



Dated: February 25, 2020
The following is ORDERED:

Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
WILLIAM H. THOMAS, JR.,
Debtor.

Case No. 16-27850-L
Chapter 11

**ORDER DENYING “MOTION FOR SANCTIONS PURSUANT TO
RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY CIVIL PROCEDURE
AGAINST THE OFFICE OF THE TENNESSEE ATTORNEY GENERAL
INCLUDING MICHAEL WILLEY”**

THE MOTION OF THE DEBTOR, William H. Thomas, Jr., styled “Motion for Sanctions Pursuant to Rule 9011 of the Federal Rules of Bankruptcy Civil Procedure Against the Office of the Tennessee Attorney General Including Michael Willey” [Dkt. No. 787], was filed January 20, 2020. The Debtor asks that the court “schedule a hearing on Debtor’s Rule 9011 Motion for Sanctions to determine what corrective actions are required and whether any sanctions should be granted.”

Herbert H. Slatery, III, Tennessee Attorney General and Reporter (the “Attorney General”), filed an objection through counsel on behalf of the Tennessee Attorney General’s Office (including Senior Assistant Attorney General Michael Willey) on February 20, 2020 [Dkt. No. 840]. The Attorney General notes that Michael Collins was appointed Trustee in Bankruptcy on January 24, 2019; that the Debtor unsuccessfully appealed that appointment; and that the Debtor did not obtain the consent of the Trustee in Bankruptcy prior to filing his *pro se* motion for sanctions, nor did the Trustee in Bankruptcy join in the motion or support the motion. The Attorney General maintains that the Debtor lacks standing to bring his motion. The Attorney General is correct. The Trustee in Bankruptcy has the right to sue and be sued as representative of the estate. 11 U.S.C. § 323(b).

The Debtor asserts that he gave notice of his intent to file a motion for sanctions by letter dated December 9, 2019, addressed to Willey [Dkt. No. 787, Ex. A]. The Debtor asserts that “The December 9, 2019 letter set forth various representation [sic] made to the Court by Mr. Willey under Rule 9011(b) by filings [sic] pleadings, motions and other papers that were improper and submitted in order to harass and cause delay and increase the cost of litigation without the necessary support required by 9011(b)(2)(3) and (4).” The motion then “incorporate[s] herein verbatim by reference thereto” the December 9, 2019 letter. A copy of the letter is attached to the motion. The bulk of the motion consists of quotations from a December 20, 2019 letter sent by Willey and a Response to the Debtor’s Renewed Motion to Dismiss Proofs of Claim filed by the Attorney General [Dkt. No. 768]. The motion also references a January 17, 2020 letter that the Debtor alleges was emailed to Mr. Willey. A copy of the January 17, 2020 letter is attached to the motion [Dkt. No. 787, Ex. D].

Recognizing the deficiencies in the Debtor's motion, the Attorney General identifies the documents to which the Debtor objects as: (1) Tennessee Department of Transportation's ("TDOT") Amended Claim filed on July 23, 2019; (2) a December 6, 2018 notice of joinder in a renewed motion for the appointment of a Chapter 11 trustee; (3) a September 25, 2018 motion to limit discovery; and (4) various pleadings in the Debtor's appeals of bankruptcy court orders to the district court [Dkt. No. 840, ¶ 10]. The upshot of the Attorney General's response to the December 9, 2019 letter was that he would not change his positions in response to it. The Debtor then sent the January 17, 2020 letter. The Attorney General notes in his objection that this letter did not reference Rule 9011; give a 21-day notice; or demand that any corrective action be taken.

Federal Rule of Bankruptcy Procedure 9011 gives explicit instructions concerning how a motion for sanctions may be initiated. Specifically, it requires that the motion "describe the specific conduct alleged to violate subdivision (b)." The motion does not do this. The motion itself does not contain references to any specific pleading, motion, or other paper the Debtor finds objectionable. The Attorney General rather graciously identified four items raised in the December 9, 2019 letter. It is not up to the Attorney General or the court to infer the Debtor's intent from exhibits attached to his motion. It is up to the Debtor to fully comply with Rule 9011. Notwithstanding this additional deficiency, the court will address each of the Debtor's concerns identified by the Attorney General.

According to the Attorney General, the Debtor's first concern is with TDOT's Amended Claim filed July 23, 2019. The Claims Register reflects Claim No. 76, amending Claim No. 5, filed by TDOT on July 23, 2019, in the amount of \$421,129.41. No objection appears of record. Bankruptcy Code section 502(a) provides: "A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502.

Instead of an objection, the Debtor has filed a “Renewed Motion to Dismiss Proofs of Claims No. 5 and No. 76 and Motion to Compel Responses to Discovery” [Dkt. No. 752, December 18, 2019]. Even if the court were to treat this pleading as an objection to claim, the matter is still pending. There has been no resolution of the objection. The court cannot consider the imposition of sanctions until there has been a final resolution of the claim.

According to the Attorney General, the Debtor’s second concern is with a December 6, 2018 notice of joinder in a renewed motion for the appointment of a Chapter 11 trustee. The motion does not specify in what way the Debtor claims the joinder was improper. The December 9, 2019 letter states that the joinder occurred after the Tennessee Billboard Act was declared unconstitutional and after TDOT had voided billboard permits 79-3120 and 79-3421. It is not entirely clear to the court what effect the Debtor claims these facts, if true, should have had on TDOT’s joinder in the motion to appoint a Chapter 11 trustee. In any event, the motion to appoint a trustee was granted and is final.

According to the Attorney General, the Debtor’s third concern is with a September 25, 2018 motion to limit discovery. Rule 9011 by its terms does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037. Fed. R. Bankr. P. 9011(d).

According to the Attorney General, the Debtor’s fourth concern is various pleadings in the Debtor’s appeals of bankruptcy court orders to the district court. If this is so, then the motion, if any, should be filed in the court where those pleadings were filed.

None of the Debtor’s concerns, if indeed they are the ones identified by the Attorney General, involve sanctionable conduct.

Rule 9011 further requires that the motion be served as required by Rule 7004, which requires service

by mailing a copy of the summons and complaint [or motion for sanctions] to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

Fed. R. Bankr. P. 7004(b)(6). Tennessee Rule of Civil Procedure 4.04(6) provides for service, “[u]pon the state of Tennessee or any agency thereof, by delivering a copy of the summons and of the complaint to the attorney general of the state or to any assistant attorney general.” In the alternative, service may be “by registered return receipt or certified return receipt mail to the defendant. If the defendant to be served is an individual or entity covered by subparagraph (2), (3), (4), (5), (6) [the state of Tennessee], (7), (8), or (9) of this rule, the return receipt mail shall be addressed to an individual specified in the applicable subparagraph.” Tenn. R. Civ. P. 4.04(10). The Debtor did not serve his motion as required by Rules 9011 and 7004.

The Debtor’s “Motion for Sanctions Pursuant to Rule 9011 of the Federal Rules of Bankruptcy Civil Procedure Against the Office of the Tennessee Attorney General Including Michael Willey” is **DENIED** for three reasons: (1) the Debtor lacks standing to bring it; (2) the motion fails to state cause to impose sanctions; and (3) the motion was not served as required by Rules 9011 and 7004.

The Attorney General asks that the court award him reasonable expenses and attorney’s fees incurred in opposing the Debtor’s motion. Rule 9011 specifically provides for the award to the prevailing party on a motion for sanctions the “reasonable expenses and attorney’s fees incurred in presenting or opposing the motion.” The Debtor’s motion was wholly without merit. Moreover, the Debtor is a licensed attorney who should be fully aware of the consequences of

filing motions unsupported “by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.” Federal Rule of Bankruptcy Procedure 9011. The court finds that it is appropriate to award the Attorney General the reasonable expenses and attorney’s fees incurred in opposing the Debtor’s motion and invites the Attorney General to submit an affidavit setting forth those expenses and fees for the court’s consideration.

cc: Debtor (pro se)
Chapter 11 Trustee
Attorney for Chapter 11 Trustee
Tennessee Attorney General
Attorney for Tennessee Attorney General
United States Trustee
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