UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In re:	**:**	**Case No. 95-2000-CH**
ALFRED K. RYDER and	**:**	
MARY ANN RYDER,	**:**	
	:	**Chapter 7**
Debtors.	**:**	

ORDER—MOTION TO DISMISS CASE AND OBJECTIONS THERETO; MOTIONS FOR BANKRUPTCY RULE 9011 SANCTIONS AND OBJECTION THERETO

On July 31, 2001, hearing was held on Debtors' Motion to Dismiss Case. Hearing was also held on Trustee and Creditors' Motions for Rule 9011 Sanctions. Debtor Alfred K. Ryder appeared pro se; attorney Paul A. Drey appeared for Trustee Donald F. Neiman; attorney Michael J. Cunningham appeared for Maple Tree Investments; attorney Jerrold Wanek appeared for Hullinger Trucking; attorney Alan M. Wilson appeared for Ewing Feed & Grain; and attorney John L. Young appeared pro se. Mary Ann Ryder did not appear.

The court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

FACTS

Debtors filed a petition for relief under chapter 7 on July 6, 1995, and the case remains under the bankruptcy court's jurisdiction six years later. On Schedule A of the petition, Debtors indicated that they owned no real property. On Schedule B, they scheduled personal property valued at $3,420.00, and perhaps as a precursor of what was to follow, exempted $3,550.00 of personal property on Schedule C. Debtors did not schedule any secured claims or any unsecured priority claims. Their scheduled unsecured claims totaled $563,492.05. Even allowing for

duplication of two claims, Debtor's unsecured claims totaled over $354,000.00. On Schedule I, Debtors scheduled monthly income of $560.00 from social security payments and $466.66 from employment with Ryder Farms, Inc.

From the outset, the Trustee found discrepancies with Debtors' petition and their testimony at the § 341 meeting of the creditors. Upon investigation, Trustee discovered undisclosed assets consisting of farm real estate, farm equipment, and livestock. As recently as the claims hearing conducted on February 5, 2001, Trustee discovered equipment and building materials that were potential estate assets.

Debtors have maintained that all these assets belong to a corporate entity. This entity has been identified at various times as Ryder Farms Inc. of Iowa, Ryder Farms Inc. of Illinois, and Ryder Farms Inc. of Missouri.

The six contentious years of case administration are well-documented in six main case files and additional adversary proceeding files. Actions of Debtors have been brought under the scrutiny of the court and are the subject of numerous decisions. Over the course of this case, Debtors' activities have been a veritable litany of bad acts. Early in the proceedings, Alfred Ryder squandered his credibility, making false statements and changing his testimony to suit his position at any given time. At one point, five years into the administration of the case Alfred Ryder admitted that the bankruptcy petition was inaccurate on the date that it was filed. Debtors concealed assets, transferred assets post-petition, and interfered with lease agreements entered into by Trustee.

Debtors initially testified that Ryder Farms Inc. of Iowa owned no assets. They claimed Ryder Farms Inc. of Illinois owned all the several thousand acres of farmland discovered by

Trustee. After Trustee secured an affidavit to the contrary and a quitclaim deed to all Ryder Farms Inc. of Illinois' interest in property in Iowa and Missouri, Debtors testified that Ryder Farms Inc. of Iowa was the actual owner of the farmland. Debtors did not schedule any ownership of shares of the Iowa corporation. Even though they claim to be officers and directors of the corporation, they have failed to identify who owns the shares. Further, they have failed to produce the records of the corporation even when ordered to do so by the court. They have alternatively argued that they have turned over all the records or that the records are in the hands of their accountant. They have never produced the accountant or a phone number or address where the accountant could be reached.

Debtors failed to turn over property of the bankruptcy estate. They filed documents in the case when represented by counsel, without counsel's knowledge. They filed a motion to convert the case to chapter 12 even though they scheduled no farm assets or equipment. Debtors filed a chapter 12 petition for Ryder Farms, Inc. of Iowa in the Western District of Missouri. They did not notify the court or their Missouri counsel of the pending chapter 7 case in Iowa or that some of the farmland scheduled in the chapter 12 was under the control of the chapter 7 trustee in Iowa.

On August 17, 1998, Debtors filed an Application to Withdraw Bankruptcy Case with this court. Debtors gave as grounds that three attorneys had withdrawn from various matters before the court, and the bankruptcy was too expensive. Trustee and Creditors filed objections to the application. The court interpreted the application as a motion to dismiss, and a hearing was held on December 7, 1998. From the bench, the court ruled that Debtors did not show adequate

cause to dismiss 11 U.S.C. § 707. It also found that a dismissal of the case was not in the best interests of the creditors.

