

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: §  
§  
JOHN ROBERDEAU, § CASE NO. 00-31318-SAF-7  
ROBERT M. GEISLER, § CASE NO. 00-31319-SAF-7  
STAGE FRIGHT, L.L.C., § CASE NO. 00-31320-SAF-7  
§ (Administratively consoli-  
DEBTORS. § dated under case no.  
§ 00-31318-SAF-7)

**MEMORANDUM OPINION AND ORDER**

Briarpatch Limited, L.P., and Gerard F. Rubin move the court for an award of sanctions for abuse of process against John Roberdeau and Robert M. Geisler. Briarpatch and Rubin complain that Roberdeau and Geisler abused the bankruptcy process by their inappropriate grievance filed against attorney Charles B. Hendricks with the State Bar of Texas. Roberdeau and Geisler contend they filed the grievance "as a last resort only" to attempt to salvage "what semblance of our reputations have been left to us." They maintain the court cannot collaterally attack the grievance procedure before the State Bar of Texas.

The court conducted an evidentiary hearing on the motion on June 12, 2001. The motion raises a core matter concerning the administration of these bankruptcy cases. 28 U.S.C.

§157(b) (2) (A). The court has a mandate to manage bankruptcy cases to promote the objectives and goals of the Bankruptcy Code. See In re Timbers of Inwood Forest Associates, Ltd., 808 F.2d 363, 373-74 (5th Cir. 1987), aff'd, 484 U.S. 365 (1988). In implementing that mandate, the court must assure that litigation tactics not be used to inappropriately increase the expense and burdens of litigation and to protect litigants and their counsel from abusive and oppressive tactics. See Dondi Properties Corp. v. Commerce Sav. and Loan Ass'n., 121 F.R.D. 284, 286 (N.D. Tex. 1988) (en banc).

Briarpatch and Rubin request that the court invoke this statutory and inherent authority to manage cases and litigants appearing before the court. They note that Roberdeau and Geisler have motions pending before the court, several of which directly affect Briarpatch and Rubin. They also note that the court ordered all parties to participate in a settlement conference, directing, by court order, that the parties negotiate in good faith. Briarpatch and Rubin contend that the grievance process as invoked and exploited by Roberdeau and Geisler violated the court order to negotiate in good faith and abused the process affecting pending motions in these bankruptcy cases.

By letter dated April 9, 2001, Roberdeau and Geisler submitted to the Chief Disciplinary Counsel of the State Bar of Texas a grievance letter against Hendricks. It is not within the

province or jurisdiction of this court to adjudicate the grievance or to direct the manner of the processing of the grievance. The court defers to the State Bar of Texas and the Supreme Court of Texas for the manner of handling the grievance.

But, as Roberdeau and Geisler concede, they did not merely submit the grievance letter to the State Bar of Texas. Instead, they widely disseminated the letter on the eve of the court ordered settlement conference and virtually contemporaneously with their requests that this court set their pending motions for adjudication. Briarpatch and Rubin complain about the resulting repercussions of Roberdeau's and Geisler's actions outside the grievance process. The court focuses on those extra-grievance process actions and the impact on these bankruptcy cases.

By order entered March 8, 2001, this court ordered that it would conduct a settlement conference on April 25, 2001. Among other provisions, the court specifically ordered that "the parties must negotiate in good faith." By a series of orders and letters to the parties, the court determined that it would not set pending motions for hearing until the completion of the settlement process. The court advised the state and federal courts with other pending litigation involving the parties of the settlement efforts, requesting that those courts set matters accordingly. The court provided the parties by letter settlement guidelines, principles and negotiating terms for discussion.

With the court order effective and the court so engaged in the settlement process, on April 9, 2001, Roberdeau and Geisler sent their grievance letter to the State Bar complaining about statements made by attorney Hendricks. Hendricks is local counsel in these bankruptcy cases for Briarpatch and Rubin. Briarpatch and Rubin have substantial claims against the debtors. The debtors have been engaged in substantial and bitter litigation with Briarpatch and Rubin for several years. Roberdeau and Geisler did not direct any complaint against Hendricks to this court.

The grievance process is a confidential process. "All information, proceedings, hearing transcripts, statements, and any other information coming to the attention of the investigatory panel of the Committee must remain confidential and may not be disclosed to any person or entity (except the Chief Disciplinary Counsel) unless disclosure is ordered by the Court." Texas Rules of Disciplinary Procedure 2.15. Nevertheless, and contrary to the grievance procedure, Roberdeau and Geisler went public with their complaint against Hendricks, copying every person associated with the court-ordered settlement conference. Indeed, beyond that, they sent copies of their complaint to the Office of the United States Trustee, United States Department of Justice, and to several attorneys in that office.

The court finds that Roberdeau and Geisler would not have

published their grievance to the persons involved in the settlement process unless they intended to have their allegations against Hendricks influence or impact the process. They used the cover of the grievance process to obtain a collateral advantage before this court and to undermine the settlement process by attempting to chill the advocacy of opposing counsel. By doing so, Roberdeau and Geisler appear to have violated the court's order to negotiate in good faith and to have frustrated the court's directives concerning the administration of these bankruptcy cases.

Roberdeau and Geisler have filed motions seeking the following relief: (1) dismissal of these bankruptcy cases, (2) discovery from Briarpatch and Rubin, (3) vacating judgments denying their discharges, (4) discovery abuse sanctions against Briarpatch and Rubin, (5) vacating a lift stay order, and (6) removal of the trustee. Roberdeau and Geisler would have the court set each of these motions for hearing. While expecting this court to consider these motions, Roberdeau and Geisler have attacked the lawyer for their adversaries by publishing their grievance against Hendricks. They complain that Hendricks' advocacy has improperly characterized events concerning them and their disputes with Briarpatch and Rubin. Hendricks' advocacy pre-dates the entry of the settlement order. Although they claim they filed their grievance as a last resort, neither Roberdeau

nor Geisler complained to this court about Hendricks' advocacy. In support of the instant motion, Briarpatch and Rubin presented evidence to support each of the statements Hendricks allegedly made, which statements formed the basis for the grievance. It appears that Hendricks had an evidentiary basis for each of the positions he took in his various communications. Regardless of how the State Bar addresses the merits of the grievance, the public dissemination of their complaint on the eve of the settlement conference with several motions pending before the court and without an opportunity for parties to assess the basis for the grievance collaterally undermines the integrity of the administration of these cases and the adjudication of pending motions.

The communication to the United States Trustee had to be intended to impact the role of Scott Seidel, the Chapter 7 trustee. The Office of the United State Trustee maintains the panel of Chapter 7 trustees and appoints trustees. Roberdeau and Geisler have appeared to use the cover of their grievance against Hendricks to attack Seidel, thereby attempting to chill Seidel's role in the settlement process and pending motions.

Following the settlement conference, Roberdeau and Geisler filed a law suit in the United States District Court for the Southern District of New York against the trustee and Passman & Jones, a law firm with whom Seidel practices law. Roberdeau and

Geisler did not file a motion with this court concerning the actions of the trustee. 11 U.S.C. §324. By commencing litigation against the trustee in federal district court in New York, Roberdeau and Geisler must have intended to chill the performance of Seidel's functions before this court. The court has not authorized the trustee to employ counsel in these cases and he has not employed counsel. 11 U.S.C. §327. So Roberdeau and Geisler had no reason to include Passman & Jones in the suit. The suit against Passman & Jones appears to be nothing more than harassment. It appears that Roberdeau and Geisler have commenced that litigation to chill the activities of the trustee in the administration of these cases and to undermine the integrity of this court.

In that law suit, Roberdeau and Geisler also sued Stephen V. Pate and Briarpatch and Rubin because those persons settled a law suit pending between them, to which Roberdeau and Geisler were not parties. Pate, Briarpatch and Rubin announced their settlement on the record before this court and then presented it to the United States District Court for the Southern District of New York, where the litigation was then pending. It appears that litigation commenced by Roberdeau and Geisler was intended to undermine the settlement of litigation in federal court to which they are not parties, and thereby undermine the integrity of the federal courts themselves.

Turning to their affidavit in response to the instant motion, Roberdeau and Geisler aver that they have spent over one million dollars in attorney's fees over twenty years. The court notes its familiarity with the work of several of those attorneys. The court is confident that those attorneys gave Roberdeau and Geisler sound legal advice. The court questions whether Roberdeau and Geisler followed that advice. They also contend that they filed the grievance as a last resort. But, as discussed in this memorandum opinion, the grievance was not a last resort. Roberdeau and Geisler did not complain about Hendricks' advocacy tactics to this court. They also claim that they filed the grievance to preserve their reputations. Multiplying litigation creates a reputation of litigiousness. Given the misuse of the grievance process and the abusive federal litigation recently filed in the district court, Roberdeau and Geisler are inappropriately multiplying litigation. The court questions whether they thereby intend to undermine the administration of these bankruptcy cases.

Briarpatch and Rubin request that the court sanction Roberdeau and Geisler by establishing a gatekeeper injunction, prohibiting them from filing any paper in any court without prior leave of this court, until these bankruptcy cases are closed. Counsel for Roberdeau and Geisler responds that the court may not issue an injunction outside of an adversary proceeding. See Feld

v. Zale Corp. (In re Zale), 62 F.3d 746, 762-65 (5th Cir. 1995).

In reply, Briarpatch and Rubin cite the Dondi decision, supra, for the proposition that this court has a mandate to protect them from abusive tactics by persons appearing before the court, which would include pro se litigants. They also contend that Roberdeau and Geisler, in their affidavit in opposition to the motion, effectively waived any objection to the lack of an adversary proceeding for an injunction. The instant motion did not request a gatekeeper injunction. Therefore, the debtors' affidavit cannot be construed as a waiver.

A bankruptcy court may issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the Bankruptcy Code. See Placid Ref. Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.), 108 F.3d 609, 613 (5th Cir. 1997) (citing 11 U.S.C. §105). The court has inherent power to sanction a litigant for bad faith conduct. See Chambers v. NASCO, Inc., 501 U.S. 32 (1991). The majesty of the rule of law compels that knowing and deliberate violations of court orders be sanctioned by contempt. See Offutt v. United States, 348 U.S. 11, 14 (1954). The court should use the least severe sanction to fulfill the purpose of enforcing court orders and deterring bad faith litigation tactics and practices. See Chambers, 501 U.S. at 44-45; Matter of Dragoo, 186 F.3d 614, 616 (5th Cir. 1999); American Airlines, Inc. v.

Allied Pilots Ass'n, 968 F.2d 523, 533 (5th Cir. 1992).

The court may issue a permanent injunction if the plaintiffs establish that they lack an adequate remedy at law. See Lewis v. S.S. Baune, 534 F.2d 1115, 1123-24 (5th Cir. 1976). Generally, injunctive relief may only be granted upon the filing of an adversary proceeding. Zale, 62 F.3d at 762-64. But the court cannot tolerate an abuse of process. The court may enjoin a litigant from filing any pleading or paper until the litigant remedies prior abuses. See Pickens v. Lockheed Corp., 990 F.2d 1488, 1489 (5th Cir. 1993); In re: Litigation filed by Melinda Wynn and R.C. Wynn, Civ. No. 3-90-1429-H (N.D. Tex. Aug. 29, 1993) (order entered by the Hon. Barefoot Sanders).

As the Supreme Court recognized in Chambers, 501 U.S. at 46-49, the court's inherent power to sanction bad faith conduct does not negate sanctions imposed by the Federal Rules of Civil Procedure. The court may deny relief sought on motions in a case for abuse of process. See, e.g., Fed. R. Civ. P. 16 and 37; Thomas v. Capital Security Services, Inc., 836 F.2d 866, 875 (5th Cir. 1988) (en banc).

Based on the foregoing,

**IT IS ORDERED** that John Roberdeau and Robert Geisler shall appear before this court on **August 14, 2001, at 1:30 p.m.**, at the Earle Cabell Federal Building and United States Courthouse, 1100 Commerce St., Dallas, TX, 14th Floor, Courtroom #3, to show cause

why they should not be held in civil contempt of court. Bankruptcy Rule 9020. They shall address whether their actions to publish their grievance against attorney Hendricks to the persons engaged in the global settlement process mandated by court order on the eve of the settlement conference undermines the sanctity of the court's order entered March 8, 2001. If held in a contempt, they shall further show cause why the sanctions should not include: (1) a directive that they withdraw their grievance against attorney Hendricks; (2) a directive that they withdraw their litigation against the trustee, Passman & Jones, Pate, Briarpatch and Rubin; (3) that they compensate Briarpatch, Rubin and Hendricks for their expenses; and (4) that they be enjoined from filing any paper or pleading until they comply with these sanctions.

In addition, regardless of whether they are found in contempt of court, their public use of the grievance procedure; their law suit against the trustee and Passman & Jones; and their law suit against parties to a federal court settlement of litigation appear to have been intended to undermine the administration of these cases, amounting to an abuse of process.

**IT IS THEREFORE FURTHER ORDERED** that John Roberdeau and Robert Geisler shall appear on **August 14, 2001, at 1:30 p.m.**, at the Earle Cabell Federal Building and United States Courthouse, 1100 Commerce St., Dallas, TX, 14th Floor, Courtroom #3, to

address the issue of abuse of process. If the court finds an abuse of process, the court shall consider denying relief requested by the debtors in pending motions.

**IT IS FURTHER ORDERED** that the temporary restraining order entered June 15, 2001, shall remain in effect until further court order.

This order is without prejudice to any adversary proceeding seeking injunctive relief.

Signed this \_\_\_\_\_ day of June, 2001.

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Steven A. Felsenthal  
United States Bankruptcy Judge