UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

In the Matter of:	:	Chapter 7
	:	
BRADFORD GEORGE BROWN,	:	
	:	
Debtor	:	Case No. 05-30144 RFH
	:	
ERNEST V. HARRIS, TRUSTEE	:	
	:	
Plaintiff / Movant	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA, acting by and through the INTERNAL REVENUE SERVICE,	:	
	:	
Defendant	:	
	:	
v.	:	
	:	
BRADFORD GEORGE BROWN,	:	Adversary Proceeding No. 07-3007
	:	
Respondent	:	

BEFORE

ROBERT F. HERSHNER, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Ernest V. Harris, Trustee:	Ernest V. Harris P.O. Box 1586 Athens, Georgia 30603
For Bradford George Brown:	Bradford George Brown, Pro Se 73 Myrtle Street Sparta, Georgia 30187

MEMORANDUM OPINION

Ernest V. Harris, Trustee, Plaintiff/Movant (hereafter "Movant"), filed with the Court on December 5, 2007, a Motion For Sanctions Pursuant To Federal Rules of Bankruptcy Procedure 9011(c). Bradford George Brown, Respondent, did not file a response. Movant's motion came on for a hearing on January 4, 2008. The Court, having considered the motion and the arguments of the parties, now publishes this memorandum opinion.

Respondent filed pro se on January 31, 2005, a petition for relief under Chapter 11 of the Bankruptcy Code. Respondent retained counsel in February 2005. In December 2005, the Court entered an order converting Respondent's Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code. The Office of the United States Trustee appointed Ernest V. Harris, Movant, to be the Chapter 7 trustee of Respondent's bankruptcy estate. The Court entered an order in January 2007 allowing Respondent's counsel to withdraw. Respondent has represented himself in the Chapter 7 proceedings since January 2007. The Court, on many occasions, has urged Respondent to seek the advice of counsel.

During the past year, Respondent has asserted pro se numerous objections directed at Movant's administration of Respondent's Chapter 7 estate. Respondent contends in part that Movant has committed fraud by allegedly failing to vigorously

object to certain creditors' claims. The Court has consistently determined that Movant is properly performing his duties as Chapter 7 trustee. The Court has overruled almost all, or perhaps all, of Respondent's objections. Those decisions are now final and binding.

Also during the past year, Respondent's brother, Martin Lloyd Brown, has asserted pro se numerous objections[1] directed at Movant that are identical to the objections asserted by Respondent.[2] Respondent has been present in court each time that the Court has overruled his brother's objections. Simply stated, Respondent is aware that the Court has consistently ruled that Movant has not committed fraud and is properly performing his duties as Chapter 7 trustee.

Movant filed on February 2, 2007, this adversary proceeding to determine the extent and validity of the Internal Revenue Service's claim for taxes and for criminal restitution. The defendant in the adversary proceeding is the United States of America, acting by and through the IRS. Although not a party to the adversary proceeding, Respondent filed on October 22, 2007, a Motion For Relief From Obstruction Of Justice By Means Of Undue Delay Pursuant To 18 U.S.C. § 1516. In his motion, Respondent contends that Movant has committed fraud upon the Court in his handling of certain claims. Respondent asks that Movant be removed as trustee.

---

[1] The Court has urged Martin Lloyd Brown to seek the advice of counsel.

[2] Respondent incorporates his brother's objections into one of his motions for relief which are the subject of Movant's motion for sanctions.

Respondent also contends that Carol Koehler Ide, a trial attorney with the IRS, has engaged in an open-ended pattern of delay to obstruct a federal audit of Respondent's tax obligations in violation of 18 U.S.C. § 1516. Respondent contends that Ms. Ide has not timely completed an examination of Respondent's tax records. Finally, Respondent contends that a claim filed by the Baxter Bacon Estate "was fraud upon the Court."

Respondent also filed in this adversary proceeding on October 24, 2007, a Motion For Relief From Violation Of Civil Rights By Means Of Conspiracy Against Rights Pursuant To 18 U.S.C. 241. In his motion, Respondent contends that Movant has committed fraud upon the Court in his handling of the claim filed by the Baxter Bacon Estate. Respondent contends that he has a legal obligation to report Movant's felonious conduct under 18 U.S.C. § 4. Respondent contends that the claim filed by the Baxter Bacon Estate "was fraud upon the Court." Respondent contends that Ms. Ide is withholding and refusing to disclose certain information that would show that Respondent owes no tax obligations.

On November 5, 2007, Movant served Respondent with a motion for sanctions that Movant intended to file with the Court unless Respondent withdrew his motion alleging obstruction of justice and his motion alleging a civil rights violation. Respondent did not withdraw his motions within the 21 day "safe harbor" provision of Bankruptcy Rule 9011(c)(1)(A). Movant filed his motion for sanctions on December 5, 2007.

In his motion, Movant moves the Court to impose sanctions under Federal Rule of Bankruptcy Procedure 9011(c). Rule 9011 provides in relevant part:

> **Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers**
>
> **(a) Signing of papers**
>
> Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
>
> **(b) Representations to the court**
>
> By representing to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying 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.

(c) Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated

(A) By motion

A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative

On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanction; limitations

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.

(3) Order

When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Fed. R. Bank. P. 9011(a), (b), (c).

Bankruptcy Rule 9011 is the bankruptcy counterpart to Federal Rule of Civil Procedure 11. Case law interpreting Rule 11 provides this Court with guidance in

interpreting Rule 9011. See 10 Collier on Bankruptcy ¶ 9011.02 (15th ed. rev. 2007); Hope v. Zimmerman, (In re Calloway), Ch. 13, Case No. 96-51864, p.6 (Bankr. M.D. Ga. Sept. 12, 1997).

"The purpose of Rule 11 sanctions is to 'reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuvers.' . . . The rule incorporates an objective standard. Hence, courts determine whether a reasonable attorney in like circumstances could believe his actions were factually and legally justified." Kaplan v. DaimlerChrysler, A. G., 331 F.3d 1251, 1255 (11th Cir. 2003).

In Baker v. Alderman,[3] the Court of Appeals for the Eleventh Circuit stated:

> The objective standard for testing conduct under Rule 11 is "reasonableness under the circumstances" and "what was reasonable to believe at the time" the pleading was submitted. This court requires a two-step inquiry as to (1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleadings should have been aware that they were frivolous. Rule 11 sanctions are warranted when a party files a pleading that (1) has no reasonable factual basis; (2) is based on a legal theory that has no reasonable chance of success and that cannot be advanced as a reasonable argument to change existing law; and (3) is filed in bad faith for an improper purpose. Although sanctions are warranted when the claimant exhibits a "deliberate indifference to obvious facts," they are not warranted when the claimant's evidence is merely weak but appears sufficient, after a reasonable inquiry, to support a claim under existing law. Sanctions may be appropriate when the plain language of an applicable statute and the case law preclude relief.

[3] 158 F.3d 516 (11th Cir. 1998).

> However, the purpose of Rule 11 is to deter frivolous lawsuits and not to deter novel legal arguments or cases of first impression.

158 F.3d at 524.

"While this [objective] standard [of reasonableness] takes into account the special circumstances that often arise in *pro se* situations, *pro se* filings do not serve as an 'impenetrable shield, for one acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.'" Patterson v. Aiken, 841 F.2d 386, 387 (11th Cir. 1988).

In Industrial Risk Insurers v. M.A.N. Gutėhoffnungshütte,[4] the Eleventh Circuit stated:

> "Improper purpose may be shown by excessive persistence in pursuing a claim or defense in the face of repeated adverse rulings. . . . In order for sanctions to be imposed for excessive relitigation of an issue already decided by the court, the disputed issue must have been clearly decided by the court's earlier orders, and counsel's relitigation of the issue must clearly offer no meritorious new arguments. *See, e.g., Mariani v. Doctors Assoc's, Inc.* 983 F.2d 5, 8 (1st Cir. 1993) (imposing sanctions for "virtually *verbatim*" reargumentation of an issue—dismissal of the action—clearly already decided by the court) (emphasis in original).

141 F.3d at 1448.

[4] 141 F.3d 1434 (11th Cir. 1998).

In Riccard v. Prudential Insurance Co.,[5] the Eleventh Circuit stated:

> Although the sanctions most commonly imposed are costs and attorney's fees, the selection of the type of sanction to be imposed lies with the district court's sound exercise of discretion. *See Donaldson v. Clark*, 819 F.2d 1551, 1557 (11th Cir. 1987). When imposing sanctions, the district court must describe the conduct determined to constitute a violation of the rule and explain the basis for the sanction imposed. *See* Fed. R. Civ. P. 11(c)(3).

307 F.3d at 1295.

The court also stated:

> The court's power to protect its jurisdiction includes the power to enjoin a dissatisfied party bent on re-litigating claims that were (or could have been) previously litigated before the court from filing in both judicial and non-judicial forums, as long as the injunction does not completely foreclose a litigant from any access to the courts, which this one does not.

307 F.3d at 1295, n 15.

"Rule 11 does not prevent the imposition of sanctions where it is shown that the Rule was violated as to a portion of a pleading, even though it was not violated as to other portions." Patterson v. Aiken, 841 F.2d at 387.

"The conduct and [financial] resources of the party to be sanctioned are relevant to the determination of the amount of sanctions to be imposed." Baker v. Alderman, 158 F.3d 516, 528 (11th Cir. 1998).

---

[5] 307 F.3d 1277 (11th Cir. 2002).

The Advisory Committee Notes to the 1993 amendments to Rule 11 state, in part:

> [Rule11] emphasizes the duty of candor by subjecting litigants to potential sanctions by insisting upon a position after it is no longer tenable. . . .
>
> However, a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit.

The Advisory Committee Notes also state:

> Whether 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 process 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; what amount is needed to deter similar activity by other litigants: all of these may in a particular case be proper considerations. The court has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanctions should not be more severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons.

Turning to the case at bar, although not a party to this adversary proceeding, Respondent filed two motions contending in part that Movant has committed fraud

upon the Court and asks that Movant be removed as trustee. During the past year, Respondent and his brother have asserted pro se the same contentions on numerous occasions. The Court has consistently determined that Movant is properly performing his duties as Chapter 7 trustee.

During the hearing on Movant's motion for sanctions on January 4, 2008, Respondent continued to make the same arguments that the Court has heard, considered, and rejected at numerous prior hearings. Respondent continues to relitigate "virtually verbatim" his contentions of Movant's fraud long after the Court has ruled that his contentions have no merit.

In his motions, Respondent contends that he has no tax liability for tax years 1994 and 1995. Respondent contends that Ms. Ide is obstructing justice by undue delay in examining his tax returns. The Court notes that Respondent was convicted of tax evasion in federal district court. Respondent owes an obligation for criminal restitution of more than $3 million. That decision is final and binding. Respondent has made the same arguments concerning his tax obligations on numerous occasions. Respondent continues to relitigate the same contentions at almost every hearing.

In his motions, Respondent contends that "The Baxter Bacon Claim 27 for $3,000,000 was fraud upon the Court." Respondent contends that Movant "recruited" this claim and somehow "orchestrated" the amount of the claim to increase from $10,000 to $3,000,000. Respondent has made the same argument at numerous prior

hearings. Respondent continues to relitigate this contention long after the Court has ruled that it has no merit.

Respondent has proceeded pro se in the Chapter 7 proceedings since January 2007. The Court, on many occasions, has urged Respondent to seek the advice of counsel. Respondent is a medical doctor who had substantial real estate holdings prior to filing for bankruptcy relief. In the motions and objections that Respondent has filed in the bankruptcy proceedings, Respondent regularly includes citations to the Bankruptcy Code and to other federal statutes. The Court has consistently ruled that Movant is properly performing his duties as Chapter 7 trustee. Although he is proceeding pro se, the Court is of the opinion that Respondent understands that the two motions he has filed in this adversary proceeding are frivolous and meritless. The Court is persuaded that Respondent seeks to delay and harass by relitigating frivolous contentions that the Court has already ruled upon. The Court is persuaded that Respondent should be sanctioned under Bankruptcy Rule 9011.

Movant asks the Court to order Respondent to reimburse the bankruptcy estate for attorney fees incurred in dealing with Respondent's frivolous motions. Movant also asks the Court to impose additional monetary sanctions to deter Respondent from continuing to assert frivolous motions, objections and responses.

The Court is persuaded that the bankruptcy estate should recover, at a minimum, the attorney fees and expenses it has incurred in dealing with the two

motions filed by Respondent. The Court directs Movant to file a verified statement of his attorney time and expenses within twenty days of this decision. The Court will then impose sanctions sufficient to deter Respondent's frivolous motions, objections and responses.

An order in accordance with this memorandum opinion will be entered this date.

DATED this 14th day of February, 2008.

/s/ Robert F. Hershner, Jr.
ROBERT F. HERSHNER, JR.
United States Bankruptcy Judge