

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re: ) Case No. 02-24124  
)  
ROSE FORD, ) Chapter 13  
)  
Debtor. ) Judge Arthur I. Harris

ORDER TO APPEAR AND SHOW CAUSE

On November 4, 2004, the Court heard oral argument on the Chapter 13 trustee's motion to dismiss this case for lack of feasibility under 11 U.S.C. § 1307(c) (Docket #36) and the debtor's response (Docket #38). The Court then indicated that it would take the matter under advisement. After reviewing the record in this case and several related cases, the Court finds that it cannot resolve the Chapter 13 Trustee's motion absent further evidence; however, the Court's review of the record in this case and several related cases has revealed the possibility of a more serious matter – an abuse of the bankruptcy process and violation of Bankruptcy Rule 9011 – which merits its own hearing.

Accordingly, for the reasons that follow, the debtor and debtor's counsel are ordered to appear at an evidentiary hearing at 1:30 P.M. on February 23, 2005, in Courtroom 3102, 127 Public Square, Cleveland, Ohio, and show cause why they should not be sanctioned for failing to disclose in the debtor's schedules and statement of affairs: (1) the debtor's ownership interest in real property located at

1063 Elbon Road, (2) the secured interest of creditor National City Bank in the same property, and (3) a foreclosure action involving the same property pending in state court. Debtor's counsel shall also appear and show cause why he should not be sanctioned under 28 U.S.C. § 1927.

## DISCUSSION

This Court has inherent authority to impose sanctions on offending parties and counsel. *See, e.g., Mapother & Mapother, PSC v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996) (“Bankruptcy courts, like Article III courts, enjoy inherent power to sanction parties for improper conduct.”); *In re French Bourekas, Inc.*, 175 B.R. 517, 525 (Bankr. S.D.N.Y. 1994) (noting that bankruptcy court possesses power to impose sanctions as inherent authority and by virtue of 11 U.S.C. § 105(a)). A Court must be careful when considering whether to impose sanctions. “When a court metes out a sanction, it must exercise such power with restraint and discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The sanction levied must thus be commensurate with the egregiousness of the conduct.” *In re Downs*, 103 F.3d at 478.

### *Rule 9011*

Rule 9011 of the Federal Rules of Bankruptcy Procedure was amended in 1997 to conform to the 1993 changes to Rule 11 of the Federal Rules of Civil

Procedure. 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;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions.* . . .

(1) *How Initiated.*

(A) *By Motion.* . . .

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

28 U.S.C. § 1927

Section 1927 of Title 28, United States Code, provides:

**Counsel's liability for excessive costs**

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

The Court is aware of a split among the circuit courts as to whether bankruptcy courts may impose sanctions pursuant to 28 U.S.C. § 1927. *Compare In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 230 (2d Cir. 1991) ("A bankruptcy court may impose sanctions pursuant to 28 U.S.C. § 1927."), with *In re Courtesy Inns, Ltd.*, 40 F.3d 1084, 1086 (10th Cir. 1994) ("[T]he bankruptcy court may not impose sanctions under § 1927."). In the absence of controlling precedent in the Sixth Circuit, and absent persuasive argument to the contrary, this Court is inclined to agree with those courts holding that a bankruptcy court may indeed impose sanctions pursuant to 28 U.S.C. § 1927. *See, e.g., In re Volpert*, 186 B.R. 240, 242-45 (N.D. Ill. 1995) (explaining that bankruptcy courts are not a separate court from the district court but "still fall within the ambit of [28 U.S.C. §§ 451 and 1927] by virtue of their status as units of the district courts, which clearly are 'courts of

the United States.’ ”), *aff’d*, 110 F.3d 494 (7th Cir. 1997). *See also* 28 U.S.C. § 151 (“[T]he bankruptcy judges in regular active service shall constitute a unit of the district court.”); 28 U.S.C. § 152(a)(1) (“Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.”); David S. Kennedy & Tisha L. Federico, *If the United States Bankruptcy Court Is Not a “Court of the United States,” Then What Is It?*, 28 U. MEM. L. REV. 859 (1998).

*11 U.S.C. § 105*

Section 105 of the Bankruptcy Code provides in pertinent part:

**Power of court.**

(a) The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

*Specific Conduct That Appears to Violate Rule 9011(b)  
or Otherwise Merit Sanctions*

The specific conduct that appears to merit sanctions is the failure to disclose in the debtor’s schedules and statement of affairs: (1) the debtor’s ownership

interest in real property located at 1063 Elbon Road, (2) the secured interest of creditor National City Bank in the same property, and (3) a foreclosure action involving the same property pending in state court. Unfortunately, as detailed below, contemporaneous filings in related bankruptcy and state foreclosure cases suggest that these omissions were the result of more than simple inadvertence.

*Factual and Procedural Background of Rose Ford Case and  
Contemporaneous Cases Brought by Related Parties*

The debtor Rose Ford filed this Chapter 13 case through her attorney, Alexander Jurczenko, on December 11, 2002. The Court granted the debtor two extensions of time to file her plan, schedules, and statement of affairs; however, the debtor did not file her plan, schedules, and statement of affairs until February 13, 2003, the same day that the debtor was to appear in response to an order to show cause why the case should not be dismissed.

In the schedules and statement of affairs, filed under penalty of perjury, the debtor did not disclose: (1) the debtor's ownership interest in real property located at 1063 Elbon Road, (2) the secured interest of creditor National City Bank in the same property, and (3) a foreclosure action involving the same property pending in state court.

National City Home Loan Services, Inc., fka Altegra, however, filed a proof of claim on March 31, 2003, and included documentation of a note and mortgage with respect to 1063 Elbon Road. The note and mortgage were signed by Mary L. Ford and Rose L. Ford on November 9, 1998, and recorded with the Cuyahoga County Recorder on November 16, 1998. The mortgage was also signed by Horace Ford as spouse of Rose Ford. Rose Ford's Chapter 13 plan does not mention or otherwise provide for the treatment of Altegra's secured claim. There is nothing in the record to show that Altegra was ever served with a copy of the debtor's Chapter 13 plan or the notice of meeting of creditors, *see* Docket #14 (certificate of service of 341 notices). The plan was confirmed on November 27, 2003 (Docket #31).

On January 17, 2003, attorney Alexander Jurczenko filed a Chapter 13 petition, Case #03-10690, on behalf of debtor Mary L. Ford. The petition lists the debtor's address as 1063 Elbon Road, in Cleveland Heights, Ohio. After the Court granted the debtor an extension of time until February 18, 2003, to file her plan, schedules, and statements (Case #03-10690, Docket #5), the debtor filed her plan, schedules, and statements on February 19, 2003 (Case #03-10690, Docket #7). In Schedule A, Mary Ford indicates that she holds a 1/2 interest in the property located at 1063 Elbon Road with Rose Ford. In Schedule D, Mary Ford includes

the mortgage of Altegra with respect to 1063 Elbon Road, and in Schedule H she lists Rose Ford as a codebtor on the debt owed to Altegra. In the Statement of Affairs, Mary Ford discloses a pending foreclosure case, Altegra Credit Company v. Mary L. Ford, et al., CV-02-480968. The docket sheet for the state foreclosure case, available at [www.cuyahoga.oh.us](http://www.cuyahoga.oh.us), indicates that Attorney Jurczenko filed a notice of stay of proceedings on February 11, 2003. The same docket also indicates that the state court proceedings were stayed by the state judge on October 29, 2003: “THE COURT HAVING BEEN INFORMED OF A PENDING BANKRUPTCY CASE, BANKRUPTCY CASE NO. 02-24124.”

On March 21, 2003, National City filed a motion for relief from stay and relief from the codebtor stay in the Mary Ford case (Case #03-10690, Docket #9). The motion and attachments reflect the 1/2 ownership interest of Rose Ford in the Elbon Road property and indicate an arrearage on the note in excess of \$11,000. On March 27, 2003, attorney Alexander Jurczenko filed a response to the motion for relief from stay in the Mary Ford case (Case #03-10690, Docket #12). His response *admits the allegations* as to the 1/2 ownership interest of Rose Ford in the Elbon Road property. *Id.* at ¶ 11.



*Pattern of Serial Filings, Lack of Prosecution, and Noncompliance with  
Bankruptcy Laws, Rules, and Court Orders*

The Court's review of recent bankruptcy cases filed by (1) Rose Ford, the current debtor; (2) Mary Ford, the apparent co-owner with Rose Ford of the Elbon Road property; and (3) Horace Ford, who signed the 1998 mortgage of the Elbon Road property as spouse of Rose Ford, suggests a disturbing pattern of serial filings, lack of prosecution, and noncompliance with bankruptcy laws, rules, and court orders. Although the Court wishes to emphasize that the subject of this show cause order is limited to the conduct of the debtor and debtor's counsel *in the current case*, the record in these related cases provides important context to the specific conduct at issue in the current case.

*Rose Ford*

Rose Ford's first Chapter 13 case was filed by attorney Lee Kravitz on June 2, 1995 (Case #95-12422). It was closed shortly after the debtor successfully completed her Chapter 13 plan and received her discharge on September 30, 1998.

Rose Ford's current Chapter 13 case, Case #02-24124, was filed by attorney Jurczenko on December 11, 2002. It remains pending, although there is presently an unopposed motion to dismiss the case for lack of funding. (Docket #36).

*Mary Ford*

Mary Ford's first Chapter 7 case was filed by attorney Michael Linn on September 21, 1992 (Case #92-15209). Mary Ford received a Chapter 7 discharge on January 19, 1993.

Mary Ford's second Chapter 7 case was filed by attorney Esther Lester on August 10, 1999 (Case #99-16135). Mary Ford received her Chapter 7 discharge on December 14, 1999. The discharge in Case #99-16135 presumably discharged her personal obligation to National City for the note she co-signed with Rose Ford to purchase the Elbon Road property in 1998.

Mary Ford's first Chapter 13 case was filed by attorney Jurczenko on January 7, 2003 (Case #03-10690). It was dismissed for lack of funding on September 10, 2003.

Mary Ford's second Chapter 13 case was filed by attorney Lee Kravitz on January 5, 2004 (Case #04-10059). It was voluntarily dismissed on October 29, 2004.

*Horace Ford*

Horace Ford's first Chapter 13 case was filed by attorney Roger Stearns on March 5, 2001 (Case #01-11764). It was dismissed for lack of funding on May 9,

2002.

Horace Ford's second Chapter 13 case was filed by attorney Jurczenko on July 5, 2002 (Case #02-17260). It was dismissed for failure to timely file plan, schedules, and statements on December 16, 2002.

Horace Ford's third Chapter 13 case was filed by attorney Jurczenko on October 3, 2002 (Case #02-21119). It was dismissed for failure to timely file plan, schedules, and statements on April 2, 2003.

Horace Ford's fourth Chapter 13 case was filed by attorney Jurczenko on March 18, 2003 (Case #03-13239). It was dismissed for lack of funding on April 15, 2004.

Horace Ford's fifth Chapter 13 case was filed by attorney Lee Kravitz on November 5, 2004 (Case #04-24190). It remains pending.

Based upon the Court's review of the record in these cases, the debtor Rose Ford and her counsel may have engaged in filings and omissions in Case #02-24124 that constitute an abuse of the bankruptcy process, something this Court will not tolerate.

#### *Range of Potential Sanctions*

If the Court does find an abuse of the bankruptcy process, the Court is

concerned that merely dismissing Rose Ford's current Chapter 13 case with a 180-day filing bar under 11 U.S.C. § 109(g) would be an insufficient sanction. Other sanctions may provide a better deterrent and more complete remedy. For example, the Court could also impose in rem relief, *i.e.*, modification of the automatic stay as it relates to the real property located at 1063 Elbon Road, so that in any future bankruptcy case filed by *any party*, the automatic stay of Section 362(a) will not apply to such real property unless and until a party in interest moves to apply the stay and demonstrates that the secured interests of all entities in the real property will be adequately protected under 11 U.S.C. § 361.

In order to provide due process to all parties, the Court will provide separate notice to the apparent co-owner, Mary Ford, and to Horace Ford. In rem relief, if granted, would apply to debtor Rose Ford, co-owner Mary Ford, Horace Ford, and any other parties who may claim an interest in the property through these parties. An injunction preventing application of the automatic stay to such real property would apply until the current mortgagees or their assignees no longer have a security interest in the property.

Among the sanctions that the Court is considering are:

- monetary sanctions against the debtor and debtor's counsel under Bankruptcy Rule 9011;

- in rem relief, *i.e.*, modification of the automatic stay as it relates to the real property located at 1063 Elbon Road, so that in any future bankruptcy filing by any party, the automatic stay of Section 362(a) will not apply to the property described above unless and until a party in interest moves to apply the stay and demonstrates that the interests of all secured creditors in the property will be adequately protected;
- disgorgement of fees previously paid to debtor's counsel in this case;
- an order that debtor's counsel satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of his conduct in this case;
- referral of debtor's counsel to relevant disciplinary authority such as the Office of Disciplinary Counsel of the Supreme Court of Ohio or the Committee on Complaints and Policy Compliance of the United States District Court for the Northern District of Ohio.

The Court acknowledges that it cannot, on its own initiative, order the debtor or debtor's counsel to pay a creditor's reasonable attorneys' fees or other expenses incurred as a direct result of any violation of Rule 9011. *See* Bankruptcy Rule 9011(c)(2). Nevertheless, nothing in Rule 9011 prevents the Court from imposing monetary or other sanctions under separate authority, specifically this Court's inherent authority. *See, e.g., In re Mroz*, 65 F.3d 1567, 1575 (11th Cir. 1995) ("The fact that rules such as Rule 11 and Bankruptcy Rule 9011 have been promulgated by Congress does not displace a court's inherent power to impose sanctions for a parties' bad faith conduct.").

## CONCLUSION

For the foregoing reasons, the debtor and debtor's counsel are ordered to appear at an evidentiary hearing at 1:30 P.M. on February 23, 2005, in Courtroom 3102, 127 Public Square, Cleveland, Ohio, and show cause why they should not be sanctioned for their conduct in failing to disclose in the debtor's schedules and statement of affairs: (1) the debtor's ownership interest in real property located at 1063 Elbon Road, (2) the secured interest of creditor National City Bank in the same property, and (3) a foreclosure action involving the same property pending in state court. Debtor's counsel shall also appear and show cause why he should not be sanctioned under 28 U.S.C. § 1927.

IT IS SO ORDERED.

/s/ Arthur I. Harris                      1/21/2005  
Arthur I. Harris  
United States Bankruptcy Judge