

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

District Court and it's really the most appropriate court to hear it in light of the facts and circumstances of this case.³

In re:

Case No. 6:01-bk-00533-ABB
Chapter 11

The Movant established no basis for the relief requested. The *ore tenus* motion was denied and the final evidentiary hearing proceeded.

EVERGREEN SECURITY, LTD.,

Debtor.

The Sanctions Motions were filed by Evergreen Securities, Ltd. pursuant to Federal Rule of Bankruptcy Procedure 9011 and 28 U.S.C. Section 1927. Rule 9011(c) empowers a bankruptcy court to determine whether a violation of Rule 9011 has occurred and impose appropriate sanctions for a violation. Motions for Rule 9011 sanctions are "core" proceedings over which bankruptcy courts have subject matter jurisdiction. 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(A), (b)(2)(O), 1334(a), (b); Polo Bldg. Group v. Rakita (In re Shubov), 253 B.R. 540, 543 (B.A.P. 9th Cir. 2000). A bankruptcy court retains jurisdiction to impose sanctions against a litigant even after dismissal of the case. In re Whitney Place Partners, 123 B.R. 117, 120 (Bankr. N.D. Ga. 1991), *aff'd*, 966 F.2d 681 (11th Cir. 1992). This Court has subject matter jurisdiction to hear and determine the sanctions matters pursuant to Rule 9011 and 28 U.S.C. Sections 157 and 1334.

ORDER

This matter came before the Court on the *ore tenus* motion made by Peter R. Ginsburg and Peter R. Ginsburg, P.C. (collectively, the "Movant") on August 28, 2007 at the commencement of the final evidentiary hearing on the Sanctions Motions (Doc. Nos. 1542 and 1624) and the Order to Show Cause (Doc. No. 1700) pending against the Movant in connection with the Movant's signing, filing, and advocating of the Recusal Motion.¹ The Movant requested the sanctions matters be heard by the United States District Court for the Middle District of Florida, Orlando Division ("District Court")²:

In a situation such as this, where the Court believes that it is personally under attack or has been personally maligned in some way, we believe that the law requires that the Court set this matter to another judge, an independent judge, a judge who's not influenced at all by the perceived attacks on the Court. Therefore, we would renew our motion to have this matter heard by the

The Court previously ruled in its July 17, 2007 Order (Doc. No. 1685) it has authority to conduct an evidentiary hearing on Evergreen's 28 U.S.C. Section 1927 Motion and to submit proposed findings of fact and conclusions of law to the District Court pursuant to 28 U.S.C. Section 157(c)(1). No reconsideration of the July 17, 2007 Order was sought. This Court is authorized to hear and determine the 28 U.S.C. Section 1927 Motion.

The Court is vested with subject matter jurisdiction of the sanctions matters pursuant to 11 U.S.C. Section 105(a) and its inherent powers. The Order to Show Cause was issued pursuant to 11 U.S.C. Section 105(a) and the Court's inherent powers. Section 105(a) sets forth "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Court, in addition to its Section 105(a) and Rule 9011 powers, has inherent power to sanction wrongful

¹ The Movant and others filed a Motion for Recusal, Motion to Disqualify, Disclosure of All Ex Parte Communications and Revocation of All Prior Orders (Doc. No. 1508) ("Recusal Motion") on July 27, 2006 seeking, among other things, recusal of the undersigned Judge from further involvement in this case and various other cases involving the Movant. The Recusal Motion was denied by Order entered on February 27, 2007 (Doc. No. 1643).

² Aug. 28, 2007 Hr'g Tr. vol. 1, pp. 50-3.

³ Id. p. 50, ll.21-5, p. 51, ll.1-5.

conduct. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); Glatter v. Mroz (In re Mroz), 65 F.3d 1567, 1575 (11th Cir. 1995). This Court is empowered by Section 105(a) and its inherent powers to determine the sanctions matters.

Dated this 2nd day of January, 2008.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

No basis for transferring a matter to another court exists where the party seeking transfer made disparaging remarks about the presiding judge:

A party cannot cast sinister aspersions, fail to provide a factual basis for those aspersions, and then claim that the judge must disqualify herself because the aspersions, *ex proprio vigore*, create a cloud on her impartiality.

In re United States, 158 F.3d 26, 35 (1st Cir. 1998). “A party cannot force disqualification by attacking the judge and then claiming that these attacks must have caused the judge to be biased against [her].” F.D.I.C. v. Sweeney, 136 F.3d 216, 219 (1st Cir. 1998). Even where a judge who presides at trial is “exceedingly ill disposed towards” a party upon completion of the evidence, grounds for disqualification do not exist:

“Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions.”

Liteky v. U.S., 510 U.S. 540, 550-51 (1994) (*citation omitted*).

The Movant has not established this Court is without jurisdiction to determine the sanctions matters. The Movant has presented no basis for transferring the sanctions matters to the District Court. This Court has jurisdiction to enter final orders on the sanctions matters.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Movant’s *Ore Tenus* Motion made on August 28, 2007 is hereby **DENIED**.