

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)
)
AIDA'S PARADISE, LLC,) Case No. 6:12-bk-00189-KSJ
) Chapter 11
Debtor.)
)
_____)

**ORDER DENYING MOTION FOR SANCTIONS AND
FOR AWARD OF ATTORNEYS' FEES AGAINST THE ROY LAW FIRM**

Creditor TD Bank seeks sanctions against the Roy Law Firm for withholding documents necessary to determining the value of debtor's real property located on International Drive (the "Property").¹ In connection with a motion to value the Property,² TD Bank issued a subpoena against the Roy Law Firm seeking any correspondence and documents between the Roy Law Firm and third parties related to the Debtor's assets and TD Bank's loan and security interest in the Property.³ Specifically, TD Bank sought copies of a joint venture proposal outlining the terms of a sale of the Property, which TD Bank argues is a relevant and persuasive indication of value.

Upon receipt of the subpoena, The Roy Law Firm filed a Motion for Protective Order contending that the response time required by the subpoena was unreasonable, the requests were vague and the information requested was irrelevant or privileged.⁴ Instead of filing a motion to

¹ Doc. No. 141.

² Doc. No. 68.

³ Doc. No. 141 at 2-3 and Exhibit A.

⁴ Doc. No. 96.

compel, TD Bank sent numerous emails offering to “work” with the Roy Law Firm and providing a more specific list of documents it was seeking.⁵

TD Bank did not obtain the documents it requested and continued to pressure The Roy Law Firm through email communication. On the morning of the initial valuation hearing, The Roy Law Firm finally produced unexecuted versions of the joint venture documents as requested, indeed were relevant and which helped corroborate TD Bank’s proposed value.⁶ At the hearing, the Court denied The Roy Law Firm’s motion for protective order,⁷ finding the documents were relevant and obviously were not burdensome to produce.

TD Bank now seeks sanctions against The Roy Law Firm, arguing debtor’s special foreclosure counsel, William Roy, improperly withheld documents. Mr. Roy, denies that he withheld any documents which were the subject of the subpoena and argues he did not have a copy of the *executed* letter of intent to produce.⁸ He also continues to argue the letter of intent was not relevant because it was not a binding contract or agreement, and he in good faith provided all documents which were actually relevant to the value of the Property, albeit belatedly.⁹

Bankruptcy Rule 7037, which incorporates Federal Rule of Civil Procedure 37, allows a Court to award expenses, including attorney fees, if a motion for protective order is denied.¹⁰ Here, Mr. Roy chose to file a Motion for Protective Order which was denied. The decision to impose sanctions lies within the sound discretion of the court.¹¹ In this case, based on the facts presented, the Court, exercising her discretion, denies TD Bank’s request to impose sanctions against The Roy Law Firm.

⁵ Doc. No. 141 Exhibit C.

⁶ Doc. No. 141 at 4.

⁷ Doc. No. 135.

⁸ Doc. No. 151 at ¶17.

⁹ *Id.* at 23-28.

¹⁰ Federal Rule of Civil Procedure 37(a)(5)(B) (as incorporated by Bankruptcy Rule 7037).

¹¹ *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1109 (9th Cir. 2005); *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503 (4th Cir. 1977) (citing *General Dynamics Corp. v. Selb Manufacturing Co.*, 481 F.2d 1204, 1211 (8th Cir. 1973)).

After the initial valuation hearing on September 7, 2012, but before the conclusion of evidence on December 19, 2012, TD Bank was in possession of the relevant executed letter of intent and joint venture agreement. The Bank had ample opportunity at the two later hearing dates on October 23 and December 19, 2012, to submit the agreement into evidence.¹² Although untimely, TD Bank was not prejudiced by Mr. Roy's seemingly disingenuous failure to produce. Furthermore, TD Bank could have but never filed a proper motion to compel. Instead, TD Bank relied on email persuasion to "work with" Mr. Roy in the production of documents.¹³ The Court simply cannot find Mr. Roy sufficiently culpable, the Bank sufficiently prejudiced, or either party sufficiently blameless to justify sanctions. Accordingly, the Court will deny TD Bank's Motion for Sanctions against The Roy Law Firm (Doc. No. 141).

DONE AND ORDERED in Orlando, Florida this 28th day of December, 2012.



KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

¹² Exhibit No. 20 was entered into evidence October 23, 2012.

¹³ The Advisory Committee Notes to Federal Rule 37 "make it clear that the interrogating party must move to compel answers." Fed.R.Civ.P. 37 Advisory Committee Notes in Subdivision (a) – 1970 Amendment and 1993 Amendments.