

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re RICHARD T. BROWN, JR.,
Debtor-Appellant

: CIVIL ACTION
: NO. 97-5302
:
:
: Bankruptcy No. 96-30290

MEMORANDUM AND ORDER

HUTTON, J.

December 3, 1998

Presently before the Court is Appellant's Motion for Rehearing Pursuant to Federal Rule of Bankruptcy Procedure 8015 (Docket No. 14). For the reasons set forth below, the Appellant's motion is **DENIED**.

I. BACKGROUND

This motion seeks a rehearing of this Court's order affirming three orders and a final judgment of the United States Bankruptcy Court. The Appellant filed an appeal for each of these decisions by the Bankruptcy Court. This Court consolidated the four appeals, Civil Action Nos. 97-5302, 97-8011, 98-1352, and 98-1570, under the caption Civil Action No. 97-5302.

In July of 1996, Appellee United Companies Lending Corporation ("Appellee UCLC") granted Appellant and Debtor, Richard T. Brown ("Brown" or Appellant), a mortgage in residential property at 2428 Poplar Street, Philadelphia, Pennsylvania. As a part of this loan, Appellee UCLC charged Appellant approximately \$5,000 in

standard industry charges including loan origination points and settlement costs. Appellant made a few payments on the mortgage before it became in arrears. Appellant, an attorney and sole practitioner, simply did not have sufficient income to pay the mortgage. On October 24, 1996, the Appellant filed a Petition for Relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

Appellee UCLC filed a Motion for Relief from the automatic stay. Appellee UCLC wanted to exercise foreclosure remedies on the property. The Bankruptcy Court granted Appellee UCLC's motion for relief from the stay.

Appellant then sought to avoid certain fees connected with the mortgage and note by bringing an adversary action alleging that the mortgage was a fraudulent transfer under Section 548 of the Bankruptcy Code. Appellant argued that Appellant did not receive "reasonably equivalent value" for the standard industry loan charges paid in connection with the making of the loan. The Bankruptcy Court held a hearing and found that the mortgage was not fraudulent under the meaning of Section 548 of the Bankruptcy Code. The Bankruptcy Court concluded that Appellant's argument was frivolous and, upon Appellee UCLC's motion, granted sanctions against Appellant for bringing the action.

On April 4, 1997, Appellee United States Trustee filed a Motion to Dismiss or Convert the Chapter 11 case arguing that the

Debtor: (1) failed to serve required monthly operating reports on the United States Trustee; (2) failed to file a disclosure statement and plan of reorganization; (3) was unable to effectuate a plan of reorganization (4) failed to comply with 28 U.S.C. § 1930(a)(6) requiring a payment of a quarterly fee; and (5) caused unreasonable delay that was prejudicial to the creditors in the case.¹ The Bankruptcy Court delayed a hearing on the motion numerous times to allow Appellant to file a Chapter 11 plan and Disclosure Statements. Appellant finally submitted a Chapter 11 plan and the required Disclosure Statements. The plan, however, was deficient on several levels. After several other delays, the Bankruptcy Court dismissed the case and held:

The Court has examined the Debtor's Amended Disclosure Statement and Plan, and finds that the same, despite the Court's direction, contain confusing information which in large part is difficult to comprehend. To the extent one can draw any reasoned conclusion from the information presented by the Debtor to the Court and to the Debtor's creditors, one can only conclude that the information indicates that the Debtor's law practice is marginal and/or break even, and with net income barely sufficient for the Debtor to support himself at or above a poverty subsistence level. In the face of such evidence, and the Court finding itself in agreement that the Debtor, despite repeated opportunity, has failed to adequately address the objections of the United States Trustee regarding his conduct as a Chapter 11

¹ The United States Trustee is an official of the U.S. Department of Justice and responsible for supervising the administration of all Chapter 11 bankruptcy cases. See 28 U.S.C. § 586 (1994). The United States Trustee has standing to move to convert or dismiss a Chapter 11 case under Sections 307 and 1112(b) of the Bankruptcy Code.

Debtor-in-possession, the Court finds that good cause exists for dismissal of this case under 11 U.S.C. § 1112(b)(2)(3)(4)(5) & (10).

In re Richard T. Brown, Bankr. No. 96-30290, at 1 n.1 (Bankr. E.D. Pa. (Nov. 25, 1997)).

Appellant appealed these decisions of the Bankruptcy Court. On October 15, 1998, this Court entered an order affirming the decisions of the Bankruptcy Court. See In re Richard t. Brown, Jr., No. CIV.A.97-5302, 1998 WL 734701 (E.D. Pa. Oct. 15, 1998). Appellant now moves for a rehearing of several of these issues.

II. DISCUSSION

Appellant's motion seeks a rehearing and/or a correction of this Court's order affirming the decision of the Bankruptcy Court under Bankruptcy Rule 8015. In pertinent part, this rule provides that "a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel." 11 U.S.C. Rule 8015. Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel.

Appellant challenges the two aspects of this Court's order affirming the Bankruptcy Court's decisions. First, Appellant contends that this Court erred in determining that he received reasonably equivalent value for his loan. Second, Appellant argues

that the sanctions awarded against him by the Bankruptcy Court were inappropriate.

A. Adversary Proceeding

Appellant first argues that this Court, in terming the fees charged Appellant on his loan as "standard," failed to consider that it is irrelevant that the transfer of the debtor's property was at arm's length. Rather, Appellant contends that the proper determination is whether the debtor received reasonably equivalent value. This Court finds that Appellant's argument lacks merit.

Section 548 of the Bankruptcy Code empowers the trustee to avoid conveyances made with fraudulent intent. A conveyance is constructively fraudulent if: 1) the debtor was insolvent on the date of the transfer or 2) the debtor received less than "a reasonably equivalent value" in exchange for the transfer; and 3) the transfer is made within one year prior to filing the bankruptcy petition. See 11 U.S.C. § 548(a) (1994); see also In re Brasby, 109 B.R. 113, 121 (Bankr. E.D. Pa. 1990), aff'd, 1992 WL 21362, at *3 (E.D. Pa. Jan. 27, 1992); In re Metro Shippers, Inc., 78 B.R. 747 (Bankr. E.D. Pa. 1987).

This Court finds that it properly considered whether Appellant received reasonably equivalent value. This Court found that, with the loan, Appellant was able to retire two pre-existing liens against his house, retire credit card debt, and obtain

further credit to operate his practice of law. While the Court also found that any charges incurred were standard, the Court affirmed the Bankruptcy Court decision because it ultimately concluded that Appellant received reasonably equivalent value in exchange for these "standard" fees. Therefore, Appellant's motion is denied in this respect.

B. Sanctions

Appellant next seeks a rehearing on, or correction of, the Bankruptcy Court's award of sanctions against Appellant under Bankruptcy Rule 9011. Appellant argues the sanctions were not appropriate because: (1) he brought these claims in good faith; (2) he expected the Bankruptcy Court to find the transfer was not for reasonably equivalent value given that this determination is largely a question of fact; and (3) the motion for sanctions was made too late under a supervisory rule imposed by the Third Circuit. This Court disagrees and finds the award of sanctions was appropriate.

Bankruptcy Rule 9011 is analogous to Federal Rule of Civil Procedure 11, containing modifications as are appropriate in bankruptcy matters. See In re Case, 937 F.2d 1014, 1022 (5th Cir. 1991). Accordingly, review of the bankruptcy court awards of Bankruptcy Rule 9011 sanctions are conducted under "the same standard applicable to an order of sanctions under Rule 11." In re Akros Installations, Inc., 834 F.2d 1526, 1531 (9th Cir. 1987).

Thus, as in Rule 11 cases, the imposition of sanctions is reviewed pursuant to Bankruptcy Rule 9011 using the abuse of discretion standard. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 384 (1990); Napier v. Thirty or More Unidentified Federal Agents, Employees or Officers, 855 F.2d 1080, 1092 (3d Cir. 1988).

The Third Circuit held that Rule 11 sanctions are warranted where an attorney or party has signed a pleading that results in an abuse of litigation or misuse of the court's process and in cases involving frivolous motions. See Gaiardo v. Ethyl Corp., 835 F.2d 479, 484 (3d Cir. 1987). Sanctions may be imposed where a party files an action for an improper purpose, such as harassment or undue delay. See id. Rule 11 sanctions, however, are not appropriate when a party's only fault was being on the losing end of a ruling or judgment on the merits. See id. at 483.

First, the Court disagrees with Appellant that he brought the adversary proceeding in good faith. The Bankruptcy Judge's determination that the Appellant filed a frivolous adversary proceeding in order to avoid the fees in connection with his mortgage is supported by the record. Appellant took no discovery, requested no documents, brought no witnesses to the hearing, and did not know whether he looked at Third Circuit case law prior to filing the adversary proceeding. The Appellant admitted as much at the hearing. See R. at 10, 13 (1/15/98). Thus, the sanctions imposed were not an abuse of discretion.

Second, while the determination of whether a debtor received reasonably equivalent value is a question of fact, the Court still finds that sanctions were appropriately awarded. Appellant brought no witnesses to the hearing, requested no documents, took no discovery, and thus submitted no factual basis for his claim that he did not receive reasonably equivalent value for his loan. Therefore, Appellant's argument lacks merit in this respect.

Third and finally, under Mary Ann Pensiero, Inv. v. Lingle, 847 F.2d 90, 98 (3d Cir. 1988), Appellant argues that the Bankruptcy Court should not have considered UCLC's motion for sanctions because the Third Circuit has held that a Rule 11 motion must be filed as soon as possible after the discovery of the alleged Rule 11 violation, and in no event later than the entry of final judgment. See id. Appellant further argues that the Bankruptcy Court violated the Lingle rule by awarding sanctions because final judgment was entered on November 24, 1997 and UCLC filed the Rule 9011 motion on December 17, 1997.² This Court disagrees.

The Court concludes that the motion for sanctions comports with the requirements set forth in Lingle. In Project 74

² This Court notes that the Lingle rule applies to Rule 9011 of the Bankruptcy Code as well as Rule 11 of the Federal Rules of Civil Procedure. See In re HSR Assocs., 162 B.R. 680, 683 (D. N.J. 1994) (noting that, under the Lingle rule, a motion for sanctions under Rule 9011 must be filed before entry of final judgment).

Allentown, Inc. v. Frost, 143 F.R.D. 77, 85 (E.D. Pa. 1992), aff'd, 998 F.2d 1004 (3d Cir. 1993) (unpublished table decision), the court faced a similar set of circumstances and found that a motion for sanctions was appropriately considered after entry of final judgment. In Frost, final judgment was entered on June 1, 1992 and the Rule 11 motion was not filed until June 29, 1992. See id. The court noted that at first glance, the motion appeared to be barred by the Lingle rule. See id. The court, however, found that the motion was not barred by the Lingle rule for several reasons. First, the goal of Lingle, to prevent piecemeal appeals, was satisfied because there could be only one appeal in that case. See id. Second, the defendants in that case could not have filed the Rule 11 motion any earlier because the court found that the plaintiff failed to produce any evidence at trial in support of its allegations. See id. Thus, the entry of judgment and discovery of the Rule 11 violation occurred on the same day or only a few days later. See id. Finally, the Frost court also noted in a footnote that "many of the courts applying the Lingle rule did so in cases where the Rule 11 motion in question was filed long after the conduct complained of and the entry of judgment." Id. at 86 n.14. Therefore, the Frost court considered the Rule 11 motion despite the Lingle rule and awarded sanctions. See id. at 93.

In this case, the Bankruptcy Court faced a similar situation as the court in Frost. Moreover, for similar reasons as

expressed by the court in Frost, this Court finds that the Rule 9011 motion for sanctions was properly considered by the Bankruptcy Court. First, the Rule 9011 motion was made as soon as UCLC discovered Appellant's Rule 9011 violation as required by Lingle. The Bankruptcy Court entered final judgment after affording the Appellant with numerous opportunities to present evidence supporting his claim that he did not receive reasonably equivalent value for his loan. UCLC filed the Rule 9011 motion only after it was clear that Appellant had no legal or factual support for his position. UCLC could not have discovered the Rule 9011 violation until the court entered final judgment because UCLC did not know Appellant would fail to take discovery, present witnesses at trial, or research any case law. Thus, as in Frost, the entry of judgment and discovery of the Rule 9011 violation occurred on the same day or only a few days later. Second, the sanctions were appropriate because the goal of Lingle, to prevent piecemeal appeals, was satisfied as there was only one appeal to this Court and can be only one appeal to the Third Circuit. Finally, this Court notes-- as the Frost court did-- that this is not a case where the motion for sanctions was filed several months after the discovery of the violation or entry of final judgment. UCLC filed the Rule 9011 motion only three weeks after entry of final judgment. For these reasons, the Court finds that the award of sanctions was

appropriate under Lingle. Accordingly, Appellant's motion for a rehearing is denied.

An appropriate Order follows.

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In re RICHARD T. BROWN, JR.,
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: CIVIL ACTION
: NO. 97-5302
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:
: Bankruptcy No. 96-30290

O R D E R

AND NOW, this 3rd day of December, 1998, IT IS
HEREBY ORDERED that the Appellant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.