

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:15-bk-05370-FMD
Chapter 7

Paul Brian Manke,

Debtor.

James Shull,

Plaintiff,

v. Adv. Pro. No. 9:16-ap-269-FMD

Paul Brian Manke,

Defendant.

**ORDER DENYING MOTION TO SET
HEARING DATE AND DENYING
DEFENDANT'S MOTION FOR SANCTIONS**

THIS PROCEEDING came before the Court without a hearing for consideration of Defendant's *Motion for Rule 9011 Sanctions* (Doc. No. 56) (the "Sanctions Motion") and *Motion to Set Hearing Date* on the Sanctions Motion (Doc. No. 123). For the reasons set forth below, the Court will deny both motions.

I. PROCEDURAL BACKGROUND

Defendant, Paul Manke, filed a Chapter 7 bankruptcy case¹ but did not list Plaintiff, James Shull, as a creditor. When Plaintiff learned of the bankruptcy, he filed a complaint to except his debt from discharge.² Defendant filed a motion to dismiss the complaint, which was granted by the

Court with Plaintiff granted leave to file an amended complaint.³ Shortly thereafter, Plaintiff filed his amended complaint (the "Amended Complaint").⁴

On February 15, 2017, following the procedure laid out in Federal Rule of Bankruptcy Procedure 9011, Defendant served Plaintiff with the Sanctions Motion, demanding that Plaintiff withdraw the Amended Complaint. Plaintiff did not withdraw the Amended Complaint, and on March 16, 2017, after the 21-day notice period required under Rule 9011, Defendant filed the Sanctions Motion with the Court.⁵ Defendant also filed a motion to dismiss the Amended Complaint, which the Court denied.⁶ Defendant then filed a motion for summary judgment, which the Court also denied.⁷

On March 23, 2018, the Court conducted a trial on Plaintiff's Amended Complaint. At the conclusion of Plaintiff's case-in-chief, the Court granted Defendant's *Motion for Directed Verdict/Nonsuit*.⁸ Plaintiff filed a *Motion for Reconsideration* which the Court denied.⁹

Plaintiff appealed the Court's order granting Defendant's *Motion for Directed Verdict/Nonsuit* to the District Court.¹⁰ While the appeal was pending, Defendant filed a second motion for sanctions in the District Court.¹¹ The District Court affirmed this Court's ruling, but declined to impose sanctions against Plaintiff, deferring "any request for sanctions to the Bankruptcy Court where a Motion for Sanctions (Bankr. Doc. #56) is pending."¹²

II. ANALYSIS

Federal Rule of Bankruptcy Procedure Rule 9011(c) provides for the imposition of sanctions upon attorneys, law firms, or parties "[i]f, after notice and reasonable opportunity to respond, the court determines that subdivision (b) has been

¹ See Case No. 9:15-bk-05370-FMD, Doc. No. 1.

² Doc. No. 1.

³ Doc. Nos. 22 and 26.

⁴ Doc. No. 28.

⁵ Doc. Nos. 55 and 56.

⁶ Doc. Nos. 29 and 41.

⁷ Doc. Nos. 50 and 70.

⁸ Doc. Nos. 92 and 93.

⁹ Doc. Nos. 95 and 99.

¹⁰ Doc. No. 108.

¹¹ District Court Case No. 2:18-cv-477-JES, Doc. No. 3.

¹² Doc. No. 120.

violated”¹³ A violation of subdivision (b) occurs when, amongst other ways, a paper is presented to the court for “any improper purpose” or “the claims, defenses, and other legal contentions therein” are not supported by existing law.¹⁴ The purpose of Rule 9011 is to deter litigation abuse.¹⁵ However, Rule 9011 is not a fee-shifting statute that requires a losing party to pay attorney’s fees and costs to the prevailing party.¹⁶

A request for sanctions may be initiated by motion or by the court on its own initiative.¹⁷ A party seeking sanctions under Rule 9011 must serve the motion on the opposing party at least 21 days prior to filing the motion with the court,¹⁸ and must “describe the specific conduct alleged to violate subdivision (b).”¹⁹ These requirements are commonly referred to as the “safe harbor” provision.²⁰ The purpose of the safe harbor provision is to give notice to the opposing party of the specific actions that violate the rule, and to give the party a chance to cure such behavior before being subject to any sanctions.²¹ If the moving party does not satisfy the “safe harbor” provisions of Rule 9011, the court must deny a motion for sanctions.²²

Only when the safe harbor requirements are met does the Court consider whether sanctions should be awarded because the papers are frivolous, legally unreasonable or without factual foundation, or the pleading was filed in bad faith or for an improper purpose.²³ Here, the Sanctions Motion consists of two paragraphs that essentially restate Rule 9011(b)(3), and does not describe

which of the Amended Complaint’s allegations lack evidentiary or legal support.

Courts routinely hold that motions for sanctions are insufficient when they fail to describe the specific allegations that warrant sanctions and contain only conclusory statements regarding a party’s pleadings being frivolous, groundless, or vexatious²⁴ For example, in *Elie v. Pacific Land Ltd.*, the court considered a motion for sanctions that is very similar to the Sanctions Motion here. In *Elie*, the defendant’s motion recited the Rule 11²⁵ standard and contained one five-sentence paragraph setting forth the basis for the request for sanctions.²⁶ The court denied the sanctions motion, finding that the motion “fail[ed] to identify what conduct is sanctionable other than generally alleging that there is no basis for finding the [defendant] liable.”²⁷ And in *In re Miller*, the Eleventh Circuit Court of Appeals considered a sanctions motion that read in part: “[t]he factual and legal assertions set forth in the Plaintiff’s complaint do not give rise to even a colorable claim for relief against the Defendant, are not warranted by existing law, and are not supported by the facts of the case.”²⁸ The defendant conceded during oral argument that the sanctions motion was insufficient to satisfy Bankruptcy Rule 9011,²⁹ and the court held that the bare-bones sanctions motion did not put the plaintiff on notice of the specific conduct alleged to warrant sanctions.³⁰ As noted in Plaintiff’s *Response to Motion for Sanctions*,³¹ if courts allowed these types of vague Rule 9011 motions to succeed, parties could file them in every case to reserve a claim for attorney’s fees.

¹³ Fed. R. Bankr. P. 9011(c).

¹⁴ Fed. R. Bankr. P. 9011(b)(1), (2).

¹⁵ *In re Addon Corp.*, 231 B.R. 385, 388 (Bankr. N.D. Ga. 1999).

¹⁶ *In re Nicholson*, 579 B.R. 640, 649 (Bankr. S.D. Ga. 2017).

¹⁷ Fed. R. Bankr. P. 9011(c)(1)(A), (B).

¹⁸ Fed. R. Bankr. P. 9011(c)(1)(A).

¹⁹ *Id.*

²⁰ See *In re Miller*, 414 F. App’x 214, 216 (11th Cir. 2011).

²¹ *Id.* at 216-217.

²² See *In re New River Dry Dock, Inc.*, 461 B.R. 642, 647 (Bankr. S.D. Fla. 2011) (Denying motion for sanctions

under Rule 9011 because the rule’s safe harbor provision is mandatory).

²³ *In re Mroz*, 65 F.3d 1567, 1572 (11th Cir. 1995).

²⁴ See *Elie v. Pac. Land Ltd.*, No. 11-60765-CIV, 2012 WL 13005814, at *3 (S.D. Fla. July 5, 2012); *In re Miller*, 414 F. App’x 214, 216 (11th Cir. 2011).

²⁵ Federal Rule of Bankruptcy Procedure 9011 is substantially identical to Federal Rule of Civil Procedure 11.

²⁶ *Elie*, 2012 WL 13005814, at *2-3.

²⁷ *Id.* at *3.

²⁸ 414 F. App’x at 216.

²⁹ *Id.* at 217.

³⁰ *Id.* at 218.

³¹ Doc. No. 100.

The Court concludes that the Sanctions Motion should be denied for failure to meet the specificity requirement of Rule 9011(c)(1)(A). In addition, the Court notes that, before Plaintiff's claim failed on the evidence presented at trial, it survived two motions to dismiss and a motion for summary judgment. The record here does not support a finding that Plaintiff's claims were "frivolous, legally unreasonable or without factual foundation."

Accordingly, it is

ORDERED:

1. The Motion to Set Hearing Date is DENIED; and
2. The Sanctions Motion is DENIED.

DATED: February 22, 2019.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge