

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)		
)	CASE NO.	03-34887 (LMW)
KEVIN E. ROBINSON and)		
MARGARET M. ROBINSON,)	CHAPTER	7
)		
DEBTORS.)		
KEVIN E. ROBINSON and)	ADV. PRO. NO.	03-3215
MARGARET M. ROBINSON,)		
)		
PLAINTIFFS)	DOC. I.D. NO.	49
)		
vs.)		
)		
EDUCATIONAL CREDIT)		
MANAGEMENT CORPORATION,)		
)		
DEFENDANT.)		

APPEARANCES

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BRIEF MEMORANDUM AND ORDER RE: MOTION FOR SANCTIONS

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, the above referenced debtors / plaintiffs (the “Debtors”) commenced this chapter 7 case (the “Case”) by a petition dated September 29, 2003 and filed on October 1, 2003. (See Case Doc. I.D. No. 1.);¹

WHEREAS, the Debtors filed a complete list of schedules including a Schedule F (“Schedule F”) that lists nonpriority unsecured claims at \$54,515.98, of which approximately \$20,573 are unpaid student loans and \$30,730 are unpaid medical bills. (See Case Doc. I.D. No. 1.) The Debtors’ schedules also disclose no real property assets and \$7,174.00 in personal property assets. (See *id.*);

WHEREAS, the chapter 7 Trustee filed a report of no distribution (Case Doc. I.D. No. 4) for the Case on December 10, 2003;

WHEREAS, on December 23, 2003, the Debtors filed a complaint (the “Complaint”) against Sallie Mae, an unsecured creditor, seeking a declaration that \$2,300 of unpaid student loans is dischargeable pursuant to Bankruptcy Code § 523(a)(8) because it “will impose an undue hardship on the [D]ebtors and the [D]ebtors’ dependents.” (Adv. Pro. Doc. I.D. No. 1, ¶ 13.);²

WHEREAS, the Debtors received their chapter 7 discharge on February 5, 2004. (See Case Doc. I.D. No. 8.);

¹ Citations herein to the docket of the above-captioned chapter 7 case appear in the following form: “Case Doc. I.D. No. ____.” Citations herein to the docket of this adversary proceeding appear in the following form: “Adv. Pro. Doc. I.D. No. ____.”

² The filing of the Debtors’ complaint commenced the above-referenced adversary proceeding (the “Adversary Proceeding”).

WHEREAS, Educational Credit Management Corp. (“ECMC”) filed a motion (Adv. Pro. Doc. I.D. No. 12, the “Motion for Substitution”) on March 19, 2004 to be substituted for Sallie Mae as defendant in the Adversary Proceeding;

WHEREAS, this court granted the Motion for Substitution in an order dated April 14, 2004. (*See* Adv. Pro. Doc. I.D. No. 15.);

WHEREAS, on April 16, 2004, ECMC filed an answer to the Complaint alleging that \$18,172.03 of outstanding student loans is not subject to discharge pursuant to Bankruptcy Code § 523(a)(8). (*See* Adv. Pro. Doc. I.D. No. 18.);

WHEREAS, on May 18, 2004 the court entered a pretrial order. (*See* Adv. Pro. Doc. I.D. No. 19, the “First PTO.”)³ In relevant part, the First PTO provided that “all discovery shall be completed and closed by the 30th day of July 2004 . . . [the ‘Discovery Bar Date’],” and set a trial date of September 27, 2004. (*Id.*);

WHEREAS, on July 22, 2004, ECMC filed a motion (Adv. Pro. Doc. I.D. No. 21, the “ECMC Motion To Extend”) to amend the First PTO in order to extend the Discovery Bar Date and the date for trial.

WHEREAS, this court granted the ECMC Motion To Extend on July 28, 2004 (*see* Adv. Pro. Doc. I.D. No. 22), and an amended First PTO (Adv. Pro. Doc. I.D. No. 23, the “Second PTO”) was entered on the same day. The Second PTO established a new Discovery Bar Date of September 30, 2004 and a new trial date of November 22, 2004. (*See id.*);

³ The First PTO is titled on its face “Amended Pretrial Order” but is in fact the first pretrial order issued in the Adversary Proceeding.

WHEREAS, on October 1, 2004, the Debtors filed a motion (Adv. Pro. Doc. I.D. No. 26, the “Debtors First Motion To Extend”) to amend the Second PTO in order to extend the Discovery Bar Date and the date for trial. This court granted the Debtors First Motion To Extend by an order entered on November 5, 2004 (*see* Adv. Pro. Doc. I.D. No. 27) and an amended Second PTO (Adv. Pro. Doc. I.D. No. 28, the “Third PTO”) was entered on the same day. The Third PTO established a Discovery Bar Date of November 15, 2004 and a trial date of December 13, 2004. (*See id.*);

WHEREAS, on December 10, 2004, the Debtors filed another motion (Adv. Pro. Doc. I.D. No. 34, the “Debtors Second Motion To Extend”) to amend the Third PTO in order to extend the Discovery Bar Date and the date for trial. This court granted Debtors Second Motion To Extend by an order entered on December 16, 2004 (*see* Adv. Pro. Doc. I.D. No. 35) and an amended Third PTO (Adv. Pro. Doc. I.D. No. 36, the “Fourth PTO”) was entered on the same day. The Fourth PTO established a Discovery Bar Date of January 24, 2005 and a trial date of February 28, 2005. (*See id.*);

WHEREAS, on February 7, 2005, ECMC filed a motion to compel discovery or, in the alternative, to dismiss the Complaint with prejudice and to impose a monetary sanction on the Debtors for attorney fees and expenses. (*See* Adv. Pro. Doc. I.D. No. 39, the “Motion To Compel.”);

WHEREAS, after two continuances, a hearing on the Motion To Compel was held on March 30, 2005 and the court (Dabrowski, C.J.) issued an order compelling the Debtors to respond to ECMC’s discovery requests with a deadline for compliance of April 29, 2005. (*See* Adv. Pro. Doc. I.D. No. 46, the “Discovery Order.”) The Discovery Order further provided that “if the [Debtors] fail[] to produce the documents requested, or correct inaccuracies in [their] interrogatory

responses, by April 29, 2005, the [Debtors'] adversary proceeding will be dismissed with prejudice.”
(*Id.*);

WHEREAS, on May 5, 2005, ECMC filed a motion for judgment (Adv. Pro. Doc. I.D. No. 48, the “Motion for Judgment”) and a “reclaimed” motion for monetary sanctions for attorney fees and costs in the amount of \$1,686.79 (*see* Adv. Pro. Doc. I.D. No. 49, the “Motion for Sanctions”) because the Debtors failed to comply with the court’s Discovery Order;

WHEREAS, a hearing (the “Hearing”) with respect to the Motion for Judgment and Motion for Sanctions was held on June 1, 2005;⁴

WHEREAS, at the conclusion of the Hearing, this court granted ECMC’s Motion for Judgment and issued an order (Adv. Pro. Doc. I.D. No. 54, the “June 1 Order”) dismissing the Adversary Proceeding with prejudice and retaining jurisdiction to rule on the Motion for Sanctions;

WHEREAS, the court, in its discretion, has the authority to impose monetary sanctions against a party that fails to obey an order compelling response to discovery under Rule 7037 of the Federal Rules of Bankruptcy Procedure. *See Stalford v. Blue Mack Transport, Inc. (In re Lands End Leasing, Inc.)*, 220 B.R. 226, 229 (Bankr. D.N.J. 1998) (explaining that Bankruptcy Rule 7037 incorporates Fed. R. Civ. P. 37(b)(2) in adversary proceedings). *See also Coan v. Hutter (In re Hutter)*, 207 B.R. 981, 986 (Bankr. D. Conn. 1997) (Shiff, J.);

WHEREAS, a decision to award monetary sanctions, such as attorney’s fees, is guided by equitable considerations, such as the noncomplying party’s ability to pay. *See Doering v. Union County Bd. of Chosen Freeholders*, 857 F.2d 191, 195 (3d Cir. 1988) (discussing Rule 11 sanctions);

⁴ References herein to the audio record of the Hearing appear in the following form: “Audio Record at __:__:__.”

Tedeschi v. Smith Barney, Harris Upham & Co., Inc., 579 F. Supp. 657, 664 (S.D.N.Y. 1984) (discussing Rule 11 sanctions, the court stated that, “[t]he assessment of fees against a non-prevailing litigant must be fair and reasonable based upon the particular circumstances of the case, including the financial resources and ability of the parties against whom the award is made and the financial status of the prevailing party.”). *See also In re Omega Trust*, 110 B.R. 665, 673 (Bankr. S.D.N.Y. 1990) (listing “[t]he good faith or bad faith of the offender; . . . [t]he impact of the sanction on the offender, including the offender’s ability to pay a monetary sanction; . . . [and the] impact of the sanction on the offended party, including the offended person’s need for compensation” as some factors taken into consideration by courts in determining the type of sanction to impose under Bankruptcy Rule 9011);⁵

WHEREAS, the court finds that there is sufficient evidence in the record that the Debtors are of limited means and at least one of the Debtors and / or one or more of their dependents suffer from various medical conditions that would impact the Debtors’ ability to pay any monetary sanctions imposed by the court. (*See* Case Doc. I.D. No. 1; Audio Record at 3:14:46 - 3:16:04.) Accordingly, the court has determined that \$1,686.79 in sanctions would harm the Debtors disproportionately more than the incurrence of a like amount of fees and costs harmed ECMC;

WHEREAS, the June 1 Order dismissing the Adversary Proceeding with prejudice constitutes a “drastic penalty” against the Debtors for failure to comply with ECMC’s discovery requests. *See, e.g., Salahuddin v. Harris*, 782 F.2d 1127, 1132 (2d Cir. 1986) (“It is well settled law

⁵ Given the paucity of Rule 7037 authority the court concludes that case law under Rule 9011 is apposite. The court has considered the other factors listed in *Omega Trust* and finds them not to be significant factors under the circumstances presented here.


in this Circuit that dismissal under Fed. R. Civ. P. 37 is a drastic penalty which should be imposed only in extreme circumstances.”) (internal quotations and citation omitted);

WHEREAS, the court finds that it has already imposed the harshest sanction of dismissal with prejudice on the Debtors and that equitable considerations, including the Debtors’ apparent inability to pay, and the balance of the harms between the parties persuades the court to decline to impose monetary sanctions against the Debtors;

NOW, THEREFORE, for the reasons set forth above, it is hereby **ORDERED** that the Motion for Sanctions is denied.

BY THE COURT

Dated: November 3, 2005


Lorraine Murphy Weil
United States Bankruptcy Judge