

CONSUMER BANKRUPTCY

Bankruptcy Attorney Pays Price for Vexatious Litigation

Litigation must have a proper purpose

By Craig D. Robins

A recent court decision brought back a memory of an odd discussion I had with an attorney in the hallway of the bankruptcy court a good number of years ago. He was there to defend a Chapter 13 trustee's motion to dismiss and boasted to me that he was not worried about losing, as he planned to "paper the trustee to death" with an extraordinary amount of litigation.

I found his comments most peculiar as they were illogical and smacked of bad faith. The attorney didn't plan to litigate the merits, he instead sought to essentially harass the trustee with excessive motions practice, believing that the trustee would eventually give in. This attorney apparently had a few loose screws in his head as such a frivolous litigation tactic would certainly not succeed and could only cause the attorney additional problems.

I don't know how that attorney ultimately fared with his Chapter 13 case, but I read a few years later that he had been sanctioned by the bankruptcy court in several other cases and ultimately disbarred from practicing any law in New York.

As Chief Judge Irving Kaufman said 30 years ago, "advocacy is an art in which the unrelenting pursuit of truth and the most thorough self-control must be delicately balanced," and "zealous advocacy on behalf of a client can never excuse contumacious or disrespectful conduct."

Judge Elizabeth S. Stong, sitting in the Brooklyn Bankruptcy Court, recently cited these quotes from Judge Kaufman in a case involving an attorney who thought he could engage in vexatious litigation as a strategy for thwarting a Chapter 7 trustee's adversary proceeding.

In *Debra Kramer, Trustee of the Estate of Shahara Khan v. Mahia*, No. 10-46901-ess, (Bankr. E.D.N.Y. March 11, 2013), Judge Stong addressed a situation in which an attorney acted in bad faith to multiply proceedings unreasonably and vexatiously. The judge sanctioned the

attorney \$15,000.

In that Chapter 7 case it appeared that the debtor transferred her home to her son for no consideration. The trustee, through her counsel, Avrum J. Rosen, of Huntington, then brought an adversary proceeding against the son in December 2011, seeking to set aside the transfer as a fraudulent conveyance.

At the pre-trial conference six weeks later, an attorney, Karamvir Dahiya of New York City, appeared. The court directed him to respond to the complaint within a week, which was already past due. Dahiya filed his answer a week after the court directed him to. In it, he included counterclaims against the trustee and he also demanded a jury trial.

The answer contained allegations that were bizarre and outlandish. The counterclaims sought a permanent injunction against the trustee to bar her from bringing actions against the defendant without first showing that there was "probable cause." Dahiya also brought a counterclaim seeking to compel the court to amend its Local Rules to impose a similar requirement on all trustees.

In the first counterclaim, which was for "abuse of process," Dahiya alleged that the trustee brought the adversary proceeding without a basis in fact or law, to intimidate the family to extract a settlement. He characterized the conduct of the trustee and her counsel as "contemptible from all aspects" and claimed that they "acted deliberately, maliciously, oppressively and with callous and intentional disregard of their duties..." Dahiya further sought an award of punitive damages, attorneys' fees and costs.

In the second counterclaim, which was for "constitutional torts," he charged the trustee with deliberately hurting the family composition. He stated that the defendant's "spiritual duty to maintain his fam-



Craig D. Robins

ily has been negatively impacted" by the proceeding. He alleged that the trustee did not "do her homework" and that she had abused her powers.

Dahiya further sought an injunction permanently enjoining the trustee from instituting any proceedings unless the trustee filed an independent sheet along with the summons and complaint delineating the

steps the trustee had undertaken to ascertain the facts alleged in the complaint, and a minimum one-page summary of arguments as to why there is probable cause.

Finally, the attorney asked the court to direct the United States Trustee to investigate the assertion of intra-family claims by Chapter 7 trustees.

The trustee then brought a motion for sanctions pursuant to 28 U.S.C. § 1927, which allows sanctions to be imposed against an attorney who engages in unreasonable and vexatious litigation, and Bankruptcy Code § 105, which permits bankruptcy judges to essentially grant any relief necessary to carry out the mandates of the Bankruptcy Code.

In her motion, the trustee, after describing her investigation and due diligence, argued that Dahiya brought the counterclaims in bad faith, making meritless allegations in order to harass, intimidate, and disparage the trustee, and to frustrate the purpose of the bankruptcy process and prevent the court from reaching the merits of the adversary proceeding. The trustee also pointed out that Dahiya had brought similar abuse of process counterclaims against trustees in at least five other cases.

A month after the trustee brought the sanctions motion the defendant fired Dahiya and hired new counsel who immediately withdrew the counterclaims. Oddly, seven months later, the defendant discharged the new attorney and rehired Dahiya.

Dahiya's response to the sanctions

motion was marked by many requests for adjournments, missed deadlines, and significant and unnecessary delay. Dahiya agreed to a settlement, but then refused to go forward with it. Dahiya also retained an attorney, dismissed him, then retained a second. All of this resulted in a delay of six months before the sanctions motion was ultimately heard. Dahiya argued that the court did not have the authority to sanction him.

In her 31-page decision, Judge Stong confirmed after a lengthy discussion that the court did indeed have the authority to sanction attorneys pursuant to § 1927, stating the court has the ability to protect the integrity of the bankruptcy process by an award of sanctions as well as the court's inherent authority.

The judge stated that sanctions are designed primarily to punish the offending attorney and to deter the repetition of the sanctionable conduct. "Sanctions are appropriate under § 1927 where an attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose such as delay."

The court held that Dahiya did not have colorable claims against the trustee, and acted in bad faith by filing the counterclaims. The judge stated that he "acted for an improper purpose, and the counterclaims were without merit." Perhaps Dahiya learned a \$15,000 lesson that litigation must have a proper purpose.

Note: Craig D. Robins, a regular columnist, is a Long Island bankruptcy lawyer who has represented thousands of consumer and business clients during the past twenty years. He has offices in Coram, West Babylon, Patchogue, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: www.BankruptcyCanHelp.com and his Bankruptcy Blog: www.LongIsland-BankruptcyBlog.com.