

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA

In Re

JAMES E. PARKER, SR.

Case No. 94-04020

Debtor

JAMES E. PARKER, SR.

Plaintiff

v.

Adv. Case No. 05-3003

DAN LIVINGSTON, MELVIN BURKLOW,
ROBERT L. BURKLOW, ED BURKLOW,
and JAMES WILSON

Defendants

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS

Kenneth R. Ridlehoover, Attorney for the Debtor/Plaintiff, Pensacola, FL
Yancey Langston, Attorney for the Defendants, Pensacola, FL

This case is before the Court on the defendants' motion for sanctions. 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) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is granting the defendants' motion for sanctions against the debtor, James E. Parker, Sr.

FACTS

The plaintiff-debtor, James E. Parker, Sr., filed a pro se complaint to determine the

validity, priority, or extent of creditors' liens.¹ In response to the debtor's complaint, the defendants filed a motion to dismiss for lack of jurisdiction and a motion for sanctions. On April 4, 2005, the Court held a telephonic hearing on the motion to dismiss. The Court took the matter under advisement, and continued the hearing on the motion for sanctions until after ruling on the motion to dismiss. On April 11, 2005, the Court entered an order granting the defendants' motion to dismiss, finding that the Court lacked jurisdiction over the case. The Court found that Parker's complaint was based on claims by a discharged debtor against property not involved in a bankruptcy case and/or against nondebtor parties, and therefore the Court dismissed the complaint with prejudice ruling that there was no ground for assertion of federal jurisdiction.

The defendants filed this motion for sanctions in response to Parker's complaint. The defendants allege Parker's complaint, which was signed and filed by Parker, was frivolous and grounded in bad faith. Additionally, the defendants motion alleges that Parker's complaint had no chance of success under existing law and precedent, and failed to advance a reasonable argument to extend, modify or reverse existing law. Further, defendants assert Parker's allegations of fraud on the part of the defendants has no evidentiary support. The defendants' sanctions motion seeks reasonable expenses including attorney's fees incurred by the defendants as a result of debtor's improper filing.

LAW

Bankruptcy Courts have statutory authority to sanction parties under Rule 9011 of the Federal Rules of Bankruptcy Procedure. *See* Fed.R.Bankr.P. 9011. In addressing sanctions, Rule 9011 reads in relevant part:

¹Attorney Kenneth Ridlehoover assisted James Parker after Parker filed the complaint pro se. Defendants' counsel stated on the record that the defendants are requesting sanctions against Parker only. They are not seeking sanctions for any actions of Mr. Ridlehoover.

The signature of an attorney or party constitutes a certification that the attorney or a party has read the document; that to the best of the attorney's or 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 . . . 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, the represented party, or both, an appropriate sanction, which may include an order to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document

Id. If a court finds that a party has violated Rule 9011, sanctions must be imposed. *In re Thomason*, 161 B.R. 281, 284 (Bankr. N.D. Fla. 1993). Because Bankruptcy Rule 9011 is substantially identical to Federal Rule of Civil Procedure 11, authorities applying Rule 11 may be useful in applying Rule 9011. *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1572 (11th Cir. 1995).

The Eleventh Circuit has determined that Rule 9011 authorizes sanctions when either “(1) the papers are frivolous, legally unreasonable, or without factual foundation, or (2) the pleading is filed in bad faith or for an improper purpose.” *Id.* When a court is confronted with a motion for sanctions under Rule 11 or Rule 9011, it must first determine whether the party's claim is objectively frivolous, in view of the law or facts. *Id.* at 1573 (*citing Jones v. International Riding Helmets, Ltd.*, 49 F.3d 692, 695 (11th Cir. 1995)). Then, if it is frivolous, the Court must decide whether a reasonable inquiry would have made the party aware that the filing was frivolous. *Id.* The language of the rule clearly stresses the need for a pre-filing inquiry into both the factual and legal bases supporting the motion. *Thomason*, 161 B.R. at 284. If the party has failed to conduct a reasonable inquiry into the matter, then the Court is obligated to impose sanctions, even if the party had a good faith belief that the claim had merit. *Mroz*, 65 F.3d at 1573. Additionally, a complaint is factually groundless and requires sanctions when the plaintiff has absolutely no evidence to support its allegations. *Id.*; *In re General Plastics Corp.*,

170 B.R. 725, 731 (Bankr. S.D. Fla.1994).

The *Mroz* Court did not set out a specific framework for analyzing the “bad faith/improper purpose” prong. Courts, however, consistently apply the objective standard of reasonableness under the circumstances, in analyzing the debtor’s conduct under Rule 9001. *In the matter of Graffy*, 233 B.R. 894, 896 (Bankr. M.D. Fla. 1999). Therefore in keeping within the *Mroz* framework and the objective standard generally applied by courts to Rule 9011, reasonableness under the circumstances is used to determine whether the debtor’s conduct in this case violated the “bad faith/improper purpose” prong of Rule 9011. *Id.*

Analyzing the present case under these guidelines, the Court finds that the complaint Parker filed was objectively frivolous in view of the law. It is clear that this Court had no grounds for jurisdiction over Parker’s complaint, and any reasonable inquiry into the law should have made Parker aware the complaint was frivolous. Even if Parker filed the complaint in good faith, “[n]o amount of good faith is sufficient to overcome an attorney’s duty to investigate the law before filing a document.” *Thomason*, 161 B.R. at 284. The Court is aware that Parker filed his complaint pro se, but “[a] pro se litigant has the same duties under Rule 9011 as an attorney.” *Graffy*, 233 B.R. at 896 n.2 (quoting *In re Weiss*, 111 F.3d 1159, 1169 (4th Cir. 1997); *In re Mayhew*, 1994 WL 16006014, *2 (Bankr. S.D. Ga. 1994).

As stated previously, when a court finds that a party has violated Rule 9011, it must impose sanctions. *Thomason*, 161 B.R. at 284. The rule is not intended to deter an attorney’s or party’s enthusiasm or creativity in pursuing factual or legal theories, but rather, to deter and punish those parties responsible for bringing meritless actions which result in needless litigation delay and expense. *Id.* (citing *Donaldson v. Clark*, 819 F.2d 1551, 1556 (11th Cir. 1990)). The frivolous complaint filed by the debtor caused defendants to incur needless attorney’s fees and

expenses in the amount of \$3,161.50 to defend against the complaint. As a result of Parker's violation of Rule 9011, he should be sanctioned in the amount of \$3,161.50.

THEREFORE IT IS ORDERED:

- 1) The defendants' motion for sanctions is GRANTED;
- 2) The debtor, James E. Parker, Sr. is ORDERED TO PAY to Yancy Langston, attorney for defendants, the sum of \$3,161.50 within 30 days of the entry of this order.

Dated: May 16, 2005


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE