Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
October 05, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:	)	Case No.: 19-14084-MKN
	)	Chapter 11
DAVID LEE MELDRUM and	)	
MARY COLLEEN MELDRUM,	)	Date: N/A
	)	Time: N/A
Debtors.	)	

ORDER DENYING RENEWED MOTION TO CONDITIONALLY APPROVE DISCLOSURE STATEMENT[1]

On September 4, 2019, the Ballstaedt Law Firm ("Ballstaedt Firm") on behalf of David Lee Meldrum and Mary Colleen Meldrum ("Debtors"), filed an ex parte "Motion to Conditionally Approve Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of the Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined With Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan" ("Ex Parte Motion"). Attached to the Ex Parte Motion is a supporting declaration from Seth Ballstaedt, Esq. ("First Ballstaedt Declaration"). Also attached to the Ex Parte Motion was a proposed order granting the request and scheduling a combined hearing for final approval of the disclosure statement as

[1] In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §101, *et seq.* All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "Local Rule" are to the bankruptcy provisions of the Local Rules of Practice for the District of Nevada.

well as confirmation of the Debtors' proposed Chapter 11 plan ("First Proposed Order"). The Ballstaedt Firm uploaded the proposed order for court approval.

On September 11, 2019, the court denied the Ex Parte Motion without prejudice to the Debtors "seeking disclosure statement approval on regular notice pursuant to Bankruptcy Rules 3017(a) and 2002(b)." ("First Denial Order"). (ECF No. 28).

On September 30, 2019, rather than seeking disclosure statement approval on regular notice as directed by the court, the Ballstaedt Firm filed a "Renewed Motion to Conditionally Approve Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of the Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined With Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan" ("Renewed Motion"). (ECF No. 29). The only difference between the Ex Parte Motion and the Renewed Motion appears to be the date of the electronic signature. In fact, the Renewed Motion makes no mention that the Ex Parte Motion was denied, nor does it mention that the court required that disclosure statement approval be sought on regular notice. Attached to the Renewed Motion is another supporting declaration from Seth Ballstaedt, Esq. ("Second Ballstaedt Declaration"). The only difference between the First Ballstaedt Declaration and the Second Ballstaedt Declaration is the date of the electronic signature. Also attached to the Renewed Motion is another proposed order identical to the First Proposed Order submitted with the Ex Parte Motion.

On its face, the Ballstaedt Firm's filing of the Renewed Motion appears to be a violation of the competency requirement applicable in bankruptcy cases under Bankruptcy Rule 9011(b). See generally In re Spickelmier, 469 B.R. 903, 910-912 (Bankr. D. Nev. 2012). Where relief is previously denied, simply refiling an identical request based on identical evidence, has no legal or factual basis. Id. at 912 ("The reasonably competent attorney would not have simply changed the date on a previously denied motion and re-submitted it to the court without more than a belief that somehow the very circumstances that were insufficient to justify relief requested in the first motion were somehow, in the second motion, sufficient to justify an order shortening time. Nor would the reasonably competent attorney have advocated on behalf of such a motion without

some modicum of knowledge as to its possible legal basis."). Compare In re Schivo, 462 B.R. 765, 773 (Bankr. D. Nev. 2011).

Even worse, ignoring the court's First Denial Order that required the Debtors to seek disclosure statement approval on regular notice also violates the well-established collateral bar rule. See Maness v. Meyers, 419 U.S. 449, 459 (1975) ("The orderly and expeditious administration of justice by the courts requires that 'an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.'"); United States v. Adams, 744 Fed.Appx. 492, 493 (9th Cir. 2018). See, e.g., In re LaManna, 23 Fed.Appx. 759, 761 (9th Cir. 2001) (debtor's bankruptcy attorney prevented from challenging the validity of a bankruptcy court's prior order in a subsequent contempt proceeding). As the Ninth Circuit has observed, "…a smoothly functioning judicial process may be jeopardized if parties are able to determine for themselves when and how to obey court orders." In re Establishment Inspection of Hern Iron Works, Inc., 881 F.2d 722, 726 (9th Cir. 1989). Instead of seeking relief from the First Denial Order, by reconsideration or otherwise, the Ballstaedt Firm chose to simply violate it. Violation of the order is subject to contempt sanctions.

Under Bankruptcy Rule 9011, sanctions for violation of the attorney competency requirement may include non-monetary directives or payment of a penalty to the court, but only as are necessary to deter future repetition of the misconduct. See Fed.R.Bankr.P. 9011(c)(2). See, e.g., In re Alstott, Case No. 19-11968-MKN (Bankr. D. Nev.), Order on Motion to Disgorge, at 5-6, Docket No. 33, entered Sept. 6, 2019). Civil contempt sanctions for violation of a court order also may include mild, non-compensatory fines, as well as other remedies designed to ensure future compliance. See generally Knupfer v. Lindblade (In re Dyer), 332 F.3d 1178, 1192-1196 (9th Cir. 2003).

In this instance, the Ballstaedt Firm has repeatedly sought conditional approval of the Debtors' proposed Chapter 11 disclosure statement pursuant to Section 1127(f)(3)(A). See Ex Parte Motion at 3:8-11; Renewed Motion at 3:8-11. Even a cursory reading of the Bankruptcy Code, however, reveals that **no such provision exists**. Even a cursory reading of Section 1127

reveals that it addresses modifications of a Chapter 11 plan rather than the approval of a Chapter 11 disclosure statement. On that basis alone, both requests were and are dead on arrival and should never have been submitted by competent counsel.

If the Debtors were pursuing Chapter 11 relief in pro se, perhaps both requests could be construed liberally as being sought under Section 1125(f)(3). But even then, both motions filed by the Ballstaedt Firm ignore that conditional approval of a Chapter 11 disclosure statement is discretionary[2] and remains the exception rather than the rule. Ordinarily, disclosure statements are approved in advance of being used to solicit acceptance of a proposed Chapter 11 plan. See 11 U.S.C. § 1125(b). Ordinarily, parties in interest must be provided at least 28 days' notice of the deadline to object to a proposed disclosure statement. See Fed.R.Bankr. P. 2002(b). Ordinarily, parties in interest must be provided at least 28 days' notice of the deadline to object to confirmation of a proposed Chapter 11 plan. Id. While the Debtors apparently believe that it is in their best interests to confirm their proposed Chapter 11 plan quickly, see Ex Parte Motion at 3:13-15 and Renewed Motion at 3:13-15, the same could be said for almost every debtor.

As acknowledged in both the First Ballstaedt Declaration and the Second Ballstaedt Declaration, Debtors have substantial assets, have secured debts in excess of $5 million, have priority and perhaps nondischargeable obligations to the Internal Revenue Service, and have more than sixty creditors with close to $2 million in total unsecured claims. According to the bankruptcy notice issued in this case, the deadline for non-governmental creditors to file claims does not elapse until October 30, 2019, and governmental entities may file claims as late as December 24, 2019. (ECF No. 8). Nowhere in the record is there a request by the Debtors to advance the bar dates for filing proofs of claim. Without knowing the claims that must be addressed in a proposed Chapter 11 plan, it is puzzling at best why or even how a Chapter 11 plan would be proposed.

The docket in this case reveals that the Debtors filed a proposed Chapter 11 plan of

[2] Section 1125(f)(3)(A) provides that the bankruptcy court "may conditionally approve a disclosure statement" rather than "shall" grant approval. FRBP 3017.1(a) likewise provides that the court "may" grant such approval and Local Rule 3017(b) similarly provides that a court "may" conditionally approve a disclosure statement.

reorganization and a proposed disclosure statement on August 20, 2019. (ECF Nos. 23 and 24). These proposals were filed less than three weeks after the Debtors' meeting of creditors was concluded by the Office of the United States Trustee. The docket also reveals that the Debtors did not file their valuation of an entity identified as DN Harmon, LLC, in which they hold 100 percent of the interest, until September 4, 2019. (ECF No. 26). Even though the disclosure statement includes financial statements for that entity attached as Exhibit "C," nowhere is that entity mentioned in the liquidation analysis attached as Exhibit "E." Moreover, Debtors' purported liquidation analysis also does not mention several other entities that they identify in their fair market value analysis attached as Exhibit "B" to their disclosure statement. Additionally, the disclosure statement mentions only the bar date for non-governmental creditors to file proofs of claim, but not the later bar date for governmental creditors. In view of the assets and claims involved in this proceeding, it is not clear how the disclosure statement can meet the adequate information standard under Section 1125(a).

In short, nothing in the Ex Parte Motion, Renewed Motion, First Ballstaedt Declaration, Second Ballstaedt Declaration, the Debtors' schedules, the proposed disclosure statement, or any other items appearing on the docket, provide a legal or evidentiary basis to support these repeated requests for relief. The same materials do, however, raise serious concerns about the conduct of the Debtors' counsel.

IT IS THEREFORE ORDERED that the Renewed Motion to Conditionally Approve Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of the Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined With Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan, brought on behalf of the above-captioned Debtors, Docket No. 29, be, and the same hereby is, **DENIED**.

IT IS FURTHER ORDERED that **a status hearing will be conducted on October 16, 2019, at 11:00 a.m.**, to determine whether further proceedings should be scheduled with respect to the Ballstaedt Law Firm, including consideration of the imposition of sanctions for violation

of Rule 9011 of the Federal Rules of Bankruptcy Procedure, or, the imposition of contempt sanctions for violation of the prior order denying the prior ex parte application.

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