

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT

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IN RE: )  
 ) CASE NO. 03-35768 (LMW)  
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ROBERT E. FOX, )  
 ) CHAPTER 11  
 )  
DEBTOR. ) DOC. I.D. NOS. 308, 332  
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**APPEARANCES**

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**MEMORANDUM AND ORDER DENYING MOTION FOR SANCTIONS**

Lorraine Murphy Weil, United States Bankruptcy Judge

The matters before the court are (a) the above-referenced debtor’s (the “Debtor”) Motion for Sanctions Against Carol Feinberg and Her Counsel (Doc. I.D. No. 308, the “Motion”)<sup>1</sup> and (b) Carol

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<sup>1</sup> References herein to the docket of this chapter 11 case are in the following form: “Doc. I.D. No. \_\_\_\_.”

Feinberg's objection thereto (Doc. I.D. No. 332, the "Objection"). This court has jurisdiction over the foregoing as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and that certain Order dated September 21, 1984 of the District Court (Daly, C.J.).<sup>2</sup>

The Motion and the Objection came on for a hearing (the "Hearing") on June 14, 2006.<sup>3</sup> Post-hearing briefing is complete and the matters are ripe for decision. This memorandum constitutes the findings of fact and conclusions of law required by Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Rules") (made applicable here by Rule 9014 of the Rules).

## **I. BACKGROUND**

The Debtor commenced this bankruptcy case by the filing of a petition under chapter 7 of the Bankruptcy Code on November 24, 2003 (the "Petition Date"). The Debtor voluntarily converted his chapter 7 case to a case under chapter 11 of the Bankruptcy Code and an order (Doc. I.D. No. 84) to that effect was entered on February 25, 2005. The Debtor remains in possession and/or control of his assets and business affairs as debtor in possession pursuant to Bankruptcy Code §§ 1107 and 1108. The Debtor co-owns with his wife, Loretta Fox, a residence located at 15 Long Point Road, Branford, Connecticut (the "Fox Property").<sup>4</sup> The Fox Property is the subject of a prior

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<sup>2</sup> That order referred to the "Bankruptcy Judges for this District" "all cases under Title 11, U.S.C., and all proceedings arising under Title 11, U.S.C., or arising in or related to a case under Title 11, U.S.C. . . ." References herein to title 11 of the United States Code or to the Bankruptcy Code are references to the same as they appeared prior to the effective date of their amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

<sup>3</sup> A transcript of the Hearing appears in the docket of this case as Doc. I.D. No. 349 (the "6/14/06 Transcript"). References herein to the 6/14/06 Transcript appear in the following form: "6/14/06 Transcript at \_\_\_\_." References herein to exhibits placed in evidence by the Debtor at the Hearing appear in the following form: "Debtor Exh. \_\_\_\_."

<sup>4</sup> Mrs. Fox is a debtor in a separate chapter 11 case before this court, *see In re Loretta Erma Fox*, Chapter 11 Case No. 04-33468 (the "Other Case"). References herein to the docket of the Other Case appear in the following form: "Other Case Doc. I.D. No. \_\_\_\_."

decision of this court (Doc. I.D. No. 415, the “Prior Decision”) and is described more fully therein. The Prior Decision determined the value of the Fox Property to have been \$1,988,933.00 as of the Petition Date.

Among other assets, Ms. Feinberg owns a life interest in a property (the “Feinberg Property”) on Long Island Sound. (*See* Debtor Exh. 1 at 13, 16, 17.) The Feinberg Property abuts the Fox Property. (*See id.* at 19.)<sup>5</sup> On March 30, 2005, Ms. Feinberg<sup>6</sup> caused to be filed on the docket of this case an “Irrevocable Offer for the Purchase of Real Property Jointly Owned by Estates of Debtors Robert and Loretta Fox (Doc. I.D. No. 94, the “Original Offer”) in which Ms. Feinberg offered to purchase the interests of the Foxes in the Fox Property for \$2,000,000.00.<sup>7</sup> That the Foxes did not desire to sell the Fox Property is evidenced by the fact that there is pending before the court in this case confirmation of a plan of reorganization in which the Debtor proposes that he and his wife retain ownership of the Fox Property (unless the Debtor elects to sell the Property). (*See* Doc. I.D. No. 342 (the “Plan”) at Section III.B. (treatment for Class 3). The remaining relevant events are set forth below in chronological order.

An “Assignment and Transfer of Michael Johnston Claim Other Than for Security and Waiver of Notice” was filed in this case on September 16, 2005. (*See* Doc. I.D. No. 138, the “Assignment”.) The Assignment memorializes the purchase by Ms. Feinberg of a certain judgment claim in the amount of \$4,191.75 owned by one Michael Johnston. (*See id.*) Ms. Feinberg paid

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<sup>5</sup> Debtor Exh. 1 is a transcript of a deposition (the “Feinberg Deposition”) of Ms. Feinberg conducted by counsel for the Debtor in Bridgeport, Connecticut on December 8, 2005. Ms. Feinberg’s children hold the remainder interest with respect to the Feinberg Property.

<sup>6</sup> All Ms. Feinberg’s filings in this case and in the Other Case were effectuated through (and, where necessary, signed by) counsel.

<sup>7</sup> A similar document was filed in the Other Case on March 29, 2005. (*See* Other Case Doc. I.D. No. 46.)

\$2,500.00 for the Assignment. (*See* Debtor Exh. 1 at 36.)<sup>8</sup> Prior to the Assignment, Ms. Feinberg was not a creditor in this case. (*See id.* at 29.) Also on September 16, 2005, the Debtor filed a motion further to extend the period (the “Exclusivity Period”) within which the Debtor had the exclusive right to propose and confirm a chapter 11 plan in this case. (*See* Doc. I.D. No. 141, the “Exclusivity Motion”).) On October 7, 2005, (a) RFC Property I, Inc. (“RFC”)<sup>9</sup> filed an objection (Doc. I.D. No. 160, the “RFC Exclusivity Objection”) to the Exclusivity Motion, and (b) Ms. Feinberg also filed an objection (Doc. I.D. No. 161, the “Feinberg Exclusivity Objection”) to the Exclusivity Motion. On October 10, 2005, that certain Motion of Carol Feinberg for Joint Administration with Related Case of Loretta Fox (Doc. I.D. No. 162, the “Feinberg JA Motion”) was filed. On October 12, 2005, that certain Motion of Carol Feinberg for Conversion of Case or Appointment of a Chapter 11 Trustee (Doc. I.D. No. 177, the “Feinberg Conversion/Trustee Motion”) was filed.

On November 9, 2005, a motion was filed on Ms. Feinberg’s behalf (Doc. I.D. No. 210, the “Feinberg Protective Motion”) seeking to strike notice of a deposition of Ms. Feinberg by the Debtor or, in the alternative, entry of an order directing that the Debtor’s discovery with respect to Ms. Feinberg be taken by written interrogatories, document requests and/or admissions. (*See id.*) The Debtor filed an objection thereto (Doc. I.D. No. 215) on November 14, 2005. The Feinberg

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<sup>8</sup> It is uncontested that the Johnston claim is an allowed claim. It also is uncontested that Ms. Feinberg is not a creditor in the Other Case. (*See id.*)

<sup>9</sup> RFC holds by assignment a judgment claim in the amount of \$185,488.13 owned by Duane H. Gillman, Chapter 7 Trustee of Western Mill and Fixture Co., Inc. (the “Western Mills Trustee”) rendered against the Debtor in the United States Bankruptcy Court for the District of Utah. (*See* Proof of Claim Nos. 1, 351; Doc. I.D. Nos. 352, 374.)

Protective Motion and the Debtor's objection thereto were settled without a hearing and the Feinberg Deposition was conducted as noted above.

On December 28, 2005, Ms. Feinberg filed a Request for Judicial Notice (Doc. I.D. No. 230, the "Feinberg JN Request") requesting the court to take judicial notice of certain docket entries in the adversary proceeding brought by the Western Mills Trustee against the Debtor in the Utah Bankruptcy Court. On January 6, 2006, Ms. Feinberg filed a Renewed Irrevocable Offer for the Purchase of Real Property Jointly Owned by Estates of Debtors Robert and Loretta Fox (Doc. I.D. No. 238, the "Renewed Offer") again offering to purchase the Fox's respective interests in the Fox Property for an aggregate payment of \$2,000,000.00.<sup>10</sup>

On January 9, 2006, National Wood Products, Inc. ("NWP")<sup>11</sup> filed a "[j]oinder" (Doc. I.D. No. 240, the "NWP Joinder") in the Feinberg Conversion/Trustee Motion. On January 9, 2006, the Debtor filed an "objection" of the Debtor to a subpoena served upon him by Ms. Feinberg apparently in anticipation of the January 10, 2006 hearing discussed below. (*See* Doc. I.D. No. 244.) Also on January 9, 2006, the Debtor filed (a) an objection (Doc. I.D. No. 247, the "Debtor Conversion/Trustee Objection") to the Feinberg Conversion/Trustee Motion and (b) an objection (Doc. I.D. No. 243, the "Debtor JN Objection") to the Feinberg JN Request. Also on January 9, 2006, EMC Mortgage Corporation ("EMC") filed a motion (Doc. I.D. No. 246, the "EMC JA Motion") to administratively consolidate this case and the Other Case.<sup>12</sup>

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<sup>10</sup> A similar document was not filed in the Other Case.

<sup>11</sup> NWP Is a judgment creditor in this case. (*See* Prior Decision.)

<sup>12</sup> EMC holds the first mortgage on the Fox Property. (*See id.*)

On January 10, 2006, a hearing (the “1/10/06 Hearing”) was held in this case.<sup>13</sup> At that hearing, Ms. Feinberg (through counsel) conceded that the sole motive for her actions in this case was her desire to purchase the Fox Property. (*See* 1/10/06 Transcript at 11; *cf.* Debtor Exh. 1.) By orders of the court, the Feinberg Conversion/Trustee Motion and the Feinberg J/N Request were denied, the Feinberg Exclusivity Objection was overruled and the Debtor Conversion/Trustee Objection and the Debtor J/N Objection were sustained,<sup>14</sup> all on the grounds that (given the referenced concession) the foregoing documents were “filed in bad faith, and . . . [Ms. Feinberg] may not prosecute” (1/10/06 Transcript at 11:8-9). (*See* Doc. I.D. Nos. 251, 252, 253, 254, 255 (all issued January 10, 2006, the “1/10/06 Orders”).) The Exclusivity Period was extended to April 24, 2006 (subject to conditions agreed to among the Debtor, RFC and the United States Trustee at the 1/10/06 Hearing). (*See* Doc. I.D. No. 265 ( issued January 17, 2006, the “1/17/06 Order”).) The NWP Joinder was deemed to be a motion by NWP to appoint a chapter 11 trustee or to convert this case to a case under chapter 7, and the hearing thereon was to be combined with the hearing on the disclosure statement. (*See* 1/10/06 Transcript at 11, 28.)<sup>15</sup> Ms. Feinberg functionally exited the case after the 1/10/06 Hearing and was not heard from again until the Objection was filed in response to the Motion. As noted above, confirmation of the Plan is pending in this case. NWP filed an objection to Plan confirmation. (Doc. I.D. No. 365.) A hearing on that objection is pending.

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<sup>13</sup> A transcript of the 1/10/06 Hearing is in the record of this case as Doc. I.D. No. 281. References herein to that transcript appear in the following form: “1/10/06 Transcript at \_\_\_\_.”

<sup>14</sup> The Feinberg JA Motion had been continued without date by the court in open court on November 21, 2005 and still technically remains pending.

<sup>15</sup> The hearing on the NWP Joinder was marked “off” on August 16, 2006. On March 24, 2006, RFC filed a motion for appointment of a chapter 11 trustee. (*See* Doc. I.D. No. 291, the “RFC Trustee Motion.”) The hearing on the RFC Trustee Motion was marked “off” on August 16, 2006. The Debtor’s objection to the claim of RFC was settled by a stipulation filed on August 29, 2006. (*See* Doc. I.D. No. 374.)

## II. ANALYSIS

The Motion was filed on April 26, 2006. The Motion seeks imposition of sanctions against Ms. Feinberg and her attorneys in respect of her filings and/or other activities in this case pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure, 28 U.S.C. § 1927 and 11 U.S.C. § 105(a) (this court's inherent authority to curtail abusive litigation practices). The Objection was filed by Ms. Feinberg apparently on behalf of all the respondents.

Local District Rule 11 for United States District Court for the District of Connecticut provides as follows:

**(a) Motion for Attorneys' Fees and/or Sanctions.** Motions for attorneys' fees or sanctions shall be filed with the Clerk and served on opposing parties within 30 days of the entry of judgment. Any motions not complying with this rule shall be denied.

D. Conn. L. Civ. R. 11. Local District Rule 11 applies in this court pursuant to Rule 1001-1 of this Court.<sup>16</sup> In this case, the court deems the Local District Rule 11 "judgment" to have been entered when the 1/10/06 Orders and/or the 1/17/06 Order were entered in accordance with this court's determination of Ms. Feinberg's lack of standing at the 1/10/06 Hearing.<sup>17</sup> The court construes

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<sup>16</sup> Rule 1001-1(b) of the Local Rules of Bankruptcy Procedure provides in relevant part as follows:

All local Rules of Civil Procedure of the United States District Court for the District of Connecticut shall apply in cases or proceedings in the Bankruptcy Court insofar as they are relevant and not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Rules of Bankruptcy Procedure, and the case management procedures applicable at the seat of the Bankruptcy Court to which the case or proceeding has been assigned.

D. Conn. LBR 1001-1.

<sup>17</sup> *Cf.* Fed. R. Bankr. P. 9001(7) ("Judgment" means any applicable order."). It is apparent from the portions of the 1/10/06 Hearing quoted above that the Debtor won his victory over Ms. Feinberg (*i.e.*, Ms. Feinberg's right to participate in this case was terminated) in January, 2006. Accordingly, the court attaches no significance to the fact that the Feinberg JA Motion has not

Local District Rule 11 to apply to *all* motions for sanctions not just motions for sanctions under Rule 11 of the Federal Rule of Civil Procedure. The Motion was filed on April 26, 2006 and, accordingly, is untimely under Local District Rule 11 except, perhaps, with respect to the Original Offer and the Renewed Offer. Ms. Feinberg's filing of the Original Offer and the Renewed Offer may have been an unorthodox way of communicating to the Debtor and other parties in interest her desire to purchase the Fox Property but, under the circumstances presented here, those two acts are not themselves sanctionable.<sup>18</sup>

### III. CONCLUSION

For the foregoing reasons, the Motion shall be denied and the Objection shall be sustained.

It is **SO ORDERED**.

Dated: December 4, 2006

BY THE COURT

  
Lorraine Murphy Weil  
United States Bankruptcy Judge

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technically been denied and/or that the Assignment was not itself the subject of proceeding (other than in respect of the 1/10/06 Hearing).

<sup>18</sup> Further, it has not been established that the Debtor has complied with the mandatory notice requirements of Rule 9011. *Cf. In re Szabo Contracting, Inc.*, 283 B.R. 242, 258 (Bankr. N.D. Ill. 2002) (Compliance with Rule 9011 notice requirement mandatory). *See also Martens v. Thomann*, 273 F.3d 159, 178 (2d Cir. 2001) (same under 1993 version of Rule 11). The court expresses no opinion as to whether Ms. Feinberg's other filings and acts in this case would have been sanctionable had the Motion been timely filed.