



this Court the "determin[ation] [of] the proper damages and costs to be awarded to [WMS Motor Sales] for [Irene K.] Makridis's filing and pursuing a frivolous appeal." (Sanctions Order at 4.) This opinion deals with that limited issue.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

#### **I. STATEMENT OF FACTS**

By way of background, Debtor Michelle Reese filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on April 25, 2010. (Main Case, Doc. # 1.) The Debtor listed WMS Motor Sales ("WMS") as a general unsecured creditor in the amount of \$6,400.00. On August 25, 2008, WMS filed a complaint to determine its debt to be non-dischargeable.

On June 26, 2009, this Court entered Memorandum Opinion Regarding Trial (Doc. # 24) and Order Regarding Trial (Doc. # 25) (collectively, "Trial Judgment"), holding that the Debtor owed WMS a non-dischargeable debt in the amount of \$6,343.00. On July 24, 2009, the Debtor, by and through Irene K. Makridis, Esq., filed (i) Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel ("Motion to Extend Time") (Doc. # 27); and (ii)

Notice of Appeal to Bankruptcy Appellate Panel. (Doc. # 28.) On July 28, 2009, WMS filed Plaintiff Creditor's Memorandum Contra Debtor Defendant's Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel. (Doc. # 29.) That same day, the Court entered Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Appellate Panel ("Denial Order") (Doc. # 30), finding that Debtor had failed to provide any reason to grant an extension of time beyond the ten-day<sup>1</sup> period set forth in Federal Rule of Bankruptcy Procedure 8002.

The next day, on July 29, 2009, Debtor filed Motion for Reconsideration of Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Panel [sic] (Doc. # 31), arguing that Debtor did not need to show excusable neglect because she filed her request to extend time within the twenty-day period after expiration of the ten-day appeal period. On July 30, 2009, the Court entered Order Denying Motion for Reconsideration of Order Denying Motion to Extend Time to File Notice of Appeal to Bankruptcy Panel ("Reconsideration Order"). (Doc. # 33.) Debtor filed Amended Notice of Appeal to Bankruptcy Appellate Panel (Doc. # 36) on August 6, 2009.

On September 23, 2009, Debtor filed Motion for Stay of Execution Pending Appeal to the Bankruptcy Appellate Panel. (Doc. # 53.) Two days later, on September 25, 2009, WMS filed Plaintiff

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<sup>1</sup> Although the current applicable period to file an appeal, pursuant to Federal Rule of Bankruptcy Procedure 8002, is fourteen days, the time period in question was prior to the effective date for the revised rules. As a consequence, the Debtor had ten days to appeal the Trial Judgment.

Creditor's Memorandum Contra Stay of Execution or for the Requirement of a Supersedeas Bond. (Doc. # 54.) On September 28, 2009, the Court entered Order (i) Conditionally Granting Motion for Stay and (ii) Imposing Obligation to Post a Supersedeas Bond. (Doc. # 56.)

On October 5, 2009, WMS filed Motion for Rule 11 Sanctions (Doc. # 58), asking this Court to impose sanctions against Ms. Makridis and "ordering [her] to pay Plaintiff's attorney [sic] fees and expenses incurred in being required to respond to and defend against repeated frivolous and meritless efforts by Makridis to pursue an untimely appeal of this Court's June 28, 2009 judgment in favor of Plaintiff and against Defendant Reese."

On December 8, 2009, the Bankruptcy Appellate Panel of the Sixth Circuit ("B.A.P.") entered an Order ("Dismissal Order") (Doc. # 63) which dismissed Debtor's appeal "[u]pon consideration of the appellant's motion to voluntarily dismiss the appeal . . . ." <sup>2</sup> A hearing on the Motion for Sanctions ("Sanctions Hearing") was scheduled for January 7, 2010. (Doc. # 67.) On December 21, 2009, WMS filed Motion for Continuance (Doc. # 69), asking the Court to reschedule the Sanctions Hearing until January 21, 2010. On December 22, 2010, the Court (i) granted WMS's Motion for Continuance, and (ii) rescheduled the Sanctions Hearing for January 21, 2010.

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<sup>2</sup> Although not part of the record before this Court, counsel for WMS referenced a letter from the Debtor to the B.A.P. which (i) indicated that the Debtor never authorized Ms. Makridis to file an appeal; and (ii) requested the appeal be dismissed. This letter was the basis for the B.A.P.'s Dismissal Order.

On January 12, 2010, the Debtor filed Motion to Hold in Abeyance Motion for Sanctions Pending Resolution of Similar Motion Before the Bankruptcy Appellate Panel ("Abeyance Motion"). (Doc. # 73.) The next day, WMS filed Memorandum Contra Motion to Hold Sanctions in Abeyance. (Doc. # 74.) Appearing at the hearing on the Motion for Sanctions on January 21, 2010, were: (i) Randil J. Rudloff, Esq., on behalf of WMS; and (ii) Ms. Makridis, on behalf of herself. Based on WMS's withdrawal of its opposition to the Abeyance Motion, the Court did not rule on the merits of the Motion for Rule 11 Sanctions, and held such motion in abeyance.

On February 22, 2010, the B.A.P. entered the Sanctions Order which required this Court to determine the proper damages and costs to be awarded to WMS for Ms. Makridis's filing and pursuing a frivolous appeal. The B.A.P. found that "[t]he arguments raised by Makridis in support of the appeal are wholly without merit." (*Id.* at 3.) The B.A.P. further noted, "Makridis's arguments lack any conceivable merit, and this has been apparent for a long time." (*Id.* at 4.) Ms. Makridis appealed the Sanctions Order to the United States Court of Appeals for the Sixth Circuit.

On July 16, 2010, the Sixth Circuit Court of Appeals dismissed the appeal of the Sanctions Order, *sua sponte*, for lack of a final appealable order. (Doc. # 79.)

On August 31, 2010, this Court held an evidentiary hearing ("Evidentiary Hearing") in compliance with the Sanctions Order. Appearing at the Evidentiary Hearing were: (i) Mr. Rudloff and John

Rossi, Esq. on behalf of WMS; and (ii) Ms. Makridis on behalf of herself. At the Evidentiary Hearing, WMS presented evidence regarding (i) the amount of attorney's fees WMS incurred in defending against Ms. Makridis's frivolous appeal, and (ii) the reasonableness of such fees. Mr. Rudloff, who testified regarding (i) the 38 hours he spent in defending against Ms. Makridis's appeal, and (ii) his hourly rate of \$200.00, explained that he keeps time contemporaneously on a timekeeper sheet in 1/4 hour intervals. Dennis James, general manager of WMS, testified that Mr. Rudloff's fee for defense of the appeal was reasonable. Ms. Makridis neither testified in her own defense nor provided any defense to the Court.

## II. DISCUSSION

### **A. Sanctions Under Federal Rule of Bankruptcy Procedure 8020**

Federal Rule of Bankruptcy Procedure 8020 provides: "[i]f a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after separately filed motion . . . and reasonable opportunity to respond, award just damages and single or double costs to the appellee." FED. R. BANKR. P. 8020 (West 2009). As explained in the B.A.P.'s Sanctions Order, Rule 8020 "is, for all practical purposes, identical to that of Federal Rule of Appellate Procedure 38. Accordingly, courts considering Bankruptcy Rule 8020 motions are guided by cases applying Appellate Rule 38." (Sanctions Order at 2) (quoting *Tina Livestock Sales, Inc. v. Schachtele (In re Schachtele)*, 343 B.R. 661, 666 (B.A.P. 8th Cir.

2006) (footnote omitted)).

In *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574 (Fed. Cir. 1991), the United States Court of Appeals for the Federal Circuit construed Rule 38 in imposing sanctions against a party for filing an appeal that had no basis in law or fact. The *Finch* Court noted, "Sanctions under Rule 38 thus perform two vital functions: They compensate the prevailing party for the expense of having to defend a wholly meritless appeal, and by deterring frivolity, they preserve the appellate calendar for cases truly worthy of consideration." *Id.* at 1578 (citing *Pac-Tec v. Amerace Corp.*, 903 F.2d 796, 804 (Fed. Cir. 1990); *Sun-Tek Indus. v. Kennedy Sky-Lites*, 865 F.2d 1254, 1255 (Fed. Cir. 1989)).

Further, under Rule 8020, courts may hold an attorney, as well as a party, liable for frivolous appeals. See *Dungaree Realty, Inc. v. United States*, 30 F.3d 122, 125 (Fed. Cir. 1994) (sanctioning an attorney for filing a frivolous appeal).

#### **B. Monetary Sanctions**

Here, the B.A.P., having found Ms. Makridis's appeal to be wholly without merit, remanded to this Court the determination of the appropriate amount of damages and costs as sanctions pursuant to Rule 8020. As the B.A.P. explained, because Ms. Makridis's appeal was frivolous and lacked merit, monetary sanctions under Rule 8020 are appropriate.

At the Evidentiary Hearing, Mr. Rudloff provided the Court with an itemized bill, detailing the 38 hours he spent in defending

against Ms. Makridis's frivolous appeal. Among other things, Mr. Rudloff (i) conducted research regarding (a) the delayed appeal, and (b) the Motion for Sanctions; (ii) prepared and filed memoranda of law; (iii) drafted and filed the Motion for Sanctions; and (iv) prepared an appellate brief. Mr. Rudloff also billed WMS for out-of-pocket expenses in the amount of \$13.85 related to mailing WMS's brief to the B.A.P. Mr. Rudloff's hourly rate is \$200.00, which this Court finds to be within the range of reasonableness in this locality.<sup>3</sup>

Ms. Makridis challenged neither the reasonableness or necessity of the time Mr. Rudloff spent in defending against this appeal nor the hourly rate at which Mr. Rudloff billed WMS. Ms. Makridis's sole "defense" was to comment on the lack of descriptive narrative on Mr. Rudloff's billing statement.

In a similar case, *Deck v. Chase Home Fin.*, 2007 U.S. Dist. LEXIS 76800 (S.D. Ind. 2007), the District Court applied Rule 8020 to award attorney's fees and costs to a creditor where the debtor's appeal was frivolous. The *Deck* Court stated, "Appellants did not contest any of Appellee's calculation of hours or rates for attorney work or their costs." *Id.* at \*13. Like the appellant in *Deck*, Ms. Makridis did not contest Mr. Rudloff's calculation of fees or his rate.

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<sup>3</sup> Based on this Court's review of hundreds of fee arrangements, \$200.00 per hour is within the ordinary range of fees in this region.

This Court finds both the number of hours spent by Mr. Rudloff and his hourly rate to be reasonable. Accordingly, this Court will award to WMS damages and costs equal to Mr. Rudloff's actual fees and expenses in the amount of \$7,613.85.<sup>4</sup>

**C. Non-Monetary Sanctions**

In addition to monetary sanctions in the form of WMS's attorney's fees, Ms. Makridis is prohibited from seeking any fees or expenses from the Debtor in connection with the frivolous appeal. The record reflects conflicting information regarding whether Debtor authorized Ms. Makridis to file the appeal.<sup>5</sup> Even if the Debtor authorized the appeal, Ms. Makridis's execution in filing the appeal, however, was so defective as to warrant no compensation whatsoever. As explained in the Sanctions Order, Ms. Makridis did not offer any explanation of excusable neglect, despite the fact that the Motion to Extend Time "was filed after the time for filing the notice of appeal had expired on July 6, 2009, but within 20 days of the expiration date." (Sanctions Order at 3.) As set forth in *HML II, Inc. V. Ginley (In re HML II, Inc.)*, 234 B.R. 67, 70 (B.A.P. 6th Cir. 1999), Rule 8002(c)(2) requires a party to show excusable neglect if the time for an appeal has expired.

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<sup>4</sup> This figure represents Mr. Rudloff's attorney's fees: \$7,600.00 (38 hours at a rate of \$200.00 per hour) plus expenses in the amount of \$13.85.

<sup>5</sup> Ms. Makridis attached an affidavit signed by the Debtor, which indicated that the Debtor asked Makridis to file the appeal. However, the Debtor disavows this affidavit in her letter to the B.A.P. wherein she voluntarily dismissed the appeal.

Here, Ms. Makridis not only failed to make any showing of excusable neglect, she argued that Rule 8002(c)(2) - despite plain language to the contrary - did not require her to do so. Further, the B.A.P. noted that this Court could not have construed the Motion for Reconsideration as an amended motion to extend time for appeal because it was filed 23 days after the time for appeal had expired. "Once the 20-day time period has passed, no extension is permitted . . . ." (Sanctions Order at 3.) Ms. Makridis never provided any legal basis upon which this Court could grant her Motion to Extend Time. Instead, she incorrectly stated the law, and pursued an appeal that was time-barred.

Because Ms. Makridis pursued the untimely appeal without any justification, she is barred from collecting any fees from the Debtor in connection with the frivolous appeal.

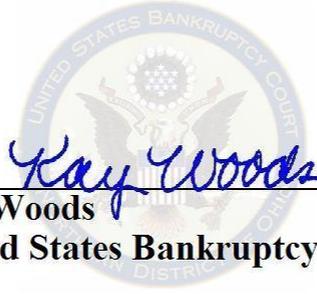
### III. CONCLUSION

Based on the record, this Court imposes sanctions against Irene K. Makridis, Esq. in the amount of \$7,613.85, which represents the reasonable and necessary attorney's fees and expenses incurred by WMS related to all post Trial Judgment activity, including defense of the untimely appeal and the Motion for Sanctions. Additionally, Ms. Makridis is prohibited from billing Debtor for any post Trial Judgment legal work. Accordingly, this Court will order Ms. Makridis: (i) to pay WMS \$7,613.85 within thirty (30) days; and (ii) to (a) refrain from billing Debtor for any post Trial Judgment legal

work or (b) reimburse Debtor for any amounts Debtor may have already paid.

An appropriate Order will follow.

IT IS SO ORDERED.



Dated: September 23, 2010  
11:27:56 AM

Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

MICHELLE REESE,  
  
Debtor.

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WMS MOTOR SALES,  
  
Plaintiff,

v.

MICHELLE REESE,  
  
Defendant.

CASE NUMBER 08-41173

ADVERSARY NUMBER 08-04172

HONORABLE KAY WOODS

\*\*\*\*\*  
ORDER IMPOSING SANCTIONS  
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This cause is before the Court on Final Order by Bankruptcy Appellate Panel ("Sanctions Order") (Doc. # 78), which remanded to this Court the "determin[ation] [of] the proper damages and costs

to be awarded to [WMS Motor Sales] for [Irene K.] Makridis's filing and pursuing a frivolous appeal." (Sanctions Order at 4.)

For the reasons set forth in this Court's Memorandum Opinion Regarding Determination of Damages for Filing Frivolous Appeal entered on this date, this Court hereby orders Ms. Makridis (i) to pay WMS Motor Sales \$7,613.85 within thirty (30) days; and (ii) to (a) refrain from billing Debtor for any post Trial Judgment legal work or (b) reimburse Debtor for any amounts Debtor may have already paid.

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