UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	Case No. 3:11-bk-2019-PMG
Allen L. Moore, Angelia P. Moore, Debtors.	Chapter 7
Angelia P. Moore, Plaintiff,	
vs.	Adv. No. 3: 11-ap-1016-PMG
Precision Recovery Analytics, Inc., f/k/a Paragon Way, Inc., Michael Crossan, Defendants.	

ORDER ON DEFENDANTS' MOTION FOR SANCTIONS PURSUANT TO BANKRUPTCY RULE OF PRACTICE AND PROCEDURE 9011

THIS CASE came before the Court for hearing to consider the Motion of the Defendants, Precision Recovery Analytics, Inc. (Precision) and Michael Crossan (Crossan), for Sanctions Pursuant to Bankruptcy Rule of Practice and Procedure 9011. (Doc. 86).

The Debtor, Angelia P. Moore, commenced this adversary proceeding by filing a Complaint against Precision and Crossan (collectively, the Defendants) for damages based upon the Defendants'

willful violation of the automatic stay and discharge injunction. In the Motion for Sanctions, the Defendants assert that a number of inaccuracies appear in the Complaint, and that the inaccuracies show that the Debtor and her attorney had not conducted a reasonable investigation of the claims prior to filing the Complaint, in accordance with the requirements of Rule 9011.

For sanctions to be warranted under Rule 9011, the Court must find that the Debtor's Complaint was objectively frivolous, and that the person who signed the Complaint should have been aware that it was frivolous. The Defendants assert that the Debtor's allegations of a "willful" stay violation are frivolous, because they were not listed as creditors on the Debtor's bankruptcy schedules, and therefore did not receive notice of the Chapter 7 petition. Based on the record, however, the Court cannot determine whether the Defendants had actual knowledge of the Debtor's bankruptcy case before the alleged violations of the stay occurred. Accordingly, the Court cannot find that the Debtor's allegations of a willful stay violation are frivolous, and the Defendants' Motion for Sanctions should be denied.

Background

On February 28, 2011, Precision filed an action against the Debtor in the state court in Duval County, Florida. Generally, Precision alleged that the Debtor had obtained a loan from GE Money Bank, that the debt had been assigned to Precision, and that the Debtor had not repaid the loan in accordance with the terms of the agreement. According to the state court action, the Debtor owed Precision the sum of $4,087.12.

On March 23, 2011, the Debtor filed a petition under Chapter 7 of the Bankruptcy Code. In her schedules, the Debtor listed Paragon Way, Inc. as an unsecured creditor in the amount of $4,087.00, with the notation "collection – GE Money Bank/Care." The Debtor also listed GE Money Bank for

"notice only," with the notation "representing: Paragon Way, Inc." Precision was not listed as a creditor on the Debtor's schedules.

On April 14, 2011, after the bankruptcy petition was filed, Precision obtained a default against the Debtor in the state court action.

On May 27, 2011, the state court entered a Default Final Judgment in favor of Precision and against the Debtor in the principal amount of $4,087.12, plus interest and costs.

On July 13, 2011, a Discharge of Joint Debtors was entered in the Debtor's Chapter 7 case.

On October 26, 2011, Precision obtained a Writ of Garnishment in the state court action.

On December 7, 2011, the Debtor filed a Complaint in this Court against GE Capital, Precision, and Precision's president. In the Complaint, the Debtor alleges that the Defendants knowingly violated the automatic stay and the discharge injunction by prosecuting the state court action after the bankruptcy petition had been filed.

In the Motion currently under consideration, the Defendants contend that the Complaint contains a number of inaccuracies that could have been prevented if the Debtor and her attorney had conducted a reasonable investigation of the facts as required by Rule 9011. The alleged inaccuracies generally involve (1) whether Precision and Paragon Way, Inc. are "the same entities," or whether they are separate and distinct, (2) whether Crossan was an officer of Precision at the time of the alleged violations, and (3) whether Precision lacked notice of the bankruptcy case as a result of the Debtor's failure to schedule Precision as a creditor. (Doc. 86, pp. 3-5). By failing to investigate these matters, the Defendants assert that the Debtor and her attorney did not comply with the standards of Rule 9011,

and should be jointly liable for the costs and attorney's fees incurred by the Defendants in defending against the Complaint.

Discussion

The Defendants' Motion for Sanctions should be denied. Based on the record, the Court cannot determine that the Debtor and her attorney violated Rule 9011 by filing the Complaint for violation of the automatic stay and discharge injunction.

A. The Complaint

In the Complaint, the Debtor alleges that Precision filed a prepetition action against her in state court to collect a debt, and that Precision continued to prosecute the action after the filing of her bankruptcy case. (Doc. 1, ¶¶ 9-13). The Debtor further alleges:

> 18. At all times pertinent, GE Capital, Precision Recovery and Mr. Crossan had knowledge of Ms. Moore's bankruptcy and intended the actions that violated 11 U.S.C. §362(a) and 11 U.S.C. §524.

(Doc. 1, ¶ 18). Consequently, the Debtor seeks an award of damages in her favor based upon the Defendants' knowing violation of the stay and discharge injunction. (Doc. 1, ¶¶ 20, 21).

It is well-established that a Court may award damages based upon a knowing or willful violation of the automatic stay.

> While any violation of the stay is prohibited under §362, damages are only awarded where the violation is "willful." A willful violation of a stay "occurs when the creditor '(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay.'" (Citations omitted). Willfulness requires either "actual knowledge that a bankruptcy is under way," *Randolph v. IMBS, Inc.*, 368 F.3d 726, 728 (7th Cir. 2004), or, as some courts have held, "notice of sufficient facts to cause a reasonably prudent person to make additional inquiry to determine whether a bankruptcy petition has been filed." *In re Sansone*, 99 B.R. 981, 984 (Bankr. C.D. Cal. 1989)(citations omitted).

In re White, 410 B.R. 322, 326 (Bankr. M.D. Fla. 2009). For purposes of determining "willfulness," notice of the bankruptcy "need not be a formal notice of the commencement of a case where the creditor has sufficient facts which would cause a reasonably prudent person to make further inquiry." In re McBride, 473 B.R. 813, 820 (S.D. Ala. 2012)(quoting In re Bragg, 56 B.R. 46, 49 (Bankr. M.D. Ala. 1985)).

B. The Motion for Sanctions

The Defendants contend that the Debtor and her attorney violated Rule 9011 by filing the Complaint, because they cannot allege that Precision and Crossan had knowledge of the Debtor's bankruptcy case at the time that the alleged stay violations occurred. According to the Defendants, Precision was not listed as a creditor on the Debtor's schedules, and therefore did not receive notice of the commencement of the case.

> Had Plaintiff or her counsel accurately listed PRA on Schedule F in light of the pending collection lawsuit, PRA would have received notice of the bankruptcy. Plaintiff's failure to accurately complete Schedule F resulted in PRA not receiving notice of the lawsuit and prevents Plaintiff from now claiming that PRA violated the Bankruptcy Code.

(Doc. 86, p. 5). Based on the asserted defects in the Complaint, the Defendants seek an award of their attorney's fees and costs pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure and §105 of the Bankruptcy Code.

Rule 9011(b) of the Federal Rules of Bankruptcy Procedure provides that the presentation of a paper to the Court is a certification that the paper is proper and warranted "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances." Fed.R.Bankr.P. 9011(b).

If the Court determines that Rule 9011(b) has been violated, Rule 9011(c) provides that the Court may impose an appropriate sanction on the attorneys or parties who committed the violation. Fed.R.Bankr.P. 9011(c).

> The objective standard for testing conduct under Rule 11 is "reasonableness under the circumstances" and "what was reasonable to believe at the time" the pleading was submitted. This court requires a two-step inquiry as to (1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleadings should have been aware that they were frivolous. . . . Although sanctions are warranted when the claimant exhibits a "deliberate indifference to obvious facts," they are not warranted when the claimant's evidence is merely weak but appears sufficient, after a reasonable inquiry, to support a claim under existing law.

Mortgage Electronic Registration Systems, Inc. v. Malugen, 2012 WL 1382265, at 6 (M.D. Fla.)(quoting Baker v. Alderman, 158 F.3d 516, 524 (11th Cir. 1998)). Thus, an objective standard is applied in determining whether an attorney or party has violated Rule 9011, consistent with the Rule's purpose of deterring only frivolous lawsuits. MERS v. Malugen, 2012 WL 1382265, at 7.

C. Conclusion

In this case, it appears undisputed that Precision was the plaintiff in the prepetition collection action against the Debtor, and that the post-petition collection efforts were undertaken on behalf of Precision. The collection action was filed by Precision as "assignee of GE Money Bank's right to be repaid by" the Debtor. (Doc. 53, Exhibit 3, ¶ 11).

It also appears undisputed that the Debtor listed Paragon Way, Inc. on her schedule of unsecured creditors as the collection agent for the GE Money Bank debt. (Main Case, Doc. 1).

The Defendants assert that the listing of Paragon Way, Inc. was insufficient to provide Precision with notice of the bankruptcy, because Precision and Paragon Way are separate and distinct entities. (Doc. 86, p. 3). Accordingly, the Defendants contend that Precision's post-petition collection actions

were not taken with knowledge of the bankruptcy petition, and therefore were not "willful" violations of the automatic stay and discharge injunction.

As shown above, however, a violation of the stay may be willful where the party either had actual knowledge of the case, or notice of sufficient facts to support an additional inquiry. In re White, 410 B.R. at 326. Formal notice of the commencement of the case is not the controlling factor. In re McBride, 473 B.R. at 820.

In this case, the record indicates that Precision and Paragon Way shared the same physical address, and that the two entities may have a contractual or operating relationship. The Annual Reports filed by Precision and Paragon Way on May 18, 2011, for example, reflect that both entities shared the same "current principal place of business" and "current mailing address" in Austin, Texas. (Doc. 86, Exhibits 1C, 1D). Additionally, the record indicates that Precision and Paragon Way may have entered into a Service and Management Agreement in 2006 whereby Paragon Way agreed to service or manage certain loans acquired by Precision. (Doc. 53, Exhibit B, p. 2).

Paragon Way was listed as a creditor on the Debtor's schedules, and received notice of the filing of the case. Given the apparent contractual and physical connection between the two entities, the Court cannot determine whether Precision also received knowledge or notice of the Debtor's bankruptcy case before the alleged stay violations occurred. Under these circumstances, the Court cannot find that the Debtor's Complaint for willful violation of §362 and §524 was frivolous, or that the Debtor and her

attorney should have been aware that it was frivolous at the time that it was filed. The Defendants' Motion for Sanctions should be denied.

Accordingly:

IT IS ORDERED that the Motion of the Defendants, Precision Recovery Analytics, Inc. and Michael Crossan, for Sanctions Pursuant to Bankruptcy Rule of Practice and Procedure 9011 is denied.

DATED this 19 day of June, 2013.

BY THE COURT

Paul M. Glenn

_____

PAUL M. GLENN
United States Bankruptcy Judge