


ORDERED.

Dated: February 21, 2019



 Karen S. Jennemann
 United States Bankruptcy Judge

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

In re)	
)	
JULIE B. ZALLOUM,)	Case No. 6:17-bk-02329-KSJ
)	Chapter 13
Debtor.)	
_____)	
)	
JULIE B. ZALLOUM,)	
)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. 6:17-ap-00068-KSJ
)	
RIVER OAKS COMMUNITY SERVICES)	
ASSOCIATION, INC. et al.,)	
)	
Defendants.)	
_____)	

ORDER PARTIALLY DENYING MOTIONS FOR SUMMARY JUDGMENT
(Count 7 is dismissed, but the Court will hold a trial on all other US Bank related issues)

This adversary proceeding came before the Court to consider the numerous cross dispositive motions¹ filed by US Bank² and the Debtor. This dispute relates to a home at 217

¹ Doc. Nos. 112, 116, 182, 186 (US Bank’s Amended Motion to Dismiss and Debtor’s Reply); Doc. Nos. 109, 165 (Debtor’s Answer to US Bank’s Counterclaim and US Bank’s Response); Doc. Nos. 110, 170, 219 (Debtor’s Motion to Dismiss Counterclaim and US Bank’s Response); Doc. Nos. 207, 216, 217, 226, 227, 229 (US Bank’s Motion for Summary Judgment on Counterclaim and related responses) Doc. No. 177, 178, 187, 206, 208, 220 (Debtor’s Motions for Partial Summary Judgment and related responses).

River Village Drive in DeBary, Florida (the “River Village House”) and, generally, whether US Bank has a valid and enforceable mortgage lien on the home. Count 8 of the Debtor’s Amended Complaint and US Bank’s Counterclaim best frame this dispute.³ After reviewing the various motions, responses and supporting affidavits, I conclude that factual disputes preclude summary judgment as a matter of law and will deny all pending motions with one exception relating to Count 7 of the Amended Complaint.

On Count 7, Debtor seeks monetary sanctions against US Bank and the other Defendants in this adversary proceeding. Section 105(a) of the Bankruptcy Code⁴ authorizes a bankruptcy court to “‘issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.’”⁵ “[T]he plain meaning of § 105(a) encompasses any type of order, whether injunctive, compensative, or punitive, as long as it is ‘necessary or appropriate’ to carry out the provisions of’ the Bankruptcy Code.”⁶ As the party seeking sanctions against US Bank, the Debtor carries the burden of showing why sanctions are justified.⁷ Debtor here requests monetary sanctions against the US Bank because of “egregious” conduct and for “filing false fabricated documents” with the Court.

“While § 105 does empower a Bankruptcy Court to address wrongful conduct through contempt proceedings, it only permits monetary sanctions to be awarded to the extent they are ‘necessary or appropriate to carry out the provisions’ of the Bankruptcy Code.”⁸ Bankruptcy Courts “may only impose sanctions for contempt that are coercive and not punitive.”⁹ To

² The creditor’s full name is U.S. Bank National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust 2006-OA2 Mortgage Pass-Through Certificates, Series 2006-OA2. The Court will refer to the creditor as US Bank.

³ Doc. No. 23 and 64.

⁴ All references to the Bankruptcy Code refer to 11 U.S.C. § 101 *et. seq.*

⁵ *In re Rhodes*, 563 B.R. 380, 387 (Bankr. M.D. Fla. 2017) (quoting *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1389 (11th Cir. 1996)).

⁶ *Id.* (quoting *In re Jove Eng’g, Inc.*, 92 F.3d 1539, 1554 (11th Cir. 1996)).

⁷ *In re Brown*, Case No. 6:05-bk-15294-ABB, 2009 WL 10633429 at *7 (Bankr. M.D. Fla. Feb. 19, 2009).

⁸ *Id.*

⁹ *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1389-90 (11th Cir 1996).

determine whether a sanction is coercive or punitive, the court asks “(1) whether the award directly serves the complainant rather than the public interest, and (2) whether the contemnor may control the extent of the award.”¹⁰ If the sanction being sought is primarily monetary damages and the conduct already has occurred so the sanctioned party cannot alter their conduct and control the sanction, then “the court may not order such monetary damages, as they are punitive and not coercive.”¹¹ “A Bankruptcy Court may [also] invoke its statutory powers of [§] 105(a) to redress Rule 9011 violations, bad faith, and unreasonable, vexatious litigation.”¹²

Debtor’s allegations in Count 7 request monetary damages for US Bank’s alleged prior bad actions. Debtor seeks sanctions to punish US Bank, which is not permitted under § 105. Debtor fails to state a claim for sanctions against US Bank as a matter of law.

Accordingly, it is

ORDERED:

1. US Bank’s Amended Motion to Dismiss (Doc. No. 116) the Amended Complaint is **PARTIALLY DENIED.**
2. Count 7 is dismissed with prejudice for failing to state a claim against US Bank.
3. Debtor’s Motions for Partial Summary Judgment (Doc. Nos. 177, 178, 187) on Counts 7 and 8 the Amended Complaint and her Objection to Claim 6 of US Bank are **DENIED.**
4. Debtor’s Motion to Dismiss Counterclaim (Doc. No. 110) is **DENIED.**
5. US Bank’s Motion for Summary Judgment on the Counterclaim (Doc. No. 207) is **DENIED.**

¹⁰ *Id.*

¹¹ *In re Brown*, 2009 WL 10633429, at *7 (quoting *In re Hardy*, 97 F.3d at 1389-90).

¹² *In re Evergreen Sec., Ltd.*, 384 B.R. 882, 932 (Bankr. M.D. Fla.), aff’d, 391 B.R. 184 (M.D. Fla. 2008), aff’d, 570 F.3d 1257 (11th Cir. 2009).

6. The Court will schedule a one-day trial on:
 - a. US Bank's Motion for Relief from Stay (Doc. No. 30 in Case No. 6:17-bk-02329-KSJ);
 - b. Debtor's Objection to Claim 6 of US Bank (Doc. Nos. 52, 26 in Case No. 6:17-bk-02329-KSJ);
 - c. Count 8 of the Amended Complaint in 6:17-ap-68-KSJ (Doc. No. 23), with the exception that after entry of the Memorandum Opinion on the ROCSA claims, no dispute exists that ROCSA holds a valid lien on the River Village House that is subordinate to the secured claim (if any) proven by US Bank at trial; and
 - d. US Bank's Counterclaim in 6:17-ap-68-KSJ (Doc. No. 64).
7. US Bank is directed to bring to the trial the original promissory note and mortgage related to the River Village House.
8. Debtor is directed to supply all exhibits in paper form to the Clerk's office 14 days before trial. The Clerk is directed to receive and digitally upload all the Debtor's proposed exhibits at least seven days prior to trial.
9. US Bank shall upload and file all proposed exhibits under Local Rule 9070-1 at least 14 days before trial.
10. The parties shall exchange paper copies of all exhibits no later than 7 days before trial.
11. The Court will not consider exhibits that are not timely filed other than for rebuttal or impeachment purposes.

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The Clerk is directed to serve a copy of this order on all interested parties.