

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

Case No. 3:14-bk-4766-PMG

John Riley O'Steen  
d/b/a Riley O'Steen Dairy,  
and Ashley Koon O'Steen,

Debtors.

Chapter 7

**ORDER ON (1) MOTION FOR SANCTIONS AND FOR AWARD OF ATTORNEYS' FEES  
AND COSTS, AND (2) MOTION TO STRIKE MOTION FOR SANCTIONS**

**THIS CASE** came before the Court for hearing to consider (1) Lafayette State Bank's Motion for Sanctions and for Award of Attorneys' Fees and Costs, and (2) the Debtors' Motion to Strike the Bank's Motion for Sanctions. (Docs. 202, 204).

In the Motion, the Bank asserts that the Debtors intentionally misrepresented both the scheduled claims and the filed claims in their bankruptcy case in an attempt to qualify for relief under Chapter 12 of the Bankruptcy Code. The Bank also asserts that the Debtors separately misrepresented certain contacts between the Bank's attorney and their creditors. Finally, the Bank asserts that it was injured by the Debtors' misrepresentations, and therefore seeks an award of damages pursuant to Section 105(a) of the Bankruptcy Code and Rule 9011(b) of the Federal Rules of Bankruptcy Procedure.

Generally, a motion for sanctions under Rule 9011 must be filed promptly after the moving party identifies the alleged violation, and before the Court enters a final determination on the offending papers. In this case, the Motion for Sanctions is not timely, because it was filed almost three years

after the Bank first challenged the Debtors' schedules and claims, almost two years after the case was converted to a liquidating Chapter 7 case, and more than one year after the Court entered a final determination on the Debtors' representations regarding the contacts between the Bank's attorney and their creditors. Accordingly, the Bank's Motion for Sanctions should be denied.

### **Background**

On September 30, 2014, the Debtors filed a petition under Chapter 12 of the Bankruptcy Code. (Doc. 1). The petition was accompanied by the Debtors' schedule of assets and liabilities.

On October 10, 2014, the Bank filed a Motion to Dismiss or Convert Case Due to Lack of Eligibility. (Doc. 20). In the Motion, the Bank asserted that the Debtors' scheduled claims exceeded the maximum debt to qualify for Chapter 12 relief under §101(18) of the Bankruptcy Code.

On October 20, 2014, Claim Number 5 was filed on behalf of Howland Feed Mill. Claim 5 was signed by Howland's general manager, but was filed by the Debtors' attorney on Howland's behalf in an amount that was substantially less than the creditor's scheduled claim.

On October 28, 2014, the Debtors filed an Amended Schedule of Unsecured Creditors, and listed Howland as a creditor holding a claim in the reduced amount. (Doc. 33).

On February 13, 2015, the Bank filed a Memorandum in Support of its Motion to Dismiss or Convert. (Doc. 79). In the Memorandum, the Bank contended that the Debtors intentionally filed Howland's Claim Number 5 in an incorrect amount, and also omitted a restitution claim owed by one Debtor, in an effort to qualify for relief under Chapter 12 of the Bankruptcy Code.

On March 10, 2015, the Court entered an Order Granting in Part and Denying in Part the Bank's Motion to Dismiss or Convert, and the Debtors' Chapter 12 case was converted to a case under Chapter 11 of the Bankruptcy Code on March 18, 2015. (Docs. 93, 97).

On September 28, 2015, the Debtors' Chapter 11 case was converted to a liquidating case under Chapter 7 of the Bankruptcy Code. (Doc. 170).

On December 23, 2015, the Bank filed a Complaint Objecting to the Debtors' Discharge and to Determine Dischargeability of Debt. (Adv. Pro. 3:15-ap-393-PMG, Doc. 1). In Count III of the Complaint, the Bank seeks a denial of the Debtors' discharge under §727(a)(4) of the Bankruptcy Code, based on the allegations that the Debtors had falsified and manipulated the claims and schedules in their main bankruptcy case.

On January 22, 2016, the Debtors filed a Motion to Disqualify the Bank's attorney in the discharge proceeding. (Adv. Pro. 3:15-ap-393-PMG, Doc. 9). In the Motion, the Debtors primarily alleged that the Bank's attorney had threatened certain of their creditors in an attempt to coerce the creditors to change their claims.

On June 7, 2016, the Court entered an Order denying the Debtors' Motion to Disqualify the Bank's attorney. (Adv. Pro. 3:15-ap-393-PMG, Doc. 31).

### **Discussion**

On August 11, 2017, the Bank filed the Motion for Sanctions that is currently before the Court. (Doc. 202). In the Motion, the Bank asserts that the Debtors intentionally misrepresented both the scheduled claims and the filed claims in their bankruptcy case in an attempt to qualify for relief under Chapter 12 of the Bankruptcy Code. The Bank also asserts that the Debtors separately misrepresented certain contacts between the Bank's attorney and their creditors. Finally, the Bank contends that it was injured by the Debtors' misrepresentations, and therefore seeks an award of damages pursuant to §105(a) of the Bankruptcy Code and Rule 9011(b) of the Federal Rules of Bankruptcy Procedure.

“Sanctions under Bankruptcy Rule 9011 are warranted when (1) the papers are frivolous, legally unreasonable or without factual foundation, or (2) the pleading is filed in bad faith or for an improper purpose.” In re Mroz, 65 F.3d 1567, 1572 (11<sup>th</sup> Cir. 1995)(quoted in In re Fazzary, 530 B.R. 903, 906 (Bankr. M.D. Fla. 2015)).

Generally, a motion for sanctions under Rule 9011 must be filed promptly after the moving party identifies the alleged violation.

FRBP 9011 is structured to require clear and precise notice of alleged violations, and permits counsel to avoid the harsh consequences of a violation by promptly correcting or withdrawing offensive pleadings or positions in such pleadings. And, as also noted above, the sanctions to be imposed for FRBP 9011 violations are limited to those sufficient to deter the violative conduct. FRBP 9011(c)(2).

For these reasons, courts have required that motions under Rule 11 be brought promptly after the identification of the allegedly wrongful conduct. (Citation omitted). Such prompt action is necessary to achieve the prophylactic purpose of Rule 11 – the prevention of wasteful litigation practices and the deterring of future bad conduct. (Citation omitted). Where such motions are brought after the fact, they necessarily fail to promote the purpose of Rule 11, deterring wrongful and abusive litigation practices. (Citation omitted).

In re Quinones, 543 B.R. 638, 648 (Bankr. N.D. Cal. 2015)(Emphasis supplied). Ordinarily, a motion under Rule 9011 should be filed promptly after the submission of the challenged paper, and may be viewed as untimely if delayed too long. Warehouse Solutions, Inc. v. Integrated Logistics, LLC, 2014 WL 11279467, at 5 (N.D. Ga.).

Additionally, a motion for sanctions under Rule 9011 should be filed before the Court has entered a final determination regarding the alleged violation. The Eleventh Circuit Court of Appeals has stated:

We agree with the Second, Fourth, and Sixth Circuits that the service and filing of a motion for sanctions “must occur prior to final judgment or judicial rejection of the offending” motion. . . . The [safe harbor provision of Rule 9011] cannot have any effect

if the court already denied the motion; it is too late for the offending party to withdraw the challenged contention.

In re Walker, 532 F.3d 1304, 1309 (11<sup>th</sup> Cir. 2008). See also Capital Corp. Merchant Banking, Inc. v. Norwich, 2009 WL 10671309, at 2 (M.D. Fla.)(A motion for sanctions is untimely if it is filed after the Court has adjudicated the offending paper.).

In this case, the Bank's Motion for Sanctions was untimely because it was not filed promptly after the Bank identified the alleged violations, and because it was filed after the Court entered final determinations on the Bank's challenges to the offending papers.

**A. After the alleged violation was identified**

First, the Motion for Sanctions is untimely because it was not filed promptly after the Bank identified the alleged violations.

The Bank contends that the Debtors violated Rule 9011 by filing schedules and amended schedules that omitted or understated certain claims, and also by filing a claim on behalf of a creditor (Claim Number 5) in an incorrect amount. According to the Bank, the Debtors filed the false schedules and claim in an improper attempt to qualify for relief under Chapter 12 of the Bankruptcy Code.

The Bank identified certain alleged violations as early as October 10, 2014, when it filed its Motion to Dismiss or Convert Case Due to Lack of Eligibility (the Eligibility Motion). (Doc. 20). On February 13, 2015, the Bank amplified its position by filing a Memorandum in Support of the Eligibility Motion. (Doc. 79). In the Memorandum, for example, the Bank asserted that Claim Number 5 and the Debtors' amended schedules were filed in inaccurate amounts in an effort to manipulate the amount of their aggregate debt.

The Bank's Motion for Sanctions under Rule 9011, however, was not filed until August 11, 2017, almost three years after the Bank initially filed the Eligibility Motion, and two and one-half years after the Bank challenged Claim Number 5 and the scheduled claims as falsely reduced. The Motion is untimely because it was not filed promptly after the Bank identified the allegedly wrongful conduct. In re Quinones, 543 B.R. at 648.

**B. After the Court entered a final determination on the offending papers**

Second, the Motion for Sanctions is untimely because it was filed after the Court entered final determinations on the Bank's challenges to the offending papers.

The Bank challenged Claim Number 5 and the Debtors' scheduled claims in the Eligibility Motion and Supporting Memorandum, and the Court entered an Order on the Eligibility Motion on March 10, 2015. (Doc. 93). In the Order, the Court determined that the case "shall be converted" to a case under Chapter 11, and an Order converting the Chapter 12 case to a case under Chapter 11 was entered on March 18, 2015. (Doc. 97). On September 28, 2015, the Chapter 11 case was converted to a liquidating case under Chapter 7. (Doc. 170).

After the conversion of their case to a case under Chapter 7, it was "too late" for the Debtors to avoid the consequences of the alleged violations by correcting the amount of the claims. In re Walker, 532 F.3d at 1309.

Additionally, as a separate alleged violation of Rule 9011, the Bank contends that the Debtors filed a Motion to Disqualify the Bank's Attorney (the Disqualification Motion) in which they falsely represented that the Bank's attorney threatened the Debtors' creditors in an effort to coerce the creditors to change their claims. (Adv. Pro. 3:15-ap-393-PMG, Doc. 9).

On June 7, 2016, the Court entered an Order denying the Disqualification Motion. (Adv. Pro. 3:15-ap-393-PMG, Doc. 31)

As shown above, the Motion for Sanctions under Rule 9011 was filed on August 11, 2017, more than two years after the Court entered an Order on the Eligibility Motion and converted the case, and more than one year after the Court entered an Order on the Disqualification Motion. The Motion for Sanctions is untimely because it was filed after the Court entered final determinations on the Bank's challenges to the offending papers.

### **Conclusion**

Lafayette State Bank has filed a Motion for Sanctions and for Award of Attorneys' Fees and Costs.

In the Motion, the Bank asserts that the Debtors intentionally misrepresented both the scheduled claims and the filed claims in their bankruptcy case in an attempt to qualify for relief under Chapter 12 of the Bankruptcy Code. The Bank also asserts that the Debtors separately misrepresented certain contacts between the Bank's attorney and their creditors. Finally, the Bank asserts that it was injured by the Debtors' misrepresentations, and therefore seeks an award of damages pursuant to Section 105(a) of the Bankruptcy Code and Rule 9011(b) of the Federal Rules of Bankruptcy Procedure.

Generally, a motion for sanctions under Rule 9011 must be filed promptly after the moving party identifies the alleged violation, and before the Court enters a final determination on the offending papers. In this case, the Motion for Sanctions is not timely, because it was filed almost three years after the Bank first challenged the Debtors' schedules and claims, almost two years after the case was converted to a liquidating Chapter 7 case, and more than one year after the Court entered a final

determination on the Debtors' representations regarding the contacts between the Bank's attorney and their creditors. Consequently, the Bank's Motion for Sanctions should be denied.

Accordingly:

**IT IS ORDERED** that:

1. Lafayette State Bank's Motion for Sanctions and for Award of Attorneys' Fees and Costs is denied.
2. The Debtors' Motion to Strike the Bank's Motion for Sanctions is moot.

**DATED** this 26 day of September, 2017.

**BY THE COURT**

Paul M. Glenn

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PAUL M. GLENN  
United States Bankruptcy Judge