On December 10, 1999, Debtors filed an Application for Approval of Compromise and Settlement of Claims. In the document, Debtors represented that they had reached agreement with all their creditors. The application provided for a specified payment to each listed creditor who would accept that amount as full satisfaction of the claim, and Debtors' waiver of discharge. Debtors argued that there were sufficient funds in the estate to make the required payments.

The United States Trustee objected to the application, questioning Debtors' credibility, whether all the known creditors were listed, the lack of equality of treatment of claims, and whether the listed creditors were fully informed of the facts of the case. After conducting a hearing, the court agreed with the United States Trustee and denied the motion.

On May 5, 2000, in the course of an adversary hearing, Debtors reached a "global" settlement of all the issues surrounding the bankruptcy case. The agreement was read into the record. The court questioned Alfred Ryder and Mary Ann Ryder, individually and under oath, as to their understanding of the agreement. Each understood the agreement and voluntarily accepted the terms. They pointedly conditioned their acceptance on the provision that no real property would be sold without giving them the opportunity to supply additional funds to the estate. Trustee expressly agreed to this condition, and it was incorporated into the settlement agreement. The court approved the settlement agreement and directed Trustee to memorialize the agreement in writing.

Debtors refused to sign the writing and reneged on the agreement. At Trustee's request, the court conducted a show cause hearing and ultimately ordered specific performance of the

settlement agreement. The court subsequently authorized Trustee to proceed with the administration of the estate under the terms of the settlement agreement.

On May 15, 2001, Debtors filed the instant Motion to dismiss Chapter 7 Bankruptcy of Alfred K. Ryder and Mary Ann Ryder. Trustee and four creditors object to the dismissal.

DISCUSSION

Motion to Dismiss the Case

11 U.S.C. § 707 governs the dismissal of chapter 7 bankruptcy cases. Section 707(a) provides that the court may dismiss a case only after notice and hearing and only for cause. Although the section does not address a motion by the debtor to voluntarily dismiss the case, courts generally hold that it applies to that situation. Turpen v. Eide (In re Turpen), 244 B.R. 431, 434 (B.A.P. 8th Cir. 2000); In re Hopkins, 261 B.R. 822, 823 (E.D. Pa. 2001); In re Churchill, 178 B.R. 478, 479 (Bankr. Neb. 1995); In re Harker, 181 B.R. 326, 328 (Bankr. E.D. Tenn. 1995); In re Mathis Ins. Agency, Inc., 50 B.R. 482, 486 (E.D. Ark. 1985); In re Williams, 15 B.R. 655, 658 (E.D. Mo. 1981).

Unlike chapters 12 and 13, a debtor under chapter 7 is not afforded an absolute right to dismiss the case. In re Turpen, 244 B.R. at 434. Chapter 7 provides the dual purposes of the fresh start for the debtor and a collective remedy for creditors whereby nonexempt assets are efficiently liquidated for their benefit. In re Churchill, 178 B.R. at 479. Once the administration of the case begins and the debtor receives the benefits of bankruptcy protection, the creditors' remedy would be frustrated if the case could be dismissed as a matter of right. Id. Accordingly, the debtor bears the burden of showing good cause and demonstrating why dismissal is justified. In re Turpen, 244 B.R. at 434. If there is a showing of prejudice to the creditors, the court should

deny the motion to dismiss regardless of a showing of cause. Id. Bankruptcy courts have broad discretion in determining whether to grant a voluntary dismissal of a chapter 7 case. Id. at 433.

In this case, Debtors argue that dismissal is proper because all the creditors in the chapter 7 case filed letters of settlement with the Debtors; the U. S. Trustee (and presumably the chapter 7 Trustee and his staff) are incurring additional expenses and fees; a grand jury is investigating Alfred Ryder, Mary Ann Ryder, and attorney Paul Goldsmith; Debtors signed their petition on May 11, 1995, but Goldsmith did not file the petition until July 5, 1995; and Goldsmith overstated the liabilities, the actual total being $299,552.46. Debtors' arguments are without merit.

This court previously denied a motion by Debtors to voluntarily dismiss their case. After notice and a hearing, the court determined that a dismissal was not in the best interest of the creditors. Dismissal would result in prejudice to the creditors who had been stayed from pursuing collection of their claims. "Delay in satisfying creditor claims can be sufficient to preclude dismissal." Peterson v. Atlas Supply Corp. (In re Atlas Supply Corp.), 857 F.2d 1061, 1063 (5th Cir. 1988); see also In re Turpen, 244 B.R. at 435. At the time of the previous decision, Debtors had forestalled collection for over three years. The time has now expanded to six years. The amount of delay alone would be sufficient to preclude dismissal.

The court previously sustained the U.S. Trustee's objection to Debtor's motion to compromise and settle claims. The court agreed that given Debtors' lack of candor and honesty, particularly when under oath, there was no reason to believe that Debtors had listed all their known creditors or had provided accurate information to those listed. Further, Debtors' waiver of discharge was rendered valueless by the requirement that Creditors accept the settlement as

full satisfaction of the debt. Because the court refused to approve the motion, the settlement negotiations were not consummated, and Creditors are not bound by statements made in the course of the negotiations. The court made this decision readily apparent to Debtors at the claims hearing held on February 5, 2001.

More importantly, Debtors reached a stipulated settlement agreement with Trustee at the May 5, 2000, hearing. The court approved the settlement, and when Debtors reneged on the agreement, the court ordered its specific performance. The court authorized Trustee to proceed according to the agreement. Section 6 of the settlement agreement provides:

> The Debtors, Alfred K. and Mary Ann Ryder, and Ryder Farms Inc., an Iowa Corporation, and all other entities of the Debtors hereby agree to the payment of all Trustee fees, attorney fees, expenses, taxes, and all allowed claims, including any interests, if allowed by the Court. The creditors, including the creditors identified in the Chapter 7 proceeding brought by Alfred K. and Mary Ann Ryder as well as the Chapter 12 proceeding brought by Ryder Farms, Inc., an Iowa corporation, shall be given notice to file claims in this matter. A claims hearing, if necessary, shall be held to determine the validity and amounts of said claims.

Debtors are bound by this provision, and this court has jurisdiction to enforce it. The court has held a claims hearing and determined the validity of several claims. To now dismiss the case, surrender jurisdiction, moot the settlement agreement, and require all the creditors to re-litigate their claims in state forums would constitute clear prejudice to the creditors.

The court notes, that on several occasions, Debtors have raised all the points listed in their motion, save one. The exception is the fact that they and the attorney that filed their petition are being investigated by a grand jury. The court finds that this fact does not mitigate in favor of dismissal.

The court agrees that the administration of this case has been costly and Trustee fees and expenses continue to accumulate, dissipating assets of the estate. However, Debtors are the

architects of their dilemma. They failed to honestly schedule assets, thereby requiring Trustee to make extensive investigations. They failed to produce discovery information, thereby requiring Trustee to request the court's assistance to obtain the information. Debtors have submitted numerous filings, many baseless, that required Trustee to respond. They have filed numerous appeals only to withdraw them before the appellate court reached the merits.

Finally, Debtors have failed to amend their schedules even after numerous assets were uncovered. They have made no attempt to correct errors and omissions, even after testifying that the schedules were inaccurate.

This court agrees "[n]o debtor should expect to abuse the bankruptcy process by using it to his benefit to forestall the collection of debts and seek to escape the web of trickery so keenly woven about the creditors. Confidence of the public in bankruptcy system must be upheld." In re Mathis Ins., 50 B.R. at 487.

The court concludes that Debtors have not shown cause to dismiss the case. Creditors would be prejudiced by a dismissal and consequently, such a dismissal is not in their best interests. Therefore, Debtors' motion to dismiss will be denied.

Rule 9011 Sanctions

Trustee and Creditors claim that Debtors' motion to dismiss the case is frivolous. They argue that because the court has previously denied a motion to dismiss the case and this motion contains nothing new, Debtors are making the motion for the improper purposes of causing unnecessary delay. They ask the court to sanction Debtors under Fed. R. Bankr. P. 9011 in order to deter Debtors from pursuing such activities. The court agrees that sanctions are necessary.

Rule 9011 provides in pertinent part:

* * *

(b) Representations to the 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,--

(1) it is not being presented for any improper purpose, such as to harass or to 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.

(c) Sanctions. 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 upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation…

* * *

(2) Nature of sanction; Limitations. 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. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

* * *

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Bankruptcy Rule 9011 is sufficiently similar to Fed. R. Civ. P. 11 that law interpreting Rule 11 is applicable to Rule 9011 cases. Grunewaldt v. Mutual life Ins. Co. of New York (In re Coones Ranch, Inc.), 7 F.3d 740, 743 n. 4 (8th Cir. 1993).

The Rule is not designed to prevent a litigant from advancing a novel claim or defense which is arguably supported by existing law. Farguson v. Mbank Houston, N.A., 808 F.2d 358, 359 (5th Cir. 1986). Nor is it intended to prevent arguments advocating the extension, modification, or reversal of existing law. Id. Such positions are not frivolous even though they might not succeed or warrant in-depth consideration. Id.

The purpose of the Rule is to "deter baseless filings" and "streamline the administration and procedure of the federal courts." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990). It imposes a duty on litigants to make a reasonable inquiry before filing papers with the court and determine that the claim asserted is "well grounded in fact, legally tenable, and 'not interposed for any improper purpose.'" Id. An attorney or unrepresented party's signature on a pleading, motion, or other filing is a certification that such an inquiry was made. In re KTMA Acquisition Corp., 153 B.R. 230, 247 (Bankr. D. Minn. 1993).

The measure of the reasonableness of a party's actions is an objective standard. Miller v. Bitter, 985 F.2d 935, 938 (8th Cir. 1993). The court must consider the circumstances of the case. "An inquiry that is unreasonable when an attorney [or party] has months to prepare a complaint may be reasonable when he only has a few days before the statute of limitations runs." Cooter & Gell, 496 U.S. at 401. When the court makes a determination of whether a filing was supported by fact and law to the "best of the signer's knowledge, information and belief," it must assess the signer's credibility. Id. at 402.

However, regardless of the party's credibility, "a motion that attempts to re-litigate a decided issue or introduces nothing new is frivolous." Ballato v. Ballato (In re Ballato), 190 B.R. 447, 449 (M.D. Fla. 1995). Rule 9011 functions, in part, to prevent the re-argument of issues already ruled on by a court. Id.

In this case, Debtors filed a motion to dismiss their chapter 7 case more than two years after the court denied a previous request to dismiss their case. In the intervening years, Debtors did nothing to correct the admitted errors and omissions in their schedules. They continue to conceal assets, make false statements, and attempt to hinder Trustee from administering the estate.

The motion to dismiss cites matters previously raised and ruled upon as reasons for the dismissal of the case. The only authority cited by Debtors is the local rules from the United States Bankruptcy Court for the Western District of Missouri. The court can only conclude that Debtors are attempting to re-litigate these matters and the previous motion to dismiss.

Viewing the circumstances in their totality, the court finds that Debtors did not make a reasonable inquiry into the facts and existing law. Such an inquiry would have disclosed that their attempt to dismiss the case at this juncture would be futile absent the most compelling new circumstances, which the court cannot even envision at this time. In making its determination the court appropriately considers the credibility of Debtors and finds it extremely wanting. Debtors have made numerous false statements to the court, as well as various parties and their own counsel. They have changed their statements to suit their position of the day, going so far as denying statements contained in court and deposition transcripts. The weight that the court attaches to Debtors' statements does not extend beyond that which it can visually verify.

Debtors continue to present baseless filings devoid of authority with this court. They have filed numerous appeals; none of which has been decided on the merits. Debtors' activities require Trustee and Creditors to respond, resulting in additional expenses for the parties and the estate. The activities also result in harassment to Creditors and needless delay in administering the estate. For all the above reasons, the court finds that Debtors violated Rule 9011, and sanctions are warranted.

After determining that an attorney or unrepresented party has violated the rule, a court may impose an appropriate sanction. Fed. R. Bankr. P. 9011. The imposition of an "appropriate" sanction is left to the broad discretion of the court. Cooter & Gell, 496 U.S. at 393. The sanction may include payment of the opposing parties' attorney fees and other expenses. Id. The fees and expenses include those attributable to investigating, researching, and resisting the meritless filing, as well as those attributable to researching, preparing, and prosecuting the sanctions motion. In re Spectee Group, Inc., 185 B.R. 146, 160 (S.D.N.Y. 1995).

In this instance, the court finds that an appropriate sanction to deter Debtors from submitting frivolous filing is to award fees and expenses to those parties resisting the motion to dismiss. The court will also award fees and expenses for the preparation for motions for Rule 9011 sanctions. The parties seeking the award must provide the court with time and expense documentation conforming the courts' decision In re Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1989). Debtors may submit objections to the expense records, however, with the following caveat. Debtors' objections must be specific and be based on law or fact, and they must support any objection with evidence or risk additional sanctions.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. Alfred K. Ryder and Mary Ann Ryder's Motion to Dismiss Case is DENIED. Reconsider Allowance of Claims is DENIED.

2. Trustee Donald F. Neiman's Motion for Rule 9011 Sanctions is GRANTED.

3. Creditor Ewing Feed & Grain's Motion for Sanctions is GRANTED.

4. Parties objecting to Debtors' Motion to Dismiss Case will submit documentation of fees and expenses incurred attributable to resisting the motion. Parties filing a motion for sanctions will submit documentation of fees and expenses incurred attributable to the motion for sanctions. Documentation must be filed with the Clerk of Court within fifteen (15) days of the filing of this order.

5. Debtors may file objections to the documentation for fees and expenses. Such objections must be filed with the Clerk of Court within fifteen (15) days of the filing of the documentation of fees and expenses of the respective parties.

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RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT