

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 7 Case
)	Number <u>90-60141</u>
RONALD F. MAYHEW)	
CONNIE B. MAYHEW)	
)	
Debtors)	
_____)	

ORDER

Pursuant to notice, hearing was held on February 24, 1994 on the objection of Ann R. Moore, Chapter 7 trustee in this case to the latest attempt by debtors to amend their B-4 schedule of exemptions in contravention of a direct order of this court prohibiting further amendment to said schedule. The debtors, claiming a lack of notice, did not attend the hearing. Giving debtors the benefit of the doubt, I entered an order dated March 4, 1994 vacating all findings made at that hearing and reset hearing on the trustee's objection for March 29, 1994 with notice to be served on debtors at every address provided by debtors to this court.¹ I further ordered debtors to appear and show cause why sanctions should not be imposed upon them pursuant to Federal Rule of Bankruptcy Procedure 9011

¹The March 29, 1994 hearing was subsequently reassigned to March 31, 1994 by notice issued March 15, 1994.

([hereinafter Rule 9011]). Because debtors are currently proceeding pro se in this case, a copy of Rule 9011 was served with the notice of hearing.

The factual background leading to the trustee's objection is fully set forth in my March 4 order but requires repeating. The present amendment is the third attempt by debtors to amend their schedules. On December 4, 1992 the debtors attempted to amend their B-4 schedule of exemptions and their B-2 personal property schedule. The trustee objected to the amended B-4 schedule and pursuant to notice a hearing was held on January 26, 1993. The debtors failed to appear at that hearing. By order filed February 8, 1993 I sustained the trustee's objection and found as follows.

. . . [T]he Court finds that at a previous point in this bankruptcy, the Trustee had pending an objection to the granting of a discharge to the Debtors, an objection to the B-4 exemptions of the Debtors, and claimed an interest in a house belonging to the debtors located in Gilmer County, Georgia. That pursuant to an agreement of the Debtors, Trustee, and others, that the Debtors and/or someone on their behalf would pay to the Trustee the sum of \$7,500.00 and that the debtors would use \$10,000.00 of their B-4 exemption in their house in Gilmer County, the \$10,000.00 plus \$7,500.00 representing the equity therein, and that the Trustee would abandon her interest therein. As a further part of said agreement, it was agreed that the Trustee would withdraw her objection to the granting of the debtor's discharge, subject to Court approval, and would withdraw her objection to the B-4 Exemption of the Debtors, which B-4 Exemptions would include the \$10,000.00 exemption in the Ellijay house, and

would abandon the Ellijay house. As a further part of said agreement, it was agreed that the Trustee would have the guns and jewelry, furs and gun safe, which had been obtained by the FBI from the Debtor, Connie Mayhew and from the home of the father of the Debtor, Connie Mayhew as part of a criminal investigation and would sell any of said items to the Debtors and/or their designee at the appraised value, with the Debtors having the option of taking any one or more of the items therefrom, but that the Debtors would not amend their B-4 Schedule to exempt any of the items so taken.

The February 8, 1993 order further found that the trustee had complied with the terms of the settlement. The debtors' amended B-4 schedule sought to exempt items in the custody of the FBI covered under the agreement between debtors and the trustee. The February 8, 1993 order directed that the amended B-4 schedule be stricken and that debtors "were . . . prohibited from filing any further amendment which attempted to exempt the firearms, jewelry, furs, or gun safe, or to amend the B-4 schedule in any manner."

The debtors acting pro se filed a response on February 18, 1993 which was taken by me as a request to reconsider the order of February 8. By order filed February 25, the debtors' request for reconsideration was denied and, as the debtors were proceeding pro se, the order directed the clerk to deliver to the debtors a copy of part VIII of the Federal Rules of Bankruptcy Procedure pertaining to appeals from an order of the bankruptcy court.

The debtor Ronald F. Mayhew again responded to the order of February 25, 1993. The response of the debtor Ronald Mayhew

pertinent to the debtors' efforts to amend their B-4 schedule of exemptions clearly establishes receipt of the order of February 25, 1993 as well as the provisions of the bankruptcy rules regarding appeals. No appeal of the February 8, 1993 order was taken.

On July 16, 1993 the debtors Ronald F. Mayhew and Connie B. Mayhew again attempted to amend their B-4 schedule of exemptions and again attempted to exempt jewelry and firearms in the possession of the FBI in direct contravention to my order of February 8, 1993, the B-4 schedule submitted being an exact duplicate of the schedule stricken in the February order. On October 26, 1993 the trustee filed an objection to that attempt to amend the B-4 schedule.

On January 14, 1994 the debtors again attempted to amend their B-4 schedule of exemptions in contravention of the February 8, 1993 order. In lieu of an exemption in jewelry and firearms, this amended B-4 seeks to exempt \$8,900.00 representing cash proceeds from the trustee's sale of estate property, a house in Claxton, Georgia. On February 14, 1994 the trustee again objected to the attempted amendment to the B-4 schedule. Both the July 1993 and January 1994 "motions" to amend were signed by debtor Ronald Mayhew. The B-4 schedules themselves were signed by both debtors.

