

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

SOUTHERN ILLINOIS RAILCAR CO., Bankruptcy Case No. 02-30456

Debtor.

OPINION

This matter having come before the Court on a Motion to Compel Production of Documents, CBC's Objection to Debtors' Motion to Compel, CBC's Trial Brief & In Limine Request, Objection and Memorandum in Opposition to Caldwell-Baker Company's Motion in Limine, Southern Illinois Railcar Company and Southern Illinois Railcar Company, and L.L.C.'s Motion for Sanctions and to Strike the Claim of Caldwell-Baker Company; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On May 3, 2004, after initially hearing arguments on the Debtor's Motion to Compel Production of Documents, and the Objection thereto by Caldwell-Baker Company, the Court ordered Linus Baker and Caldwell-Baker Company to certify, within two days, that the documents which the Debtor sought in the Motion to Compel Production of Documents did not exist. The Court advised Linus Baker that such a certification was at his own risk, and that the Court would carefully review this matter.

Shortly thereafter, Linus Baker filed a document entitled "Certification of Production of Documents," which he signed, together with the President of Caldwell-Baker Company, Carle E. Baker, Jr. The Certification was not dated, and it was not signed under oath, nor under penalty of perjury. The Certification merely indicated that Caldwell-Baker Company did not have the documents which the Debtor sought in its Motion to Compel Production of Documents. Following the filing of the Certification, the Debtor, being unsatisfied with it, filed a Motion for Sanctions and to Strike the Claim of Caldwell-Baker Company.

The Court held a final hearing on the Motion to Compel Production of Documents and the Motion for Sanctions and to Strike the Claim of Caldwell-Baker Company on July 16, 2004. At that hearing, Linus Baker argued that his Certification complied with the requirements of the Court and complied with the requirements of statutory law. Counsel for the Debtor argued to the contrary, and the Court finds that it is in agreement with the arguments of Debtor's counsel. The Court finds that the Certification of Production of Documents meets neither the requirements of the Court nor of statutes governing said certification. The Court is further troubled by the fact that, in spite of the certification that Caldwell-Baker Company had no documents in its possession, there were, in fact, documents turned over to Debtor's counsel after the filing of the Certification. The Court is further

troubled by the fact that, although Linus Baker argues that the documents which Debtor's counsel seeks do not exist, he was somehow able to argue that the credits which Debtor's seek to prove by virtue of the requested documents would amount only to a mere \$100,000, and, thus, are de minimus. It is beyond the understanding of the Court how Linus Baker can on the one hand argue that no documents exist, but on the other hand argue that the credits which those documents would prove amount to a mere \$100,000, if, in fact, those documents do not exist. All in all, the Court finds that the conduct of Linus Baker and the conduct of his client, Caldwell-Baker Company, is improper and has resulted in undue delay of these proceedings and prejudice to the Debtor.

Rule 9011(b)(2) and (3) of the Federal Rules of Bankruptcy Procedure states, in pertinent part, as follows:

(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, . . .

(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; . . .

The goal of the sanctions remedy provided under Bankruptcy Rule 9011 is to deter unnecessary filings, prevent the assertion of frivolous pleadings, and require good faith filings. In re Rossi, 1999 WL 253124 (Bankr. N.D. Ill. 1999); Szabo Food Service, Inc. v. Canteen Corp., 823 F.2d 1073 (7th Cir. 1987), *cert. dismissed*, 485 U.S. 901, 108 S.Ct. 1101 (1988). The rule is not intended to function as a fee shifting statute which would require the losing party to pay costs. State Bank of India v. Kaliana, 207 B.R. 597 (Bankr. N.D. Ill. 1997) (*citing* Mars Steel Corp. v. Continental Bank, 880 F.2d 928 (7th Cir. 1989)). Thus the Rule focuses on the conduct of the parties and not on the results of the litigation.

The present version of Bankruptcy Rule 9011 provides that, upon presenting in the manner of signing, filing, submitting, or later advocating documents to the Court, a party or their counsel represents to the best of that person's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, such document is not presented (1) for any improper purpose, (2) based upon frivolous legal arguments, (3) without adequate evidentiary support for its allegations, and (4) without a basis for denials of fact. These provisions essentially create two grounds for the imposition of sanctions: (1) the "frivolousness clause" which looks to whether a

party or an attorney made a reasonable inquiry into both the facts and the law; and (2) the "improper purpose clause" which looks to whether a document was interposed for an illegitimate purpose, such as delay, harassment, or increasing the costs of litigation. See: Kaliana, supra, at 601.

With respect to the "frivolousness clause" the relevant inquiry has two prongs: (1) whether the attorney made a reasonable inquiry into the facts, and (2) whether the attorney made a reasonable investigation of the law. Home Savings Assn. of Kansas City v. Woodstock Assn., 121 B.R. 238 (Bankr. N.D. Ill. 1990), *citing* Brown v. Federation of State Medical Boards of the United States, 830 F.2d 1429 (7th Cir. 1987). The investigation of the facts must have been reasonable under the particular circumstances of the case. In re Excello Press, Inc., 967 F.2d 1109 (7th Cir. 1992). A pleading is well grounded in fact if it has some reasonable basis in fact. Woodstock, supra, at 242. On the other hand, a pleading is not well grounded in fact if it is contradicted by uncontroverted evidence that was or should have been known by the attorney signing the document. Id. at 243.

Rule 9011(c) states:

(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 sanctions upon the attorneys, law firms, or parties that have violated

subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitations shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing the attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(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, and 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.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(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.

It is clearly stated in Rule 9011(c)(2) that 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. The Rule is not designed as a fee shifting rule from the prevailing parties to the losing parties. Sanctions are limited to those that are "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." See: In re Poli, 298 B.R. 557 (Bankr. E.D. Va. 2003).

In this case, given the degree of undue delay and prejudice to the Debtor, the Court finds that an appropriate amount to deter Attorney Linus Baker and his client, Caldwell-Baker Company, from improper conduct in the future is the sum of \$15,000. The Court finds that this amount should be paid to the attorneys for Debtor, and that said amount should be the joint and several obligation of both Attorney Linus Baker

and his client, Caldwell-Baker Company. The Court further finds that, although the conduct of Attorney Linus Baker and his client is clearly sanctionable, it does not rise to the level of conduct which would require striking the entire claim of Caldwell-Baker Company.

Turning to the in limine request of Caldwell-Baker Company, the Court finds that the in limine request contained in CBC's Trial Brief and In Limine Request is identical to a motion in limine previously filed with the Court on March 13, 2003, on which the Court had not previously ruled. As for this in limine request, the Court finds that both the motion for in limine filed on March 13, 2003, and the in limine request found in CBC's Trial Brief and In Limine Request should be denied. The matters raised are of a factual nature and can be dealt with at the time of trial. Allowing evidence on these matters is in no way prejudicial to Caldwell-Baker Company. In essence, the in limine request and motion for in limine seeks a ruling by summary judgment, and the Court finds that, given the factual questions present, there is absolutely no basis on which to rule in favor of Caldwell-Baker Company in a summary fashion.

Finally, the Court finds, as to the Motion to Compel Production of Documents, that there should be a continuing order for Caldwell-Baker Company to produce any documentation that it may have relating to shop days or documents reflecting the days on which the leased railcars were in the shop for repairs, as well as documentation relating to

mileage credits that may exist.

ENTERED: July 23, 2004.

/S/Gerald D. Fines

GERALD D. FINES

United States Bankruptcy Judge