

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

DONALD A. TANGWALL

Plaintiff

v.

Adv. Proc. No. 01-3196

MICHAEL JABLONSKI, DAVID WECKER,
MARK PLOE, LINDA PLOE, ALAN ROBB,
ROBERT LOOBY, PATRICK STAPLETON,
and WEBSTER, LOOBY, BAUMGARTEN,
A Michigan Corporation, Jointly and Severally

Defendants

**MEMORANDUM ON MOTIONS
FOR SANCTIONS AND ATTORNEY FEES**

APPEARANCES: DONALD A. TANGWALL
576 Foothills Plaza Drive
Maryville, Tennessee 37801
Debtor, *pro se*

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

The court held a trial on July 3, 2002, on the following:

1. Patrick Stapleton's Motion for Rule 9011 Sanctions Against Donald A. Tangwall, filed on April 17, 2002, in the Debtor's bankruptcy case;
2. Patrick Stapleton's Motion for Rule 9011 Sanctions Against Donald A. Tangwall, filed on April 17, 2002, in Adversary Proceeding 01-3196 (Adv. No. 01-3196); and
3. Patrick Stapleton's Application for Costs, filed on April 11, 2002, in the Debtor's bankruptcy case.

As the issues in the two Motions filed in the Debtor's case and in the Application filed in the adversary proceeding are intertwined, the court will resolve all three within this Memorandum.

By his Rule 9011 Motions, Stapleton asks the court to sanction the Debtor more than \$35,000.00 in attorney fees for filing allegedly frivolous and/or duplicative motions in a "campaign" of harassment and revenge. By his Application for Costs, Stapleton seeks to recover attorney fees of \$3,616.50 as a component of his costs in defending the Debtor's January 4, 2002 "Verified Motion for Contempt on Patrick Stapleton" (Verified Contempt Motion).¹

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A) (West 1993).

¹ The \$3,616.50 is also a component of the more than \$35,000.00 sought under the Rule 9011 Motions. Stapleton is not, however, seeking duplicate recovery.

I

(a) The Initial Contempt Motion

Many of the facts relevant to the present application and motions have been previously summarized by the court as follows:

The Debtor filed his Voluntary Chapter 7 Petition on February 11, 2000. He subsequently filed a Complaint on March 27, 2001, in the Circuit Court for Blount County, Tennessee, captioned "Donald A. Tangwall and Terry D. McFarlin v. Patrick Stapleton, Craig M. Reed, Darcy Reed, Mark Ploe, Linda Ploe, and Michael Jablonski." The Debtor sought damages resulting from the Defendants' alleged conversion of his personal property in January and March 2000.

The Circuit Court dismissed the Complaint on May 31, 2001. The Order of Dismissal provides in material part:

This cause came to be heard on the 30th day of May, 2001, upon the Motion of Defendants Pat Stapleton, Mark Ploe, Linda Ploe, and Michael Jablonski, to dismiss Plaintiff's cause of action as it constitutes property of the Debtor's Estate in Plaintiff's Bankruptcy styled Donald A. Tangwall, Chapter 7 Bankruptcy No. 00-30531. . . . Upon the arguments of counsel for the Defendants, the Plaintiff proceeding pro se, review of the relevant bankruptcy law, and the case file as a whole, it is hereby ordered, adjudged, & decreed as follows:

1. That Plaintiff's suit against all Defendants is hereby dismissed by this Court as the claims contained in Plaintiff's suit constitute property of Plaintiff's Bankruptcy Estate under 11 U.S.C. § 541(a)(1).

2. This dismissal shall be with prejudice as to the Plaintiff Donald A. Tangwall, but without prejudice as to the rights of the Trustee in Bankruptcy.

Also on May 31, 2001, the Chapter 7 Trustee filed a Notice of Abandonment in this court relating to the claims asserted in the Circuit Court Complaint. The Notice of Abandonment provides:

The Trustee, by and through counsel, hereby gives notice that he is abandoning any interest of the Estate in any cause of action

possessed by the Debtor against any party for the alleged wrongful eviction and dispossession of real property located at 642 Wears Valley Road, Townsend, Tennessee, and for the alleged wrongful dispossession, conversion, and or retention of personal property of the Debtor which has been listed as exempt in the Debtor's petition, as may be amended. The abandonment does not extend to any causes of action possessed by the Debtor seeking damages for any alleged prepetition misconduct or as to any request for turnover of any property of the Estate not otherwise mentioned herein.

The Debtor then filed his [?Motion to Find Attorney Patrick Stapleton, interested party Mark Ploe and Lynn Ploe in contempt of court, damages, and for return of property per Bankruptcy rule 4001(a)(3)" (Initial Contempt Motion)] in this court, seeking the return of his personal property, money damages for wrongful eviction, and a finding of contempt against Stapleton and the Ploes. On its face, the [Initial] Contempt Motion raises only the March 2000 *post*petition claims and does not mention the January 2000 *pre*petition claims.

In re Tangwall, No. 00-30531, slip op. at 2-3 (Bankr. E.D. Tenn. May 28, 2002) (footnote omitted).

At the June 25, 2002 hearing on the Initial Contempt Motion, the court found that Stapleton violated the automatic stay of 11 U.S.C.A. § 362 (West 1993 & Supp. 2002) as alleged by the Debtor. However, because the Debtor presented no meaningful evidence of injury resulting from Stapleton's actions, the court awarded no damages for the violation.

The Initial Contempt Motion expressly requested the return of, and damages for injury to, the "[p]ersonal property of Donald Tangwall." The motion also sought emotional distress damages. However, after pursuing the Initial Contempt Motion for more than nine months, the Debtor acknowledged at the July 3, 2002 hearing that any harm he may have suffered due to Stapleton's automatic stay violation was "insignificant."²

² As an excuse for his failure to offer proof of damages, the Debtor dubiously alleged, for the first time in this proceeding, that the ultimate party injured by the automatic stay violation was Tang-Tang Marketing, one of the Debtor's
(continued...)

(b) The Verified Contempt Motion

The Debtor's Verified Contempt Motion has also been previously discussed by the court:

Stapleton and the Ploes are the subjects of [the Initial Contempt Motion] filed in this court by the Debtor on September 14, 2001. In his subsequent Verified Contempt Motion, the Debtor accuses Stapleton of tampering with the Debtor's witness David Chamberlain (whose testimony is purportedly relevant to the Initial Contempt Motion) by lying to David Chamberlain regarding the Debtor's alleged criminal background.

In re Tangwall, No. 00-30531, slip op. at 2-3 (Bankr. E.D. Tenn. Mar. 28, 2002) (footnotes omitted). The Verified Contempt Motion was dismissed on Stapleton's Motion for Summary Judgment with costs taxed to the Debtor. *See id.* at 6-7.

The Verified Contempt Motion stated, in material part, that "[d]uring discovery the Debtor has found Patrick Stapleton to be tampering with Debtors [sic] witnesses." However, in a January 27, 2002 deposition, the Debtor admitted that he filed the motion, without any evidence of actual witness tampering, merely because David Chamberlain had expressed an unwillingness to testify.

(c) Adv. No. 01-3196

Adversary No. 01-3196 was initiated by the December 11, 2001 filing of the Debtor's Complaint, which asserts numerous pre- and postpetition claims. Count V of the Complaint seeks damages for the same January 2000 prepetition conduct complained of in the Blount County Circuit

²(...continued)
business entities.

Court litigation. At the July 3, 2002 hearing, the Debtor testified that he voluntarily dismissed a complaint, presumably Adv. No. 01-3196, “after discovering . . . what actually happened.”

(d) The Motion for Disqualification

The Debtor filed his “Debtor’s Motion for Disqualification of Attorney Patrick Stapleton, Franklin Norton, and David Benner” (Motion for Disqualification) on October 2, 2001. Norton and Benner are the attorneys for Stapleton, who in turn was formerly the attorney for Defendants Mark and Linda Ploe. The Motion for Disqualification alleged that Norton and Benner, who work at the same law firm, should be disqualified due to the Debtor’s intention to call Benner as a witness.

Stapleton alleges that the motion was filed “to get leverage over defense counsel.” The Debtor withdrew the Motion for Disqualification in open court on March 7, 2002. At the July 3, 2002 hearing, the Debtor stated that he withdrew the Motion for Disqualification “as soon as he [Benner] cooperated and gave me some information.”

II

As noted, the court’s March 28, 2002 Order awarded Stapleton his costs in defending the Verified Contempt Motion. By his Application for Costs, Stapleton seeks an award of his attorney fees expended in that same proceeding. Stapleton contends that he is deserving of attorney fees because the Verified Contempt Motion was based on unfounded allegations and filed in bad faith.

Generally, absent specific statutory or contractual authorization, litigants are responsible for their own attorney fees. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 95 S. Ct. 1612, 1621

(1975). However, the court may award attorney fees in “certain exceptional cases where the opposing party has acted in bad faith.” *Shimman v. International Union of Operating Eng’rs, Local 18*, 744 F.2d 1226, 1229 (6th Cir. 1984); see also *Alyeska*, 95 S. Ct. at 1622 (Attorney fees may be awarded “when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons”) (citation omitted).

Attorney fees are warranted only if the court finds that “the claims advanced were meritless, that counsel knew or should have known this, and that the motive for filing the suit was for an improper purpose such as harassment.” *Big Yank Corp. v. Liberty Mut. Fire Ins. Co.*, 125 F.3d 308, 313 (6th Cir. 1997) (citation omitted). The court must find that the claims at issue were both meritless and filed for improper reasons. See *id.* at 313-14 (citing and quoting *Colombrito v. Kelly*, 764 F.2d 122, 133 (2d Cir. 1985)). “Neither meritlessness alone . . . nor improper motives alone . . . will suffice.” *Liberty Mut.*, 125 F.3d at 314 (quoting *Colombrito*, 764 F.2d at 133).

As will be discussed more fully below, the court has little difficulty finding that the Debtor’s Verified Contempt Motion was brought without adequate investigation and without any evidentiary support. As such, the claim was meritless. Stapleton has not, however, shown an improper motive on the Debtor’s part in the filing of the Verified Contempt Motion. The alleged “campaign” of harassment and revenge, while certainly conceivable, simply has not been proven beyond the bounds of speculation. Absent proof of an improper purpose, the court cannot make a finding of bad faith, and Stapleton is therefore not entitled to an award of attorney fees as a component of his costs. See *Liberty Mut.*, 125 F.3d at 314.

III

Stapleton's Rule 9011 Motions are brought pursuant to FED. R. BANKR. P. 9011(b) and (c), which provide in material part:

~~(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by filing a motion or otherwise) a 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;

. . . .

(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[.]

. . . .

(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. . . .

. . . .

~~(2) Nature of Sanctions. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter or punish the debtor or the filer 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.~~

. . . .

(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. BANKR. P. 9011(b), (c). “[T]he test for imposing Rule 9011 sanctions is whether the individual’s conduct was reasonable under the circumstances” existing at the time of filing. *Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 481 (6th Cir. 1996). Ambiguities should be resolved in favor of the filing party. 10 KING, COLLIER ON BANKRUPTCY ¶ 9011.04[5], at 9011-21 (15th ed. rev. 2002).

IV

Stapleton seeks Rule 9011 sanctions under the following theories:

1. The Debtor’s Initial Contempt Motion was frivolously filed, because the claims contained therein had already been decided by the Blount County Circuit Court’s Order of Dismissal.
2. The Debtor’s Initial Contempt Motion was frivolously filed, because it asserts claims that are property of the estate.
3. Adv. No. 01-3196 was frivolously filed, because it contains almost identical claims and requests for relief as the Initial Contempt Motion and the Circuit Court Complaint.
4. The Debtor’s Motion for Disqualification was filed without justification.

5. The Debtor's Verified Contempt Motion was filed without justification.

The first of these theories has already been disposed of by the court since the initial filing of Stapleton's Rule 9011 Motions. The Circuit Court's Order of Dismissal did not have a preclusive effect on future filings. See *In re Tangwall*, No. 00-30531, slip op. at 4-5 (Bankr. E.D. Tenn. May 28, 2002). Because the Circuit Court's dismissal was based only on jurisdictional grounds, the Order of Dismissal is not an "adjudication on the merits" that precludes relitigation in the proper court. See *id.*

Stapleton's second and third theories have also been previously addressed by the court. Stapleton is correct in his assertion that the Debtor's Initial Contempt Motion contains claims that are property of the estate. See *id.* at 5-6. The Debtor personally sought damages for items that: (1) he did not claim as exempt; and (2) the Chapter 7 Trustee did not abandon. See *id.* "Those items therefore remain property of the estate, and claims relating to those items remain under the control of the Chapter 7 Trustee." *Id.* at 6. For the same reasons, the Debtor's Adv. No. 01-3196 Complaint contains prepetition claims belonging to the estate. "It is well settled that the right to pursue causes of action formerly belonging to the debtor--a form of property under the Bankruptcy Code--vests in the trustee for the benefit of the estate. The debtor has no standing to pursue such causes of action." *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988) (internal citations and quotations omitted).

Although the court is troubled by the Debtor's pursuit of claims belonging to the Chapter 7 estate, Rule 9011 violations are more clearly evident in the Verified Contempt Motion and the Motion

for Disqualification. As noted, the Verified Contempt Motion was based on allegations lacking in evidentiary support. See FED. R. BANKR. P. 9011(b)(3).³ Further, the Debtor's own explanation for his withdrawal of the Motion for Disqualification proves an improper purpose in the filing of that document - to obtain the "cooperation" of Stapleton's counsel. See FED. R. BANKR. P. 9011(b)(1).

In the court's mind, the Debtor's Rule 9011 violations are sanctionable. In deciding the appropriate sanction, the court is mindful that the penalty "shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." FED. R. BANKR. P. 9011(c)(2). "The principal goal of Rule 11 sanctions is deterrence with compensation being a secondary goal." *Orlett v. Cincinnati Microwave, Inc.*, 954 F.2d 414, 419 (6th Cir. 1992). The sanction may consist of 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." FED. R. BANKR. P. 9011(c)(2). In identifying the appropriate sanction, the court should consider "all relevant factors" including the ability to pay, the party's mitigating conduct (if any), and the party's culpability. *Orlett*, 954 F.2d at 419.

The more than \$35,000.00 in attorney fees requested by Stapleton is excessive in light of the Debtor's ability to pay and is beyond the minimal amount necessary to discourage future misconduct. The Debtor testified that he has been unemployed, working on his "electric car project," and living on loans from friends since September 1999. The Debtor is not, however, without the resources to pay some lesser sanction. His unemployment is, by all appearances, voluntary.

³ The Debtor's failure to offer proof of damages at the June 25, 2002 hearing, and his acknowledgment that he suffered, at best, "insignificant" harm, indicate that the Initial Contempt Motion may also have contained allegations devoid of evidentiary support.

The court finds Stapleton's \$3,616.50 in attorney fees expended in defense of the Verified Contempt Motion to be a reasonable sanction under the circumstances of this case.⁴ The court views this sanction as the least amount necessary to deter the Debtor's misconduct.⁵ The Debtor's multiple violations of Rule 9011 are troubling, specifically his persistent litigation of at least one claim lacking evidentiary support and his filing of a motion to obtain the "cooperation" of defense counsel.⁶ The Debtor's conduct has cost Stapleton unwarranted time and expense and has "epitomize[d] a misuse of the court's resources." See *Metropolitan Life Ins. Co. v. Alside Supply Ctr. of Knoxville (In re Clemmer)*, Ch. 7 Case No. 94-33182, Adv. No. 95-3004, slip op. at 77 (Bankr. E.D. Tenn. Nov. 8, 1995).

Further, the court will impose an additional, nonmonetary sanction in light of the Debtor's pattern of improper filings. See FED. R. BANKR. P. 9011(c)(2) (Sanctions may include "directives of a nonmonetary nature . . ."). The Debtor will be required to seek leave of court before filing any future motions or complaints in his bankruptcy case. See, e.g., *Selvy v. United States Dep't of Hous. & Urban Dev.*, 198 F.R.D. 485, 487 (E.D. Mich. 2000).

⁴ The court is not compelled to set another hearing to allow the Debtor an opportunity to examine Mr. Stapleton's attorney regarding these fees. The Debtor was served with a copy of the Affidavit of R. David Benner in Support of Application for Costs filed April 11, 2002, which fully itemizes the services rendered by Mr. Stapleton's attorney, R. David Benner, in support of the requested fee. Furthermore, Mr. Benner testified at the July 3, 2002 hearing and was subject to cross examination on the attorney fee issue.

⁵ Lesser sanctions, such as the costs awarded in the court's March 28, 2002 Order on the Verified Contempt Motion, have not phased the Debtor, as is evidenced by his continued pursuit of "insignificant" damages under his Initial Contempt Motion.

⁶ The Debtor's status as a *pro se* litigant in no way excuses his conduct. "The Debtor, although unrepresented by counsel, is far more sophisticated than the conventional *pro se* debtor. Throughout his three years of appearances before this court, the Debtor has shown himself to be an experienced, articulate, and savvy litigant." *Farmer v. Butch Family Preservation Trust (In re Tangwall)*, Ch. 7 Case No. 00-30531, Adv. No. 01-3083, slip op. at 14 (Bankr. E.D. Tenn. June 12, 2002).

As the Debtor's Rule 9011 violations occurred in contested matters filed in the bankruptcy case, the court will deny Stapleton's Motion filed in the adversary proceeding. The Application for Costs will also be denied.

An order consistent with this Memorandum will be entered.

FILED: July 17, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

DONALD A. TANGWALL

Plaintiff

v.

Adv. Proc. No. 01-3196

MICHAEL JABLONSKI, DAVID WECKER,
MARK PLOE, LINDA PLOE, ALAN ROBB,
ROBERT LOOBY, PATRICK STAPLETON,
and WEBSTER, LOOBY, BAUMGARTEN,
A Michigan Corporation, Jointly and Severally

Defendants

ORDER

For the reasons stated in the Memorandum on Motions for Sanctions and Attorney Fees filed this date, the court directs that Patrick Stapleton's Motion for Sanctions Against Donald A. Tangwall filed by Patrick Stapleton on April 17, 2002, is DENIED.

SO ORDERED.

ENTER: July 17, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

ORDER

For the reasons stated in the Memorandum on Motions for Sanctions and Attorney Fees filed this date, the court directs the following:

1. The Application for Costs filed by Patrick Stapleton on April 11, 2002, is DENIED.
2. Patrick Stapleton's Motion for Rule 9011 Sanctions Against Donald A. Tangwall filed on April 17, 2002, is GRANTED.
3. Patrick Stapleton shall recover attorney fees from the Debtor Donald A. Tangwall in the amount of \$3,616.50. This Order constitutes a judgment for the attorney fees.
4. The Debtor Donald A. Tangwall will seek leave of the court before filing another motion or complaint in the bankruptcy court for the Eastern District of Tennessee.

SO ORDERED.

ENTER: July 17, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE