

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re )  
 )  
MICHAEL JOHN WRIGHT, ) Case No. 6:10-bk-09884-KSJ  
 ) Chapter 7  
 Debtor. )  
 )  
\_\_\_\_\_ )

ORDER SCHEDULING EVIDENTIARY HEARING ON DEBTOR'S  
MOTION FOR SANCTIONS AGAINST WELLS FARGO BANK

This case came on for hearing on January 4, 2011, on the debtor's motion for sanctions against Wells Fargo, N.A., and Wells Fargo's response.<sup>1</sup> At the hearing, the parties presented oral argument on the sole issue of whether the debtor even has standing to assert a violation of the automatic stay. The Court then took the standing issue under advisement. The Court now finds the debtor has demonstrated sufficient standing, at least at this preliminary stage, to warrant an evidentiary hearing on all issues, including standing, raised in the debtor's motion for sanctions.

The standing issue, in short, is whether the debtor, Michael John Wright, has incurred sufficient injury to seek damages against Wells Fargo<sup>2</sup> for freezing an exempt bank account he co-owns with his non-debtor wife *before* the debtor's claim of exemption fully vested.<sup>3</sup> The debtor argues he has standing because he has a strong interest in the exempt-claimed account funds and that his inability to access his bank account funds cause him significant harm. Wells Fargo responds that, because the time for the Chapter 7 trustee to object to the debtor's claim of exemption in the bank account had not run, the account funds were property of the bankruptcy estate and the debtor thus did not have a legal interest in his own bank account at this time. Therefore, the bank

<sup>1</sup> The debtor filed a motion for sanctions on September 3, 2010 (Doc. No. 13). Wells Fargo filed an objection and memorandum of law in response to the debtor's motion (Doc. No. 24).

<sup>2</sup> As successor by merger to Wachovia Bank, N.A.

<sup>3</sup> Under the Constitutional standing requirement, a movant must allege (1) an injury in fact, (2) causation, and (3) redressability. *Sprint Communications Co., L.P. v. APCC Services, Inc.*, 554 U.S. 269, 273-74 (2008) (quotations omitted) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Wells Fargo here challenges only the "injury in fact" prong of this test.

argues the debtor cannot possibly prove he was injured by the bank's freeze on his monies during this time and, as such, lacks standing.

The Court finds the debtor has demonstrated sufficient cause, at least on a preliminary basis, to warrant an evidentiary presentation on *both* the standing issue and the merits of the debtor's motion for sanctions. The debtor has alleged Wells Fargo injured him by asserting control over his and his wife's exempt bank account. Pursuant to 11 U.S.C. § 522(l), the debtor holds a presumptive interest in the account funds that was affected by Wells Fargo's actions in freezing access to the monies, until a party objects to the exemption. Here, no objection was ever filed. The debtor thus has preliminarily alleged an adequate injury in fact sufficient to establish standing. Accordingly, the parties are directed to present evidence on all issues raised by the debtor's motion for sanctions, including standing and the rationale behind Wells Fargo's action in freezing the debtor's account, at a final evidentiary hearing set for **2:00 p.m. on May 16, 2011**. The Court specifically directs Wells Fargo to send a designated representative to the evidentiary hearing with knowledge of Wells Fargo's practice of freezing debtor bank accounts, even when the bank is not a creditor of the debtor.

DONE AND ORDERED in Orlando, Florida, March 28, 2011.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with a stylized flourish at the end.

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KAREN S. JENNEMANN  
United States Bankruptcy Judge

Copies provided to:

Debtor: Michael John Wright, 343 Still Forrest Terrace, Sanford, FL 32771

Debtor's Attorney: Kenneth D. Herron, Jr., 1851 W. Colonial Drive, Orlando, FL 32804

Trustee: Robert E. Thomas, P.O. Box 5075, Winter Park, FL 32793-5075

United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32801

Laurie Pugh, Wachovia Bank, P.O. Box 3908, Portland, OR 97208-3908

John G. Stumpf, Chairman and CEO, Wells Fargo & Company, 420 Montgomery Street, San Francisco, CA 94104

Keith Appleby, Fowler White Boggs PA, P.O. Box 1438, Tampa, FL 33601