



IT IS ORDERED as set forth below:

Date: June 09, 2008

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 07-73085

Phuc Thi Nguyen,

CHAPTER 7

Debtor.

JUDGE MASSEY

Wells Fargo Financial National Bank,

Plaintiff,

v.

ADVERSARY NO. 07-6656

Phuc Thi Nguyen,

Defendant.

ORDER DENYING APPLICATION FOR ATTORNEY'S FEES

Defendant's counsel filed on June 3, 2008, a motion entitled "Application for Attorney's Fees" contending that Plaintiff acted in bad faith in filing this adversary proceeding because the claim made had no merit. In other words, Movant seeks sanctions, but there is no provision in

the Bankruptcy Rules for seeking sanctions by application. The request for relief should have been filed as a motion. See Bankruptcy Rule 9013(a).

The movant should have been Mr. Nguyen. “The purpose of sanctions is to deter abusive practices and to compensate the offended party.” *In re Addon Corp.*, 231 B.R. 385, 389 (Bankr. N.D. Ga. 1999). Movant is not the offended party. To the extent that Mr. Nguyen incurred fees for defending this case, the claim is his. If counsel agreed to work for nothing, he cannot be compensated for the misconduct of the opposing party.

Movant relies on *Love v. Tower Loan of Mississippi, Inc. (In re Love)*, 577 F.2d 344 (5th Cir. 1978) and Bankruptcy Rule 9011. The *Love* case is inapposite because it was decided under the Bankruptcy Act. In 1979, the Bankruptcy Code became effective, and thereafter, there were many changes in the Federal Rules of Bankruptcy Procedure. All of this superceded the law stated in the *Love* case.

Bankruptcy Rule 9011 deals with the duties of parties and their attorneys to the Court and each other concerning factual and legal contentions. Bankruptcy Rule 9011(c) permits the Court to “impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.” A party seeking the imposition of sanctions must do so by motion and may not file the motion without complying with the safe harbor provision, noted in italics below, that requires notice to the other side and an opportunity to withdraw or correct the document or documents alleged to violate Rule 9011.

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.

Fed. R. Bank. P. 9011(c)(1)(A). (Emphasis added.)

Movant has not shown that he gave the proper notice under this safe harbor provision, which is designed to head off improper conduct before damage is done by calling it to the attention of the offending party. Further, the application seeks sanctions against Plaintiff. The certificate of service of the application shows that it was not served on Plaintiff pursuant the provisions of Bankruptcy Rule 7004, as required by Bankruptcy Rule 9011(c)(1)(A).

For these reasons, the application for attorney's fees is DENIED.

END OF ORDER