



IT IS ORDERED as set forth below:

Date: October 20, 2014

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	
)	CASE NO.: 14-56519-MGD
THE MARIETTA CITY GRAMLING)	
ST. LAND TRUST,)	
)	CHAPTER 13
DEBTOR,)	
)	
-----)	-----
JOHNSON FAMILY TRUST, JUDE)	
PATTERSON, AS TRUSTEE,)	
)	
Movant,)	
)	CONTESTED MATTER
v.)	
)	
THE MARIETTA CITY GRAMLING)	
ST. LAND TRUST and LESLIE)	
MATHIS, individually,)	
)	
Respondents.)	

**ORDER DENYING JOHNSON FAMILY TRUST'S MOTION FOR CONTEMPT AND
MOTION FOR SANCTIONS AGAINST DEBTOR AND LESLIE MATHIS**

Following the dismissal of the Marietta City Gramling St. Land Trust's Chapter 13 case, mortgage creditor Johnson Family Trust ("Movant") filed a motion asking this Court to hold Leslie Mathis, the trustee of the Gramling St. Land Trust ("Debtor"), in contempt for failing to comply with a subpoena. The Movant also seeks sanctions under Rule 9011 against the Debtor and Ms. Mathis (collectively, "Respondents") for filing a frivolous petition.

After careful review of the Movant's motions, neither contempt nor sanctions are warranted, and therefore, the motions are denied. The Debtor, Ms. Mathis and the other parties in these cases are referred to the United States Trustee to investigate as he deems appropriate for the reasons set forth below.

I. Relevant Factual Background

Before the Court are the Movant's Motion for Sanctions and Motion for Contempt, and Respondents' response to the motion for sanctions. (Docket Nos. 20, 22 & 24). A hearing on the motions was held July 8, 2014. At the hearing, the Court requested further briefing on several legal issues raised in these motions. Only the Movant submitted a supplemental brief. (Docket No. 27). The factual basis supporting the Movant's sanctions request includes facts related to both the instant case and a purported pattern of behavior by Ms. Mathis in her capacity as Trustee for various land trusts. The Court looks first to the facts of the current bankruptcy case and then to the prior cases relied upon by the Movant.

A. Current Bankruptcy Case

On March 31, 2014, the Debtor filed a voluntary Chapter 13 petition that was signed by Ms. Mathis, as trustee. Debtor's petition was neither filed nor signed by an attorney. On April 1, 2014, the Movant filed an Emergency Motion to Dismiss seeking immediate dismissal, or alternatively, relief from stay. (Docket No. 3). The basis for the request for dismissal was that

the Debtor, as a land trust, was not eligible for Chapter 13 under 11 U.S.C. § 109(e). Alternatively, the Movant asked for relief from stay on the grounds that Debtor's Chapter 13 was filed and proposed in bad faith by unreasonably delaying the Movant's foreclosure on its collateral. (Docket No. 8). Emergency relief was granted, and Movant was permitted to cry the foreclosure sale as advertised and scheduled. (Docket No. 9). The Movant's request for dismissal was noticed for hearing for April 23, 2014. (Docket No. 11).

The Movant served a subpoena ordering Ms. Mathis to appear at the April 23, 2014 hearing and requiring her to produce certain documents related to the instant case, as well as documents related to any prior bankruptcies in which Ms. Mathis had been involved. (Docket No. 20-1, Ex. A, sec. II).

Prior to the hearing, the Debtor retained counsel and filed a voluntary motion to dismiss without prejudice. (Docket No. 17). The Chapter 13 Trustee also filed a motion to dismiss based on Debtor's ineligibility. (Docket No. 17). The case was dismissed and, at the request of the Movant, the Court retained jurisdiction for a period of thirty days to allow the Movant to file additional motions. (Docket No. 18).

The Movant later filed a motion to hold Ms. Mathis in contempt for failure to comply with a subpoena. (Docket No. 20). The basis for contempt is Ms. Mathis' failure to appear at the April 23, 2014 hearing and failure to produce the requested documents, as provided by the subpoena served on April 4, 2014. The Movant also moved for sanctions against the Debtor and Ms. Mathis, individually, for filing a frivolous bankruptcy petition. (Docket No 22). The Movant's request for sanctions was largely aimed at Ms. Mathis' purported repeated behavior in other similar bankruptcy cases.

Following the hearing on its contempt motion, the Movant submitted a supplemental brief outlining its arguments against Ms. Mathis and the Debtor. With respect to its contempt claim, Movant asserted that holding Ms. Mathis in contempt was both allowable and warranted because: (1) there is no exception to subpoena powers for non-evidentiary hearings, (2) Mathis' presence was required to determine whether an evidentiary hearing was necessary, and (3) the correct procedure to oppose a subpoena is to move to quash it, not ignore it. (Docket No. 27).

As to the sanctions claim, Movant asserted that Ms. Mathis knew she was violating the law in three ways: (1) the Debtor is a land trust and was thus not eligible for Chapter 13 relief; (2) the Debtor is not a business trust and not eligible for bankruptcy protection; and (3) Ms. Mathis is not an attorney and violated the law by filing the petition *pro se* when it required an attorney. The Movant asserts that Ms. Mathis' actual knowledge of those legal requirements and her subsequent decision to ignore them necessitates sanctions.

Neither Ms. Mathis nor the Debtor responded to the Movant's Brief in Support of Movant's Motion for Rule 9011 Sanctions and Motion for Contempt. Respondents had filed a reply prior to the July 8, 2014 hearing that argued against Ms. Mathis' personal liability and included a response to the request for sanctions that remains unclear to the Court.¹

B. Prior Bankruptcy Cases

The Movant also relied on alleged misconduct in prior bankruptcy cases to support its request for sanctions against Ms. Mathis individually. The Court details the facts of the prior cases identified by the Movant below:

¹ Respondents' reply in reference to sanctions states that "the Movant, herself, was a primary moving party. She directed, paid for and/or effected the filing of the bankruptcy actions complaint of in her petition." (Docket No. 24, page 2). It seems that Respondents are referring to Jade Patterson, the trustee for Movant, based upon the use of "herself," yet there are no further allegations or statements regarding Ms. Patterson by either Respondents or Movant.

1. The Serenity Ranch Trust filed a Chapter 13 case on December 2, 2013 (Case No. 13-76119-MGD). The petition was signed by “LMathis, as trustee.” No attorney ever made an appearance or filed a document on this debtor’s behalf. This case was not prosecuted in any way and no claims were filed. The Chapter 13 Trustee filed a motion to dismiss based upon this debtor’s failure to meet the eligibility requirements of 11 U.S.C. § 109(e). There was no opposition to Trustee’s dismissal motion and the case was dismissed on January 22, 2014.
2. The Brady Family Douglas County Mariner Way Villa Rica Land Trust (“Brady Family Trust”) filed three bankruptcy cases.
 - a. On August 31, 2012, the Brady Family Trust filed a Chapter 13 case (Case No. 12-71815-BEM). The petition was signed by “C.McFarland as trustee.” No attorney ever made an appearance or filed a document on this debtor’s behalf. No claims were filed. On March 8, 2013, this case was dismissed on the Chapter 13 Trustee’s motion for filing deficiencies, as well as debtor’s failure to satisfy eligibility requirements under 11 U.S.C. § 109(e).
 - b. On July 13, 2013, the Brady Family Trust filed a Chapter 7 petition (Case No. 13-64465-BEM). The petition was signed by “Catherine McFarland, as trustee.” No attorney ever made an appearance or filed a document on this debtor’s behalf. On July 22, 2013, the case was dismissed for filing deficiencies.
 - c. On October 1, 2013, the Brady Family Trust filed another Chapter 13 case (Case No. 13-71600-BEM). The petition includes an illegible signature, but “C.McFarland, as trustee” is the printed name. No attorney ever made an appearance or filed a document on this debtor’s behalf. No claims were filed. On October 29, 2013, the case was dismissed for filing deficiencies.
3. The Tooley Lakewood Marietta Cobb County Land Trust filed a Chapter 7 case on January 6, 2014 (Case No. 14-50441-WLH). The petition was signed by “A.Tooley, as trustee.” No attorney ever made an appearance or filed a document on this debtor’s behalf. Seterus, Inc. sought relief from stay but the case was dismissed prior to the hearing. On February 4, 2014, the case was dismissed for filing deficiencies.
4. The Rodriguez Heritage Property Land Trust filed a Chapter 13 case on October 1, 2013 (Case No. 13-71590-BEM). The signature on the petition is illegible, but the printed name appears as “A.Lovett, as trustee.” No attorney ever made an appearance or filed a document on this debtor’s behalf. No claims were filed. On October 29, 2013, the case was dismissed filing deficiencies.
5. The Rodriguez Kennesaw Old Cobb Parkway Land Trust filed a Chapter 7 case on June 5, 2012 (Case No. 12-64380-CRM). The signature on the petition is illegible, but the printed name is “A. Rodriguez.” No attorney ever made an appearance or filed a document on this debtor’s behalf. SunTrust Mortgage, Inc.’s motion for relief from the

automatic stay was granted as to real property. On September 11, 2012, the case was dismissed after this debtor failed to appear at the Second Meeting of Creditors.

II. Motion for Contempt

The Movant bases its motion for contempt on Ms. Mathis' failure to comply with the subpoena that ordered her to appear at the April 23, 2014 hearing and produce documents related to this and various other bankruptcy cases. Based on the facts and circumstances of this case, the Court declines to hold Ms. Mathis in contempt.

A. Legal Standard

Federal Rule of Civil Procedure 45, made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 9016, states in relevant part that the court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." FED. R. CIV. P. 45(g).

Civil contempt is a tool used by courts to compel recalcitrant parties to comply with court orders. *See In re Dinnan*, 625 F.2d 1146, 1149 (5th Cir. 1980) (citing *United States v. United Mine Workers*, 330 U.S. 258 (1947) ("If its purpose is to coerce the contemnor into compliance with the court's order . . . then the proceeding is civil.")). In other words, a moving party can satisfy its burden of proof by showing that a party's non-compliance with a subpoena is delaying the resolution of the case or otherwise threatening the integrity of the judicial process.

Under the language of the Rule, it is clear that a court can hold a person in contempt for failure to comply with a subpoena. However, it is crucial to note that holding a party in contempt is a discretionary matter left to the judgment of the court, and will thus depend upon the evidence before the court. *See Howard Johnson Co. v. Khimani*, 892 F.2d 1512 (11th Cir. 1990). The burden is on the movant to show, by clear and convincing evidence, that a finding of

contempt is warranted. *See Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 739 (11th Cir. 2006) (citing *U.S. v. Hayes*, 722 F.2d 723, 725 (11th Cir. 1984)).

B. Discussion

The decision to hold a person in contempt is squarely within the discretion of the Court. *See Howard Johnson*, 892 F.2d at 1519 (“[C]ourts have broad discretion in fashioning civil contempt sanctions.”) (citation omitted). The Court concludes that there is no basis for holding Ms. Mathis in contempt for her failure to comply with the subpoena issued by the Movant.

A finding of contempt might be warranted if Ms. Mathis’ noncompliance with the Movant’s subpoena had any negative effect on an ongoing proceeding. However, in the present case, the dismissal of the case makes Ms. Mathis’ compelled compliance with the subpoena moot. Movant has offered no evidence that it was harmed by Ms. Mathis’ non-compliance. Here, Movant obtained emergency relief from the automatic stay to proceed with the scheduled foreclosure sale. Civil contempt is reserved for instances where the non-compliance of one of the parties disturbs the efficient resolution of the matter before the court, and that is not the situation in the present case. While it is somewhat troubling that Ms. Mathis has not defended or otherwise responded to Movant’s motion for contempt, a finding of contempt is still not warranted because compliance with the subpoena would neither affect the administration of the case nor Movant’s rights. Further, as direction below, the United States Trustee is better positioned to investigate and determine whether actions are warranted against Ms. Mathis.

Movant, however, is entitled to a refund of the witness fees tendered to Ms. Mathis in the amount of \$66.62.

III. Motion for Sanctions

The Movant argues that sanctions are warranted against Ms. Mathis and the Debtor because Ms. Mathis had actual knowledge that the Chapter 13 petition in the present case was

frivolous and was filed with the sole purpose of increasing the Movant's attorney's fees and to harass and delay the Movant's foreclosure sale. Based on the facts and circumstances of this case, the Court holds that sanctions are not warranted against the Debtor or Ms. Mathis.

A. Legal Standard

The Movant bases its motion for sanctions on Bankruptcy Rule 9011. The Rule is meant to prohibit parties from filing cases that are unmeritorious—in other words, to prohibit parties from using the judicial process for improper means. The Rule states in relevant part that when a petition is filed with the court, “an attorney or unrepresented party is certifying that . . . 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” FED. R. BANKR. P. 9011(b)(1).

Violation of Rule 9011 can result in sanctions. FED. R. BANKR. P. 9011(c) (“If . . . the court determines that subdivision (b) has been violated, the court may . . . impose an appropriate sanction upon the . . . parties that have violated subdivision (b) or are responsible for the violation.”). Although Rule 9011 mandates that a court impose sanctions for violations of the rule, the Court has the discretion to determine whether or not the rule has been violated. *Matter of Leeds Bldg. Products, Inc.*, 181 B.R. 1006, 1009 (Bankr. N.D. Ga. 1995) (“A determination of whether [a party] has violated Rule 9011 is left to the discretion of this [c]ourt as the trial court.”) (citation omitted); *see also In re Burnett*, 450 B.R. 116 (Bankr. E.D. Ark. 2011).

Sanctions may be warranted where a bankruptcy petition is filed frivolously, such as when there is no possibility of rehabilitation. *In re Morgan*, 85 B.R. 622, 623 (Bankr. M.D. Fla. 1987) (citing *Cinema Service Corp. v. Edbee Corp.*, 744 F.2d 584 (3d Cir. 1985)). When imposing sanctions on a party the Court should take into account the facts of the case and the

relative culpability of the party and counsel. *United States v. Milam*, 855 F.2d 739, 743 (11th Cir.1988).

The burden of proof is on the moving party. *In re Weaver*, 307 B.R. 834 (Bankr. S.D. Miss. 2002). Once a prima facie case has been made, the burden shifts to the party from whom the sanction is sought to show a legitimate purpose for the filing. *In re King*, 83 B.R. 843, 847 (Bankr. M.D. Ga. 1998).

B. Discussion

Determination of whether Rule 9011 has been violated, thus warranting sanctions, is within the court's discretion. *Matter of Leeds Bldg. Products., Inc.*, 181 B.R. at 1009. The record and the Movant's arguments do not provide a sufficient factual basis to sanction Ms. Mathis or the Debtor. The Movant's allegations, specifically Ms. Mathis' attempt to stop foreclosure and her knowledge of the Debtor's ineligibility, do not warrant sanctions without additional evidence. Furthermore, the alleged pattern of behavior presented by the Movant requires further evidence to meet the evidentiary burden for sanctions and cannot be supported by a facial review of the record.

Rule 9011 directly addresses the conduct alleged by the Movant. Specifically, Movant argues that Ms. Mathis' prior experiences in bankruptcy put both her and the Debtor on notice that their actions were unlawful. According to the Movant, that knowledge indicates that the petition was "presented for an[] improper purpose . . . [,] to harass or to cause unnecessary delay or needless increase in the cost of litigation." FED. R. BANKR. P. 9011(b). The only evidence of such requisite knowledge, and thus a potential violation of this rule, that was offered by the Movant is a pattern of behavior allegedly exhibited by Ms. Mathis in prior bankruptcy cases.

Even taking Movant's allegations as true, Ms. Mathis' alleged pattern of behavior has neither harmed nor harassed Movant.

The Court is permitted to take judicial notice of the cases included in the Movant's Motion for Sanctions despite the fact that a majority of those cases did not take place in front of this Court. *See* FED. R. EVID. 201 (made applicable to bankruptcy proceedings by FED. R. BANKR. P. 9017). Judicial notice is limited to a facial review of undisputed facts. *See, e.g., In re Patton*, 2009 WL 136817 (Bankr. E.D. Pa. 2009) ("While a court may not take judicial notice *sua sponte* of facts contained in the debtor's file that are disputed, *In re Augenbaugh*, 125 F.2d 887 (3d Cir. 1942), it may take judicial notice of adjudicative facts 'not subject to reasonable dispute . . . [and] so long as it is not unfair to a party to do so and does not undermine the trial court's fact finding authority.'" (citing *In re Indian Palms Assoc.*, 61 F.3d 197, 205 (3d Cir. 1995)).

To show that Ms. Mathis had actual knowledge, the Movant relies almost entirely on an alleged pattern of behavior exhibited by Ms. Mathis in conjunction with various other bankruptcy filings. Specifically, it argues that Ms. Mathis was party to or participated in the bankruptcies listed above. The Movant argues that Ms. Mathis' alleged participation in these bankruptcies, which the Movant characterizes as factually similar, demonstrates that she had actual knowledge that her and the respective debtor's behaviors were unlawful, thus warranting sanctions.

However, despite the assertions of the Movant, the Court cannot accept Movant's theories of Ms. Mathis' behavior in prior cases as evidence. The Court has reviewed the cases relied upon by Movant and is permitted to take judicial notice of the undisputed facts. The fact that the Serenity Ranch Trust case (Case No. 13-76119-MGD) was signed "LMathis, as trustee"

has not gone unnoticed, yet it is simply not enough to satisfy the burden of proof for Movant without further evidence. As previously mentioned, the United States Trustee is in the best position to take such investigative steps should he deem it appropriate based upon the allegations made by Movant. Yet Movant's pleadings and the facial review of the prior cases do not present sufficient evidence to determine that Ms. Mathis was involved with the prior bankruptcies. Likewise, there is insufficient support to show that Ms. Mathis or the Debtor had knowledge that their behavior was unlawful. As such, Movant has not made out a case for sanctionable conduct, and no finding of a Rule 9011 violation for Ms. Mathis or Debtor is warranted.

IV. Conclusion

Based on the facts and circumstances surrounding this case, the Court finds that neither contempt nor sanctions are warranted against either Ms. Mathis or the Debtor. Further investigation into the cases included in the Movant's Motion for Sanctions is better suited to review by the United States Trustee. If any further action is to be taken, the United States Trustee should first investigate the allegations regarding Ms. Mathis' involvement in any prior cases, and should file a status report in this action within 90 days. Accordingly, it is

ORDERED that the Movant's Motion for Contempt and Motion for Sanctions are **DENIED**.

It is **FURTHER ORDERED** that the United States Trustee file a status report regarding the status of its recommendation within 90 days from entry of this Order.

The clerk is directed to serve a copy of this Order on the parties listed below.

END OF DOCUMENT

Leslie Mathis
2840 Black Oak Hollow Road
Powder Springs, Georgia 30127

The Marietta City Gramling St. Land Trust
#354 Bld. 190
1750 Powder Springs Road
Marietta, GA 30064

Jon David W. Huffman
Poole Law Group
Suite 225
315 W. Ponce de Leon Avenue
Decatur, GA 30030

Martin Ochs, Esq.
Vivieon Kelley, Esq.
Office of the United States Trustee
362 Richard Russell Building
75 Spring Street, SW
Atlanta, GA 30303

Richard M. Skelly
Law offices of Skelly/Deininger
Suite 1500
400 Galleria Pkwy.
Atlanta, GA 30339-5953