



NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
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The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 30, 2008

Harlin DeWayne Hale
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

JACK E. PRATT, JR.,

Debtor.

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Case No. 00-35214-HDH-7

THE CADLE COMPANY,

Plaintiff,

v.

JACK E. PRATT, JR.

Defendant.

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Adversary No. 00-03600

MEMORANDUM OPINION ON
JACK E. PRATT, JR.'S MOTION FOR FEES AND EXPENSES

This matter comes before the Court on remand from the United States District Court for the Northern District of Texas following the appeal of this Court's order entered on December 23, 2005. In the underlying complaint, the Cadle Company

(“Cadle”) sought to sanction Richard B. Schiro (“Schiro”), counsel for debtor in the underlying Chapter 7 bankruptcy proceeding. Following a trial, the Court entered an order denying Cadle’s Motion for Sanctions and awarding Schiro his reasonable expenses and attorney’s fees in representing himself and defending the motion. The District Court affirmed this Court’s denial of Cadle’s Motion for Sanctions, but reversed the Court’s decision to award attorney’s fees and expenses to Schiro. The District Court then remanded the proceeding, directing this Court “to determine whether the award is warranted and, if so, whether the amounts requested by Schiro for attorney’s fees and expenses are reasonable and necessary.” *Cadle Co. v. Pratt*, 2007 WL 824117, *8 (N.D. Tex.). Cadle appealed the denial of its motion for Rule 9011 sanctions and this Court’s award of attorney’s fees. The United States Court of Appeals for the Fifth Circuit affirmed the denial of sanctions and held that it did not have jurisdiction to review the award of attorney’s fees on remand to this Court.

After consideration and for the reasons given below, the Court is of the opinion that the award to Schiro is warranted and a portion of the attorney’s fees and expenses requested by Schiro are reasonable and necessary, as provided in Rule 9011 of the Federal Rules of Bankruptcy Procedure.

I. BACKGROUND FACTS

The parties have a long litigation history. In 1999, Jack E. Pratt, Jr. (the “Debtor” or “Pratt Jr.”), son of Jack E. Pratt, Sr. (“Pratt Sr.”) and Crystal Aileen Pratt (“CA Pratt”), was insolvent and indebted to numerous creditors. Prior to that time, Pratt Jr. had received money from CA Pratt (“CA Pratt Advances”). CA Pratt died on April 2, 1996, leaving a Last Will and Testament that created various trusts for the benefit of her

children, including Pratt Jr. Trust. In 1999, Pratt Sr., as executor of the will and trustee of Pratt Jr. Trust, held a meeting with his children to inform them of the amounts of future distributions that would be available. During the meeting, he explained that any amounts they owed CA Pratt when she died would be offset from any money to be received under the will.

On August 16, 2000, Pratt Jr. filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code and Schiro represented Pratt Jr. in the proceeding. On December 14, 2000, Cadle, one of Debtor's creditors, objected to Debtor's discharge. Cadle argued for denial of the discharge in part based on Debtor's failure to disclose his right to payments under CA Pratt's will. In various depositions by Pratt Jr., Pratt Sr. and Evelyn Johnson, executive assistant to Pratt Sr., testimony stated that Pratt Jr. was not entitled to distributions under the will due to the debt he incurred to CA Pratt while she was living (the CA Pratt Advances). This Court, through Bankruptcy Judge Harold C. Abramson, determined that Cadle failed to meet its burden under 11 USC § 727(a) and granted Pratt Jr.'s discharge. The United States District Court and the Fifth Circuit affirmed this ruling.

During subsequent litigation filed by Cadle against Pratt Sr., records were produced pertaining to the administration of CA Pratt's estate. Cadle argued that such documents suggested that the loans Pratt Jr. had received from CA Pratt that were used to offset the distributions were made after CA Pratt's death. *See The Cadle Co. v. Pratt*, Case No. 3:03-CV-02273 (N.D. Tex., Godbey, J.). In the case before Judge Godbey judgment was entered for Pratt and Cadle was denied a similar Rule 11 motion.

Cadle also filed a Motion for Sanctions under Rule 9011 against Schiro in this Court and sought a new trial in the discharge adversary proceeding, alleging that Schiro violated his ethical obligations to withdraw pleadings due to the change in explanation as to the source of the setoff. After a hearing on December 15 and 16, 2005, this Court denied Cadle's Motion for Sanctions for failure to serve Schiro with a copy of the motion within the requisite twenty-one day period prior to the proceeding as set forth in Rule 9011(c)(1)(A) of the Federal Rules of Bankruptcy Procedure. Alternatively, this Court found that Cadle had not established a Rule 9011 violation because Pratt Sr. and Ms. Johnstone's testimony regarding the distributions from the will was credible and persuasive. Pursuant to Rule 9011(c)(1)(A), this Court then awarded attorney's fees and expenses to Schiro for representing himself in defending the motion.

On appeal, the District Court affirmed this Court's denial of sanctions, but held that this Court had abused its discretion in entering an award for attorney's fees and expenses to Schiro. The District Court reasoned that "[t]he threshold for the use of inherent power sanctions is high" and remanded the case to this Court in order "to determine whether the award is warranted and, if so, whether the amounts requested by Schiro for attorney's fees and expenses are reasonable and necessary." *Id.* (citations omitted). On appeal, the Fifth Circuit affirmed the denial of sanctions, but found that it lacked jurisdiction to decide the attorney's fees issue. This Court then held an evidentiary hearing on remand to give Cadle an opportunity to review and question the amount of fees and expenses awarded to Schiro per the District Court's order.

II. ISSUE

The only issue remanded to this Court from the District Court is whether the award of attorney's fees to Schiro is warranted, and if the fees and expenses awarded are reasonable and necessary.

III. ANALYSIS

A. Rule 9011

Rule 9011(c)(1)(A) states, "If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion." This Rule is substantially similar to Rule 11 of the Federal Rules of Civil Procedure, and therefore law interpreting Rule 11 is applicable to Rule 9011 cases. *In re Pratt*, 524 F.3d 580, 586 (5th Cir. 2008). The 1993 Advisory Committee Notes to Rule 11 further clarify the intent of the drafters of these provisions:

[T]he filing of a motion for sanctions is itself subject to the requirements of the rule and can lead to sanctions. However, service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11—whether the movant or the *target of the motion*—reasonable expenses, including attorney's fees, incurred in presenting *or opposing* the motion. Fed. R. Civ. Proc. 11 advisory committee's notes (emphasis added).

Accordingly, if a movant files a motion for sanctions that is baseless or procedurally deficient, as in the present case, the court may then afford sanctions to be issued against the movant, not under the inherent power of the court, but instead by the power granted to the court under Rule 9011. *See generally Atlantic Recording Corp. v. Heslep*, 2007 WL 1435395, * 8 (N.D. Tex.) (issuing sanctions against the movant upon a frivolous motion for sanctions: "[t]he Court does not take motions for sanctions lightly. Such motions,

upon mere filing, can damage an attorney's reputation, immediately call upon that attorney to defend his integrity, and can place a chilling effect on the Court's bar, preventing its members from representing their clients with vigor and creative advocacy, or from seeking to persuade the Court to move the law in a new direction”).

B. Objective Reasonableness Standard

The District Court, applying a high standard for issuance of sanctions, found that this Court abused its discretion by awarding attorney’s fees and expenses to Schiro under the Court’s inherent authority to sanction a party. However, this Court imposed attorney’s fees and expenses pursuant to Rule 9011(c)(1)(A) and does so again in this ruling, and not pursuant to its inherent authority.

Different standards apply when dealing with the court’s inherent power to sanction as opposed to the court’s power to sanction under Rule 11:

Exercise of the court’s inherent authority requires the conclusion that the offending party or lawyer acted in bad faith while exercise of the power granted the court by Rule 11 requires instead a determination as to whether, judged by the standard of reasonable party or lawyer, the party or lawyer offended one of the rule’s provisions. *Lucas v. Spelling*, 408 F. Supp. 2d 8, 11 (D.D.C. 2006); *see also Childs v. State Farm Mut. Auto Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994) (“the standard under which the attorney is measured [under Rule 11] is an objective, not subjective, standard of reasonableness under the circumstances”).

Cadle filed a Rule 9011 motion and therefore must live with its consequences. The applicable standard is therefore one of objective reasonableness under the circumstances, not bad faith.

C. Application of the Objective Reasonableness Standard

In the case of *Browne v. National Ass'n of Securities Dealers, Inc.*, 2006 WL 3770505 (N.D. Tex.), Judge Fish awarded reasonable expenses and attorney's fees incurred to the party opposing the motion for sanctions. Plaintiffs had filed a Rule 11 motion for sanctions against defendant without serving a copy of the motion to defendant twenty-one days prior to filing with the court as required by Rule 11. Applying the objective reasonableness standard, Judge Fish held that "[t]he plaintiffs are being sanctioned because no litigant, upon reasonable inquiry of the applicable law, would have filed the motion for Rule 11 sanctions without first affording the opposing party the twenty-one day safe harbor provision. . . . Any reasonable inquiry would have alerted plaintiffs to their procedural deficiency." *Id.* at *9. It was found to be objectively unreasonable to file a motion for sanctions without meeting the procedural requirements, and therefore the court was warranted in awarding defendant reasonable attorney's fees and expenses under Rule 11.

The same standard applies to Cadle in this case. Moreover, in the present case the Court conducted an evidentiary hearing and Cadle provided no credible evidence in support of its 9011 motion.

Cadle has now had an opportunity to review the claimed fees and expenses and provide arguments against them. This Court has found the arguments presented by Cadle to be unpersuasive. In filing the Rule 9011 Motion for Sanctions, Cadle failed to comply with the requisite procedural requirements and therefore its motion was denied. As in *Browne*, it was objectively unreasonable for the Motion for Sanctions to be filed without affording Schiro a copy of the motion twenty-one days prior to the filing, and Cadle

certainly was objectively unreasonable in pursuing the motion without supporting evidence. This Court is therefore warranted in awarding Schiro reasonable attorney's fees and expenses incurred in defending the motion.

D. Calculation of Schiro's Fees and Costs

Mr. Schiro has submitted an affidavit to which he attached his fees and costs in defending himself in this matter and he testified in favor of such fees and expenses. The Court finds the fees and expenses to be reasonable, and will award a portion of this request that was incurred as a direct result of the original Motion for Sanctions and the hearing on remand and will disallow fees requested for the appeal to the District Court and Circuit Court.

IV. CONCLUSION

For all of the reasons stated above, this Court finds that Cadle acted unreasonably in filing a Rule 9011 sanction against Schiro. Pursuant to Rule 9011(c)(1)(A), Schiro should be awarded reasonable fees and expenses in defending the motion.

The Court will enter a separate order consistent with this decision.

###End of Opinion###