IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

In Re:	**In Proceedings Under Chapter 7**
GARY H. SCOTT,	**Case No.: 06-14120**
Debtor.	**JUDGE RANDOLPH BAXTER**

MEMORANDUM OF OPINION AND ORDER

Before the Court is the Motion for Sanctions and Attorney Fees (the "Motion") submitted by Jack Crawford dba North Coast Theatre Service ("North Coast" or the "Movant") over the objection of the Debtor, Gary H. Scott ("Debtor"). Such relief is sought pursuant to Federal Rule of Bankruptcy Procedure 9011. *Fed. R. Bankr. P. 9011.* This Court acquires jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 157 and General Order No. 84 of this District. Following a duly noticed hearing and a review of the record, the Court renders the following decision:

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The Debtor filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") on September 11, 2006 (the "Petition Date"). An Order of Discharge was entered March 2, 2007.

On March 7, 2007, North Coast timely[1] filed a Proof of Claim for two judgments obtained against the Debtor in state court actions and a foreclosure judgment arising from those liens. The total amount of the claim at the time the case was filed was $20,287.84 with interest accruing at 10%

[1]The last date to file claims was March 8, 2007. See, Docket #34

on $8,500.00 from the first state court judgment entered in May of 2002 plus $8,104.51 in attorney fees, court costs and expenses.

The Debtor filed an Objection to North Coast's Proof of Claim (the "Objection") alleging that the Proof of Claim should be denied in its entirety because the underlying judgments were obtained while the Debtor was unable to defend against the state court actions due to medical problems. Although the Debtor does not specify which section of Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60, he is relying, he contends that the underlying state court judgments should be set aside or vacated. The Debtor's Objection was filed on May 14, 2007, at least two years after any of the three judgments were entered against him[2]. The Debtor attached an affidavit (the "Affidavit") to his Objection. In his Affidavit, signed, dated and notarized on May 11, 2007, the Debtor, at paragraph 6, states: "After receiving appropriate medical care and treatment, I now am able to participate in the defense of claims asserted by Mr. Crawford and the prosecution of the claims against Mr. Crawford."

North Coast filed a response to the Debtor's Objection on June 12, 2007. In its response, North Coast argues that the Debtor has conveniently selective ability. With regard to the state court actions, the Debtor contends that he was unable to defend against them; yet at the same time he was "able" to execute and record a deed to transfer all of his real property to his non-debtor spouse. Additionally, North Coast argues that the Debtor did not appeal any of the state court judgments and the present bankruptcy case was filed more than a year after the latest state court judgment. Citing

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[2]In the first state court action, Lorain County Court of Common Pleas Case No.: 02 CV 132879, the judgment was entered August 22, 2003. In the second state court action, Lorain County Court of Common Pleas Case No.: 03 CV 136997, the judgment was entered May 17, 2004. In the foreclosure action, Lorain County Court of Common Pleas Case No.: 04 CV 139628, arising from the two earlier state court actions, the judgment was entered April 5, 2005.

the Rooker-Feldman doctrine[3], North Coast asserts that this bankruptcy case is not an opportunity for the Debtor to appeal the decisions of the state court.

The parties were unable to resolve their dispute. An evidentiary hearing was held on due notice to all entitled parties on September 26, 2007. All parties were present for the hearing except the Debtor. Consequently, this Court overruled the Debtor's Objection for failure to prosecute. At the conclusion of the evidentiary hearing, counsel for North Coast made an oral motion for sanctions against the Debtor for wasting his and the Court's time. The Court instructed counsel to file the appropriate motion if he wanted the Court to consider sanctions against the Debtor.

Thus, North Coast filed this Motion for Sanctions and Attorney Fees (the "Motion") contending that the Debtor's failure to appear at the evidentiary hearing to prosecute his Objection is one of many dilatory tactics committed by the Debtor in this case. North Coast seeks $2,318.75 in attorney fees as sanctions for the Debtor's failure to appear to prosecute his Objection. North Coast asserts that it incurred attorney fees in responding to the Objection and appearing for the hearing on the Debtor's Objection. It also incurred additional fees to prepare for and attend an evidentiary hearing at which the Debtor did not appear and did not provide any explanation for his absence to the Court, his counsel, or North Coast. North Coast argues that the Debtor's absence was one of many tactics employed by the Debtor to cause delay, citing the Debtor's two petitions for bankruptcy relief filed on the eve of sheriff's sales as examples.

The Debtor denies North Coast's allegations and states that his absence was not intended to

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[3]Federal courts other than the Supreme Court have no subject matter jurisdiction to sit in direct review of state court decisions unless Congress has enacted legislation that specifically authorizes such relief. See, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

delay or otherwise inconvenience North Coast. He contends that he suffers from a recurring medical condition, which prevented him from traveling from his residence in Duluth, Georgia to Cleveland, Ohio to attend the evidentiary hearing.

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The issue before this Court is whether sanctions against the Debtor are warranted pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure for his failure to appear at a duly noticed evidentiary hearing to prosecute his Objection.

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Rule 9011(c) of the Federal Rules of Bankruptcy Procedure provides for sanctions where a party has committed a violation with regard to a representation made to the Court. *Fed. R. Bankr. P. 9011.* Rule 9011 provides, in pertinent part:

> (b) *Representations to the court.* By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
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> (c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.
> (1) *How initiated.*
> (A) *By motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of

> the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.
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> (2) *Nature of sanction; limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.
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> (3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Id.

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A party seeking sanctions bears the burden of proving that sanctions are warranted pursuant to Rule 9011. *In re Cedar Falls Hotel Properties Ltd. Partnership*, 102 B.R. 1009, 1014 (Bankr. N.D. Iowa 1989). "The test [in determining whether sanctions are warranted] is an objective one, not subjective...." Id. at 1015; see also *Century Products, Inc. v. Sutter*, 837 F.2d 247, 250 (6th Cir. 1988). Therefore, the Court must consider whether the conduct was reasonable. Id. "Once it is ascertained that Rule 9011 was transgressed, the bankruptcy court must select and impose an

appropriate sanction. But short of that point, the trier has broad discretion in deciding whether counsel acted responsibly under the circumstances." *In re D.C. Sullivan Co.*, 843 F.2d 596, 599 (1st Cir. 1988); see also *Thomas v. Capital Sec. Services, Inc.*, 836 F.2d 866, 876-77 (5th Cir. 1987).

There is more than one purpose for imposing sanctions pursuant to Rule 9011. One reason is to deter the improper conduct. *Thomas*, 836 F. 2d at 877. For example, sanctions exist to deter an abuse of the legal process by discouraging dilatory tactics or frivolous claims and defenses. *Herron v. Jupiter Transport Co.*, 858 F.2d 332, 334-35 (6th Cir. 1988). Another purpose is to "compensat[e] the offended party for the expenses caused by the violation as well as penaliz[e] the offender." *Lupo v. R. Rowland & Co.*, 857 F.2d 482, 485-86 (8th Cir. 1988).

Herein, North Coast asserts that sanctions should be imposed against the Debtor because he filed his Objection for the improper purpose of causing unnecessary delay and incurring costs in violation of Rule 9011(b)(1). The Debtor's Objection was submitted with an Affidavit to the Court stating that he had received appropriate medical treatment and that he was "able to participate in the defense of claims asserted by Mr. Crawford and the prosecution of the claims against Mr. Crawford." Yet, the Debtor did not appear at a duly noticed evidentiary hearing to prosecute his Objection. He also did not notify anyone (including his attorney) or provide an explanation for his absence. After his Objection was overruled for want of prosecution, and North Coast filed the subject Motion for sanctions, the Debtor responded that he was ill and unable to travel to the evidentiary hearing. Nothing was provided by the Debtor, however, to support the Debtor's late explanation for his absence. Nor did the Debtor provide the Court with any documentation to support a verifiable illness.

Additionally, the Objection, from which the subject Motion for sanctions arose, was filed by

the Debtor seeking relief pursuant to Rule 9024. On motions pursuant to Rule 9024, where the movant seeks relief pursuant to Civil Rule 60(b)(1), (2), or (3), there is a "reasonable time" limitation not to exceed one year after the judgment, order or proceeding was entered or taken. *Fed. R. Bankr. P. 9024.* As noted above, the Debtor's Objection to the allowance of North Coast's claim was made on May 14, 2007, at least two years after any of the three judgments were entered against him[4]. There are only three exceptions[5] to the one year time limitation identified under Rule 9024 and the Debtor's Objection does not fall within any of them. See, *Fed. R. Bankr. P. 9024.*

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Accordingly, the Movant's Motion for sanctions is well-premised and is hereby granted in the amount of $2,318.75, as plead, and is to be paid by the Debtor forthwith, but no later than thirty (30) days from entry of this Order.

IT IS SO ORDERED.

JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT

Dated, this _____day of March 2008

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[4]See footnote 1, *supra.*

[5]
(1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest;
(2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by §727(e) of the Code; and
(3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144, §1230, or §1330.