THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

5TH CIRCUIT BANKRUPTCY BENCH-BAR CONFERENCE

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BANKRUPTCY REMEDIES FOR LENDER MISCONDUCT

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1. Bankruptcy Code § 105

a. 11 U.S.C. § 105(a). "The court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title . . . [or] necessary and appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

b. Fifth Circuit

Wheeler v. Collier et al. (Matter of Wheeler), 596 F. App'x 323, 327 (5th Cir. 2015) (per curiam) (bankruptcy court did not have authority to impose $10,000 criminal contempt sanction against attorney under § 105 power);
Oxford Mgmt., Inc. v. Bingler (Matter of Oxford Mgmt.), Inc., 4 F.3d 1329 (5th Cir. 1993) (bankruptcy court abused its discretion under § 105(a) when it ordered discharged Chapter 11 debtor to pay post-petition funds to satisfy pre-petition debts);
In re Padilla, 379 B.R. 643, 667 (Bankr. S.D. Tex. 2007) (ordering disgorgement of monies collected in violation of a confirmed Chapter 13 is appropriate under § 105(a)).

c. Other Circuits

In re Rimsat, Ltd., 212 F.3d 1039, 1049 (7th Cir. 2000) (both inherent and § 105(a) power);
In re Rainbow Magazine, Inc., 77 F.3d 278, 282 (9th Cir. 1996) (holding that § 105(a) is Congress' statutory recognition of the bankruptcy court's inherent power to sanction).
In re Courtesy Inns, Ltd., Inc., 40 F.3d 1084, 1089-90 (10th Cir. 1994) (affirming sanctions against corporation's president for filing petition in bad faith by conflating the bankruptcy court's § 105 power with its inherent power);
In re Collins, 250 B.R. 645, 656 (Bankr. N.D. Ill. 2000) ("Bankruptcy courts have both statutory and inherent powers to sanction under § 105(a).");

2. Bankruptcy Rule 9011

a. Fifth Circuit

Tbyrd Enterprises LLC v. McVay (Matter of Tbyrd Enterprises LLC), 354 F. App'x 837, 839 (5th Cir. 2009) (per curiam) (bankruptcy court had "arising in" jurisdiction to impose Rule 9011 sanctions on debtor's counsel for filing bad faith bankruptcy petition);

Cadle Co. v. Pratt (Matter of Pratt), 524 F.3d 580, 586 (5th Cir. 2008) (referring to Federal Rule of Civil Procedure 11 jurisprudence when considering sanctions under Bankruptcy Rule 9011);

In re Dobbs, 535 B.R. 675 (Bankr. N.D. Miss. 2015) (attorney's permanent disbarment was warranted where attorney repeatedly violated Rule 9011 and state rules of professional conduct);

In re Stomberg, 487 B.R. 775, 808 (Bankr. S.D. Tex. 2013) (court ordered sanctions against attorney for Rule 9011(b) violations upon show cause order issued *sua sponte*).

b. Other Circuits

In re Rainbow Magazine, Inc., 77 F.3d 278, 282 (9th Cir. 1996) ("Bankruptcy courts' power to sanction derives from Bankruptcy Rule 9011." Affirming $45,000 sanction for signing a false Statement of Affairs.);

In re Freeman, 540 B.R. 129, 144 (Bankr. E.D. Pa. 2015) (no sanctions for filing time-barred POC);

In re Jenkins, 538 B.R. 129, 135 (Bankr. N.D. Ala. Sept. 17, 2015) (no sanctions for filing time-barred POC);

Feggins v. LVNV Funding, LLC, (*In re Feggins*), 535 B.R. 862, 86 (Bankr. M.D. Ala. 2015) (agreeing with *Sekema* by noting that "sanctions may be imposed under Bankruptcy Rule 9011 if a filed proof of claim is found to be frivolous.");

In re Sekema, 523 B.R. 651 (Bankr. N.D. Ind. 2015) ($1,000 sanction for filing late POC)(discussing *Crawford*).