Only debtor Ronald Mayhew attended the rescheduled hearing on March 31, 1994. Debtor was given the opportunity to show why the exemptions should be allowed and why Rule 9011 sanctions should not be issued against both debtors for continued violation of an order

of this court.

Debtors proceeding pro se are bound to follow the Federal Rules of Bankruptcy Procedure just as any other party represented by counsel appearing in the Bankruptcy Court. In re Schaefer, 154 B.R. 227, 231 (Bankr. S.D. Tex. 1993); In re Burse, 120 B.R. 833 (Bankr. E.D. Va. 1990). Rule 9011 requires every petition, pleading, motion or other paper filed in a bankruptcy case to be signed by an attorney or a party, if proceeding pro se. The party's signature is a certification that

the . . . party has read the document; that to the best of the . . . party's knowledge, information, and belief formed after reasonable inquiry it 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; and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay, or needless increase in the cost of litigation or administration of the case.

If, however, a court finds the party has signed the document in violation of the Rule, the court is required to impose on the signer an appropriate sanction, "which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee." Fed. R. Bankr. P. 9011.

The test of whether a party has complied with the obligations of the Rule in signing a document and filing it with the court is an objective one: whether the party's conduct was

reasonable under the circumstances. In re Sowers, 97 B.R. 480, 485 (Bankr. N.D. Ind. 1989) (citing Brown v. Federation of State Medical Boards of U.S., 830 F.2d 1429, 1435 (7th Cir. 1987)). Debtors conduct in this case in signing and filing amended B-4 schedules in direct contravention of a court order prohibiting such conduct does not meet this requirement.

The debtors' attempted amendments in July 1993 and January 1994 are simply continuing efforts by debtors to circumvent the settlement agreement resolving the debtors' prior attempt to conceal assets from the bankruptcy estate.² In that agreement, as reflected in the previously quoted portion of my February 8, 1993 order, the chapter 7 trustee agreed to abandon any interest in a house in Ellijay, Georgia in return for payment of \$7,500.00 and the debtors claiming their \$10,000.00 real estate exemption available pursuant to O.C.G.A. §44-13-100(a)(1) therein, such amounts representing the equity in said house. The July 1993 and January 1994 amendments are barely disguised efforts by debtors to undo this agreement by claiming the previously allocated \$10,000.00 real estate exemption first in furs and jewelry and then in proceeds from other real estate.

At hearing debtor Ronald Mayhew attempted to justify

²In connection with this case debtor Connie Mayhew entered a guilty plea to two counts of bankruptcy fraud. United States of America v. Connie Brown Mayhew, case number: CR692-00017-001, United States District Court for the Southern District of Georgia.

debtors' filing these amendments in contravention of court order by contending that the \$10,000.00 exemption was not part of the original settlement. Debtor contended that the notice of compromise setting forth the terms of the settlement was ambiguous in that it referred to a "homestead exemption" which he, after inquiry of his attorney, believed to refer to the state law exemption made available to individuals not in bankruptcy, see O.C.G.A. § 44-13-1, and not to the bankruptcy B-4 exemption. Debtor contends he did not learn that the settlement referenced his B-4 exemptions until after a hearing on removal of the attorney for the trustee held May 7, 1992.

Debtor Ronald Mayhew is well aware that these contentions have, for the most part, been addressed by this court previously. Not only has the chapter 7 trustee and her attorney both represented to this court, under oath, that the \$10,000.00 exemption was part of the agreement, but also the attorney who represented debtors in the settlement negotiations testified to the same at the May 7, 1992 hearing. To the extent that debtors claim a fraud was perpetrated against them by the chapter 7 trustee, that claim has been rejected by me in the May 7, 1992 decision wherein I determined that no basis existed for the removal of the attorney for the chapter 7 trustee.

Moreover, even assuming this court were to find credible the testimony of debtor Ronald Mayhew that debtors did not know the agreement referenced B-4 exemptions until May 7, 1992, that would

not excuse debtors' conduct in filing the July 1993 and January 1994 amendments with this court. Debtors have had adequate opportunity to properly pursue their legal rights since that date but have failed to avail themselves of that opportunity. They cannot now complain to this court for that failure. If debtors truly did not understand the nature of the settlement agreement until May 7, 1992, a proposition I do not believe, debtors proper course would have been to make a direct challenge to the validity of that settlement agreement. Debtors did not. Instead, they chose to attempt to amend their B-4 schedule in contravention of the agreement. While that amendment basically raised the same issues debtor Ronald Mayhew attempted to relitigate at the most recent show cause hearing, the debtors did not see fit to attend a hearing on that first attempted amendment. The February 8, 1993 order expressly outlined the nature of the settlement, and based thereon, prohibited any further amendment by debtors to their B-4 schedules. It is clear that debtors were aware of this order, the subsequent denial of its reconsideration, their right to appeal that order and the proper procedures for so doing under the Bankruptcy Rules. For whatever reason, debtors chose not to appeal and that order is now final. At the latest, at that point in time, debtors knew the nature of the settlement agreement, knew the court's position in regard to its validity, and knew that they were prohibited from further challenge to that agreement by filing amendments to their B-4 schedule.

Nevertheless, debtors chose to continue forward in spite of that order. Debtors' continued attempts to amend can only be considered unwarranted and improper collateral attacks upon the February 8 order. Such amendments are completely frivolous, made without legal basis, and warrant sanctions under Rule 9011. See In re Grantham Brothers, 922 F.2d 1438, 1442 (9th Cir.), cert. denied sub nom, Needler v. Valley National Bank of Arizona, 112 S.Ct. 94 (1991).

While debtors have a right to proceed pro se in a bankruptcy case, this status does not alleviate them from the duties imposed by Rule 9011. A review of the history of this case and pleadings and papers filed therein by debtors reveals that they have received a great deal of latitude in treatment by this court in light of their contemptuous behavior. Debtors pleadings are full of unfounded allegations of fraud and deceit by this court and its officers and indicating a disdain and disregard for the authority of this court. The latest example, which may be taken as representative, is contained in debtors "pleading" filed March 3, 1994 in which debtors asserted a lack of notice of the February 24, 1994 hearing and reaffirmed their amended B-4 schedule. In that pleading, debtor Ronald Mayhew attacks the Chapter 7 case trustee as "a fraud, extortioner and embezzler", characterizes any hearing on the trustee's objection "regarding our legal right to use our exemptions as we set fit is farce and fraudulent activity," and alleges that "this Court helps her [the Chapter 7 case trustee] to

embezzle." In addition to this latest diatribe directed against this court, the Chapter 7 case trustee, her counsel, and the debtors' former counsel, the debtors attached to this pleading a copyrighted synopsis of the "Watergate" political scandal from the early 1970's without referencing any connection to this case. Debtors contempt for this court and its orders is even more blatantly exhibited by debtors' filing, in July 1993, of a B-4 schedule with full knowledge that said schedule was an exact duplicate of the amended schedule stricken by this court in its February 8 order. Finally, while debtors have availed themselves of the legal process afforded to them by federal bankruptcy law, they have continued to abuse it by having failed to appear at hearing scheduled on their attempted amendments, either on January 26, 1993 or at the latest hearing on February 24, 1994. The fact that debtors may have been unhappy with rulings of this court does not excuse the filing of pleadings in an effort to harass or abuse the court or its officers and must be considered as imposed for an improper purpose and sanctionable under Rule 9011.

According to testimony of debtor Ronald Mayhew at the show cause hearing, the signatures on the "amended B-4 schedules" submitted to this court in both July 1993 and January 1994 are those of debtors. Having found that a Rule 9011 violation has occurred, this court is obligated to impose an "appropriate" sanction upon the signer(s) of the offending pleadings. See In re Muscatell, 116 B.R.

295, 299 (Bankr. M.D. Fla. 1990). Rule 9011 sanctions are imposed in order to deter unwarranted filings and abusive pleading practices, to punish the offender, and to compensate those who have wasted time and effort in responding to the offensive conduct. Muscatell, at 300; Burse, at 836-37; Schaefer, at 232; In re Alberto, 119 B.R. 985, 992 (Bankr. N.D. Ill. 1990). In accordance with these purposes, Rule 9011 suggests that an appropriate sanction "may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee." See also Seneca Resources Corp. v. Moody, 135 B.R. 260, 261 (S.D. Tex. 1991) ("A litigant who files patently frivolous motions should expect to pay a penalty equal to at least the costs incurred by those who must deal with such motions."). Unsecured creditors should not be made to suffer a reduced dividend because the estate has had to compensate the Chapter 7 trustee and her attorney for expenses incurred in responding to debtors' unwarranted amendments. The proper party to pay for such costs is the debtors, not the estate. An award of attorney's fees and expenses is appropriate in this case.

Accordingly, it is hereby ORDERED that the chapter 7 trustee's objection to debtors' amended B-4 schedule of exemptions filed January 14, 1994 and reaffirmed March 3, 1994 is sustained. The amended schedule is ORDERED stricken.

It is further ORDERED that the debtors are required to pay as sanctions for violation of Federal Rule of Bankruptcy Procedure 9011, all the attorney fees and expenses incurred by the Chapter 7 trustee in responding to debtors' attempted amendments filed in July 1993 and January 1994, including any actions taken through the show cause hearing held March 31, 1994. The chapter 7 trustee is directed to file an itemization of such fees and expenses with the clerk within 30 days of the entry of this order whereupon after consideration of the itemization an appropriate award will be entered.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this ____ day of June, 1994.