UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

CHRISTOPHER BRIAN CHAMBERS,	Case No. DK 08-05284
	Chapter 11
Debtor.	Hon. Scott W. Dales

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MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Christopher Chambers (the "Debtor") filed a voluntary petition for relief under chapter 11 on June 16, 2008. After considerable wrangling with his principal creditor, Christopher Helm, Jr. ("Mr. Helm"), the Debtor proposed, and the court confirmed, a reorganization plan (as modified, the "Plan," DN 14, 52, 98), premised largely on a settlement between the Debtor and Mr. Helm. The Debtor made payments pursuant to the Plan during the 36 months following confirmation, and from time to time, Mr. Helm challenged the settlement or the Plan, complaining that the Debtor, Debtor's counsel, Helm's former counsel, the United States Trustee, and even the court engaged in misconduct bordering on conspiracy. At long last, however, the Debtor filed a motion seeking entry of a discharge and a final decree closing the case. *See* Stipulated Application for Entry of Final Decree and Request for Discharge (the "Motion," DN 112). Mr. Helm opposes the Motion.

The court held a hearing in Kalamazoo, Michigan, on November 13, 2013 to consider the Motion, as well as the Debtor's request for sanctions, which prompted the court to issue a show cause order ("Show Cause Order," DN 120) against Mr. Helm under Rule 9011. After conducting an evidentiary hearing, the court rendered an oral opinion announcing its intention to

enter a discharge and final decree, but took the request for sanctions under advisement. This Memorandum of Decision and Order supplements the court's oral ruling, and explains the court's decision to refrain from imposing sanctions under Rule 9011.

I. FINAL DECREE AND DISCHARGE ISSUES

Shortly after the Debtor filed his voluntary petition under chapter 11, Mr. Helm filed a complaint to except his debt from discharge under 11 U.S.C. § 523(a)(2)(B), (4) and (6). After extensive discovery and several motions, the parties (both represented by counsel at the time) entered into a settlement agreement (the "Agreement") establishing the amount of Mr. Helm's claim and the terms by which the Debtor would satisfy the claim under the Plan.

Without objection from either Mr. Helm or his counsel, the Debtor incorporated the Agreement into his Plan, agreeing to repay Mr. Helm $200,000.00 which included $60,000.00 upon Plan confirmation, a final balloon payment of $25,000.00, and, in the interim, monthly payments of $1,575.00[1] on the first of each month (with a seven day grace period). The Agreement and Plan also entitled Mr. Helm to an 8.5 acre parcel of land on East DE Avenue in Kalamazoo, with a possible adjustment to the settlement payment if an appraisal by a jointly-selected appraiser proved the property's value to be higher or lower than anticipated. Mr. Helm accepted his treatment under the Plan in a ballot filed with the court on May 5, 2010 (DN 68), and the court confirmed the Plan by order dated May 13, 2010 (DN 70).

At some point after confirmation, Mr. Helm and his counsel, Thomas King, had a falling out, and Mr. King formally withdrew his appearance on November 15, 2012 (DN 96).

[1] The monthly payment of $1,575.00 included 6% interest on the deferred $25,000.00 final lump sum payment (which the parties calculated at $125.00 per month).

On April 8, 2013, as he neared the conclusion of his payment period under the Plan but before he completed all payments,[2] the Debtor filed a First Amended Plan (the "Amendment," DN 98) which re-calculated the balance owed to Mr. Helm as $39,942.25, minus any monthly payments to be made after filing the Amendment. The Amendment did not reduce the amount due under the Agreement, but simply recalculated and authorized a lump sum payment to be remitted in final satisfaction of Mr. Helm's claim. The Debtor proposed to pay Mr. Helm the adjusted balance in a lump sum, ten days after entry of the order approving the Amendment.

The Debtor wrote a check to Mr. Helm in the amount of $1,575.00, representing the last monthly payment, and deposited the check directly into Mr. Helm's savings account at their common bank on May 1, 2013 (Debtor's Exh. A), as he had consistently done with other payments. Approximately three weeks later, again without objection from Mr. Helm, the court approved the Amendment on May 30, 2013 (DN 108). According to the Debtor's credible testimony as corroborated by documentary evidence, the Debtor made a final lump sum payment in the amount of $38,566.78, on May 29, 2013, again by depositing a check into Mr. Helm's savings account. (UST Exh. 2). The sum of these last two payments exceeded $39,942.25[3] — thereby fulfilling the Debtor's payment obligations under the Plan as amended. As the court noted during the hearing, and as Mr. Helm eventually conceded on the record, the Debtor's indisputable compliance with his payment obligations as summarized in the Amendment renders immaterial any controversy between the Debtor and Mr. Helm concerning the appraiser's valuation of the 8.5 acre parcel on East DE Avenue in Kalamazoo, and the credit the Debtor received based on the appraisal. Because the Amendment effectively "trued up" the prior monthly payments, and because the court approved the Amendment without objection, after

