

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 08-13109	)	
	)	
JUSTIN LEE STUCKEY	)	
TERESA ROSE STUCKEY	)	
	)	
Debtors	)	
	)	
	)	
JAMES CRAVER	)	
JANE CRAVER	)	
	)	
Plaintiffs	)	
	)	
vs.	)	PROC. NO. 09-1046
	)	
JUSTIN LEE STUCKEY	)	
TERESA ROSE STUCKEY	)	
	)	
Defendants	)	

## DECISION AND ORDER ON MOTIONS FOR SANCTIONS

At Fort Wayne, Indiana, on June 2, 2010.

The matter before the court involves a motion for sanctions under Rule 9011(b)(1), filed by the defendants, to which the plaintiffs have responded. See, N.D. Ind. L.B.R. B-7007-1 (concerning the court's motion practice). This is the second such motion the defendants have filed. Their first motion was denied by the court's order of March 11, 2010, because of the failure to comply with the safe harbor provisions of Rule 9011.

The present motion suffers from the same deficiency. Although the defendants argue that filing their prior sanctions motion satisfies the safe harbor requirements of the rule the court cannot agree. See, Zhu v. Federal Housing Finance Board, 2007 WL 675646 (D. Kan. 2007) (movant cannot use compliance with safe harbor in earlier motion for sanctions to avoid separate compliance

with renewed motion). Rule 11 prohibits filing a motion for sanctions, or presenting such a motion to the court, unless it was served upon the opposition at least twenty-one days earlier. Fed R. Bankr P. Rule 9011(c)(1). This prohibition would be almost meaningless if the very act of violating it – by prematurely filing a motion for sanctions – could serve as the foundation for refileing that same motion several weeks later.

Even if the defendants' prior, unsuccessful motion for sanctions could satisfy the safe harbor requirements of Rule 9011, their present motion still has no merit. The essence of the motion is that this action is frivolous; so the plaintiffs have violated Rule 11 because “the action serves no purpose other than manifesting Plaintiffs' intent to harass or cause unnecessary delay or needles [sic] increase in the cost of litigation.” Motion for Sanctions, filed April 2, 2010, ¶ 2. But the plaintiffs have won! The court entered judgment in their favor – a judgment on the merits – denying debtors' discharge, on April 26.<sup>1</sup> See, Decision and Order on Motion for Summary Judgment, entered April 26, 2010. The court finds it difficult to conceive how the proper prosecution of a meritorious claim can constitute a violation of Rule 11, see, The Cancer Foundation, Inc. v. Cerberus Capital Management, L.P., 2008 WL 927989 (N.D. Ill. 2008) (sanctions not appropriate where “court is unable to find a purpose other than to seek relief in a court of law.”); Draper and Kramer, Inc. v. Baskin-Robbins, Inc., 690 F. Supp. 728, 732 (N.D. Ill. 1988) (“When the accused attorney actually prevails on his underlying position, his effort to turn the tables on his [Rule 11] accuser has particular strength.”), and the defendants' arguments do nothing to help overcome that skepticism.

Defendants' motion for sanctions pursuant to Rule 9011 is DENIED. That does not end

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<sup>1</sup>The court recognizes that the defendants have recently appealed that decision. See, Notice of Appeal dated May 17, 2010.

things, however. In response to the defendants' motion, the plaintiffs not only challenged the sufficiency of the motion but they also filed a counter-motion for sanctions, to which there has been no response. See, N.D. Ind. L.B.R. B-7007-1. Such a motion was not really necessary. Rule 9011 provides that "the court may award to the party prevailing on the motion reasonable expenses and attorney's fees incurred in presenting or opposing the motion." Fed. R. Bankr. P. Rule 9011(c)(1)(A) (emphasis added). See also, Fed. R. Civ. P. Rule 11, Advisory Committee Note (1983 Amendments) ("service of a cross motion under Rule 11 should rarely be needed since . . . the court may award to the person who prevails on a motion under Rule 11 . . . reasonable expenses, including attorney's fees, incurred in presenting or opposing the motion.").

"Rule 11 is not a toy." Draper and Kramer, Inc., 690 F. Supp. at 732. A motion for sanctions is itself subject to the requirements of Rule 11. Fed. R. Civ. P. Rule 11, Advisory Committee Note (1983 Amendments). A violation of that rule is "a serious thing, and an accusation of such wrongdoing is equally serious." Draper and Kramer, Inc., 690 F. Supp. at 732. The defendants' present motion for Rule 11 sanctions is so lacking, both procedurally and in its underlying merits, see e.g., Connecticut General Life Ins. Co. v. Thomas, 910 F. Supp 297, 305 (S.D. Tex. 1995), that it is appropriate for the plaintiffs to recover the reasonable attorney fees and expenses incurred in responding to it. This is especially so since the court warned defendants' counsel about the dangers of filing an inadequate motion for sanctions when it denied the defendants' earlier motion. See, Decision and Order dated March 11, 2010, pg. 2, n.1.

The plaintiffs are entitled to recover their reasonable costs, expenses and attorney fees associated with opposing defendants' motion for Rule 11 sanctions, filed on April 2, 2010. They shall have fourteen (14) days from this date within which to file and serve affidavits itemizing any

such costs, fees and expenses. The defendants shall have fourteen (14) days thereafter to file any objections thereto. In the absence of objection, the court will determine the reasonable amount of any costs, fees and expenses without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court