ORDERED.

Dated: May 29, 2020

Karen S. Jennemann
United States Bankruptcy Judge

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

In re	)	
	)	
Daytona Grand, Inc.,	)	Case No. 6:15-bk-03823-KSJ
	)	Chapter 7
Debtor.	)	
	)	

ORDER DENYING COMPETING MOTIONS FOR SANCTIONS

For years, Miles Weiss ("Weiss") and Daniel Katz ("Katz") have litigated which of them owns the Debtor, Daytona Grand, Inc. ("DGI"). Both filed separate state court lawsuits, and Weiss filed this Chapter 7 bankruptcy case.[1] Katz immediately sought dismissal of the bankruptcy case contending Weiss lacked authority to put the Debtor into bankruptcy and acted in bad faith.[2] Katz also seeks sanctions against Weiss and his counsel, Christopher W. Wickersham, Jr. ("Wickersham").[3] The bankruptcy case quickly was dismissed 22 days after it was filed,[4] but the Court reserved ruling on the award of sanctions. Wickersham now has filed a competing motion seeking sanctions against Katz.[5] Finding neither Katz nor Weiss are entitled to sanctions, both motions are denied.

[1] Doc. No. 1. This case was filed on April 30, 2015.
[2] Doc. No. 4.
[3] Doc. Nos. 4 and 53.
[4] Doc. No. 42. The Order Granting the Motion to Dismiss was entered on May 22, 2015.
[5] Doc. No. 96.

Daytona Grand, Inc.

DGI operated an adult night club in Daytona Beach, Florida (the "Property"). Weiss founded DGI[6] and, prior to April 23, 2015, he owned 100% of the company's stock.[7] On April 23, 2015, Weiss and Katz met at another club owned by Katz. What actually happened at this meeting formed the core of the parties' legal disputes for the next five years. Although Weiss signed documents transferring his ownership and other interests in DGI to Katz,[8] he immediately disputed that he intended the sale.[9] Litigation quickly ensued with both Weiss and Katz filing competing state court actions.

Weiss hired attorney Wickersham to sue Katz[10] and others in a lawsuit alleging fraud and seeking to rescind the documents signed at the meeting on April 23, 2015 (the "Circuit Court Action").[11] This lawsuit eventually was tried and finally resolved the claims and remedies between the parties, but only with a final order entered in March 2020.

Katz, acting through DGI, simultaneously filed his competing action, an unlawful detainer suit, after he allegedly was stopped from entering the Debtor's club (the "Unlawful Detainer Action").[12] DGI sought an emergency temporary injunction to allow Katz access to the Property.[13] Weiss was not a party.[14] On April 29, 2015, the Florida Circuit Court entered an order (the "Initial Order"), preliminarily finding "Katz to be the sole owner and president" of DGI and directing the Clerk to issue a writ of possession.[15]

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[6] Doc. No. 63, pg. 54. Testimony of Miles Weiss, October 7, 2015 Hearing Transcript.
[7] Doc. No. 89, pg. 4. Paragraph 8 of Amended Final Judgment.
[8] Doc. No. 89, pg. 10. Paragraph 27 of Amended Final Judgment.
[9] Doc. 63, pg. 55. Testimony of Miles Weiss, October 7, 2015 Hearing Transcript.
[10] Weiss Ex. 1(d).
[11] *Weiss et.al v. Bynum et. al.*, Case No. 2015-30610.
[12] Weiss Ex. 1(a). *Daytona Grand, Inc. v. Bishop and Unknown Possessors*, Case No. 2015-30631. This case was filed on April 27, 2015.
[13] Weiss Ex. 1(b).
[14] Weiss Ex. 1(a).
[15] Katz Ex. 1.

After entry of this Initial Order, Weiss sought to intervene in the Unlawful Detainer Action.[16] On April 30, 2015, the Florida Circuit Court held an evidentiary hearing attempting to resolve the dispute.[17] Weiss and Katz both testified.[18] Wickersham appeared as counsel for Weiss.[19] At the conclusion of the hearing, the Florida Circuit Court ruled orally for Katz, again finding Katz was the owner of DGI, should gain possession of the Property, and denied Weiss's request to intervene in the Unlawful Detainer Action.[20] Not much else happened in this case other than the state court later entered a written Temporary Injunction again finding Katz was the sole stockholder and president of DGI and could have possession of DGI's club.[21] The Unlawful Detainer Action later was dismissed for lack of prosecution with no permanent injunction or final judgment issued.[22]

Before this temporary injunction was entered in the Unlawful Detainer Action, however, Weiss filed this Chapter 7 bankruptcy case.[23] Weiss signed the petition as president of DGI, and Wickersham signed as counsel for the debtor.[24] Katz did not sign or authorize filing the petition.

Katz, also acting for DGI, immediately sought dismissal of the bankruptcy asserting it was unauthorized and a bad faith filing ("Motion to Dismiss").[25] Katz also sought sanctions against Weiss and Wickersham. Soon thereafter, on May 7, 2015, the Bankruptcy Court granted stay relief to allow the pending state court actions to proceed unfettered by the bankruptcy case.[26] And, a full trial was set on the Motion to Dismiss for May 22, 2015.

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[16] Weiss Ex. 1(c).
[17] Doc. No. 32. Order on Plaintiff's Motion for Temporary Injunction entered in *Daytona Grand, Inc. v. Bishop and Unknown Possessors*, Case No. 2015-30631.
[18] *Id*.
[19] Doc. No. 63, pg.143. Testimony of Christopher Webb Wickersham, October 7, 2015 Hearing Transcript.
[20] Doc. No. 89, pgs. 19-20, Paragraph 58 of Amended Final Judgment. Doc. No. 32, pg. 6, Paragraph (g) of Order on Plaintiff's Motion for Temporary Injunction entered in *Daytona Grand, Inc. v. Bishop and Unknown Possessors*, Case No. 2015-30631.
[21] Doc. No. 32, pg. 5, Paragraph (a) of Order on Plaintiff's Motion for Temporary Injunction entered in *Daytona Grand, Inc. v. Bishop and Unknown Possessors*, Case No. 2015-30631.
[22] Doc. No. 95, Exhibit A. Docket Report of *Daytona Grand, Inc. v. Bishop and Unknown Possessors*, Case No. 2015-30631.
[23] The petition was filed April 30, 2015 at 11:42 p.m. EDT.
[24] Doc. No. 1.
[25] Doc. No. 4. The Motion to Dismiss was filed on May 1, 2015.
[26] Doc. No. 26.

At trial, the Bankruptcy Court[27] granted the Motion to Dismiss (the "Dismissal Order")[28] acknowledging the parties' on-going dispute on who owned the Debtor and the findings in the Temporary Injunction preliminarily finding Katz the president and sole shareholder of DGI. The Dismissal Order, however, made no findings of bad faith. No one appealed the Dismissal Order; the Circuit Court Action between the parties continued.

In August 2015, Katz filed a Supplement to the Motion to Dismiss (the "Supplement")[29] renewing his request for sanctions against Weiss and Wickersham. At trial, held on October 7, 2015, Katz testified he had incurred $51,621.95, of attorneys' fees opposing the unauthorized bankruptcy filing of DGI.[30] He wants Weiss and Wickersham to pay these costs as a sanction for filing this bankruptcy case.

Weiss and Wickersham opposed this request. In October 2015, Weiss testified he was pursuing his Circuit Court Action and contended he still owned DGI.[31] Wickersham, his lawyer, testified Weiss retained authority to file the bankruptcy because he was seeking to rescind the transfer agreements with Katz and the Florida Circuit Court had not yet finally declared who owned DGI.[32] When the trial ended the then presiding Bankruptcy Judge directed the parties to submit post-trial briefs,[33] and later abated further action until the Circuit Court Action concluded.[34]

It took several years for the Circuit Court Action to finish. Katz filed counterclaims against Weiss.[35] A three-day trial occurred on February 22, 23, and March 1, 2018.[36] A 35 page Amended

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[27] The early hearings in this case were conducted by the Honorable Cynthia C. Jackson, who since has moved to the Jacksonville Division. The case was assigned to me on January 17, 2020.
[28] Doc. No. 42.
[29] Doc. No. 53.
[30] Doc. No. 63, pg. 20. Testimony of Daniel Katz, October 7, 2015 Hearing Transcript.
[31] Doc. No. 63, pg. 55-56, 58-59. Testimony of Daniel Katz, October 7, 2015 Hearing Transcript.
[32] Doc. No. 63, pgs. 84-85, 111. Testimony of Christopher Webb Wickersham, October 7, 2015 Hearing Transcript.
[33] Doc. No. 63, pgs. 156-157.
[34] Doc. No. 71.
[35] Doc. No. 89, pg. 3. Paragraphs c, d and e of Amended Final Judgment. Katz filed claims for breach of contract, conversion and tortious interference with business relationships.
[36] Doc. No. 89.

Final Judgment was entered on November 6, 2018. Neither Katz nor Weiss received any monetary damages; but Katz finally was held sole owner of DGI.[37] On March 3, 2020, the Fifth District Court of Appeal for the State of Florida affirmed the Amended Final Judgment in a *per curiam* opinion.[38]

At last, the Circuit Court Action is over. Neither Weiss nor Katz owe each other any monies. Katz was established as the 100% owner and President of the Debtor as of April 23, 2015. In hindsight, we know that Weiss was not authorized to file this bankruptcy.

Katz now seeks a ruling on his abated request for sanctions to recover monies expended in 2015, when he successfully argued for the dismissal of this bankruptcy case. [39] And, Wickersham, recently requested sanctions against Katz for refusing to withdraw his sanctions motion, given the factual findings subsequently made by the Florida State Courts ("Wickersham Motion for Sanctions).[40]

Bankruptcy Rule 9011

Under Bankruptcy Rule 9011(b), an individual's signature on the petition initiating a bankruptcy case represents a series of promises that, to the best of the signor's knowledge, the petition is well grounded in fact, warranted by existing law, and not interposed for an improper purpose.[41] If Bankruptcy Rule 9011(b) is violated, a court may impose an appropriate sanction upon attorneys, law

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[37] Doc. No. 89, pgs. 35-36. Ruling of Amended Final Judgment.
[38] Doc. No. 97.
[39] Doc. Nos. 4 and 53.
[40] Doc. No. 96. Weiss' Motion for Sanctions was filed on February 22, 2020.
[41] Bankruptcy Rule 9011 (b) provides an attorney or unrepresented party signing a petition filed with this Court certifies that:

> …to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

firms, or parties who committed the violation or who are responsible for the violation.[42] "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."[43]

When considering sanctions under Bankruptcy Rule 9011, courts apply an objective standard, which is limited to the facts and law known at the time the pleading is filed.[44] The court first determines whether "the party's claim is objectively frivolous, in view of the law or facts" and if so, whether "the person signing the document should have been aware it was frivolous."[45] In other words, whether under the circumstances, an attorney knew or after reasonably diligent inquiry should have known, filing the bankruptcy petition was frivolous.[46]

As to the second prong, the filing of a bankruptcy petition in bad faith is not *per se* sanctionable under Bankruptcy Rule 9011.[47] The court considers the facts of that particular case and, applying the objective standard, determines whether a party violated the improper purpose prong of Bankruptcy Rule 9011.[48] So, the question is not whether the petition was filed in bad faith, but whether, under the circumstances, the person signing the petition knew, or after reasonably diligent inquiry should have known, that the petition ultimately would be found to have been filed in bad faith.

Having applied this standard to this case, the Court finds Weiss and Wickersham did not violate Bankruptcy Rule 9011 by filing the bankruptcy petition. When Weiss and Wickersham filed this case, a good faith dispute existed between Weiss and Katz as to the ownership of DGI. Weiss claimed fraud occurred and sought to rescind the transfer of DGI to Katz. The Circuit Court Action,

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[42] Bankruptcy Rule 9011(c).
[43] *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1572 (11th Cir. 1995).
[44] *Rowe v. Gary*, 703 Fed. Appx' 777, 779-80 (11th Cir. 2017)(District Court abused its discretion by failing to apply an objective standard when considering Rule 11 sanctions); *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567,1573 (11th Cir. 1995)(limiting inquiry to facts and law at time of filing and adopting objective standard for Bankruptcy Rule 9011).
[45] *Mroz*, 65 F.3d at 1573.
[46] *See Mroz*, 65 F.3d at 1573; *In re Ktona*, 329 B.R. 105, 109 (Bankr. M.D. Fla. 2005)("An attorney is required to make a reasonable pre-filing inquiry that factually and legally supports the filing of the petition.")
[47] *In re Universal Partners, LLC*, Case No. 6:02-bk-13569-KSJ, Doc. No. 48, pg. 6 (Bankr. M.D. Fla. July 24, 2003).
[48] *Universal Partners*, Case No. 6:02-bk-13569-KSJ, Doc. No. 48, pg. 6. *See also In re Ktona*, 329 B.R. at 109.

which was in its early stages of litigation, took almost five years to complete, and in the Unlawful Detainer Action, no final order ever was entered.[49] Indeed, a final order concluding Katz was the sole owners of the Debtor was not entered until March 20, 2020.

At the time Weiss and Wickersham signed the petition, they had a reasonable belief the courts would restore Weiss as owner of the Debtor. Perhaps some indicia of bad faith existed when Weiss and Wickersham filed the petition, but they did not know, or after reasonably diligent inquiry should have known, that the petition would be found to have been filed in bad faith. And, the Dismissal Order contains no findings of bad faith.

Nor did Katz violate Bankruptcy Rule 9011 by failing to withdraw his request for sanctions after dismissal of the Unlawful Detainer Action. Bankruptcy Rule 9011 does not impose a "continuing obligation" on a party to amend or withdraw a pleading provided the pleading was reasonably interposed in the first place.[50] When Katz filed his Motion for Sanctions, he had transfer documents signed by Weiss and two court orders finding him the sole stockholder and president of DGI. Katz, having made a reasonably diligent inquiry, did not file a frivolous request for sanctions and, as a result, had no on-going obligation to withdraw his Motion for Sanctions.

11 U.S.C. § 105

Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."[51] This section provides bankruptcy courts with the "broad power to implement the provisions of the bankruptcy code and to prevent an abuse of the bankruptcy process, which includes the power to

[49] Although this Court disagrees with the preceding court's finding that the bankruptcy court is bound by the Initial Order and temporary injunction under the doctrines of *Rooker-Feldman* and collateral estoppel, I agree with the ultimate dismissal of this case. *See In re Florida Men's Medical Clinic, LLC,* Case No. 6:14-bk-08623-KSJ, 2014 WL 3973161 (Bankr. M.D. Fla. Aug. 7, 2014)(dismissing case for lack of authority to file and abstaining from deciding a two-party dispute over corporate control which had been pending in the state court).

[50] *Mroz*, 65 F.3d at 1572-73.

[51] 11. U.S.C. §105.

sanction counsel."[52] The word "any," as used in § 105(a), should be construed broadly and only is limited to those orders that are "necessary and appropriate" to carry out the Bankruptcy Code.[53]

The Court finds, under these circumstances, an order imposing sanctions which requires any party to reimburse the other for his attorney fees and costs related to this bankruptcy filing inappropriate. This bankruptcy case was of short duration and filed at the initial stage of the parties' state court litigation. Within seven days after the bankruptcy filing, the parties agreed to lift the automatic stay to allow the state court actions to continue. The Bankruptcy Court then dismissed this case within 22 days. No significant abuse occurred by either party to warrant sanctions.

Weiss and Katz had a dispute that took years to resolve. No party is to blame for their short visit to the bankruptcy court. The parties were attempting to protect their respective interests through different avenues and, as a result, they incurred fees and costs in the process. Under the applicable objective test and based on the facts of this case, sanctions under Bankruptcy Rule 9011 and Section 105 of the Bankruptcy Code are not appropriate.

Accordingly, it is

ORDERED:

1. To the extent the Motion to Dismiss (Doc. No. 4), as supplemented (Doc. No. 53) requests sanctions, Katz's request for sanctions is DENIED.

2. The Wickersham Motion for Sanctions (Doc. No. 96) is DENIED.

3. The clerk is directed to close this case.

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Attorney Scott W. Spradley is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.

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[52] *In re Clark*, 223 F.3d 859, 864 (8th Cir. 2000).
[53] *Jove Engineering, Inc. v. I.R.S. (In re Jove Engineering, Inc.)*, 92 F.3d 1539, 1554 (11th Cir. 1996).