[2] *See* 11 U.S.C. § 1127(e) (debtor may propose post-confirmation amendment before completion of payments).
[3] The two payments total $40,141.78, which presumably reflects an adjustment in accordance with the amortization table mentioned in the First Amended Plan at footnote 1.

notice and an opportunity for hearing, any dispute about the sufficiency of the monthly payments is similarly foreclosed. In short, the Amendment became the Plan, and the Plan is binding on the parties, including Mr. Helm. 11 U.S.C. §§ 1127(a) (modification of plan) & 1141(a) (effect of confirmation). The court finds that the Debtor has made all payments under the Plan, and because there is no reasonable cause to believe that § 522(q)(1) may be applicable to this Debtor,[4] he is entitled to a discharge under § 1141(d). The case may be closed upon entry of a final decree.

II. SANCTIONS UNDER RULE 9011

The issue of sanctions presents a closer question, but for the following reasons the court will not make an award to the Debtor or his counsel under Rule 9011.

The Debtor filed a motion for sanctions because he contends (1) that Mr. Helm had no basis for disputing that the Debtor made all payments under the Plan, and (2) that his objection to the final decree was filed for an improper purpose: simply to harass the Debtor and drive up his litigation expense. The court denied the request in the Show Cause Order, however, because the Debtor did not observe the 21 day safe harbor that Rule 9011 treats as a prerequisite to filing a motion for sanctions. *See* Fed. R. Bankr. P. 9011(c)(1)(A).

In the same order that denied the Debtor's sanction motion, however, the court *sua sponte* directed Mr. Helm to show cause why the court should not sanction him under Rule 9011. *See* Fed. R. Bankr. P. 9011(c)(1)(B)(sanctions on court's initiative). The court issued the Show Cause Order because of the extravagant claims included within Mr. Helm's recent filings, and

[4] The Debtor elected federal exemptions under § 522(b)(2), rather than relying on § 522(b)(2); the United States Trustee supports entry of the discharge; and the record contains no evidence of criminal conviction, securities fraud on the Debtor's part, or violation of 18 U.S.C. § 1964, or criminal acts resulting in physical injury or death.

because the court hoped to address the sanction and end-of-case issues in a single hearing for the convenience of the parties.

Under Rule 9011, a party or lawyer who files a pleading or other paper with a court certifies "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that:

> (1) [the pleading or other paper] is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely 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 belief or a lack of information.

Fed. R. Bankr. P. 9011(b). The court understands that Rule 11's interdiction against frivolous or harassing filings applies equally to the unrepresented litigant as the counseled, so the fact that Mr. Helm filed the offending response to the Debtor's Motion without benefit of counsel does not excuse, though it may explain, his behavior. His written submissions lack the restraint and professionalism that counsel generally brings to emotionally-charged controversies such as the present.

Having listened carefully to him during the hearing, the court concludes that Mr. Helm has had difficulty understanding the effect of the Debtor's bankruptcy on his rights generally, and the binding effect of the Agreement and the Plan, more particularly. He has been uniformly disappointed in his dealings with others —especially his former counsel, the Debtor, Debtor's

counsel, the jointly-retained appraisers, and the court. He has filed lawsuits and grievances, or expressed an interest in doing so, against each of the foregoing, and evidently has been unable to resist expressing himself vehemently, at times with exaggeration, and at other times, without a basis in fact. Mr. Helm apparently perceives these proceedings as unjust, somehow licensing him to make intemperate statements in court filings and to law enforcement authorities. Understandably, the Debtor's counsel entreated the court, in part through a sanctions motion, to bring the matter (and especially Mr. Helm's hyperbolic accusations) to an end.

In opposing the final decree, Mr. Helm filed a response (DN 115) in which he contends that the Debtor had not made all payments under the Plan, arguing in effect that at least one of the payments was late, entitling him to insist on a greater final payment under his interpretation of the Agreement.

Although the court ultimately rejected Mr. Helm's argument given the preclusive effect of the Amendment (which established the amount due as of May 30, 2013), the court does not regard as frivolous his contention that he did not receive payment in full. Indeed, the Debtor produced receipts for only 33 of the 36 payments, and for most of the hearing the United States Trustee endeavored to establish the Debtor's payment history using a combination of receipts and bank statements. As it turns out, however, the reconciliation approved in the Amendment rendered the evidence of earlier payments unnecessary. And, although the court rejected Mr. Helm's attack on the appraiser's valuation of the East DE Avenue property for similar reasons, it understands Mr. Helm's desire to adjust the appraisal-related credit that reduced the Debtor's final lump sum payment, given the vagaries of property valuation and the fact that the appraisal process is an art, not a science. Mr. Helm's arguments with respect to whether the Debtor made

all payments, though ultimately unsuccessful, were not so outlandish as to warrant imposition of sanctions under Rule 9011.

The court, however, is more troubled by his repeated and implausible allegations of criminal wrongdoing in his court filings and especially his letters to law enforcement. His claims in court filings of fraud and conspiracy among the Debtor, Mr. King, Mr. Van Elk, the United States Trustee, and the court amount to nothing more than fantastic ranting and harassment.

At the hearing, it became clear that the Debtor and his counsel shared the court's concerns. They especially regarded Mr. Helm's out-of-court allegations to the Kalamazoo County Sheriff and the United States Attorney as outrageous, libelous and malicious. The Debtor's desire and need to end Mr. Helm's diatribe is primarily what prompted him to seek sanctions in the first place. But, as the Sixth Circuit has explained, the provisions of Rule 11 — and therefore its bankruptcy counterpart— govern "papers filed in court"; the rule does not proscribe other "questionable [litigant] conduct in general." *Jackson v. Law Firm of O'Hara, Ruberg, Osborne and Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989). Here, Mr. Helm's reports to law enforcement, however questionable, are outside the reach of Rule 9011.[5]

More important, although the Sixth Circuit recognizes that Rule 9011 may be used to compensate litigants for the expenses caused by frivolous or improper filings, the primary purpose of the rule is deterrence:

> There is agreement among the circuits, with which we concur, that because deterrence, not compensation, is the principal goal of Rule 11, courts should impose the least severe sanction that is likely to deter.

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[5] If the Debtor or his attorney have libel or malicious prosecution claims against Mr. Helm for his persistent communications with law enforcement officials, such tort claims should not be addressed in a proceeding initiated by the court *sua sponte* under Rule 9011, and not in a court probably lacking the authority to try claims that may be regarded as "personal injury tort" claims. *See* 28 U.S.C. § 157(b)(5) ("personal injury tort" claims to be tried in U.S. District Court); *compare Elkes Development, LLC v. Arnold (In re Arnold)*, 409 B.R. 849 (Bankr. M.D.N.C. 2009) (defamation claim is "personal injury tort" under 28 U.S.C. § 157(b)(5)) *with In re Atron Inc. of Michigan*, 172 B.R. 541 (Bankr. W.D. Mich. 1994) (race discrimination is not "personal injury tort" claim).

Jackson, 876 F.2d at 1229. Because the court has determined to enter a final decree, which will bring these proceedings to an end, and because the entry of the discharge and the ensuing discharge injunction will stop Mr. Helm from continuing to harass the Debtor in order to collect his debt, the "principal goal of Rule 11" will be served without imposing any sanction. In other words, closing the case and entering the discharge will most certainly deter Mr. Helm from further harassment in this court. Furthermore, should Mr. Helm wish to file additional offensive papers in this court, he will be required to pay a reopening fee under 28 U.S.C. § 1930, presently set at $1,167.00. Thus, upon the closing of the case, Mr. Helm will have lost his primary public forum for his complaints.

The court agrees with Debtor's counsel that it should take steps to bring this bitter and expensive feud to an end, but imposing sanctions is likely, instead, to prolong the animosity and expense by giving rise to collection proceedings against, and appeals by, Mr. Helm. In the end, a sanction award could prove more costly for the Debtor because he will likely spend more in legal fees than the court could award today as compensation under Rule 9011.

For these reasons, the court regards the Show Cause Order as satisfied, and will not impose any sanction against Mr. Helm under Rule 9011.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 112) is GRANTED and the Clerk shall enter (1) a discharge using Official Form B18RI and (2) a final decree using Official Form B271.

IT IS FURTHER ORDERED that the case will be closed without imposing sanctions against Mr. Helm under Rule 9011.

IT IS FURTHER ORDERED that pursuant to LBR 5005-4 and Fed. R. Bankr. P. 9022, the Clerk shall serve this Memorandum of Decision and Order upon Christopher Helm, Jr., Christopher Brian Chambers, John M. Van Elk, Esq., Michael D. Almassian, Esq., Thomas G. King, Esq., the United States Trustee, and all parties listed on the Debtor's mailing matrix.

END OF ORDER

IT IS SO ORDERED.

Dated November 19, 2013

Scott W. Dales
United States Bankruptcy Judge