

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
DANIEL J. MILES,)	CASE NO. 09-92601 - MHM
)	
Debtor.)	
)	
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JAMES C. CIFELLI, Trustee,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 11-5707
RAME PROPERTIES, LLC;)	
RAME AT CHATTAHOOCHEE, LLC,)	
SHARON MUALEM,)	
MOSHE AVI MANOAH,)	
)	
Defendants.)	

ORDER DENYING MOTION FOR SANCTIONS

This adversary proceeding is before the Court on Defendant's Motion for Sanctions. Plaintiff, the Chapter 7 Trustee ("Trustee"), filed a complaint seeking to avoid allegedly fraudulent transfers from Debtor to Rame Properties, LLC, Rame at Chattahoochee, LLC, Sharon Mualem, and "Moshe Avi Manoah" under a residential lease and an amendment to that lease. Defendants contend that Sharon Mualem and "Moshe Avi Manoah" are inappropriate parties to the proceeding, and thus seek sanctions against Trustee pursuant to Federal Rule of Bankruptcy Procedure 9011. For the reasons set forth below, the Motion is denied.

I. STATEMENT OF FACTS

These proceedings stem from an involuntary Chapter 7 petition filed against Debtor December 9, 2009. Debtor moved to convert the case to Chapter 11, which relief was granted December 17, 2009. On Trustee's motion, the case was re-converted to Chapter 7 June 1, 2010.

Trustee's complaint in this adversary proceeding challenges three transfers of \$60,000, \$20,000, and \$60,000 from Debtor to Defendants in October of 2009, made as payments under a Lease for Residential Property (the "Lease") and an Amendment to Agreement (the "Amendment") for a residential property located at 8395 Jett Ferry Road, Atlanta, Georgia 30350, executed on or about October 14, 2009. The Lease was for a term of 30 months. The first page of the Lease indicates that it is between "Rame Properties (hereinafter "Landlord") and Dan Miles[.]" The Lease is signed by Debtor on the line identified as "Tenant's Signature." "JORDASH LLC" is typed on the line labeled "Leasing Broker." The signature "Sharon Mualem" appears on the line labeled "Broker or Broker's Affiliated Licensee," and "SHARON MUALEM" has been typed on the line labeled "Print or Type Name" below Sharon Mualem's signature. The signature "Sharon Mualem for Rame Properties" appears on the line labeled "Landlord's Signature," and beneath that signature "Avi Manoah for Rame Properties" is printed on a line marked "Print or Type Name." On the amendment, "Eden Brokers, INC" is typed above the line labeled "Selling Broker," and the signature "Sharon Mualem" appears just below that on a line labeled "Broker or Broker's Affiliated Licensee." What would

appear to be the signature “Avi Manoah” rests on a line labeled “Landlord Signature.”

The Amendment indicates that Rame at Chattahoochee, LLC received a payment of \$20,000 to be applied as an extension to the Lease for an additional five month period, to November 30, 2012. However, Debtor’s Schedules and Statement of Financial Affairs, filed January 29, 2010, indicates that Debtor paid Defendant Rame Properties, LLC payments of \$60,000, \$20,000, and \$60,000 in October of 2009, apparently in full payment of the Lease and the Amendment.

Pursuant to 11 U.S.C. 365(d)(1), Trustee rejected the Lease effective 60 days after the order for relief in the Chapter 7 case, and challenged the payments made. Trustee filed his *Complaint to Avoid and Recover Fraudulent Transfers* December 16, 2011, listing Rame Properties, LLC, Rame at Chattahoochee, LLC, Sharon Mualem, and “Moshe Avi Manoah” as Defendants. Defendants filed their *Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted* January 17, 2012 and argued, *inter alia*, that Defendants Sharon Mualem and “Moshe Avi Manoah” were inappropriate parties because they were merely agents of the various parties to the Lease and the Amendment, and because Trustee did not allege that Sharon Mualem or “Moshe Avi Manoah” received any money or were alter egos of the Landlord. Concurrent to filing their Motion, Defendants served Trustee with a copy of a Motion For Sanctions, noting that it would be filed in 21 days pursuant to Rule 9011 if Trustee did not dismiss the action against Sharon Mualem and “Moshe Avi Manoah.”

On January 20, 2012, Trustee contacted Defendants' attorney noting that the four defendants were listed because the documents themselves were unclear about who was executing as landlord, and requested that Rame Properties or Rame at Chattahoochee confirm which entity is the correct landlord and which entity received payment. Trustee further noted that, with this information, Trustee could likely dismiss the other defendants from the proceeding. On January 27, 2012, Defendants identified Rame Properties, LLC as the proper landlord and recipient of the payments. On February 13, 2012, Trustee contacted Defendants about the procedure he would be using to dismiss the other defendants. Defendants filed the Motion for Sanctions February 16, 2012, the same day Trustee filed a Notice of Dismissal of Defendants Rame at Chattahoochee, LLC, Sharon Mualem, and Moshe Avi Manoah.

II. CONCLUSIONS OF LAW

By filing a document with the court, an attorney certifies

“that to the best of the [attorney’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.”

Fed. R. Bankr. Proc. 9011(b).

Bankruptcy Rule 9011 imposes an affirmative duty on an attorney to conduct a reasonable investigation of the law and facts prior to signing a pleading or other litigation document, and a duty to file all pleadings and documents with a good faith belief that the relief requested may be granted, and without an improper purpose. Bankruptcy Rule 9011 was meant to require “greater attention by the... courts to pleading and motion abuses and the imposition of sanctions when appropriate, [which] should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.” Fed.R.Civ.P. 11 Advisory Committee Note to the 1983 Amendment. *See also, Westmoreland v. CBS, Inc.*, 770 F.2d 1168 (D.C.Cir. 1985). The rule was not intended to award prevailing parties compensation for costs; it was intended to deter litigation abuse. *See, Anschutz Petroleum Marketing Corp. v. E.W. Saybolt & Co., Inc.*, 112 F.R.D. 355, 357 (S.D. N.Y. 1986).

III. DISCUSSION

Defendant contends that, because Georgia law is clear that an agent is liable for a principal’s acts only in limited circumstances not applicable here, Trustee’s inclusion of Sharon Mualem and “Moshe Avi Manoah” in the adversary proceeding must be intended to harass the individuals. The facts simply do not support that conclusion. A mere three days after Defendants filed their Motion to Dismiss and served Trustee with notice of the Motion for Sanctions, Trustee contacted Defendants to clarify the parties to the Lease and express his willingness to remove excess parties. Indeed, three days before Defendants filed their Motion for Sanctions with the Court, Trustee again contacted Defendants about

the process by which he would be removing Sharon Mualem and Moshe Avi Manoah. In the face of those two assurances that the excess defendants would be dismissed, Defendants may have felt impatient, but not harassed or abused.

Nor was Trustee unreasonable in including four defendants in the proceeding rather than just one. Sharon Mualem signed the two documents in at least three capacities: as Broker's Affiliated Licensee for Jordash LLC, as Broker's Affiliated Licensee for Eden Brokers, INC., and as an agent for Rame Properties. Under Sharon Mualem's signature on behalf of Rame Properties, where her name should have been printed, Avi Manoah's name was printed. On the Amendment, Avi Manoah's signature "Avi Manoah" appears on the line identified as the Landlord of the property in question; it does not indicate that the signature was on behalf of someone, nor did the Amendment otherwise identify a landlord. The Amendment did, however, state that Rame at Chattahoochee, LLC., an entity that had not appeared in the Lease executed on the same day, had been paid under the Amendment. In fact, Rame at Chattahoochee, LLC had not been paid under the Amendment – Rame Properties, LLC had been paid. The various capacities under which Sharon Mualem and Avi Manoah may have been signing the documents is not, as Defendants suggest, clear cut. Defendants further note that "Moshe Avi Manoah" is in fact a combination of the names of two separate people, Moshe Manoah and Avi Manoah. While getting a name wrong is inconsiderate or rude, it is not an error worthy of sanction, and it is certainly not evidence of harassment.¹

¹ Indeed, Defendants, in their Motion for Sanctions, at least once identify Sharon Mualem as "Sharon Muaeim." This, too, will be left unsanctioned.

Given the ambiguities of the documents, Trustee's request for clarification was reasonable. In fact, his acceptance of an informal email rather than an affidavit identifying the appropriate party might be generous. Any undue delay in dismissing the excess parties, then, should be measured from the date upon which the appropriate party was identified, rather than from the date of Defendant's immediate and perhaps aggressive call for sanctions. Trustee dismissed Sharon Muallem and Avi Manoah, along with Rame at Chattahoochee, LLC, twenty days after Rame Properties, LLC had been identified as the proper Defendant. Impatience is not a ground for sanctions, and the delay was not significant. Accordingly, it is hereby

ORDERED that the Motion for Sanctions is *denied*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendants' attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 19th day of September, 2012.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE