Not Reported in F.Supp., 1994 WL 284971 (N.D.Cal.)

Motions, Pleadings and Filings

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United States District Court, N.D. California.

In re Donald E. RASMUSSEN, Sharon Keck Rasmussen, Debtors.

No. C-94-0180-DLJ.

June 7, 1994.

ORDER

JENSEN, District Judge.

*1 On May 25, 1994, the Court heard an appeal from the Bankruptcy Court's imposition of sanctions. Neil Jon Bloomfield appeared as appellant. Mark V. Isola of Binder & Malter appeared for appellees. Having considered the papers submitted, the arguments of counsel, the applicable law, and the entire record herein, the Court DENIES appellant's motion to reverse the Bankruptcy Court's imposition of sanctions and the Bankruptcy Court's use of a *nunc pro tunc* order, for the following reasons.

BACKGROUND

This case arises from a loan of $360,000 made on March 25, 1991 by Appellees, through the Reliance Loan Company, to debtors, Donald and Sharon Rasmussen. Appellees are Dale B. Adams, Karol J. Adams, Charles R. Ayers, Eleanore R. Evans, Howard J. Efting, Vivien F. Efting, Ralph Montez, Jr., and Mary Ann Montez. Appellant here is Neil John Bloomfield, counsel for debtors. The loan at issue was accompanied by a promissory note and secured by a deed of trust on the debtors' residence in Nicasio, California, ("Property"). Debtors defaulted on the loan August 1, 1991 after making only three payments. On October 17, 1991 appellees effected a notice of default. Reliance Loan Company ("Reliance") evidently had no foreclosure division, and on July 22, 1992 a company called PLM Lender Service was recorded a substitution as trustee, and on that same day a notice of sale was recorded.

On August 25, 1992, the debtors filed a Chapter 7 proceeding, and Charles Sims was appointed Chapter 7 trustee. On September 28, 1992, Reliance moved for relief from the Chapter 7 stay. The Bankruptcy Court stated that it would grant Reliance's motion for relief effective "as of the entry of discharge" unless the trustee appeared to oppose. The Bankruptcy Court's Order granting relief from the automatic stay was entered on the docket on March 4, 1993. On March 12, 1993 appellees, pursuant to the Trustee's deed upon sale, purchased the Property at the foreclosure sale.

On March 24, 1993, appellee Dale Adams filed a complaint for unlawful detainer against debtors. Counsel for debtors, appellant here, filed motions and petitions to: quash service; to set aside the commissioner's decision and order; for exceptions to report and order of the commissioner; and a petition to compel the trial court to quash service of summons. The Superior Court denied the Writ of Mandate, and concluded that:

Petitioners are very capably “using” the judicial system for their selfish gain to the detriment of the real party in interest ··· there comes a time when it becomes obvious the judicial system is being used for improper purposes.
The Municipal Court should resolve this matter with the utmost diligence and should consider sanctions if further delaying tactics are employed.
Nonetheless, appellant filed a motion to transfer for lack of jurisdiction. This motion failed as well. On June 15, 1993, one day prior to a hearing on Adams' motion for summary judgment, Appellant filed an application for removal to the Bankruptcy Court. On June 18, 1993, the municipal court judge concluded that he was without power to rule on the case.
*2 The Bankruptcy Court set a hearing on the removal issue for July 26, 1993. On July 21, 1993, appellant filed and served Debtors' Memorandum of Points and Authorities in Opposition to, among other things, the (1) Motion to Remand, (2) Motion for Relief from Stay *Nunc Pro Tunc,* (3) Motion to Modify Order, and (4) Request for Sanctions.
On July 26, 1993, the Bankruptcy Court orally issued sanctions against appellant in the amount of $2,000. In a subsequent Memorandum, the Bankruptcy Court wrote:
When Appellant saw that the state court was not buying his arguments, he removed the action to this court even though the removal was untimely and the action in no way impacts either the estate or the debtors' discharge rights.
The court finds Bloomfield's acts utterly reprehensible. By exploiting the bankruptcy system and abusing the laws and procedures meant to protect debtors from state courts which do not protect legitimate debtors' rights, he brings the bankruptcy system into disrepute and provides ammunition for those who would limit debtors' rights. His conduct is intended only to harass, delay, and increase the cost of evicting his clients. FRBP 9011 compels the court to sanction such conduct. Bankruptcy Docket Control Number (“D.C.N”) 19.
Appellant's appeal from the Bankruptcy Court is considered below.

DISCUSSION

A. *Legal Standard*

Legal conclusions of a bankruptcy court are reviewed *de novo. Tilley v. Vucurevich* (*In re Pecan Groves of Arizona*), 951 F.2d 242, 244 (9th Cir.1991). The Bankruptcy Court's decision to award sanctions is reviewed for abuse of discretion. *In re: Rainbow Magazine,* 136 B.R. 545, 550 (Cal.1992). In *In re Taylor,* the Ninth Circuit noted that “Our review of the sanctions orders, entered by the bankruptcy court pursuant to Bankruptcy Rule 9011, is conducted under the same standard applicable to an order of sanctions under Rule 11 of the Federal Rules of Civil Procedure.” 884 F.2d 478, 480 (9th Cir.1989).

B. *Appellant's Standing*

Appellant objects to the Bankruptcy Court's granting of relief from the stay *nunc pro tunc.* Appellant complains that the Court went beyond its powers and modified the rights of the parties.

However, there is no indication that appellant, formerly counsel to the debtors, has standing to raise such a claim. The Ninth Circuit has held that only persons who are "directly and adversely affected pecuniarily" by an order of the bankruptcy court have standing to appeal a bankruptcy Court order. *In re Pecan Groves of Arizona,* 951 F.2d 242, 245 (9th Cir.1991) citing *In re Fondiller,* 707 F.2d 441, 442 (9th Cir.1983) ("Efficient judicial administration requires that appellate review be limited to those persons whose interests are directly affected.") *Id.* at 443.

Here, the issue at hand involves the date of effectiveness of relief from a stay granted to debtors. The Bankruptcy Court's order directly affected only the debtors. The debtors are not a party to appellant's motion. Appellant has no direct pecuniary or other interest in the granting of relief from the stay. Appellant has no standing to raise the motion at issue here. Accordingly, the Court hereby orders appellant to show cause why sanctions should not be imposed for improperly raising this issue for which appellant clearly lacks standing. Appellant must submit such documentation by July 1, 1994. The matter will then be under submission.

*3 The Court also notes that even if appellant were to have standing, this Court would be hard pressed to find reversible error in the Bankruptcy Court's ruling. The Ninth Circuit Court of Appeals has held that under 11 U.S.C. Section 362(d) the bankruptcy court has "wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz,* 954 F.2d 569, 572 (9th Cir.1992). In this instance, the bankruptcy court found that "technical difficulties" existed and granted appellees' motion for relief from the stay *nunc pro tunc.* D.C.N. 19.

C. *Bankruptcy Court's Award of Sanctions*

An award of sanctions may be appropriate under Bankruptcy Rule 9011 if the paper filed is:

"frivolous in the sense that after reasonable inquiry, the sanctioned party could not form a reasonable belief that the paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or (b) if the paper is filed for an improper purpose.

In re Rainbow Magazine, 136 B.R. 545, 550 (9th Cir. BAP 1992). Here, Rule 9027 imposed a 30 day time limitation which effectively prohibited appellant's attempt to remove the unlawful detainer action. It is apparent that the Bankruptcy Court could properly have rejected appellant's argument that simply neglecting to timely file the Notice of Removal could justify defying the rule.

At issue here is whether appellant's actions merited sanctions. This Court is concerned by appellant's rationale for failing to take account of the 30 day limit-that he had failed to keep track of the running of the calendar. Appellant had made numerous motions in the unlawful detainer action, and evidenced a close attention to the legal options available. Further, appellant's motives are also questionable, and the bankruptcy court could have fairly concluded that the attempt at removal was made for improper purpose. Previous courts' have noted, *see supra,* that the debtors' approach to the case has focused on the advantages of delay, and the ability of debtors to benefit from rent free living while the court is fed a myriad of motions. Where counsel engages in such activity, the court may rightly sanction him.

Appellant's other arguments lack merit as well. Appellant asserts that sanctions were

imposed for actions taken in state court, but nothing in the Bankruptcy Court's rulings identifies state court action as the specific behavior giving rise to the sanctions. The Bankruptcy Court cited the proper rule and an action justifiably giving rise to the sanctions. The Court stated that appellant's "conduct is intend only to harass, delay, and increase the cost of evicting his clients. FRBP 9011 compels the court to sanction such conduct." Bankruptcy Docket Control Number ("D.C.N") 19. The Bankruptcy Court found that the matter should not have been brought before it. Appellant removed "even though the removal was untimely and the action in no way impacts either the estate or the debtors' discharge rights." D.C.N. 19. Appellant complains that he received inadequate notice, but does not dispute that he was aware for ten days prior to the hearing that sanctions could be imposed. Appellant had ample opportunity to convince the court that his arguments were well-founded. Accordingly, the appellant's request that the Bankruptcy Court's award of sanctions be reversed is DENIED.

CONCLUSION

*4 For the foregoing reasons, the Court ORDERS as follows:
1. Appellant's appeal seeking to reverse the Bankruptcy Court's *nunc pro tunc* order is DENIED. The Court also orders appellant to show cause why sanctions should not be imposed for improperly raising this issue for which appellant clearly lacks standing. Appellant must submit such documentation by July 1, 1994. The matter will then be under submission.
2. Appellant's appeal seeking to reverse the Bankruptcy Court's imposition of sanctions is DENIED.
IT IS SO ORDERED

In re Rasmussen
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