

United States Bankruptcy Court

SEP 22 1988

For the NORTHERN District of IOWA

Chapter 7 **BARBARA A. EVERLY, CLERK**

IN RE:

ARLEY D. BOESE,
MARY GAIL BOESE,

Debtors.

Case No. L-85-01498C

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Michael J. Melloy, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

The issues of this proceeding having been duly considered by the Honorable Michael J. Melloy, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: The amendment to Debtors' schedules filed July 6, 1988 is stricken. Judgment shall enter in favor of Stephen A. Richardson and against Arley Boese in the sum of \$303.75 plus interest at the rate of 8.32% from and after September 22, 1988.



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BARBARA A. EVERLY
Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: September 22, 1988

By: Debra S. Latay
Deputy Clerk

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA
Chapter 7
BANKRUPTCY NO.

SEP 2 21988

BARBARA A. EVERLY, CLERK

IN RE:

ARLEY D. BOESE,
MARY GAIL BOESE,

L-85-01498C

Debtors.

ORDER

An Objection to Amendment to bankruptcy schedule was filed by Attorney Stephen A. Richardson. That objection came on for hearing on September 16, 1988. The Debtor, Arley Boese appeared, pro se; Attorney Stephen Richardson appeared as the objecting creditor.

A. Objection to Amendment

The Court file shows that the Debtor filed an amendment to bankruptcy schedule on July 6, 1988. In that amendment, he amended Schedule A-3 to list as an additional unsecured creditor Attorney Stephen A. Richardson. The amendment recites that Attorney Richardson is a creditor by virtue of a judgment entered against the Debtor in the amount of \$925.00, which judgment was entered on March 28, 1988. The creditor, Stephen A. Richardson, has filed an objection to that amendment.

The facts and background concerning this debt show that Attorney Richardson was the attorney for the Debtors in various State Court litigation. Subsequent to the filing of the bankruptcy petition by the Debtors, Attorney Richardson continued to represent the Debtors in State Court litigation, including an appeal to the Iowa Supreme Court. The evidence and exhibits show that a small claims petition was filed by Attorney Richardson against Arley Boese in the Iowa District Court in and for Davis County, No. SC 4-745. The trial of that Small Claims

petition resulted in the entry of a ruling by the Judicial Magistrate in which the Magistrate found that the Debtor, Arley Boese, was indebted to the Plaintiff for \$925.00 of legal fees plus interest and cost. The decision also found that all the services represented by the \$925.00 charge were for services rendered after the filing of the bankruptcy petition. In fact, Attorney Richardson alleges that he performed substantial pre-petition services which he acknowledges were discharged by the discharge granted to the Debtors in this case.

The decision of the Judicial Magistrate was appealed to the Iowa District Court. That decision was affirmed by a District Court Judge of the Iowa District Court in and for Davis County.

The Court file shows that the Debtor received a discharge on September 11, 1986. However, a discharge only discharges those debts which were in existence as of the date of the filing of the Debtors' petition. Section 727(b) of the Bankruptcy Code states:

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under Section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under Section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under Section 502 of this title.

Section 727(b) clearly states that only debts which are those prior to the entry of the Order of Relief are subject to the discharge. In a voluntary case, the Order for Relief is entered as of the date the petition is filed and the case is commenced. 11 USC Section 301. Therefore, since the debt in question was

clearly incurred subsequent to the entry of the Order for Relief, the debt would not be subject to debtors' discharge and the amendment to debtors' Schedule A-3 should be stricken.

This Court is also obligated to give full faith and credit to the decision of the Iowa District Court as to the amount of the debt and the finding as to when the debt was incurred. Since the issue of the amount of the debt, reasonableness of the charges and when the debt was incurred, has already been litigated in the Iowa District Court, this Court will give full faith and credit to those determinations.

B. Request for Sanctions

Attorney Richardson has also requested sanctions against the Debtor in this case. Attorney Richardson alleges that the pleading in question was frivolous and caused Attorney Richardson to incur expense, including one hundred and twenty five (125) miles of travel each way, to and from his office, and the loss of eight (8) hours of his office time in defense of this matter.

There is no question that this Court has jurisdiction to impose sanctions pursuant to Rule 9011. Brown v. Mitchell (In re Arkansas Communities, Inc.),, 827 F.2d 1219, 1222 (8th Cir. 1987). Rule 9011(a) provides in pertinent part:

SIGNING AND VERIFICATION OF PAPERS

(A) Signature. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, statement of financial affairs, statement of executory contracts, statement of intention, Chapter 13 Statement, or amendments

thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. 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 an attorney or a party constitutes a certificate that the attorney or 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 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, to delay, or to increase the cost of litigation....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 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

Bankr. Rule 9011(a) (emphasis added).

Bankruptcy Rule 9011 is based on Federal Rule of Civil Procedure 11. Featherston v. Goldman (In re D.C. Sullivan Co., Inc.), 843 F.2d 596, 598 (1st Cir. 1988). Case law interpreting Rule 11 is applicable to interpretations of Bankruptcy Rule 9011. Id. The Eighth Circuit Court of Appeals has noted that pro se litigants are to abide by the dictates of Rule 11 as much as lawyers. Ginter v. Southern, 611 F.2d, 1226, 1225 n.1. (8th Cir. 1979) ("[W]e urge the district courts to assure compliance by pro se litigants with the requirements of Rule 11."). The lack of a license to practice law does not give the pro se litigant a "license to harass others, clog the judicial machinery with meritless litigation and abuse already overloaded court dockets." Ferguson v. MBank Houston, N.A., 808 F.2d 358,

359 (5th Cir. 1986): "Pro se litigants have the same duties and obligations as attorneys under Chapter 11 [of the Bankruptcy Code], no more and no less." In re 1801 Restaurant, Inc. 40 B.R. 455 (Bankr. D. Md. 1989).

The standard that Bankruptcy Rule 9001 sets forth is an objective one. See, e.g., In re D.C. Sullivan Co., Inc. 843 F.2d at 599; In re Phillips, 82 B.R. 914, 917 (Bankr. S.D. Ohio 1988); Mazzocco v. Smith (In re Smith) 82 B.R. 113, 114 (Bankr. D. Ariz. 1988); Chaudhry v. Usoskin, 61 B.R. 869, 874 (Bankr. E.D.N.Y. 1986). Bankr. Rule 9011 describes two types of sanctionable conduct: One, where the filed, signed documents are "frivolous, legally unreasonable or without factual foundation", and two, "where the pleading is filed for an improper purpose." In re Smith, 82 B.R. at 114 citing Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531, 1537-38 (9th Cir. 1986).

Applying the standards for a Rule 9011 sanction, this Court must come to the conclusion that sanctions should be imposed in this case. This Court is not unsympathetic to the Debtors' argument, however, the Debtor must also be aware of the fact that by filing this amendment and forcing this matter to hearing, he caused a creditor who had justifiable debt to incur a substantial additional expense. It should also be noted that while the Debtor appeared in Court pro se and purportedly signed the amendment as a pro se debtor, the Debtor did state at the hearing he had assistance in the preparation of the amendment. The Debtor indicated that a part time judicial magistrate, who this Court presumes is an attorney, assisted the Debtor in the preparation of the amendment to his schedules.

In making this determination to impose sanctions, this Court believes that two factors are most significant. First, the clear reading of Section 727

indicates that only those debts which were in existence as of the date of filing are subject to discharge. In addition to the clear reading of the statute, such a result would only be logical. The Code could not be designed to allow a Debtor to continually incur substantial post-petition debts while the case is being administered and then expect that those debts would also be subject to the discharge which is granted to the Debtor. The administration of the case would be an impossibility since there would be continuous debts incurred which would have to share in any distribution of the estate which would make the administration of the estate a never ending process.

Secondly, the very issues raised by the Debtor in this case have already been litigated in another forum. The Debtor raised and litigated the very issues presented to this Court in the Small Claims Division of the Iowa District Court in and for Davis County. When that decision was adverse to the Debtor, he then appealed the decision and lost it on the appeal. It cannot be said that the Debtor did not have fair warning as to the law which would be applicable to this case.

While this Court is aware of the fact that Mr. Richardson indicated that he was losing eight (8) hours of time from his practice, this Court is reluctant to award compensation for the full eight (8) hours. In terms of an appropriate sanction to be imposed, this Court will find that an appropriate sanction is \$250.00 for the loss of time and inconvenience caused to Mr. Richardson plus reimbursement of two hundred and fifty (250) miles travel at the current government rate of 21.5 cents per mile for a total of \$52.75 of mileage reimbursement. This will result in a total sanction of \$303.75 and judgment shall enter accordingly.

ORDERS

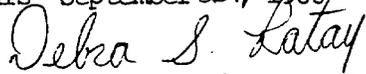
IT IS THEREFORE ORDERED that the amendment to Debtors' schedules filed July 6, 1988 is stricken.

IT IS FURTHER ORDERED that sanctions are imposed against the Debtor, Arley Boese, and in favor of Stephen A. Richardson in the sum of \$303.75 together with interest.

ORDERED: September 22, 1988


MICHAEL J. MELLOY
Bankruptcy Judge

copies mailed to: (with Judgment)
DEBTORS;
MICHAEL H. IRVINE, Trustee;
UNITED STATES TRUSTEE;
STEPHEN A. RICHARDSON, Creditor
this September 22, 1988.


Debra S. Latay
Deputy Clerk, Bankruptcy Court
P O Box 74890
Cedar Rapids, IA 52407