3. Federal Statute

a. 28 U.S.C. § 1927 – "Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

b. Fifth Circuit

Citizens Bank & Trust Co. v. Case (Matter of Case), 937 F.2d 1014, 1023 (5th Cir. 1991) ("The language of § 1927 limits the court's sanction power to attorney's actions which multiply the proceedings in the case before the court. Section 1927 does not reach conduct that cannot be construed as part of the proceedings before the court issuing § 1927 sanctions.");

In re Cochener, 360 B.R. 542, 585 (Bankr. S.D. Tex.) *aff'd in part, rev'd in part*, 382 B.R. 311 (S.D. Tex. 2007) *rev'd*, 297 F. App'x 382 (5th Cir. 2008) (relying on § 1927 to impose sanctions).

c. Other Circuits

In re DeVille, 361 F.3d 539, 546 (9th Cir. 2004) (finding that bankruptcy courts do not have sanction authority under § 1927 because a bankruptcy court is not a "court of the United States.");
In re Courtesy Inns, Ltd., Inc., 40 F.3d 1084, 1086 (10th Cir. 1994) (holding that bankruptcy court lacked authority to impose sanctions pursuant to § 1927 and discussing Circuit split).

4. Inherent Power

a. Fifth Circuit

Citizens Bank & Trust Co. v. Case (Matter of Case), 937 F.2d 1014, 1023 (5th Cir. 1991) ("[T]he bankruptcy court has the inherent power to award sanctions for bad-faith conduct in a bankruptcy court proceeding. This power does not reach conduct which does not occur in proceeding in the bankruptcy court.").

b. Supreme Court

Law v. Siegel, 134 S. Ct. 1188, 1190 (2014) (Bankruptcy court exceeded its inherent authority to sanction abusive practices when it ordered Debtor to pay Creditor's attorney's fees with an amount protected by California's homestead exemption);
Chambers v. NASCO, Inc., 501 U.S. 32, 50, 111 S. Ct. 2123, 2134, 115 L. Ed. 2d 27 (1991) (noting that courts should exercise caution when invoking inherent powers, particularly with regard to due process).

c. Other Circuits

In re Rimsat, Ltd., 212 F.3d 1039, 1049 (7th Cir. 2000) (both inherent and § 105(a) power);
In re Rainbow Magazine, Inc., 77 F.3d 278, 284 (9th Cir. 1996) (bankruptcy court had authority to impose $249,389.31 sanction pursuant to inherent power);
In re Collins, 250 B.R. 645, 656 (Bankr. N.D. Ill. 2000)("Bankruptcy courts have both statutory and inherent powers to sanction under § 105(a).");
In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc., 238 B.R. 531, 550 (Bankr. E.D.N.Y. Sept. 9, 1999);

5. Injunctive Relief

a. Fifth Circuit

Wells Fargo v. Stewart (Matter of Stewart), 647 F.3d 553 (5th Cir. 2011) (vacating bankruptcy court's injunction that required creditor to audit all proofs of claim filed in the District in any pending case on the basis that the bankruptcy court lacked jurisdiction to order such broad injunctive relief);

Feld v. Zale Corp. et al. (Matter of Zale Corp.), 62 F.3d 746 (5th Cir. 1995) (overturning bankruptcy court's permanent injunction against third-party as improper extension of court's authority and overturning temporary injunction for lack of due process)

b. Other Circuits

In re Drexel Burnham Lambert Grp., Inc., 960 F.2d 285, 293 (2d Cir. 1992) ("In bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan.");
In re A.H. Robins Co., Inc., 880 F.2d 694, 702 (4th Cir. 1989) (holding that § 524 does not limit the bankruptcy court's equitable power to enjoin suits by creditors against nondebtor third parties);
In re Dow Corning Corp., 280 F.3d 648, 656-58 (6th Cir. 2002) (holding that bankruptcy court had the authority to issue injunctive relief affecting nondebtor third parties pursuant to § 105(a));
In re Lowenschuss, 67 F.3d 1394, 1402 (9th Cir. 1995) (holding that § 524 prevents a bankruptcy court from ordering permanent injunctive relief affecting a non-debtor when sought by the debtor);
In re W. Real Estate Fund, Inc., 922 F.2d 592, 600 (10th Cir. 1990) *modified sub nom. Abel v. W.*, 932 F.2d 898 (10th Cir. 1991) (holding that § 524 prevents a bankruptcy court from ordering permanent injunctive relief affecting a non-debtor).

6. UST Enforcement

a. Fifth Circuit

Wells Fargo Bank, N.A. v. Office of United States Trustee (Matter of Townsend), No. 12-30192 (5th Cir. 2012) (5th Circuit certified appeal on issue of UST's authority to conduct Rule 2004 exam requiring mortgage servicer to produce documents outside the scope of proving the validity of Wells' proof of claim).

b. Other Circuits

In re Underwood, 457 B.R. 635, 642 (Bankr. S.D. Ohio 2011) (discussing a number of bankruptcy court decisions considering "the precise question of whether the UST has standing to conduct 2004 exams of bankruptcy creditors, including mortgage holders, even though the UST has no direct pecuniary interest in the outcome of the matter." Holding that, "[t]hese decisions leave little room for doubt that the UST has standing pursuant to the general authority of the UST to raise, appear, and be heard on any issue in a bankruptcy case granted in 11 U.S.C. § 307, and the UST's supervisorial and administrative duties described in 28 U.S.C. § 586.");
In re Davis, 452 B.R. 610, 615 (Bankr. E.D. Mich. 2011) ("The Court also agrees with the UST that even apart from § 307 of the Bankruptcy Code, 28 U.S.C. § 586 contains specific grants of authority and imposes specific duties upon the UST in bankruptcy cases that support a finding that the UST is a party in interest for purposes of requesting a Rule 2004 examination.";

In re Youk-See, 450 B.R. 312, 323 (Bankr. D. Mass. 2011) ("The UST is charged to serve as a watchdog to protect the integrity of the bankruptcy system. That status compels the conclusion that Congress intended the UST to have the tools, including the ability to conduct Rule 2004 examinations and issue subpoenas, to carry out that duty. Without such authority, the UST's role as a watchdog would be circumscribed and toothless.");
In re Michalski, 449 B.R. 273 (Bankr. N.D. Ohio 2011) (finding that UST was authorized to issue subpoena *duces tecum* and Rule 2004 exam did not exceed UST's power, but granting creditor's motion to quash specific discovery requests);
In re Countrywide Home Loans, Inc., 384 B.R. 373, 384 (Bankr. W.D. Pa. 2008) ("Clearly, Section 307 is written in extremely broad language. Indeed, it is difficult to conceive of how Section 307 could have been written in any broader language. The Court thus has no difficulty concluding that the plain meaning of the power to "raise" and to "appear and be heard" as to any issue in any bankruptcy case or proceeding includes the ability to conduct examinations pursuant to Rule 2004 in the right circumstances.").

7. CFPB Enforcement

CFPB v. Hanna, Stipulated Final Judgment and Order, 1:14-cv-02211-AT (Dec. 28, 2015) (after suit based on allegations of illegal debt collection litigation practices, ordering civil penalty of $3.1 million plus permanent injunction on filing of lawsuits or threat of suit without specific documentation of debt);
Matter of CarHop, Consent Order, 2015-CFPB-0032, (Dec. 17, 2015) (ordering car dealership accused of furnishing incorrect consumer information to consumer reporting agencies to pay $ 6.465 million civil penalty and to correct reporting information);
Yuka Hayashi, *Consumer Financial Protection Bureau Roughly Double Caseload in 2015*, WALL ST. J. (Jan. 11, 2016, 5:30 PM).