



**SO ORDERED.**

**SIGNED** this 12th day of June, 2013.

*Dale L. Somers*

Dale L. Somers  
United States Bankruptcy Judge

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**Designated for on-line use but not print publication  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**DARREN JERROD BOHANON and  
TERESA ELAINE BOHANON,**

**DEBTORS.**

**CASE NO. 12-12582  
CHAPTER 7**

**J. MICHAEL MORRIS, Trustee,**

**PLAINTIFF,**

**v.**

**ADV. NO. 12-5181**

**TERESA ELAINE BOHANON and  
EASY CREDIT AUTO SALES, INC.,**

**DEFENDANTS.**

**ORDER DENYING DEFENDANT EASY CREDIT AUTO SALES, INC.'S  
MOTION FOR RULE 9011 SANCTIONS WITHOUT PREJUDICE**

Defendant Easy Credit Auto Sales, Inc. (Easy Credit) has moved under Rule 9011<sup>1</sup> for an order sanctioning Plaintiff, J. Michael Morris, Chapter 7 Trustee, for "the filing of an Amended Complaint asserting a claim that is wholly unsupported by the law and was alleged in bad faith in an effort to harass Defendant Easy Credit."<sup>2</sup> The Trustee opposes the motion.<sup>3</sup> The Court has jurisdiction.<sup>4</sup>

### **FACTUAL BACKGROUND.**

On September 12, 2007, Easy Credit obtained judgment against the Debtors. On August 20, 2012, less than 90 days before the Debtors filed for relief under Chapter 7 on September 13, 2012, Easy Credit obtained a garnishment order against Debtor Teresa Bohanon's employer, Wesley Medical Center. The medical center withheld funds for three pay periods, one period ended pre-petition and two periods ended post-petition, and forwarded checks for the funds to Easy Credit or its counsel. On October 4, 2012, Easy Credit filed a release of garnishment. On October 18, 2012, without notice to the Trustee, the checks for the last two pay periods, which were received by Easy Credit or its counsel

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<sup>1</sup> Fed. R. Bankr. P. 9011. References to the rule in the text shall be to Rule 9011.

<sup>2</sup> Dkt. 26.

<sup>3</sup> Dkt. 30.

<sup>4</sup> This Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a) and (b), and the Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District's bankruptcy judges all matters under the Bankruptcy Code and all proceedings arising under the Code or arising in or related to a case under the Code, effective July 10, 1984. Furthermore, this Court may hear and finally adjudicate this matter because it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G). There is no objection to venue or jurisdiction over the parties.

post-petition, were returned to Wesley Medical Center, which apparently transferred the funds to Debtor Teresa Bohanon.

On October 29, 2012, the Trustee made demand on Easy Credit for avoidance and turnover of the garnished funds. After unproductive communications, the Trustee filed this adversary proceeding on November 9, 2012. As to Easy Credit, he sought avoidance of the prepetition garnishments under § 547.<sup>5</sup> On November 30, 2012, the Trustee filed an Amended Complaint, which added two allegations: (1) Paragraph 10 against Defendant Teresa Bohanon, for turnover of prepetition wages, as an alternative to the avoidance under § 547; and (2) paragraph 11 against Easy Credit, alleging that the return to Wesley Medical Center of that portion of the second garnishment check which represented pre-petition wages "constituted an action of 'continuation' of a judicial proceeding commenced before the commencement of the case and/or an act to exercise control over property of the estate," in violation of the "automatic stay pursuant to 11 U.S.C. § 363(a)(1) and/or (3)."<sup>6</sup> "[A]ppropriate damages" against Easy Credit were sought.<sup>7</sup>

On January 25, 2012, Easy Credit filed its motion for sanctions under Rule 9011. Plaintiff was later granted leave to amend the Amended Complaint by adding

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<sup>5</sup> 11 U.S.C. § 547. Future references to Title 11 shall be to the section number only.

<sup>6</sup> Dkt. 9 at 3.

<sup>7</sup> *Id.*

"Alternatively, the Court should award damages for contempt under § 105(a)"<sup>8</sup> at the end of paragraph 11.

### **DISCUSSION.**

"The purpose of . . . Rule 9011 is to deter baseless filings in bankruptcy court . . . . The rule imposes sanctions on persons violating the rule and, it is hoped, will act to deter future conduct of the same nature."<sup>9</sup> Easy Credit's motion for sanctions under Rule 9011 focuses exclusively on the allegations of paragraph 11 of the Amended Complaint. Easy Credit argues that Plaintiff's reliance on § 363(a) for imposing sanctions is baseless and lacks a non-frivolous basis, even if the claim is considered to being made under the correct statute, § 362, the claim is not supported by case law in any jurisdiction nor is arguably supported by the Code. The argument is supported by several pages of analysis and case law citations, which conclude with the statement that "[a] creditor's return of garnished wages collected post-petition to the employer, as opposed to the trustee, *before* demand is made by the trustee has never been held to violate the automatic stay."<sup>10</sup> In essence, Easy Credit, through the vehicle of a Rule 9011 motion, is requesting the Court to rule on the merits of the allegations of paragraph eleven of the Amended Complaint.

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<sup>8</sup> See dkt. 51, granting motion to amend (dkt. 41).

<sup>9</sup> 10 *Collier on Bankruptcy* ¶9011.01(Alan N. Resnick & Henry J. Sommer eds.-in-chief, 16th ed. rev. 2013).

<sup>10</sup> Dkt. 26.

Of course, the Trustee has a different view of the law and the appropriateness of imposing a Rule 11 sanction.

The Court declines to grant Easy Credit's motion. A ruling on the merits of the allegations of the Amended Complaint should be sought by a motion under the rules of bankruptcy procedure designed for such purpose, such as a motion for summary judgment. "[A] Rule 11 motion for sanctions is not a proper substitute for a motion for summary judgment."<sup>11</sup> "There are meaningful differences between the purposes and standards associated with Rule 11, which governs the imposition of certain types of sanctions, and Rule 56, which governs motions for summary judgment."<sup>12</sup> "Although dismissal of baseless claims is theoretically available under Rule 11, it is better to deal with those arguments on the merits under a rule like Rule 56."<sup>13</sup> As stated in the advisory committee notes to the 1993 amendments to Rule 11, "Rule 11 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (b). They should not be employed . . . to test the legal sufficiency or efficacy of allegations in the pleadings . . ."<sup>14</sup>

Further, this is the type of Rule 9011 motion where a ruling should be deferred until the end of the case. The advisory Committee Notes to the 1983 Amendments of

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<sup>11</sup> *Safe-Strap Co., Inc. v. Koala Corp.*, 270 F. Supp.2d 407, 416 (D.S.D.N.Y. 2003).

<sup>12</sup> *Id.* at 417.

<sup>13</sup> *In re New Motor Vehicle Canadian Export Antitrust Litigation*, 244 F.R.D. 70, 74 (D. Me 2007).

<sup>14</sup> Fed. R. Civ. P. 11 advisory committee notes (1993).

Rule 11 state: “The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation . . .”<sup>15</sup> As to the timing of ruling on a Rule 11 motion, Wright and Miller state:

If the alleged misconduct occurs during the discovery process or another part of the pretrial phase, the matter usually should be resolved at once, in order to avoid prejudicing the resolution of the litigation’s substantive issues on their merits and to discourage the possibility of further abuses. If the challenged conduct is the institution of the action itself, or occurs during a hearing or at trial, however, the question whether there has been a Rule 11 violation generally is not decided until after the litigation is completed, in order to avoid delaying the disposition of the merits of the case.<sup>16</sup>

It is sensible for courts to defer ruling on sanction motions challenging the institution of the case “until the end of trial to gain a full sense of the case.”<sup>17</sup>

### **CONCLUSION.**

For the foregoing reasons, the Court denies Easy Credit’s motion without prejudice. If it desires, Easy Credit may renew the motion at the end of the case.

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<sup>15</sup> Fed. R. Civ. P. 11 advisory committee’s note (1993).

<sup>16</sup> 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1337.1 at 715 (3rd ed. 2004).

<sup>17</sup> *Lichtenstein v. Consolidated Serv. Group, Inc.*, 173 F.3d 17, 23 (1st Cir. 1999).

The foregoing constitute Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure which makes Rule 52(a) of the Federal Rules of Civil Procedure applicable to this proceeding.

**IT IS SO ORDERED.**

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