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JUDGE: M. A. Mahoney

PARTIES: Samuel R. Brooks, III, Linda Bender Brooks, Douglas C. Hammac, Hammac's
Garage and Wrecker

CHAPTER: 13

ATTORNEYS: R. D. Horne

DATE: 12/3/98

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

SAMUEL R. BROOKS III
LINDA BENDER BROOKS

Case No. 94-12661-MAM-13

Debtors

SAMUEL R. BROOKS III and
LINDA BENDER BROOKS

Plaintiffs

v.

Adv. No. 95-1184

DOUGLAS C. HAMMAC, individually and
d/b/a HAMMAC'S GARAGE AND WRECKER

Defendants

**ORDER AWARDING SANCTIONS AGAINST
PLAINTIFF SAMUEL R. BROOKS III AND LINDA BENDER BROOKS**

Richard D. Horne, Mobile, Alabama, Attorney for Defendants
Samuel R. Brooks III and Linda Bender Brooks, pro se

This case is before the Court on the motion of the Defendants for sanctions against the plaintiffs, Samuel R. Brooks and Linda Bender Brooks. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is awarding sanctions against Samuel Robert Brooks III and Linda Bender Brooks, jointly and severally, in the amount of \$2,285 in favor of the defendants, and \$50 solely against Samuel Robert Brooks III in favor of the defendants.

FACTS

On September 18, 1995, the Brooks commenced this lawsuit against Hammac and his garage. The suit alleged that Hammac and his business harmed the Brooks when Hammac picked up and took to Hammac's place of business for storage a number of vehicles and possibly unrelated auto parts and other items. The Brooks were being evicted from their home on January 18, 1995. The eviction was requested in an eviction suit by Lawrence and Elva Tillman who owned the house that the Brooks were leasing. The sheriff arranged for Hammac to tow the vehicles and parts away as a part of the eviction. The Mobile County Sheriff's Office had obtained a court order from the Circuit Court authorizing the removal of the cars by reasonable means.

The Brooks alleged to the Circuit Court and to this Court that the eviction was improper because they filed bankruptcy the morning of the eviction. However, as the evidence shows, an order of Judge Johnstone reflects his knowledge of that fact, his mistaken belief that the automatic stay had been lifted,¹ and his authorization to proceed with the eviction process.

Prior to the suit against Hammac, in January 1995, the Brooks had raised the issue of the Tillmans alleged violation of the automatic stay and the Tillmans had sought to prevent confirmation of the Brooks' chapter 13 plan and to dismiss the Brooks' bankruptcy case. On March 16, 1995, the Tillmans and the Brooks signed a Mutual Release of All Claims in which, among other things, the Brooks released the Tillmans, "their agents, servants, employees, attorneys, representatives, and assigns" from liability for "acts done within the scope of their

¹ The Brooks had filed an earlier bankruptcy case in which the stay had been lifted to allow the Tillmans to exercise their state law remedies. Presumably, this order is the one of which Judge Johnstone was aware.

employment, representation, agency or other relationship with Lawrence D. Tillman and Elva Tillman.” The release covered claims arising from “the eviction or ejection [from their home] of the Brooks by the Tillmans . . . any claims for violation of the automatic stay . . . and all other claims.”

This suit, commenced by the Brooks against Hammac six months later, seeks damages from Hammac on nine grounds: negligence, gross negligence, willful and/or wanton behavior, conversion of vehicles, conversion of personal property in vehicles, conversion of personal property other than in the vehicles,² theft of vehicles, theft of personal property in vehicles, and theft of personal property other than in the vehicles. The causes of action arise from actions Hammac took in relation to the January 18, 1995 eviction.

On January 10, 1996, this Court dismissed the case to the extent it was based upon grounds that Hammac had violated the automatic stay, finding Hammac had not. The Court abstained pursuant to 28 U.S.C. § 1334 (c)(1) from the remainder of the case, i.e. all of the causes of action that remain to the extent they do not arise from the claim of the Brooks that Hammac violated the stay. The Court based its decision on the stay violation issue on three theories. One, the release covered Hammac as an agent of the Tillmans and all claims as to violation of the stay were released on March 16, 1995. Two, if a violation of the stay occurred, it was not willful as required to be actionable pursuant to 11 U.S.C. § 362(h). Three, even if it was a willful violation of the stay, no damages were possible because Hammac merely stored the property; it was not destroyed.

² The Brooks allege that Hammac’s took property other than the vehicles at their home the day of the eviction, e.g. engine parts, and related items.

Brooks appealed this ruling to the District Court and to the Eleventh Circuit Court of Appeals. The order was affirmed and is final.

During the case, the Brooks failed to include their address or telephone number on any pleadings. They began to include these only after the dismissal of the case had occurred and the sanctions motion had been filed. As a result of the eviction, their address had changed which made this information important. No pleading in the main bankruptcy case included an address or telephone number either until September 1996.

On February 13, 1996, Hammac filed a Motion for Sanctions seeking attorneys fees and costs expended in defending this action. Hammac alleged that, in light of the prior release, the suit by the Brooks violated Fed. R. Bankr. P. 9011 (Rule 9011 or the Rule). Hammac also asserted that the Brooks failed to include in their pleadings an address and telephone number at which they could be reached for service purposes.

The Court continued the sanctions motion for hearing until after the underlying dismissal order was final. A hearing was held on the motion on November 18, 1998. At the hearing, Hammac introduced evidence of the fees and expenses of his attorney and submitted copies of the court documents from Mobile County Circuit Court, Bankruptcy Court, and the U.S. District Court relevant to this issue. Mr. Horne spent 15.8 hours on this case (excluding the sanctions hearing time). He charges \$150 per hour. His expenses were \$93.61. Approximately 1-1.5 hours are claimed for time spent during the appeal to U.S. District Court.

Mr. Brooks was a practicing attorney prior to his disbarment in 1987. Ms. Brooks signed almost every pleading, but is not an attorney nor did the evidence show that she knew the law.

LAW

Since this adversary case was commenced in 1995, Fed. R. Bankr. P. 9011 as in effect in 1995 is the operative statute.³ In 1995, in relevant part, Rule 9011 stated:

Every . . . pleading, motion and other paper served or filed in a case under the Code on behalf of a party . . . shall be signed. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of...a party constitutes a certificate that the . . . party has read the document; that to the best of the . . . party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay, or needless increase in the cost of litigation or administration of the case. . . . If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it...an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

The movant bears the burden of proving the propriety of the sanction and the amount of damage.

The standard for judging whether a sanction is warranted is an objective one. *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 111 S. Ct. 922 (1991); *Didie v. Howes*, 988 F. 2d 1097 (11th Cir. 1993).

In assessing Rule 11 sanctions, a court first determines 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 . . .

Pelletier v. Zweifel, 921 F.2d 1465, 1514 (11th Cir. 1991) (citing *Donaldson v. Clark*, 819 F.2d 1551 (11th Cir. 1987)).

The Advisory Committee Notes to the 1993 Amendments to Rule 11 include factors to be considered by courts in ruling on sanctions motions: (1) whether the improper conduct was

³ Since that time, Rule 9011 has been amended.

willful, or negligent; (2) whether it was part of a pattern of activity, or an isolated event; (3) whether it infected the entire pleading, or only one particular count or defense; (4) whether the person has engaged in similar conduct in other litigation; (5) what effect it had on the litigation process in time or expense; (6) whether the responsible person is trained in the law; and (7) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case. Although these factors were not included in the notes until the new version of Rule 11 was effective, which corresponds to the 1997 amendment to Rule 9011 (not applicable to this case), they are relevant considerations under the old or new version of the Rule. *See also, Vasile v. Dean Witter Reynolds, Inc.*, 20 F. Supp.2d 465 (E.D.N.Y. 1998). The factors are considered in Parts A, B and C below.

The Court will discuss the two grounds for sanctions: the failure to list an address and telephone number and the groundless suit separately in parts A and B and will discuss the Brooks' ability to pay any sanctions in part C.

A.

As stated explicitly in the Rule, the Brooks were required to include their address and telephone number on each pleading. It was not done until well after the motion for sanctions was filed. At one point in the case, Mr. Brooks complained that he had not been receiving pleadings in a timely fashion. The Court admonished him to file pleadings or notices in his main bankruptcy file and this case to alert parties to his address. He did not do so, although he did orally inform opposing counsel and the Court of his address.

The Brooks are representing themselves in this case. Pro se litigants are normally given some leeway in procedural matters due to their lack of knowledge or expertise. *Downs v. Westphal*, 78 F.3d 1252 (7th Cir. 1996) (“[a]lthough civil litigants who represent themselves

(“pro se”) benefit from various procedural protections not otherwise afforded to the attorney represented litigant . . . pro se litigants are not entitled to a general dispensation from the rules of procedure or court-imposed deadlines.” (quoting *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994)); *Worst v. Hart*, 1995 WL 431357, *7 (N.D. Fla. 1995); *Thomas v. Evans*, 880 F. 2d 1235 (11th Cir. 1989). However, that lack of sophistication or knowledge is not present in this case, at least as to Mr. Brooks. Mr. Brooks was a practicing attorney, licensed in Alabama, until his disbarment in 1987. He surely knew the need for counsel and the Court to have proper addresses. Rule 11, in some version or other, has been in existence since 1937. Advisory Committee Notes to Fed. R. Civ. P. 11, U.S.C.A. (1998). Even when he did not receive pleadings, he still did not begin to conform to the Rule. He cannot claim surprise or naivete. Ms. Brooks however may not have known about Rule 9011 and its requirements. She is not an attorney and was not present at all of the hearings. The Court concludes that it would not be appropriate to find her liable for these damages.

How much was Hammac damaged by this failure to include addresses? The claim for fees does not break down the fee request in a manner which clearly establishes what work Hammac’s attorney had to do because of the address problem. The Court did not continue hearings for the Brooks when they received late pleadings. Rule 9011 states that the court “shall” impose a sanction. Therefore, since damages were minimal, a minimal award for this blatant violation of the Rule is all that is appropriate. The Court awards \$50.

B.

The other allegation is that the entire suit was improper in light of the mutual release between the Tillmans and the Brooks. The Court concludes that a sanction is appropriate on this basis as well. Rule 9011 requires that a pleading be well grounded in fact and law. As stated

above, the Court is to look at the Brooks' actions on an objective, not a subjective, basis. A party who has released all claims surrounding an eviction against the Tillmans and their "agents" cannot reasonably conclude it is appropriate to sue a party who helped the Tillmans accomplish an eviction as required by state law. If not acting for the Tillmans, who was Hammac acting for? The pleadings in the state court suit clearly state that the Tillmans seek the eviction as parties plaintiff. There is no allegation Hammac went and collected the autos on his own initiative. The Circuit Court did not hire him. It only ordered the sheriff of Mobile County to use reasonable means to remove the vehicles from the property. Hammac was the "reasonable means."

Mr. Brooks asserts that the order of the Mobile County Circuit Court was void because it was issued in violation of the stay and continues to assert the viability of that argument. His allegation is: If the order was void, the Brooks' suit was reasonable. The argument failed before and it fails now. The release settled the stay violation issues between the Brooks and the Tillmans and their agents. Therefore, regardless of whether there was or was not a violation of the stay, it is not a ground on which the Brooks can postrelease rely to assert theft and conversion or negligent (or worse) behavior.

The Brooks assert that it is reasonable to have believed that Hammac was not the Tillmans' agent. An agent, according to the dictionary is "one who acts for or in the place of another by authority from him." *Webster's Ninth New Collegiate Dictionary* (1985). According to 3 AM. JUR. 2D, Agency, §1 (1986), an agent is one to whom one party gives "the management of some business to transact in the former's name or on his account." Hammac clearly was an agent. He was hired to aid in the eviction process against the Brooks brought by the Tillmans. The orders surrounding the eviction clearly state that they are rendered in the Tillman case. There was no allegation or evidence ever offered by Brooks that the Sheriff himself paid

Hammac or that Hammac acted independently. Brooks knew why Hammac was on the property on the day of the eviction and upon whose request he was there. Based on an objective standard, the Brooks knew or should have known that Hammac was covered by the comprehensive release they signed. Even though Mr. Brooks is not now a lawyer, he is very knowledgeable about the law as his performance at hearings and in pleadings attests. He cannot rely on any latitude because he was pro se. Ms. Brooks is not an attorney; however, she signed the release that covered these claims. Although she is less knowledgeable than Mr. Brooks is, the wording of the release is too broad for her not to be put on notice that a new suit against Hammac was inappropriate. She should be held liable for these sanctions too on that basis. *Patterson v. Aiken*, 841 F. 2d 386, 387 (11th Cir. 1988) (“pro se filings do not serve as an ‘impenetrable shield’ [from the application of Rule 11]” (quoting from *Ferguson v. MBank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir. 1986))); *McGahren v. First Citizens Bank & Trust (In re Weiss)*, 111 F. 3d 1159, 1170 (4th Cir. 1997) (“Rule 11 does not exempt pro se litigants from its operation; a pro se litigant has the same duties under Rule 9011 as an attorney”).

Mr. Horne’s claim states that he expended approximately 14-15 hours of time at \$150/hour in this suit in its bankruptcy court phase. His time did not include any time for the sanctions hearing. Therefore, 15 hours of time is an appropriate gauge of time spent. A rate of \$150 per hour is a reasonable hourly fee in this district. Mr. Horne’s claim states that he expended \$93.61 in costs. A large portion of the costs is 325 photocopies at \$.25 per page. Since an appeal of this matter went to the Eleventh Circuit, the Court believes that many of the photocopies were required by the appeals. Therefore, the Court concludes \$35 is a reasonable amount of costs for the bankruptcy court level matters. Damages total \$2,285.

The Court will not impose sanctions for time expended at either appellate court level. According to the case law, Rule 9011 is not applicable to bankruptcy appeals. The Appellate Rules govern these matters and any sanctions request as to actions in appellate courts need to be brought there. *In re Lauricella*, 105 B.R. 536, 541 (9th Cir. BAP 1989).

C.

The Eleventh Circuit requires that courts consider the ability of the sanctioned parties to pay when imposing sanctions. *Baker v. Alderman*, 158 F.3d 516, 528-529 (11th Cir. 1998) The Brooks are currently in Chapter 13, paying \$799 per month to the Chapter 13 trustee. As of October 1998, the debtors were not current on their plan payments. No evidence was offered as to their ability to pay except what is in their chapter 13 bankruptcy case file. The Court therefore awards the full amount of the fees and expenses requested as explained above. However, the Court would reconsider the amount of the award if the Brooks file a motion to reconsider and submit evidence of an inability to pay which is sufficient for a reduction based upon case law on this point.

CONCLUSION

The Brooks knew they had settled with the Tillmans and their agents as to the eviction. They then filed, six months later, a new suit against a person and his business who were directly related to the eviction process. This was not reasonable or appropriate. Samuel R. Brooks, in direct contravention of the language of Rule 9011, did not put an address or telephone number on the pleadings the Brooks filed in this case until after the sanctions motion was filed—after the conclusion of the case itself. This too is not reasonable and should not be condoned. The damages to Hammac are \$2,285 and \$50 respectively or \$2,335.

THEREFORE IT IS ORDERED that the defendants, Douglas C. Hammac and Hammac's Garage and Wrecker, are awarded a judgment of \$2,285, jointly and severally, against Samuel R. Brooks III and Linda Bender Brooks, and are awarded a judgment of an additional \$50 solely against Samuel R. Brooks III.

Dated: December ____, 1998

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE