Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
March 11, 2020

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re: MERCY A. FLEMINO aka MERCY ANN FLEMINO aka MERCY FLEMINO, Debtor.	Case No. 13-14866-MKN Chapter 7
MERCY FLEMINO, an individual, Plaintiff, v. VULCAN RECOVERIES, LLC; JACK PIERCE, ESQ.; BERNICKSON LIFSON, P.A.; ANTHONY DAKIS; KIRK ANDERSON, ESQ.; ANDERSON LAW FIRM PLLC; JP MORGAN CHASE BANK, N.A.; BRYANT D. TCHIDA, ESQ.; LEONARD, STREET AND DEINARD, P.A., Defendants.	Adv. Proc. No. 19-01051-MKN Date: February 20, 2020 Time: 1:30 p.m.

ORDER ON FED. R. BANKR. P. 9011 MOTION FOR SANCTIONS[1]

[1] In this Order, all references to "AECF No." are to the numbers assigned to the documents filed in this adversary proceeding as they appear on the adversary docket maintained by the clerk of court. All references to "ECF No." are to the numbers assigned to the documents filed in the underlying bankruptcy proceeding. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "LR" are to the bankruptcy provisions of the Local Rules of Practice for the District of Nevada.

On February 20, 2020, the court heard the Fed.R.Bankr.P. 9011 Motion for Sanctions brought by Kirk Anderson, Esq. and Anderson Law Firm. The appearances of counsel were noted on the record. After the hearing, the matter was taken under submission.

BACKGROUND

On June 3, 2013, Mercy A. Flemino ("Debtor") filed a voluntary Chapter 7 petition. (ECF No. 1). The case was assigned for administration to panel Chapter 7 trustee William A. Leonard ("Trustee").[2]

On June 17, 2013, Debtor filed her schedules of assets and liabilities ("Schedules") along with her statement of financial affairs ("SOFA"). (ECF No. 11). On her real property Schedule "A," Debtor listed no real property whatsoever. On her personal property Schedule "B," Debtor listed, *inter alia*, a "Counterclaim in litigation, Flemino, et al. v. JP Morgan Chase Bank, N.A., et al., US District Court, District of Minnesota, Case No. 0: 12-CV-00112-MJD-SER," as having an unknown value. On her Schedule "C," Debtor claimed exemptions for certain personal property listed on her Schedule "B," but not the counterclaim that was listed.[3] On her unsecured creditor Schedule "F," Debtor listed Vulcan Recoveries, LLC ("Vulcan") as having a claim in an unknown amount based on a "Law Suit." On her Schedule "H," Debtor listed Donald R. Flemino ("Donald Flemino") as a co-debtor with respect to the claim of Vulcan. On her Schedules "I and J," Debtor attested that she was divorced and unemployed.

On Item 4(a) of her SOFA, Debtor attested that she was the subject of a wrongful foreclosure lawsuit pending in the state court for Ramsey County, Minnesota ("Minnesota State Court"), entitled Vulcan Recoveries, LLC v. Donald R. Flemino, Mercy A. Flemino, and JP Morgan Chase Bank, N.A., Case No. 62-CV12-888 ("Vulcan Action"). Debtor also attested that she was the subject of another wrongful foreclosure suit against MERS and Chase in the United States District Court for the District of Minnesota, entitled Mercy A. Flemino v. Chase, et al. On

---

[2] A Chapter 7 trustee is responsible for collecting and liquidating all property of the bankruptcy estate and is accountable for all property received. See 11 U.S.C. § 704(a)(1 and 2).

[3] The Counterclaim constituted property of the Chapter 7 estate under Section 541(a)(1). Debtor never claimed the Counterclaim as exempt on her Schedule "C" and it remained property of the bankruptcy estate until the case was closed.

Item 5 of her SOFA, Debtor attested that on January 4, 2011, creditor Chase Mortgage completed a foreclosure sale on real property located at 1858-1860 Carroll Avenue, St. Paul, MN 55104 ("Minnesota Property").

On July 11, 2013, the Trustee reported that no assets were available for distribution to creditors in the Debtor's case. (ECF No. 19).

On August 9, 2013, Debtor filed an amended Schedule "F," adding, *inter alia*, Anthony Dakis ("Dakis"), Bernick Lifson, P.A. ("BL"), and Vulcan as unsecured claimants as a result of orders entered in the Vulcan Action. (ECF No. 22). Dakis was listed as having a claim in the amount of $800.00, BL with a claim of $47,705.25, and Vulcan with a claim of $47,705.25.

On August 28, 2013, Debtor filed an amended Schedule "A," listing a fee simple interest in the Minnesota Property, having an unknown value. (ECF No. 26). In her description of the Minnesota Property, Debtor attested that the property was foreclosed on January 4, 2011, and that she has a right of redemption ("Redemption Right").[4]

On September 4, 2013, an order was entered granting the Debtor's Chapter 7 discharge. (ECF No. 27).

On September 9, 2013, a final decree was entered closing the Chapter 7 case. (ECF No. 29).

On August 12, 2016, an order was entered reopening the Debtor's case at the request of the Office of the United States Trustee ("UST") for the purpose of administering the proceeds of a personal injury claim that had not been disclosed by the Debtor. (ECF No. 31).[5]

---

[4] The alleged Redemption Right was a legal interest of the Debtor that constituted property of the Chapter 7 estate under Section 541(a)(1). The Redemption Right, if any, was never claimed as exempt and would have remained property of the Debtor's bankruptcy estate until the case was closed.

[5] Once the automatic stay has terminated, it cannot be reimposed in lieu of seeking appropriate injunctive relief under FRBP 7065. See Canter v. Canter (In re Canter), 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); In re Leeds, 589 B.R. 186, 192 (Bankr. D. Nev. 2018); Ramirez v. Whelan (In re Ramirez), 188 B.R. 413, 416 (B.A.P. 9th Cir. 1995)(Klein, J., concurring). On April 25, 2019, the Chapter 7 case was reopened for a second time. Reopening of the case did not reimpose the automatic stay.

On November 18, 2016, Vulcan filed a proof of claim in the unsecured amount of $47,705.25 ("Vulcan POC").

On December 28, 2016, Debtor filed an amended Schedule "C" asserting an exemption of the personal injury claim under Nevada law in the amount of $16,150. (ECF No. 39).

On February 6, 2018, an order was entered approving a settlement of the personal injury claim, including a distribution of the exemption amount claimed by the Debtor. (ECF No. 64).

On June 1, 2018, an order was entered sustaining the Debtor's objection to the Vulcan POC. (ECF No. 83).

On January 29, 2019, the Chapter 7 bankruptcy trustee filed a final distribution report reflecting that the Debtor received a disbursement from the settlement proceeds totaling $37,688.53, that included her personal injury exemption. (ECF No. 109).

On February 7, 2019, the Chapter 7 case was re-closed. (ECF No. 110).

On April 25, 2019, an order was entered granting the Debtor's request to again re-open the Chapter 7 case to allow the Debtor to commence an adversary proceeding to assert an automatic stay violation. (ECF No. 113).

On May 16, 2019, Debtor filed a complaint ("Complaint") commencing the above-captioned adversary proceeding. (ECF No. 114; AECF No. 1). Defendants specifically named in the Complaint are (1) Vulcan, (2) Jack Pierce, Esq. ("Pierce"), (3) BL, (4) Dakis, (5) Kirk Anderson, Esq. ("Anderson"), (6) Anderson Law Firm PLLC ("Anderson Law"), (7) JP Morgan Chase Bank, N.A. ("Chase Bank"), (8) Bryant D. Tchida, Esq. ("Tchida"), and (9) Leonard, Street and Deinard, P.A. ("LSD"). Debtor alleges that Pierce and the BL law firm represented Vulcan in the Vulcan Action, while Anderson and Anderson Law (collectively, "Anderson Defendants") represented Dakis in the Vulcan Action. The Complaint also alleges that Tchida and the LSD law firm represented Chase Bank in the Vulcan Action. By the Complaint, Debtor seeks actual and punitive damages under Section 362(k)(1), as well as attorney's fees, alleging

that the Defendants willfully violated the automatic stay through their continued conduct in the Vulcan Action.[6]

On June 24, 2019, an answer to the Complaint was filed on behalf of the Anderson Defendants. (AECF No. 6).

On July 16, 2019, an answer was filed on behalf of Tchida and LSD. (AECF No. 9).

On September 6, 2019, an answer was filed on behalf of Chase Bank. (AECF No. 11).[7]

On October 22, 2019, a Motion for Summary Judgment, Request to Annul the Automatic Stay, and Request for Judicial Notice was filed by Tchida and LSD ("Tchida Defendants").[8] (AECF No. 17). As required by LR 7056(a), the motion was accompanied by the moving party's Statement of Undisputed Facts in Support of the motion, to which was attached 51 exhibits. (AECF No. 18). That motion ("Tchida SJ Motion") was noticed to be heard on December 19, 2019, in compliance with LR 7056(c). (AECF No. 19).

On November 4, 2019, a joinder in the Tchida SJ Motion was filed by Chase Bank. (AECF No. 26).

On November 5, 2019, a joinder in the Tchida SJ Motion was filed by the Anderson Defendants. (AECF No. 28).

On November 20, 2019, the Tchida Defendants filed a motion for sanctions against the Debtor and her counsel, asserting that commencement and continued prosecution of the instant adversary proceeding constitutes a violation of FRBP 9011 ("Tchida Sanctions Motion"). (AECF No. 30). The motion was noticed to be heard on December 23, 2019. (AECF No. 31).

---

[6] The Complaint appears to be separated by Roman numerals into two claims, one entitled "Violation of Automatic Stay" and another entitled "Respondent Superior." The latter appears to be a reference to the doctrine of respondeat superior by which an employer (or principal) may be held responsible (liable) for the act of its employee (or agent). The court is unaware of any circumstance where the doctrine itself constitutes a separate claim for relief.

[7] As of the date of the hearing on the Anderson SJ Motion, no answer or other response to the Complaint by Defendants Vulcan, Pierce, BL, or Dakis appears on the docket for this adversary proceeding.

[8] The LSD law firm is now known as Stinson LLP.

On December 11, 2019, an opposition to the Tchida SJ Motion was filed by the Debtor. (AECF No. 34).

On December 12, 2019, a reply in response to that opposition was filed by the Tchida Defendants. (AECF No. 39).

On December 12, 2019, the Anderson Defendants separately filed a separate summary judgment motion ("Anderson SJ Motion") that was noticed to be heard on February 20, 2020. (AECF Nos. 35 and 47). Rather than filing a statement of undisputed facts, the Anderson SJ Motion is accompanied by a declaration of counsel authenticating various documents attached as Exhibits "B" through "S" to the motion.

On December 13, 2019, a motion to strike Debtor's opposition to the Tchida SJ Motion ("Strike Motion") was filed by the Tchida Defendants. (AECF No. 40).

On December 16, 2019, opposition to the Tchida Sanctions Motion was filed by the Debtor and her counsel. (AECF No. 46).

On December 16, 2019, an order was entered permitting the Strike Motion to be heard at the same time as the Tchida SJ Motion. (AECF No. 44). On the same date, a response to the Strike Motion was filed by the Debtor. (AECF No. 45).

On December 30, 2019, the Anderson Defendants also filed the instant motion for sanctions against the Debtor and her counsel ("Anderson Sanctions Motion"). (AECF No. 51). The Anderson Sanctions Motion is accompanied by a declaration of the Anderson Defendants' counsel, Peter M. Angulo ("Angulo Declaration") that also authenticates various documents attached as Exhibits "B" through "S" attached to the motion. The Anderson Sanctions Motion was originally noticed to be heard on February 5, 2020 (AECF No. 53), but was continued by the court to February 20, 2020, to be heard alongside the Anderson SJ Motion.

On January 2, 2020, an order was entered granting summary judgment in favor of the Tchida Defendants. (AECF No. 54).[9]

[9] The order also denied without prejudice a request to annul the automatic stay, and further required the Anderson Defendants to proceed with their separate motion for summary judgment.

On January 14, 2020, Debtor filed her opposition to the Anderson SJ Motion ("SJ Opposition"). (AECF No. 59). Attached as Exhibit "1" to that opposition is a copy of the Affidavit of Jeramie Steinert signed on January 13, 2020. ("Steinert Affidavit").[10] Attached as Exhibit "2" to that opposition is a copy of a judgment entered in the Vulcan Action dated July 9, 2013, but which the Debtor refers to as the July 30, 2013 order. See SJ Opposition at 2:8-9. A copy of the July 30, 2013 order, however, appears as Exhibit "M" to the Anderson SJ Motion.

On January 27, 2020, the Anderson Defendants filed a reply in support of the Anderson SJ Motion ("SJ Reply"). (AECF No. 61). Attached as Exhibits "T" through "Y" are various documents in response to the SJ Opposition.

On January 31, 2020, Debtor filed opposition to the Anderson Sanctions Motion ("Sanctions Opposition"). (AECF No. 64). Attached as Exhibit "1" to the Sanctions Opposition is a copy of the same Steinert Affidavit that the Debtor attached to her SJ Opposition.

On February 6, 2020, the Anderson Defendants filed their reply in support of the Anderson Sanctions Motion. (AECF No. 66).[11]

RULE 11 STANDARDS

In this district, the expectations of parties and their attorneys who file pleadings and other papers before the court was addressed In re Spickelmier, 469 B.R. 903 (Bankr. D.Nev. 2012). In that decision, the court observed as follows:

> Rule 9011 addresses representations made by all who file or appear in bankruptcy court:
> By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

[10] The Steinert Affidavit refers to ten attached exhibits but none of the exhibits are attached to the affidavit.

[11] On February 13, 2020, the Tchida Defendants filed their reply in support of their sanctions motion in addition to a supporting declaration of its local counsel, James Shea ("Shea Declaration"), regarding attorney's fees. (AECF Nos. 68 and 69). At the hearing on February 20, 2020, counsel reported that the Tchida Sanctions Motion had been settled.

(1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Rule 9011(b).

A bankruptcy court may independently assess violations of Rule 9011. Rule 9011(c)(1)(B) ("On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.").

Under Rule 9011(b)(3), bankruptcy courts have the authority to sanction attorneys who present, through signing, filing, submitting, or later advocating, a pleading that is frivolous. *Winterton v. Humitech of N. Cal., LLC (In re Blue Pine, Inc.)*, 457 B.R. 64, 75 (9th Cir.2011). According to the Bankruptcy Appellate Panel of the Ninth Circuit, "[t]he word 'frivolous,' when used in connection with sanctions denotes a filing that is both baseless—lacks factual foundation—and made without reasonable competent inquiry." *Id.* (citing *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990)). An attorney, then, "has a duty to conduct a reasonable factual investigation as well as to perform adequate legal research that confirms that his position is warranted by existing law (or by a good faith argument for a modification or extension of existing law)." *Id.* (citing *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir.2002)). "Thus, a finding that there was no reasonable inquiry into either the facts or the law is tantamount to a finding of frivolousness." *Id.* (citing *Townsend*, 929 F.2d at 1362).

When considering whether to impose sanctions, the court measures the conduct of attorneys who appear before it objectively. *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir.2003) (citing *Townsend*, 929 F.2d at 1362). "The standard is reasonableness." *Id.* (citing *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829–30 (9th

> Cir.1986), *overruled on other grounds by Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)). The reasonableness of an attorney's conduct, in turn, is measured against that "of a competent attorney admitted to practice before the involved court." *In re Kayne*, 453 B.R. at 382 (citing *Smyth v. City of Oakland (In re Brooks–Hamilton)*, 329 B.R. 270, 283 (9th Cir. BAP 2005) (quoting *Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.)*, 922 F.2d 1438, 1441 (9th Cir.1991) (in turn citing *Zaldivar*, 780 F.2d at 829–30))), *aff'd in part, rev'd in part on other grounds, and remanded*, 271 Fed.Appx. 654 (9th Cir.2008). As a consequence, an attorney may act negligently and still violate Rule 9011. *In re Schivo*, 462 B.R. 765, 777 (Bankr.D.Nev.2011) (citations omitted); *In re Smith*, 462 B.R. 783, 793 (Bankr.D.Nev.2011) (citations omitted). "[T]he subjective intent of the movant ... is of no moment." *Wilson*, 326 F.3d at 1109 (quoting *Zaldivar*, 780 F.2d at 830) (original modifications and quotations omitted). "[T]he attorney must only fail to meet" the objective standard. *In re Schivo*, 462 B.R. at 777.

469 B.R. at 909-910 (Emphasis added). See, e.g., Phillips v. Gilman (In re Gilman), 2019 WL 3096872, at *14 (B.A.P. 9th Cir. July 12, 2019) (debtor awarded attorney's fees and costs for responding to creditor's frivolous sanctions motion). See also In re Hsin-Shawn Cyndi Sheng, 2019 WL 6033212, at *16-18 (Bankr. E.D. Cal. Nov. 8, 2019) (Chapter 7 trustee required to incur additional legal fees and costs in responding to frivolous claims raised by debtor's counsel).

DISCUSSION

The court has reviewed the Angulo Declaration as well as the exhibits accompanying the Anderson Sanctions Motion. No objection to the authenticity of the exhibits has been made by the Debtor nor has the Debtor otherwise objected to the court's consideration of the exhibits.[12] The court also has considered the Steinert Affidavit submitted by the Debtor that is identical to the evidence offered by the Debtor in response to the Anderson SJ Motion.

[12] The arguments of counsel set forth in the Opposition are not evidence, but the court considers those arguments in determining whether the Anderson Defendants are entitled to judgment as a matter of law. The court is mindful that the Anderson Defendants are obligated to meet their initial burden of establishing that there is no genuine dispute of facts material to the relief requested. See Cristobal v. Siegel, 26 F.3d 1488, 1494-95 (9th Cir. 1994); Lopez-Gomez v. Sessions, 693 Fed.Appx. 729, 731 (9th Cir. 2017); Johnson v. Vintage Center LLC, 2019 WL 3714748, at *2 (E.D. Cal. Aug. 7, 2019). They have met that burden.

Based on the materials submitted, the court concludes that FRBP 9011(b)(2) and (b)(3) have been violated, and that sanctions against the Debtor and her counsel under FRBP 9011(c), are appropriate.

1. FRBP 9011(b)(2) and FRBP 9011(b)(3) Were Violated.

For the following reasons, the court concludes that the Debtor's claims and legal contentions are frivolous, and that her allegations and factual contentions have no evidence likely to be supported by further investigation or discovery.

First, Debtor does not dispute that on November 25, 2019, in compliance with FRBP 9011(c)(1)(A), counsel for the Anderson Defendants mailed a copy of the instant motion to Debtor's counsel, before the motion was filed on December 30, 2019. See Angulo Declaration at ¶2. Debtor also does not dispute that prior conversations between her counsel and defendants' counsel took place in September 2019, requesting documentation supporting the allegations of the Complaint. Id. at ¶ 3.[13] Debtor does not dispute that the requested documentation was never provided.

Second, there is no dispute that a sheriff's sale of the Minnesota Property took place on or about July 11, 2011. See Exhibit "D" to Anderson Sanctions Motion. Under Minnesota law, borrowers have six months to redeem. See M.S.A. § 580.23, subd. 1. The redemption period expired on or about January 11, 2012. Neither the Debtor nor her former spouse, Donald Flemino, filed for bankruptcy protection until June 3, 2013. Because the Debtor had allowed the redemption period to expire, the extension of time permitted in bankruptcy by Section 108(a) and (b) would not have applied. As a matter of Minnesota law, Debtor had no legal or equitable interest in the Minnesota Property when she commenced her bankruptcy case. As a matter of bankruptcy law, the Minnesota Property was not property of her bankruptcy estate. 11 U.S.C. § 541(a)(1). There was no violation of the automatic stay with respect to the Minnesota Property.

Third, after the Debtor received her discharge on September 4, 2013, the automatic stay terminated under Section 362(c)(2)(C), and the Chapter 7 proceeding closed on September 9,

[13] Counsel for the Tchida Defendants attests that such a conference occurred by telephone on or about September 11, 2019. See Shea Declaration at ¶6.

2013. Thereafter, the Vulcan Action proceeded for the purposes of determining the Debtor's rights in the Minnesota Property. See Exhibit "N" to Anderson Sanctions Motion. Because the Vulcan Action proceeded solely for the purpose of determining title to the property rather than the Debtor's personal liability for any prebankruptcy debts, prosecution of the Vulcan Action did not violate the Debtor's discharge. See 11 U.S.C. §§ 707(b) and 524(a)(2).

Fourth, there is no dispute that a trial was conducted in the Vulcan Action on May 5, 2014, where the Debtor was represented by attorney Jeramie Steinert and Dakis was represented by the Anderson Defendants. See Exhibit "O" to Anderson Sanctions Motion. After the trial, the Minnesota State Court entered its findings of fact, conclusions of law, and judgment on July 14, 2014 ("Minnesota Judgment"). Id. Because the judgment did not determine the Debtor's personal liability for a debt discharged in her Chapter 7 proceeding, the judgment is not void and continuation of the Vulcan Action did not violate the discharge injunction. See 11 U.S.C. § 524(a)(1 and 2). The Minnesota State Court determined, *inter alia*, that the Debtor had failed to timely redeem the Minnesota Property under Minnesota law and that she had no right, title, or interest in the property after approximately January 11, 2012. After trial on the merits, the Minnesota State Court also dismissed with prejudice the Debtor's civil conspiracy, defamation, tortious interference with business relations, slander of title, and declaratory relief claims against Vulcan, Chase, and Dakis.[14] Although Debtor attempted to appeal the judgment, the appeal was

[14] The Chapter 7 case was closed on September 9, 2013, and any property of the estate not administered by the Trustee was abandoned. See 11 U.S.C. § 554(c) ("Unless the court orders otherwise, property of the estate that is not abandoned under this section and not administered at the time of the closing of the case is abandoned to the debtor…"). Because the abandoned property was no longer property of the Chapter 7 estate, the automatic stay terminated as such property under Section 362(c)(1). Whatever may have occurred in connection with the Redemption Right or any other property scheduled by the Debtor and not administered by the Trustee, would not have been protected by the automatic stay after September 4, 2013. By contrast, the personal injury claim that was not scheduled by the Debtor was never administered until after the Chapter 7 case was reopened the first time, and thereafter settled by the Trustee.

dismissed on February 11, 2016, on a motion brought by Vulcan. See Exhibit "S" to Anderson Sanctions Motion.[15] There was no violation of the automatic stay or the discharge injunction.

Fifth, the Steinert Affidavit primarily represents the opinions of the Debtor's counsel in the Vulcan Action rather than percipient testimony based on personal knowledge. See, e.g., Steinert Affidavit at ¶¶ 5, 6, 7, 11, 13, 14, 16, 17, and 18. Moreover, the affiant primarily attests to the alleged actions taken by Vulcan, rather than the Anderson Defendants. Id. at ¶¶ 13, 14, 15, 16, 17 and 18. More important, the affiant makes no reference to the Minnesota Judgment that adjudicated on the merits all of the Debtor's alleged claims based on civil conspiracy, defamation, tortious interference with business relations, slander of title, and declaratory relief. Neither the opinions of Debtor's counsel in the Vulcan Action, nor his arguments, constitute evidence. In essence, nothing in the Steinert Affidavit suggests that the Debtor has any claims under Minnesota law with respect to the Minnesota Property.

Finally, the Steinert Affidavit fails to provide any evidence that the sanctions awarded in the July 30, 2013, order were ever paid by the Debtor. As previously discussed, on August 9, 2013, Debtor amended her Schedule "F" to add the debts owing to Dakis, BL, and Vulcan, arising from the July 30, 2013 order entered in the Vulcan Action. Likewise, there is no affidavit or declaration from the Debtor attesting that she ever paid those sums, assuming that she properly amended her schedules to list them as debts existing on the petition date. There is no evidence provided nor argument made that the July 30, 2013 order[16] has resulted in any injury to the Debtor.

---

[15] The bankruptcy court is required to give full faith and credit to relevant determinations made in state court proceedings. See Siller v. McProud (In re CWS Enterprises, Inc.), 870 F.3d 1106, 1119 (9th Cir. 2017). The relevant factual and legal determinations made by the state court in the Vulcan Action are entitled to preclusive effect unless overturned by the appellate courts in Minnesota.

[16] The July 30, 2013, order entered by the Minnesota State Court does not establish whether sanctions were imposed in the Vulcan Action against the Debtor, Donald Flemino, and their counsel, based on acts that occurred before or after June 3, 2013. The record shows that an order was issued by the Minnesota State Court on July 9, 2013, requiring the Debtor, Donald Flemino, and their counsel to show cause why they should not be sanctioned under Rule 11 ("OSC"). See Exhibit "W" to SJ Reply. A debtor who voluntarily participates postpetition in a legal proceeding commenced prepetition may be subject to postpetition liability for "returning to

For these reasons, the court concludes that Debtor's claim against the Anderson Defendants under Section 362(k)(1) for alleged injuries sustained through a willful violation of the automatic stay has no basis in fact or law, nor a nonfrivolous argument for a change in law.

2. FRBP 9011(c) Sanctions.

In Spickelmier, the court also observed as follows:

> While subdivision (b) of Rule 9011 provides the required standard, subdivision (c) governs the nature of sanctions the court may impose. Rule 9011(c) ("If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction...."). *See also In re Blue Pine,* 457 B.R. at 75. Sanctions for violations of Rule 9011 are to be deterrent in nature. Rule 9011(c)(2) ("A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated."). *See also In re Brooks–Hamilton,* 329 B.R. at 283. However, given the various forms improper conduct may assume, a court imposing sanctions under Rule 9011 "has wide discretion in determining what sanction" should properly be imposed. *Id.* at 285 (citing *Kowalski–Schmidt v. Forsch (In re Giordano),* 212 B.R. 617, 622 (9th Cir. BAP 1997), *aff'd in part, rev'd in part on other grounds,* 202 F.3d 277 (9th Cir.1999) (unpublished table decision)).

469 B.R. at 910-911.

Debtor commenced this adversary proceeding on May 16, 2019. The Anderson Defendants answered the complaint on June 24, 2019. The Anderson Defendants, along with

---

the fray." See Boeing North American, Inc. v. Ybarra (In re Ybarra), 424 F.3rd 1018, 1022-27 (9th Cir. 2005). In this instance, the Minnesota State Court was clear that it was proceeding in the Vulcan Action solely as to Donald Flemino and not the Debtor. Any continued participation by the Debtor in the Vulcan Action after she filed bankruptcy was purely voluntary on her part. After the OSC hearing was conducted on July 16, 2013, the order was entered by the Minnesota State Court on July 30, 2013, imposing sanctions in the amount of $47,705.25, as joint and several obligations of those parties. See Exhibit "Y" to SJ Reply. The sanctions order simply does not specify whether it is based on conduct of the defendants that took place before or after the bankruptcy petition was filed. In her Findings of Fact and Conclusions of Law, Order for Judgment, and Judgment, entered July 9, 2013, the state court judge specifically indicated: "On June 3, 2013, Mercy Flemino filed for bankruptcy in Nevada. Thus, the Court's Order in this matter applies to Donald Flemino only." See Exhibit "M" to Anderson Sanctions Motion. (Emphasis added)

other defendants, first requested that the Debtor provide documentation in support of her allegations on or about September 11, 2019. The Anderson Defendants transmitted their "safe harbor" letter to Debtor's counsel on November 25, 2019, formally demanding that the Debtor dismiss the complaint for violation of FRBP 9011(b). Debtor had until December 16, 2019, to dismiss the complaint as to the Anderson Defendants, to avoid liability under FRBP 9011. Debtor did not do so.

Even after the Anderson Sanctions Motion was filed on December 30, 2019, Debtor continued to advocate that she was injured by a willful violation of the automatic stay by the Anderson Defendants. Given the opportunity to provide evidence that she had a Redemption Right on the bankruptcy petition date, Debtor ignored her failure to comply with Minnesota law and her loss of any law or equitable interest in the Minnesota Property. Instead, Debtor offered only the Steinert Affidavit which ignored the findings and conclusions set forth in the Minnesota Judgment, and the legal consequences of that judgment. Moreover, rather than offering any legal analysis for a claim under Section 362(k)(1), Debtor's bankruptcy counsel only offers the Steinert Affidavit, and an incomplete one at that. It is not unusual for bankruptcy counsel to rely on information from state court counsel on the merits of a debtor's state law claims, but FRBP 9011(b) places an independent duty on bankruptcy counsel to evaluate the legal and factual basis for a debtor's bankruptcy law claims. In this instance, the Debtor and both of her counsel breached their obligations under FRBP 9011(b)(2) as to the legal basis for the claim, and their obligations under FRBP 9011(b)(3) as to the evidentiary basis for the claim.

There is no evidence before the court of a history of similar conduct by the Debtor's state court counsel or local bankruptcy counsel. A punitive sanction to deter future conduct by such counsel is not required on the current evidentiary record. There is evidence in the record, however, of the Debtor's prior failure to disclose assets in the case, see discussion at 3, supra, and her apparent willingness to pursue claims without legal basis. Regardless of whether the Debtor or her counsel bears the greatest responsibility for the commencement and continued prosecution of this ill-advised adversary proceeding, it is clear that the Anderson Defendants do not.

Under these circumstances, the court will award attorney's fees and costs to the Anderson Defendants under FRBP 9011(c)(2). The award will be limited by the amount of attorney's fees and costs incurred from the telephone conference with Debtor's counsel that occurred on or about September 11, 2019, through the completion of the February 20, 2020 hearing on the instant motion. The court will award some or all of such fees and costs. See Dressler v. The Seeley Co. (In re Silberkraus), 336 F.3d 864, 871 (9th Cir. 2003). The sanction awarded under FRBP 9011(c) will apply jointly and severally, to the Debtor, her state court counsel, and her local bankruptcy counsel who commenced the instant adversary proceeding.

IT IS THEREFORE ORDERED that the Fed.R.Bankr.P. 9011 Motion for Sanctions, brought by Kirk Anderson, Esq. and Anderson Law Firm, Adversary Docket No. 51, be, and the same hereby is, **GRANTED.**

IT IS FURTHER ORDERED that no later than March 25, 2020, counsel for Kirk Anderson, Esq. and Anderson Law Firm PLLC, shall serve and file an affidavit or declaration, along with an itemized billing statement, setting forth the attorney's fees and costs incurred in connection with this proceeding from September 11, 2019, through February 20, 2020. After such materials have been filed, Debtor shall have fourteen calendar days to object, if at all, to the amounts requested. Thereafter, the court shall enter a supplemental order with respect to attorney's fees and costs.

Copies sent via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:

MERCY FLEMINO
9555 JENNIFER COURT
CHISAGO CITY, MN 55013

BERNICKSON LIFSON, P.A.
ATTN: OFFICER/AGENT
5500 WAYZATA BLVD, STE 1200
MINNEAPOLIS, MN 55416

ANTHONY DAKIS
5500 WAYZATA BLVD., STE 1200
MINNEAPOLIS, MN 55416

JACK PIERCE, ESQ.
5500 WAYZATA BLVD., STE 1200
MINNEAPOLIS, MN 55416

VULCAN RECOVERIES LLC
ATTN: OFFICER/AGENT
2605 VALE CREST
GOLDEN VALLEY, MN 55422

# # #