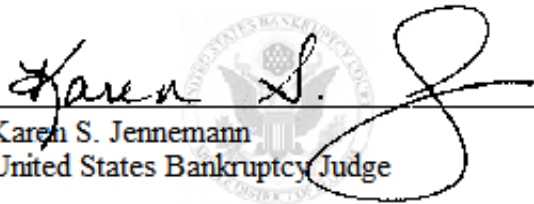


ORDERED.

Dated: August 20, 2021



Karen S. Jennemann
United States Bankruptcy Judge

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

In re)	Case No. 6:20-bk-01346-KSJ
)	Chapter 11
Ellingsworth Residential Community)	
Association, Inc.,)	
)	
Debtor.)	
_____)	

ORDER AWARDING ATTORNEYS' FEES AND COSTS

Alice Guan (“Guan”), *pro se*, has filed two claims, one seeking \$500,000 and the other seeking \$1.6 million, against Ellingsworth Residential Community Association, Inc. (“Debtor”).¹ A one-day trial to resolve Debtor’s Objection² to Guan’s claims was held on February 25, 2021. Days before trial, Guan subpoenaed over 50 potential witnesses, mostly professionals, or respondents to document requests, without first coordinating with Debtor’s counsel.³

¹ Claim Nos. 4-3 and 5-2.

² Amended Omnibus Objection to Allowance of Claims 4-3 and 5-2 Filed by Alice Guan, Doc. No. 313.

³ Doc. Nos. 580, 584, 588, 589, 590, 591, 592, and 593.

In response, Debtor filed its Emergency Motion for Protective Order, or in the Alternative, to Quash Subpoenas Issued by Alice Guan and For Sanctions (the “Motion”).⁴ The Court partially granted the Motion, established some order to Guan’s subpoena efforts, and awarded sanctions against Guan and to reimburse Debtor for any attorneys’ fees incurred in filing and prosecuting the Motion.⁵ Debtor timely filed the requisite affidavit on March 12, 2021, and seeks \$1,194 in attorneys’ fees as sanctions for services related to the Motion.⁶

During the bankruptcy case, Guan, who is representing herself and has no legal experience, filed numerous conflicting and confusing papers.⁷ And, although the trial on Debtor’s objection to her claims was scheduled almost five months earlier,⁸ Guan requested the Court immediately issue over 50 subpoenas two weeks before the trial,⁹ with no notice to Debtor or potential third-party witnesses.

Sanctions against Guan and the reimbursement of Debtor’s attorneys’ fees in connection with the Motion are appropriate under Federal Rule of Civil Procedure 45(d)(1), made applicable by Federal Rule of Bankruptcy Procedure 9016. A court has discretionary power to award sanctions under Rule 45(d)(1).¹⁰ Generally, the decision

⁴ Doc. No. 578.

⁵ Amended Order on Pre-Trial Motions, Doc. No. 614.

⁶ Doc. No. 669.

⁷ See, e.g., Doc. Nos. 436, 438, 440, 452, 455, 457, 466, 467, 512, 586, 587, 599, and 706.

⁸ Doc. No. 308.

⁹ Doc. Nos. 436, 438, and 440.

¹⁰ *Stermer v. Old Republic Nat’l Title Ins. Co. (In re ATIF, Inc.)*, 622 B.R. 127, 131 (Bankr. M.D. Fla. 2020) (citing *UnitedHealthcare of Fla., Inc. v. Am. Renal Assocs. Holdings, Inc. (In re Subpoenas Served on the Am. Kidney Fund, Inc.)*, No. TDC-17-1787, 2019 WL 1894248, at *5 (D. Md. Apr. 29, 2019)).

to award sanctions is made “after balancing the need for discovery against the burden imposed on the person from whom discovery was sought.”¹¹ Rule 45(d)(1) provides

A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney’s fees--on a party or attorney who fails to comply.¹²

Guan unduly burdened third party witnesses by failing to issue subpoenas without proper notice, giving them little to no time to rearrange their schedule to appear at the trial. Guan did not take any reasonable steps to avoid placing an undue burden on these third parties. The trial date was set more than five months in advance, yet Guan waited days before the trial to issue subpoenas requiring third party witnesses to testify at trial that ultimately would provide completely irrelevant testimony.

The Court recognizes that Guan is a *pro se* litigant, but Guan has unreasonably wasted the Court’s valuable resources and unduly burdened Debtor and third parties

¹¹ *Id.* (citing *In re Subpoenas Served on the Am. Kidney Fund, Inc.*, 2019 WL 1894248, at *5).

¹² Fed. R. Civ. P. 45(d)(1).

with her abusive subpoena filings. Debtor is entitled to sanctions against Guan and reasonable¹³ attorneys' fees and costs for work performed on its Motion.¹⁴

After review of the Affidavit from Debtor's counsel and the billing statements submitted,¹⁵ the Court finds the requested fees of \$1,194 reasonable and will award that amount as sanctions against Guan.

Accordingly, it is

ORDERED:

1. The Court awards Debtor sanctions of \$1,194 against Alice Guan based on Debtor's affidavit of Attorneys' Fees and Costs (Doc. Nos. 578 and 669-1).
2. Debtor shall offset these sanctions, dollar for dollar, against any amounts Guan is to receive on her allowed claim.

###

Attorney Daniel A. Velasquez will serve a copy of this Order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.

¹³ A determination of whether these fees are reasonable requires the Court to consider the number of hours that could be reasonably expended on the litigation and then multiply that hourly figure by a reasonable hourly rate. This is known as the "lodestar method." *Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 879 (11th Cir. 1990), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939 (1989). In conducting this analysis, the Court considers the twelve factors outlined in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Those twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.* at 717-19. The Court considered each applicable *Johnson* factor in reviewing the fees requested.

¹⁴ See *Martinez v. Giacobbe*, 951 So. 2d 902, 904 (Fla. 3d DCA 2007) (quoting *Fla. Fed. Sav. & Loan Ass'n v. Sanchez*, 553 So. 2d 1254, 1255 (Fla. 3d DCA 1989)) ("[I]t is for the bankruptcy court to determine whether a litigant 'was entitled to attorney fees incurred in the bankruptcy proceeding and, if so, what a reasonable fee should have been.'").

¹⁵ Doc. No. 669-1.