



IT IS ORDERED as set forth below:

James E. Massey

Date: September 12, 2012

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 09-82915

Hindu Temple and Community Center of
Georgia, Inc.,

CHAPTER 11

Debtor.

JUDGE MASSEY

Lloyd Whitaker, Trustee,

Movant,

v.

CONTESTED MATTER

Annamalai Annamalai, Eric Kane, et al.,

Respondent.

**ORDER GRANTING IN PART TRUSTEE'S MOTION TO HOLD
RESPONDENTS IN CONTEMPT FOR VIOLATION OF THE BARTON DOCTRINE**

Lloyd T. Whitaker, as Chapter 11 Trustee in this case, filed on September 6, 2012 an emergency Motion to Hold Certain Parties in Contempt and to Impose Sanctions for Willful

Violations of the Barton Doctrine and Automatic Stay in connection with two lawsuits filed against him and persons who have provided services as professionals to him in this case. The first lawsuit was brought under case no. 1:12-CV-2941 filed on August 24, 2012 in the United States District Court for the Northern District of Georgia in Atlanta by the following plaintiffs: Annamalai Annamalai, Hindu Temple and Community Center of High Desert, Inc., Vishal Kalyani, a Minor, by and Through Her Father & next Friend Annamalai Annamalai , Kumar Chinnathambi, Seshamani Viswanathan, Shiva Vishnu Temple of Georgia, Inc., Indian Handicrafts Development Corporation, Vishal & Paru America, Inc., and Hindu Temple of Ohio, Inc. (“USDC Plaintiffs”). Defendants in the federal court action include Lloyd T. Whitaker, the Trustee of the Chapter 11 Debtor in this case; Hayden Kepner, Jr., an attorney for the Trustee; David Crumpton, an accountant for the Trustee, and “Bill Elrod,” who is identified in paragraph 146 of the complaint as the owner of Elrod Auctions (sic) Company, Inc. Elrod Auction Company was also employed by the Trustee in this case, and its principal, Rick Elrod recently died. This court approved the employment of all of these professionals by approving the employment of the respective firms for which they worked.

Most, if not all, of the other defendants in federal action are persons holding claims against the Debtor, attorneys who appeared in the bankruptcy case or persons that are alleged to have participated in some aspect of events connected to the bankruptcy case. Annamalai Annamalai controlled the Debtor prior to the appointment of the Trustee in November 2009.

The second lawsuit was brought as an amendment to a pending case in the Common Pleas Court of Montgomery County, Ohio, Case No. 2012 CV 02619, by Annamalai Annamalai as

plaintiff against Hayden Kepner, Jr. and J. Robert Williamson, who through their law firm represent the Chapter 11 Trustee, Mr. Whitaker, in this case.

As the title of the motion indicates, the Trustee seeks an order holding the USDC Plaintiffs, Eric Kane, attorney for the USDC Plaintiffs, and Mr. Annamalai with respect to the Ohio action, in contempt for violating the Barton Doctrine.

The Court held a hearing on the motion on September 12, 2012 attended by Mr. Annamalai, Eric Kane, and the Trustee and his counsel. There is no dispute about the filing and content of the complaint in the federal action and the amended complaint in the Ohio action. This court did not authorize the filing of either action.

The Barton doctrine is the holding of the Supreme Court in *Barton v. Barbour*, 104 U.S. 126, 127, 26 L.Ed. 672 (1881) that “[i]t is a general rule that before suit is brought against a receiver[,] leave of the court by which he was appointed must be obtained.’ *Barton* involved a receiver in state court, but the circuit courts have extended the Barton doctrine to lawsuits against a bankruptcy trustee.” *Carter v. Rodgers*, 220 F.3d 1249, 1252 (11th Cir. 2000). In *Carter*, the Eleventh Circuit held that if the claim asserted by a litigant in a suit against a bankruptcy trustee is related to the bankruptcy proceeding, the Barton doctrine applies to bar the filing of the action unless the bankruptcy court has authorized the litigant to proceed. “The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.” *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 788 (11th Cir.1990).

The complaint in the federal action is replete with allegations of misconduct by the Trustee and his professionals in carrying out their duties. Mr. Annamalai argues essentially that

the Trustee and his professionals operated outside the scope of their fiduciary duties. His analogy is a trustee driving a car that is property of the estate to a parking lot, who is arrested for drunk driving (or he might have said more aptly, who negligently caused an automobile accident). Such a trustee, Mr. Annamalai argues, could not hide behind the Barton Doctrine to avoid being prosecuted or sued. His hypothetical is inapposite, however, because he assumes the ultimate fact – that the Trustee and his professionals misbehaved in some egregious manner.

If a trustee misbehaves, a party in interest may seek an order in the bankruptcy court removing the trustee or determining that the alleged misbehavior is not related to the bankruptcy case. In fact, that is precisely what Mr. Annamalai did in this case in causing a company he controls to file a motion to remove the Trustee on essentially the same grounds set out in the complaint in the federal action. The Court denied that motion after an evidentiary hearing in which the movant and his counsel could not cite a single law or case supporting removal of the trustee and could prove a single fact that could have remotely required the removal of the Trustee.

The federal action is in effect a collateral attack on numerous orders of this court that determined issues raised in the federal complaint and those orders are long since final and not subject to appeal. Thus, the federal action, if permitted to go forward, would have a direct effect on the bankruptcy case and on the possible distribution of assets of the Debtor's estate, which is Mr. Annamalai's true purpose. For these reasons, the filing of the federal action violated the Barton doctrine.

The Ohio action appears to assert fraud and perhaps defamation claims against Mr. Kepner and Mr. Williamson on the basis of a statement allegedly made by a person named “Young,” who is alleged to have told a news reporter:

. . . I’ve talked to people down in Georgia, the lawyers who represent the bankruptcy trustee down in Georgia gave us the word, never be alone with him, never trust anything he says, he’ll put fraudulent criminal complaints on you, whatever it is, whatever it might be, so stay away from him.

Ohio Complaint, Doc. 326, Part 3, p. 8. The complaint does not state who “him” is but presumably “him” is Mr. Annamalai. After alleging a conspiracy against him, Mr. Annamalai alleges in paragraph 20 of the Ohio complaint: “New-party Defendants are (sic) J. Hayden Kepner and J. Robert Williamson entered the state of Ohio through electronic means for the purpose of joining this civil conspiracy.”

The Ohio action is related to this bankruptcy case because the information allegedly given to “Young” by “lawyers who represent the bankruptcy Trustee,” who might or might not be Kepner or Williamson and who might or might not have said what Annamalai alleges, would have acquired their knowledge in the course of their representation of the Trustee. Whether Mr. Annamalai is untrustworthy or litigious are facts directly related to analysis of lawsuits that Mr. Annamalai caused the Debtor to file and, in some instances, in which he also joined as a plaintiff.

The settlement of certain of those suits was the subject of the motion to remove the Trustee. The Court had previously approved the settlement of those cases. The Court determined that the lawsuits had no value in part because of the Trustee’s testimony concerning his assessment of the integrity of Mr. Annamalai. The Ohio action seeks to relitigate one ground on which the Trustee decided not to pursue actions belonging to the estate.

Mr. Annamalai has refused on numerous occasions to provide information to the Trustee about the Debtor's financial affairs by claiming a privilege against self-incrimination. The Trustee brought adversary proceeding no. 09-9080 against Mr. Annamalai and others defendants, some of whom are USDC Plaintiffs, seeking to avoid and recover fraudulent transfers to Mr. Annamalai. In the course of that litigation Mr. Annamalai made admissions by failing to answer requests to admit¹. Among Mr. Annamalai's admissions are these:

All payments made by the Debtor to or for the benefit of Mr. Annamalai and his family from January 1, 2005 to September 10, 2010, which was the date on which he asserted a right not to respond to Plaintiff's requests to admit (Ex. 118), were made without any consideration from him to the Debtor whatsoever.

All payments made by the Debtor to or for the benefit of Mr. Annamalai or his family from January 1, 2005 through September 10, 2010 were made with the specific intent to defraud creditors of the Debtor.

Mr. Annamalai may not relitigate his lack of integrity by filing lawsuits against the Trustee or the Trustee's professionals. To permit such conduct would have a severely adverse effect on the ability of the Trustee to liquidate assets of the estate.

Because the federal and Ohio actions are directly related to this bankruptcy case and their continued pendency would have an adverse effect on the ability of the Trustee and his professionals to do their duties, the Court holds that the filing of those actions violated the Barton doctrine. Violators of the Barton Doctrine may be held in contempt. *In re DeLorean Motor Co.*, 991 F2d 1236, 1241 (6th Cir. 1993). This court has inherent power to impose sanctions for bad-

¹ The Trustee move to compel discovery after Mr. Annamalai asserted a blanket claim of the 5th Amendment privilege against incrimination. A.P. Doc. 75. In granting the motion to compel discovery, this court determined that he were not entitled to rely on a blanket claim of privilege and therefore made the requested admissions. A.P. Doc. 92. Later the court denied Mr. Annamalai's motion to undeem admissions. A. P. Doc. 242.

faith conduct. *In re Mroz*, 65 F.3d 1567, 1575-6 (11th 1995). The court finds that the filing of these actions against the Trustee and his professionals were in bad faith in light of the obvious relationship of the claims made in those actions on this case and the bad-faith purpose of filing those actions.

For these reasons, the motion of the Trustee to hold the USDC Plaintiff, Mr. Annamalai as to the Ohio action and Eric Kane in contempt for violating the Barton doctrine and for other relief is GRANTED in part as follows:

1. The USDC Plaintiffs are directed to dismiss the federal action against Lloyd Whitaker, David Crumpton, Haydon Kepner, Jr. and “Bill” (Rick) Elrod by 4:00 p.m. on Friday, September 14, 2012 and to file no later than 4:00 p.m. on September 21, 2012, a certified copy of the notice of dismissal with the Clerk of this court with a cover sheet showing the name of this bankruptcy case and the case number.

2. Annamalai Annamalai is directed to dismiss the Ohio action against Hayden Kepner, Jr. and J. Robert Williamson by 4:00 p.m. on September 17, 2012, and to file no later than 4:00 p.m. on September 21, 2012, a certified copy of the notice of dismissal with the Clerk of this court with a cover sheet showing the name of this bankruptcy case and the case number.

3. Eric Kane stated at the hearing held on September 12, 2012 he had decided to withdraw as counsel for the USDC Plaintiffs in the District Court. If he does so, he is directed to file with this court no later than by 4:00 p.m. on September 14, 2012 a certified copy of his motion for permission to withdraw filed in the District Court with a cover sheet showing the name of this bankruptcy case and the case number.

4. The Court will schedule a further hearing on this motion to determine appropriate sanctions after the earlier of (1) a decision by the District Court on motions filed by the Trustee and his professionals under Civil Rule 11 or (2) if such a motion is not filed, the date on which the federal action is dismissed.

5. Failure to obey this Order will be construed as contempt of court and will subject each USDC Plaintiff and Mr. Kane to a daily sanction of \$1,000 each from the day after the respective deadlines in paragraphs 1 and 2 above until the federal action is dismissed, unless Mr. Kane files a motion to withdraw as stated. Failure of Mr. Annamalai to obey this order will subject him to a separate daily sanction of \$1,000 from the date of the deadline in paragraph 3 above to the date the Ohio action is dismissed. Such sanctions will not preclude other sanctions such as barring Mr. Annamalai and the other USDC Plaintiffs from filing any further document in this court.

The Clerk is directed to serve a copy of this Order on counsel for the Trustee and on Eric Kane at the address shown on document no. 333, who is directed to serve a copy of this order on the USDC Plaintiffs. Counsel for the Trustee is also directed to serve a copy of this Order on the USDC Plaintiffs separately and on Eric Kane.

END OF ORDER