



SO ORDERED,

A handwritten signature in blue ink that reads "Katharine M. Samson".

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: March 30, 2020

The Order of the Court is set forth below. The docket reflects the date entered.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE: BERNELL MARTIN
DEBTOR**

**CASE NO. 19-02193-NPO
CHAPTER 13**

ORDER DENYING TRUSTEE'S MOTION FOR SANCTIONS

This matter came on for hearing on the Motion for Sanctions, ECF No. 37,¹ under Rule 9011 of the Federal Rules of Bankruptcy Procedure by the chapter 13 Trustee against Santander Consumer USA Inc. ("Santander") with Santander's Response in Opposition, ECF No. 45. This proceeding is core under 28 U.S.C. § 157(b)(2)(A).

The Motion was heard with Santander's motion to dismiss the Trustee's related adversary proceeding, in which the complaint pleaded, among other grounds for relief, that Santander violated Rule 9011. Compl. ¶ 20, Adv. ECF No. 5 at 4. The complaint also asserted that the Trustee was the prevailing party under Rule 9011 and requested expenses and attorney's fees incurred in

¹ "ECF No. ____" refers to a docket entry in the bankruptcy case. "Adv. ECF No. ____" refers to a docket entry in the adversary proceeding, *Barkley v. Santander Consumer USA Inc. (In re Martin)*, Adv. No. 19-00041-KMS, (Bankr. S.D. Miss. filed Oct. 2, 2010).

presenting the Motion. *Id.* ¶ 26. At the hearing and in his brief, the Trustee clarified that he seeks only expenses and attorney's fees as the prevailing party. *See* Adv. ECF No. 21 at 7; Fed. R. Bankr. P. 9011(c)(1)(A) ("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.").

A request for relief under Rule 9011 is properly initiated by motion. Fed. R. Bankr. P. 9011(c)(1)(A); *see also Akers v. Beal Bank (In re Akers)*, Adv. Proc. No. 12-10020, 2012 WL 3133924, at *2 (Bankr. D.C. Aug. 1, 2012) ("[T]here is no independent cause of action under Rule 9011."). Consequently, the Trustee's request for expenses and attorney's fees is considered here, not in the adversary proceeding, along with Santander's request for expenses and attorney's fees asserted in the Response. Because the Trustee is not the prevailing party under Rule 9011, his request for expenses and attorney's fees is denied. Santander's request for expenses and attorney's fees as the prevailing nonmovant is also denied.

FINDINGS OF FACT

The facts, which are not in dispute, are recounted in more detail in the adversary proceeding. *See* Opinion & Order, Adv. ECF No. 24. Santander filed a proof of claim for a deficiency balance on a truck loan. Cl. 1-1. The Trustee objected that Santander's claim was barred by Mississippi's statute of limitations. ECF No. 17 at 2. In Mississippi, when a debt is time-barred, it is also extinguished. Miss. Code Ann. § 15-1-3(1).

Santander failed to respond, and an order was entered sustaining the objection and disallowing the claim. ECF No. 26. The Trustee served Santander with a proposed motion for sanctions for filing the proof of claim. Compl. ¶ 26, Adv. ECF No. 5 at 5. Twelve days after the Trustee served Santander with the proposed motion, Santander withdrew the proof of claim. *Id.*; ECF No. 33. After Santander withdrew the proof of claim, the Trustee filed the Motion.

CONCLUSIONS OF LAW

“Federal Rule of Bankruptcy Procedure 9011—bankruptcy’s analogue to Civil Rule 11—authorizes the court to impose sanctions for bad-faith litigation conduct” *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158, 2168 n.4 (2015). However, a motion for sanctions under Rule 9011 “may not be filed with or presented to the court” unless the movant first serves it on the target party and the party has not withdrawn or corrected the challenged submission during the ensuing twenty-one days. Fed. R. Bankr. P. 9011(c)(1)(A).

Here, the target party was Santander, and the challenged submission was the proof of claim that on its face showed the debt to be both time-barred and extinguished. It is undisputed that Santander withdrew the proof of claim within the twenty-one-day safe harbor period. Rule 9011 explicitly provides that under that circumstance, the Trustee should not have filed the Motion. Consequently, the Trustee cannot be the prevailing party under Rule 9011. It follows that the Trustee cannot be entitled to prevailing-party attorney’s fees and expenses.

At the hearing, the Trustee argued that Rule 9011 says the motion “may not be filed,” not “should not be filed.” But those phrases are synonymous. *See* Fed. R. Bankr. P. 9011 advisory committee’s note to 1997 amendment (“The ‘safe harbor’ provision contained in subdivision (c)(1)(A) . . . *prohibits the filing* of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion” (emphasis added)).

The Trustee also argues that Santander’s withdrawal of the proof of claim makes the Trustee the prevailing party. Adv. ECF No. 21 at 8. In support, the Trustee cites *Cox v. Swiss-American, Inc. (In re Affiliated Foods Sw., Inc.)*, 472 B.R. 538 (Bankr. E.D. Ark. 2012). That case is in no way analogous. There, the court denied the motion for sanctions and awarded expenses

and attorney's fees to the target party. *Id.* at 549 (“Based on Swiss-American’s conduct in filing and pursuing a meritless Motion for Sanctions, the Respondents are entitled to an award of reasonable expenses and attorney’s fees as the prevailing party in opposing the Motion for Sanctions pursuant to Rule 9011(c)(1)(A).”). The Trustee’s argument under *Swiss-American* therefore fails.

As to Santander’s request, the prevailing party may be awarded expenses and attorney’s fees “if warranted.” Fed. R. Bankr. P. 9011(c)(1)(A). Other than stating that the Trustee was prohibited from filing the Motion, Santander offers no argument why expenses and attorney’s fees would be warranted here. *See Resp.* ¶¶ 16-18, ECF No. 45 at 3, 4. Consequently, Santander’s request for expenses and attorney’s fees is also denied. *See Hoffman v. Bailey*, No. 13-5153, 2017 WL 1494495, at *4 (E.D. La. Apr. 26, 2017) (denying award when prevailing nonmovant failed to offer any justification other than court denied motion).

ORDER

The Motion for Sanctions, including the Trustee’s request for expenses and attorney’s fees, is therefore **ORDERED DENIED** and

FURTHER ORDERED that Santander’s request for expenses and attorney’s fees is also denied.

##END OF ORDER##