



The following constitutes the Memorandum Decision of the Court. Signed: July 3, 2019

A handwritten signature in black ink, appearing to read "Roger L. Efremsky", is written over a horizontal line.

Roger L. Efremsky
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: Case No. 18-41720 RLE
Chapter 7
ERIC DANIEL ARBUCCI, Date: February 6, 2019
Debtor. Time: 2:00 p.m.
Place: Courtroom 201

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**MEMORANDUM DECISION ON CREDITOR
SAMUEL GOODWIN'S MOTION FOR SANCTIONS**

Before the court is creditor Samuel Goodwin's (hereinafter referred to as "Creditor") Motion for Sanctions after finding of bad faith in Debtor Eric Daniel Arbucci's (hereinafter referred to as "Debtor") chapter 13 bankruptcy. Creditor seeks sanctions against both the Debtor and his counsel, Arasto Farsad (hereinafter referred to as "Debtor's Counsel").

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1 The court has jurisdiction over this core proceeding
2 pursuant to 28 U.S.C. §§ 157(b) (2) (A), (B) and (L). The
3 following constitutes the court's findings of fact and
4 conclusions of law.¹

5 **I. Factual Background**

6 This matter arises from Debtor's illegal conduct in 2015,
7 when Debtor, driving an unregistered and uninsured car at an
8 unsafe speed and without proper vision correction, failed to
9 yield to Creditor, a pedestrian in a crosswalk, and hit him,
10 causing Creditor serious bodily injury.

11 On June 4, 2018, after trial in Alameda County Superior
12 Court, judgment in the amount of \$268,875.30 was entered in favor
13 of Creditor and against Debtor (hereinafter, the "Judgment").
14 Creditor recorded an Abstract of Judgment on June 4, 2018,
15 thereby perfecting the Judgment as a lien against Debtor's home.
16 Debtor appealed the Judgment but failed to post a supersedeas
17 bond.² Creditor then filed an application to sell Debtor's home
18 to satisfy the Judgment. Several days later, on July 27, 2018,
19 Debtor filed his chapter 13 bankruptcy, thereby staying
20 Creditor's application to sell Debtor's home.

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23 ¹Unless specified otherwise, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
25 "Rule" references are to the Federal Rules of Bankruptcy
26 Procedure, and all "Civil Rule" references are to the Federal
27 Rules of Civil Procedure.

28 ²In his bankruptcy schedules, Debtor valued his home at
\$1.650 million. The only debt against the home was Creditor's
Abstract of Judgment in the amount of \$268,875.30 and Alameda
County property taxes of approximately \$10,000. See Proof of
Claim #2-1 and #4-1.

1 Following the bankruptcy filing, both the chapter 13
2 Standing Trustee and Creditor filed objections asserting that
3 Debtor's case had been filed in bad faith and that the plan(s)³
4 were being proposed in bad faith. With regards to the plan(s)
5 being filed in bad faith, neither the chapter 13 Standing Trustee
6 nor the Creditor sent a "safe harbor" letter to Debtor and/or
7 Debtor's Counsel as described under Rule 9011(c).

8 The chapter 13 Standing Trustee and the Creditor's
9 objections to confirmation were heard by the court on December 7,
10 2018. After considering the papers and the parties' arguments,
11 the court found that the case had been filed in bad faith and the
12 plan(s) had been proposed in bad faith, and sustained both
13 objections.⁴ The court then converted the case to chapter 7
14 pursuant to 11 U.S.C. § 1307(c).

15 On January 9, 2019, Creditor filed the current Motion for
16 Sanctions. The matter came on for hearing on February 6, 2019.
17 After hearing, the court took the matter under submission.

18 **II. Legal Standard**

19 Federal Rule of Bankruptcy Procedure 9011 provides, in
20 relevant part, as follows:

21 **(b) Representations to the Court.** By presenting to the
22 court (whether by signing, filing, submitting, or later
23 advocating) a petition, pleading, written motion, or
24 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

25 ³At the time of the confirmation trial, Debtor had filed his
26 fifth amended plan.

27 ⁴The court made detailed findings of fact and conclusions of
28 law orally on the record. Those findings and conclusions are
incorporated herein by reference.

1 reasonable under the circumstances, -

2 (1) it is not being presented for any improper purpose,
3 such as to harass or to cause unnecessary delay or
4 needless increase in the cost of litigation;

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

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

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

18
19 **(c) Sanctions.** If, after notice and a reasonable
20 opportunity to respond, the court determines that
21 subdivision (b) has been violated, the court may,
22 subject to the conditions stated below, impose an
23 appropriate sanction upon the attorneys, law firms, or
24 parties that have violated subdivision (b) or are
25 responsible for the violation.

26 (1) How Initiated.

27 (A) By Motion. A motion for sanctions under this
28 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 the violations
committed by its partners, associates, and
employees.

FRBP 9011(b) and (c) (1) (A).

With regards to Creditor's request for sanctions for
Debtor's proposing plans in bad faith, the court is unable and
unwilling to issues sanctions as a result of Creditor's failure

1 to comply with FRBP 9011(c)(1)(A). The court, however, finds
2 that sanctions are appropriate for Debtor's bad faith filing of
3 the petition itself, as the "safe harbor" provision of Rule 9011
4 requiring 21-days notice prior to seeking sanctions, is not
5 applicable to a claim that the chapter 13 petition was filed in
6 bad faith. See FRBP 9011(c)(1)(A) exception.

7 The court's finding that the petition was filed in bad faith
8 was supported by the facts that: (1) Debtor owned his home
9 (valued at \$1.650 million in his Schedule A) outright, encumbered
10 only by Creditor's Abstract of Judgment in the approximate amount
11 of \$268,000, and a tax lien in the approximate amount of \$10,000;
12 and (2) Debtor listed minimal other debt in his schedules, none
13 of which was actively being collected and none of which appeared
14 to be or were the stated impetus for the bankruptcy filing. In
15 addition, Debtor's Statement of Financial Affairs indicated that
16 he operated no business as he disclosed that he had no income
17 from employment or from operation of a business during the year
18 he filed or the two previous calendar years. Despite these
19 representations in the Statement of Financial Affairs, the court
20 acknowledges that Debtor did represent that he derived some
21 income from renting a room(s) at his home.

22 It was clear to the court that Debtor filed this bankruptcy
23 solely to delay collection of Creditor's Judgment and to avoid
24 posting a supersedeas bond. The record supported the fact that
25 Debtor had the financial means to pay the Judgment. See In re
26 Dental Profile, Inc., 446 B.R. 885, 900 (Bankr. N.D. Ill. 2011)
27 (citations omitted) (because direct evidence of motive or intent
28 is rarely available, court must look to objectively ascertainable

1 circumstances that support inference of improper purpose in
2 deciding whether to award sanctions under the "improper purpose"
3 clause of Rule 9011); In re Dickson, 2017 WL 5634598, *5 (Bankr.
4 E.D. Ky. November 22, 2017) (citing In re Dental Profile, Inc.,
5 446 B.R. at 900) (the focus of a claim under the "improper
6 purpose" clause is on why the nonmovant filed the legal pleading
7 at issue). Moreover, because Debtor was not involved in a
8 business venture, the Judgment did not pose any danger of
9 disrupting business interests. See Marsch v. Marsch (In re
10 Marsch), 36 F.3d 825 (9th Cir. 1994).

11 The court's finding was further supported by the fact that
12 on January 7, 2019, one month after the court sustained the
13 chapter 13 Standing Trustee and Creditor's objections and
14 converted the case to chapter 7, Debtor and the chapter 7 Trustee
15 entered into an agreement to allow Debtor to refinance his home
16 and pay all of his administrative and creditor claims in full.
17 The agreement was approved by the court and was consummated. See
18 Docket ##101-104; 121 and 147.

19 In In re Marsch, the Ninth Circuit established a two-pronged
20 test for determining whether sanctions are warranted under FRBP
21 9011 for the bad faith filing of a bankruptcy petition.
22 Specifically, the bankruptcy court must consider both the
23 frivolousness and the improper purpose on a sliding scale, where
24 the more compelling the showing as to one element, the less
25 decisive need be the showing as to the other. In re Marsch, 363
26 F.3d at 829-31.

27 The court's findings at the confirmation hearing that the
28 petition was filed in bad faith support a current finding that

1 the petition was both frivolous and filed for an improper
2 purpose. The petition was filed solely to delay collection of
3 Creditor's Judgment and to avoid posting a supersedeas bond, even
4 though Debtor had the ability to satisfy the Judgment with non-
5 business assets.⁵ Debtor's actions were a transparent attempt to
6 use a chapter 13 petition and the resulting automatic stay as an
7 inexpensive substitute for the supersedeas bond required to
8 pursue an appeal under state law.

9 Having determined sanctions are warranted, the court must
10 next determine: (1) the amount of the sanctions to be awarded
11 against Debtor; and (2) whether Debtor's Counsel should also be
12 sanctioned.

13 Rule 9011 provides that sanctions for violation of the Rule
14 "**shall** be limited to what is sufficient to deter repetition of
15 such conduct or comparable conduct by others similarly situated."
16 FRBP 9011(c)(2) (emphasis added). The court may order a violator
17 to pay the injured party "the reasonable attorneys' fees and
18 other expenses incurred as a direct result of the violation."

19 Id.

20 Creditor seeks an order awarding sanctions of \$47,812.50
21 against Debtor and Debtor's Counsel to reimburse Creditor for
22 attorney fees incurred in responding to the petition and opposing
23 confirmation. To grant the relief sought in full, the court must
24 find: (a) that the fees sought are reasonable; and

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26 ⁵There was no evidence or argument at the hearing regarding
27 the cost of obtaining a supersedeas bond. Regardless, the court
28 presumes that the same equity in Debtor's home that he used to
pay all of his debts in the chapter 7 would have been more than
sufficient to obtain a supersedeas bond.

1 (b) that the amount of the award is necessary for deterrence.
2 Creditor's request fails this test in part. In re Studio 2000
3 USA, Inc., 2003 WL 1956241, *7 (Bankr. N.D. Cal. April 11, 2003)

4 First, the fees sought were not all reasonably necessary to
5 contest the petition. After careful consideration of the papers
6 filed by Creditor, the time records submitted by Creditor's
7 counsel, and the nature and duration of the hearings before the
8 court, the court determines that the fees reasonably incurred in
9 contesting the petition do not exceed \$30,750.00. This figure
10 was based on the court's determination that rather than the \$700
11 and \$525 that the attorneys used in their request for fees,
12 \$500/hour was a reasonable rate for Creditor's counsel. The
13 court deducted 6.0 hours for duplicative appearances and 5.3
14 hours for excessive time spent on research and writing briefs.

15 Second, as adjusted, the fees awarded do not exceed the
16 amount necessary for deterrence. This was one of the most
17 egregious filings by a debtor in this court's experience. The
18 court therefore determines that a sanction of \$30,750 is
19 necessary and sufficient to deter future conduct of this type.

20 Here, neither Debtor nor Debtor's Counsel set forth any
21 meritorious reasons why Debtor's Counsel Arasto Farsad, who
22 signed the petition along with the Debtor, should not be jointly
23 liable for any sanctions with Debtor. See In re Coquico, Inc.,
24 508 B.R. 929, 937-38 (Bankr. E.D. Pa. 2014) (all signatories to a
25 bankruptcy petition, including bankruptcy counsel and a debtor's
26 officer or representative, subject themselves to Rule 9011). As
27 such, the court finds Arasto Farsad to be jointly liable for the
28 \$30,750 sanction with Debtor. To the extent that there are

1 insufficient funds held by the chapter 7 Trustee to pay the
2 sanctions in full, Creditor may seek to recover these sanctions
3 from Arasto Farsad and/or his law firm. Finally, because the fee
4 award is fully sufficient for deterrence purposes, the court
5 determines that it is not necessary to impose any further
6 sanctions.

7 **III. Conclusion**

8 For all of the above reasons, the court awards sanctions in
9 the amount of \$30,750 in favor of Creditor and jointly against
10 Debtor and Debtor's Counsel Arasto Farsad, for Debtor's bad faith
11 filing of his bankruptcy petition. A separate order shall issue.

12 *** * * End of Memorandum Decision * * ***

Court Service List

No Court Service Required

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