

ORDERED.

Dated: May 17, 2017



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

JUAN M. VELAZQUEZ and
CANDIDA R. VELAZQUEZ,

Debtors.

Case No. 8:15-bk-01712-CPM

Chapter 7

ROBERT HADLEY and
SHELIA HADLEY,

Debtors.

Case No. 8:15-bk-01585-CPM

Chapter 7

ORDER ON ORDERS TO SHOW CAUSE TO GREEN TREE SERVICING, LLC

THE CASES REFERENCED ABOVE came on for hearing on July 20, 2015, and for continued hearing on November 9, 2015, for consideration of the Court's Orders to Show Cause (Docs. 28 and 29, respectively) directing Green Tree Servicing, Inc. ("Green Tree") to appear and show cause why the Court should not impose sanctions against Green Tree under Rule 9011, Federal Rules of Bankruptcy Procedure, for submitting Reaffirmation Agreements (the "Agreements") (Docs. 19 and 11, respectively) that state the current market value of the collateral securing the Debtors' debts to Green Tree as the same amount, to the penny, as the Debtors' loan balances.

Under Rule 9011(b)(3), by presenting a bankruptcy court with a petition, pleading, motion, or other paper, the attorney or unrepresented party is certifying, among other things, that the allegations and other factual contentions have evidentiary support. Rule 9011 incorporates an objective standard, the application of which involves the following two-step analysis: “whether the party’s claims are objectively frivolous in view of the facts or law and then, if they are, whether the person who signed the pleadings should have been aware that they were frivolous; that is, would he have been aware had he made a reasonable inquiry.”¹ A court must look beyond the party’s subjective intent to determine whether, under the circumstances, a reasonable person would have taken the same actions.² Factually groundless allegations where the presenter offers no cognizable evidence to support his or her allegations merit Rule 9011 sanctions.³ And, significant to the facts at issue here, Rule 9011 does not exclude non-lawyers from its operation.⁴

In the Velazquez case, Green Tree submitted a reaffirmation agreement showing the current fair market value of the Debtors’ house as \$151,801.13. The Debtors’ bankruptcy schedules state the value of the property as \$95,617. In addition, the Court takes judicial notice that on the initial hearing date of July 20, 2015, the Polk County Property Appraiser reflected the just market value of this property as \$95,617. In the Hadley case, Green Tree submitted a reaffirmation agreement showing the current fair market value of the Debtors’ house as \$157,142.66. The Debtors’ bankruptcy schedules state the value of the property as \$67,236. In addition, the Court takes judicial notice that on July 20, 2015, the Polk County Property Appraiser reflected the just market value of this property as \$67,236. Thus, the Court finds that

¹ *In re Evergreen Security, Ltd.*, 384 B.R. 882, 931 (Bankr. M.D. Fla. 2008) (quoting *Jones v. Int’l Riding Helmets, Ltd.*, 49 F.3d 692, 695 (11th Cir. 1995)).

² *In re Graffy*, 233 B.R. 894, 896 (Bankr. M.D. Fla. 1999).

³ *Id.* See also *In re Stewart*, 247 B.R. 515, 523 (Bankr. M.D. Fla. 2000) (minimal factual inquiry may result in the imposition of Rule 9011 sanctions).

⁴ *Graffy* at 896 (citations omitted).

the stated values of the Debtors' homes as set forth in their respective reaffirmation agreements with Green Tree are objectively frivolous in view of the values provided on the Debtors' schedules and the Polk County Property Appraiser's website.

At the hearing, Green Tree made no proffer of having made any inquiry (reasonable or otherwise) as to the accuracy of the amounts stated in the Agreements. Instead, counsel for Green Tree advised the Court that when Green Tree's records reflect that a loan is not in default, Green Tree populates the field for "Current Market Value" as it appears in the reaffirmation agreement using the amount of the loan balance. When a loan is current, counsel explained, Green Tree needs no re-appraisal and, therefore, no re-appraisal is performed. Adherence to a company policy, however, does not excuse the failure to verify the accuracy of information provided to a court. A similar defense was rejected by the court in *In re Schuessler*.⁵ In that case, the court considered the imposition of sanctions against a creditor for filing a meritless motion for relief from stay based on lack of adequate protection, where the creditor followed the creditor's or its servicing agent's own policy of not allowing bank branches to accept direct, in-person payments from any mortgagor in bankruptcy. "Before moving for relief from stay, a secured creditor's analysts and supervisors should do more than simply forward data to the next station or entity involved in the process. Someone must consider the specific facts of each individual case and conclude that relief from stay is actually necessary and warranted."⁶ So too must someone at Green Tree be responsible for reviewing the market value information provided in each reaffirmation agreement for accuracy.

As to the imposition of sanctions, Rule 9011(c) provides in part:

(2) Nature of sanction; limitations

⁵ *In re Schuessler*, 386 B.R. 458 (Bankr. S.D. N.Y. 2008),

⁶ *Id.* at 491.

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

The determination of an appropriate Rule 9011 sanction lies within the discretion of the Court.⁷ As stated by Judge Paskay in *In re MPX Technology*, the purpose of a Rule 9011 sanction is to deter abusive practices and to compensate the offended party.⁸ Although Rule 9011 does not provide a list of factors to consider, the court in *In re Lemons* suggested that the following factors provide guidance as to whether to impose a sanction and if so, what sanction to impose:

- whether the improper conduct was willful or negligent;
- whether it was part of a pattern of activity, or an isolated event;
- whether it infected the entire pleading or only one particular count or defense;
- whether the person has engaged in similar conduct in other litigation;
- whether it was intended to injure;
- what effect it had on the litigation in time or expense;
- whether the responsible person is trained in the law;
- what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and
- what amount is needed to deter similar activity by other litigants.⁹

Nonmonetary sanctions are preferred over monetary sanctions, and the sanction imposed should be the minimum necessary to deter future violations.¹⁰

⁷ *In re MPX Technology, Inc.*, 310 B.R. 453, 459 (Bankr. M.D. Fla. 2004).

⁸ *Id.* (citation omitted).

⁹ *In re Lemons*, 285 B.R. 327, 333 (Bankr. W.D. Okla. 2002)

Here, the Court finds that Green Tree violated Rule 9011(b)(3) by making factual contentions regarding the value of the Debtors' collateral without sufficient evidentiary support for and without having made a reasonable inquiry into the accuracy of those contentions. Because no party moved for the imposition of monetary sanctions, the Court finds that based on the conduct at issue and in consideration of the factors described above, the Court should impose the following nonmonetary sanction as a means of deterring repetition of such conduct by Green Tree and others similarly situated. Accordingly, it is

ORDERED:

1. Green Tree shall modify its corporate training manual for reaffirmation agreements to include the following language:

When an employee signs papers for filing in bankruptcy court, by his or her signature the employee represents to the court that the employee has evidentiary support for the facts as stated in the papers. And the employee may not, therefore, sign a reaffirmation agreement unless he or she has such evidentiary support.

2. Within 30 days from date of entry of this order, Green Tree shall file a Notice of Compliance, certifying that the modification to its training manual for reaffirmation agreements described above has been made.

The Clerk shall serve a copy of this order on interested non-CM/ECF filers.

¹⁰ *Id.* (citation omitted).