic stay of Section 362(a).

8. On October 10, 2003, in the First Bankruptcy Case, the Debtor filed a Chapter 13 Plan. Notwithstanding that title to the Property had vested in the Bank approximately three months earlier, and, therefore, there was no mortgage to cure or pay, the Plan proposed to pay a mortgage arrearage to the Bank with current mortgage payments being paid outside of the Plan.⁵

9. On November 25, 2003, in the First Bankruptcy Case, United States Bankruptcy Judge Lorraine Murphy Weil granted the Bank’s motion for relief from stay to proceed with the state foreclosure and summary process actions.

⁴For convenience and clarity, the First through Fifth Bankruptcy Cases may also be referred to herein as the First through Fifth Petitions.

⁵With title vested in the Bank on July 22, 2003, and the First Bankruptcy Case having commenced on October 10, 2003, the relevant bankruptcy estates in the First through the Fifth Bankruptcy Cases did not have an interest in the Property. See *In re Kane*, 236 B.R. 131, 133 (Bankr. D. Conn. 1999); *In re Loubier*, 6 B.R. 298, 303 (Bankr. D. Conn. 1980).

10. On January 13, 2004, a judgment for possession of the Property entered in favor of the Bank, and against the Debtor, John Doe, Jane Doe and Pat Doe, in the summary process action,. The Housing Court Judge ordered a final stay of execution through April 15, 2004, on condition that the Debtor make \$1,200 per month use and occupancy payments. The Debtor made three (3) such payments during January, February and March, 2004. The Debtor, Frank Schultz and Shannon Morris continued to occupy the Property from April 15, 2004 to January 19, 2005.

11. On February 23, 2004, Judge Weil dismissed the First Bankruptcy Case with the prejudice of a 180-day bar precluding the Debtor from being a debtor pursuant to Title 11, United States Code.

12. By letter dated April 13, 2004,⁶ Attorney Rigoglioso informed counsel for the Bank, *inter alia*, that “I have a purchaser for the [Property] . . . willing to purchase the [P]roperty in “as is” condition for \$121,000.00 within thirty (30) days”.⁷

13. On April 19, 2004, counsel for the Bank responded to Attorney Rigoglioso’s April 13, 2004 letter by facsimile stating, *inter alia*, “My client considered and *rejected* the offer to purchase set forth in your letter. . . . [The prospective purchaser] is welcome to put in an offer with the agent handling the [P]roperty *after vacant possession of the [P]roperty has been secured.*” (emphasis added).

14. Notwithstanding the “rejection” of the “offer to purchase”, and the Bank’s advice

⁶Numerous exhibits, including letters and the facsimile referred to in Finding No. 13, were introduced in evidence without objection at the Initial Hearing and incorporated into the Hearing record by agreement.

⁷At the Initial Hearing Attorney Rigoglioso described the “purchaser” as “my client . . . trying to purchase the Property through her sister.” Tr. 12/23/2004 at 2:43:30.

of its willingness to entertain offers after obtaining possession,⁸ Attorney Rigoglioso, on at least eight occasions between May 18 and November 9, 2004, see various letters introduced in evidence at the Initial Hearing, attempted to negotiate a sale of the Property through a broker.

15. On April 19, 2004, the Clerk of the New Haven Housing Court issued an execution for possession and another eviction was scheduled for May 13, 2004.

16. On May 3, 2004, one Frank Schultz, represented by Attorney Rigoglioso, filed a Chapter 13 petition commencing Case Number 04-31578 (LMW) (hereafter, the “Second Bankruptcy Case”). Schultz claimed to be one of the “Doe” defendants in the summary process action, thereby staying the summary process eviction by operation of the automatic stay of Section 362(a).

17. On June 16, 2004, in the Second Bankruptcy case, Judge Weil granted the Bank’s motion for relief from stay to proceed with the summary process action.

18. On July 12, 2004, Judge Weil dismissed the Second Bankruptcy Case without prejudice

19. On June 22, 2004, the Clerk of the New Haven Housing Court re-issued an execution for possession, and another eviction was scheduled for July 8, 2004.

20. On July 2, 2004, one Shannon Morris, represented by Attorney Rigoglioso, filed a Chapter 13 petition commencing Case Number 04-33147 (ASD) (hereafter, the “Third Bankruptcy Case”). Shannon Morris claimed to be one of the “Doe” defendants in the summary process action, thereby staying the summary process eviction by operation of the

⁸At the Hearing counsel for the Bank advised that the Bank had obtained actual vacant possession of the Property on January 19, 2005.

automatic stay of Section 362(a).

21. On July 29, 2004, in the Third Bankruptcy case, the undersigned judge granted the Bank's motion for relief from stay to proceed with the summary process action.

22. On October 18, 2004, the undersigned judge dismissed the Third Bankruptcy Case without prejudice.

23. On August 5, 2004, the Clerk of the New Haven Housing Court re-issued an execution for possession, and another eviction was scheduled for September 2, 2004.

24. On September 1, 2004, Frank Schultz, again represented by Attorney Rigoglioso, filed another Chapter 13 petition commencing Case Number 04-34122 (LMW) (hereafter, the "Fourth Bankruptcy Case"). Schultz again claimed to be one of the "Doe" defendants in the summary process action, thereby again staying the summary process eviction by operation of the automatic stay of Section 362(a).

25. On October 7, 2004, in the Fourth Bankruptcy Case, the undersigned judge⁹ granted the Bank's motion for relief from stay to proceed with the summary process action.

26. On October 15, 2004, the Clerk of the New Haven Housing Court re-issued an execution for possession and another eviction was scheduled for November 8, 2004.

27. On October 19, 2004, the Debtor, represented by Attorney Rigoglioso, filed the instant Chapter 13 petition commencing the instant bankruptcy case (hereafter, the "Fifth Bankruptcy Case"), thereby again staying the summary process eviction by operation of the automatic stay of Section 362(a).

⁹While the Fourth Bankruptcy Case was assigned to Judge Weil, Judge Weil and the undersigned judge preside over combined Chapter 13 calendars and hear routine motions in cases assigned to the other.

28. On October 19, 2004, the Debtor and Attorney Rigoglioso filed a Chapter 13 Plan in the Fifth Bankruptcy Case. The Plan again proposed to pay a mortgage arrearage to the Bank with “current mortgage payments” being paid outside of the Plan. See Finding No. 8, and fn. 5, supra.

29. On December 6, 2004, Judge Weil dismissed the Fourth Bankruptcy Case with the prejudice of a one-year bar to re-filing.

30. On December 9, 2004, in the Fifth Bankruptcy Case, Judge Weil granted the Bank’s motion for relief from stay to proceed with the summary process action.

31. On December 23, 2004, as previously noted, the undersigned judge dismissed the Fifth Bankruptcy Case, with the prejudice of a two-year bar to re-filing, and denied, without prejudice, the Bank’s request for sanctions with leave to file the Motion citing therein the authority pursuant to which sanctions were sought.

32. The Bank incurred \$525.00 in marshal’s and mover’s fees on account of the cancelled evictions referenced herein.

33. The Bank incurred \$750.00 in filing fees for the five motions for relief from stay outlined above.

34. The Bank incurred \$1,750.00 in attorney’s fees for the five motions for relief from stay referenced herein plus \$750.00 in attorney’s fees for the motion to dismiss and motion for sanctions in this case.

IV. DISCUSSION AND SANCTIONS

A. Bankruptcy Rule 9011.

A Bankruptcy Court has the authority, under Bankruptcy Rule 9011, to impose sanctions on any party or attorney who, *inter alia*, signs, or later advocates, a document that is interposed for an improper purpose. Fed. R. Bankr. P. 9011. The pertinent section of Rule 9011 reads:

(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 cause unnecessary delay or needless increase in the cost of litigation;

* * * *

(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 conditions stated below, impose an appropriate sanction on the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(emphasis added).

The preliminary requirement of Rule 9011 is the existence of a signed petition, pleading, motion, or other document signed, filed, or later advocated. E.g., Adduono v. World Hockey Assoc., 824 F.2d 617 (8th Cir.1987). This requirement is met in this proceeding by the signed and filed Petitions which commenced the relevant bankruptcy cases. Violations of Rule 9011 are determined by applying an objective standard of reasonableness under the circumstances. E.g., In re KTMA Acquisition Corp., 153 B.R. 238, 248 (Bankr. D. Minn. 1993). When analyzing whether a document has been filed for improper purposes under Rule 9011, “the signer’s conduct is judged objectively looking at the facts of the case, the reasonableness of the pleading and the circumstances of the

filing.” Id. at 265. When a Court finds that a violation has occurred, as this Court determines herein, sanctions against those responsible should be considered, and imposed where appropriate.

Based on the facts set forth above, the Court finds that all five Petitions, including five signed by Attorney Rigoglioso and two signed by the Debtor, were filed and “later advocated” and prosecuted for improper purposes, that is to harass the Bank and to impede and obstruct the Bank’s legitimate attempts to obtain possession of the Property in accordance with state law with the intended effect of causing unnecessary delay and needless increase in the cost of litigation. Furthermore, the Second, Third, Fourth and Fifth Bankruptcy Cases were filed and advocated for the additional improper purpose of coercing the Bank into a sale of the Property to the Debtor’s sister. Under the circumstances presented, sanctions upon (i) the Debtor, as a party “responsible” for improper conduct in connection with the First and Fifth Petitions, and (ii) upon the Debtor’s counsel, Attorney Rigoglioso, in connection with all five Petitions, all under the authority of Fed. R. Bankr. P. 9011(b)(1) & (c), are warranted.

Fed. R. Bankr. P. 9011(c)(2) provides in relevant part:

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B) [not applicable herein], the sanction may consist of, or include, . . . if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney’s fees and other expenses incurred as a direct result of the violation.

B. Title 28, United States Code, Section 1927.

Section 1927 of Title 28, United States Code, provides:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

By its terms, Section 1927 addresses unreasonable and vexatious multiplications of proceedings; and "it imposes an obligation on attorneys throughout the entire litigation to avoid dilatory tactics. "United States v. Int'l Brotherhood of Teamsters, 948 F.2d 1338, 1345 (2d Cir. 1991)." "[A]n award under [Section] 1927 is proper when the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose. . . ." Id. (citations and internal quotation marks omitted). An award pursuant to Section 1927 "may be imposed only against the offending attorney; clients may not be saddled with such awards." Id.

It appears to the Court that Attorney Rigoglioso's actions in signing, filing and prosecuting the First through Fifth Petitions, and frivolous Chapter Plans targeting a then non-existent mortgage, were so completely without merit that the only conclusion based on the record is that such actions were undertaken for improper purposes, to harass the Bank, and coerce the Bank toward a sale of the Property, all by multiplication of proceedings unreasonably and vexatiously. The filing of a bankruptcy petition solely to forestall a secured creditor from exercising legitimate rights, compounded by prosecution of a Chapter 13 Plan incapable of confirmation, is conduct no court, including this one, can condone. See In Re Johnson, 24 B.R. 832, 834 (Bankr. E. D. Pa. 1982). Accordingly, pursuant to 28 U.S.C. § 1927, sanctions as to the Debtor's counsel are appropriate.

C. Inherent Power of the Court & Section 105¹⁰

Finally, a court has an additional means at its disposal for sanctioning improper conduct -- its inherent power.

This power stems from the very nature of courts and their need to be able “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” Chambers v. NASCO, Inc., --- U.S. -- -, 111 S.Ct. 2123, 2132, 115 L.Ed.2d 27 (1991) (quoting Link v. Wabash R.R. Co., 370 U.S. 626, 630-31, 82 S.Ct. 1386, 1388-89, 8 L.Ed.2d 734 (1962)). One component of a court's inherent power is the power to assess costs and attorneys' fees against either the client or his attorney where a party has “acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” Ayeska Pipeline Serv. Co. v. Wilderness Soc’y, 421 U.S. 240, 258-59, 95 S.Ct. 1612, 1622-23, 40 L.Ed.2d 141 (1975) (quoting F.D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129, 94 S.Ct. 2157, 2165, 40 L.Ed.2d 703 (1974)). Sanctions imposed under a court's inherent power – commonly known as the bad faith exception to the "American Rule" against fee shifting – "depend not on which party wins the lawsuit, but on how the parties conduct themselves during the litigation." Chambers, 111 S.Ct. at 2137.

United States v. Int’l Brotherhood of Teamsters, *supra*, 948 F.2d at 1345.

Under standards well-established in this Circuit, a trial court’s inherent power must be exercised with restraint and not utilized unless the challenged conduct is “entirely without color” and “motivated by improper purposes.” Milltex Industries Corp. v. Jacquard Lace Co., LTD, 355 F.3d 34, 35 (2d Cir. 1995).

The improper motivation targeting the Bank already detailed herein was

¹⁰The Court views Section 105(a) as part of the support for its inherent authority. That sub-section provides:

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

compounded by its effect on this Court – itself victimized by the Debtor and her counsel’s reckless filing of five frivolous Petitions, and the prosecution of two unfounded, and unconfirmable proposed Chapter 13 Plans. The collective effect of such conduct not only prejudiced the Bank, but impeded and obstructed the ability of this Court to manage its affairs so as to achieve the fair, orderly and expeditious disposition of cases, and visited a disruptive and wasteful effect on the limited resources of this Court and the state court.¹¹

The conduct of the Debtor and her counsel in these proceedings was “entirely without color” and “motivated by improper purposes.” Accordingly, sanctions on the Debtor and her counsel, pursuant to the inherent power of the Court, are warranted.

D. Sanctions.

In accordance with the above, and pursuant to Fed. R. Bankr. P. 9011(c), 28 U.S.C. §1927, and its inherent power, the Court will impose the following monetary sanctions against the Debtor payable to the Bank by separate order:

\$105.00 for Marshal’s and mover’s fees;
\$150.00 for ½ of the filing fees associated with two Section 362 motions;
\$350.00 for ½ of the attorneys fees associated with two Section 362 motions;
\$375.00 for ½ of the attorney’s fees associated with the Initial Motion and the Motion; and
\$8,400.00 (7 X \$1,200 per month) for illicit use and occupancy of the Property.¹²

Total monetary sanction against the Debtor equals **\$9,380.00**.

In accordance with the above, and pursuant to Fed. R. Bankr. P. 9011(c), 28 U.S.C.

¹¹While the state court was subjected to as much, if not more, disruption than that inflicted on this Court, the Court does not include that component in the sanctions calculus.

¹²Imposed on the basis of the evidence presented, and counsel for the Bank’s representations at, the Initial Hearing. In limiting this sanction component to \$8,400.00 the Court is cognizant that the total amount for illicit use and occupancy could be as high as \$10,800.00 (9 months X \$1200.00/month).

§1927, and the Court's inherent power, the Court will impose the following monetary sanctions against Attorney Rigoglioso payable to the Bank by separate order:

\$420.00 for Marshal's and mover's fees;
\$600.00 for filing fees associated with four Section 362 motions (Second through Fifth Petitions);
\$1,400.00 for attorneys fees associated with four Section 362 motions; and
\$375.00 for ½ of the attorney's fees associated with the Initial Motion and the Motion.

Total monetary sanction against Attorney Rigoglioso equals **\$3,775.00**.

V. CONCLUSION

The Debtor, pursuing an illicit bankruptcy agenda entirely without color, in bad faith, and motivated by improper purposes, in conspiracy with, and aided and abetted by Frank Shultz and Shannon Morris, and orchestrated with the substantial assistance of Attorney Rigoglioso, filed five bankruptcy petitions and prosecuted five cases in this Court. This collective and collusive effort was intended to and did obstruct, forestall and defeat the Bank's legitimate efforts to enforce its rights in state court to obtain possession of the Property to which it enjoyed title. This abusive bankruptcy agenda targeted and prejudiced the Bank and this Court through harassment, caused unnecessary delay, and an increase in the cost of litigation.

For the reasons set forth herein, a separate Order imposing the sanctions discussed herein, pursuant to Fed. R. Bankr. P. 9011(c), 28 U.S.C. §1927, and the Court's inherent power, shall enter simultaneously herewith.

Dated: March 13, 2006

BY THE COURT


Albert S. Dabrowski
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
PATRICIA A. MORRIS,)
)
)
DEBTOR.) RE: Doc. I.D. No. 13

**ORDER IMPOSING MONETARY SANCTIONS ON THE DEBTOR
AND COUNSEL FOR THE DEBTOR**

Following notice and a hearing upon the Motion to Dismiss with Prejudice and Sanctions, Doc. I.D. No. 13, and the Motion for Sanctions, Doc. I.D. No. 25, filed and prosecuted by U.S. Bank National Association, as Trustee (hereafter, the "Bank"), the Court entered this same date its Memorandum on Motion for Sanctions in accordance with which

IT IS HEREBY ORDERED pursuant to Fed. R. Bankr. P. 9011 and the Court's inherent power, that the Debtor, on or before March 31, 2006, shall pay to the Bank in good funds the monetary sanction of **\$9,380.00**, and

IT IS FURTHER ORDERED pursuant to Fed. R. Bankr. P. 9011, 28 U.S.C. §1927, and the Court's inherent power, that Attorney Joseph Rigoglioso, counsel for the Debtor, on or before March 31, 2006, shall pay to the Bank in good funds the monetary sanction of **\$3,775.00**.

Dated: March 13, 2006

BY THE COURT


Albert S. Dabrowski
Chief United States Bankruptcy Judge