

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

CHRYSTAL MESSER,

Ch. 7

Debtor

Case No. 00-70664

RAYMOND GUY REVELL
BETTY REVELL, and
DARDRA REVELL FREEMAN,

Plaintiffs,

v.

CHRYSTAL MESSER,

Defendant

Adv. No. 01-90005

**ORDER DETERMINING SANCTIONS
AGAINST DARDRA REVELL FREEMAN**

THIS MATTER came on for hearing August 17, 2005 for a determination of the amount of sanctions to be imposed upon Plaintiff in this adversary proceeding, Dardra Revell Freeman (n/k/a Dardra Revell), pursuant to this Court's order on Defendant's Motion for Sanctions entered on November 27, 2002. That order followed the entry of a final summary judgment in favor of Defendant on June 11, 2002. The instant hearing was conducted based on the mandate of the 11th Circuit Court of Appeals in *Martin vs. Automobili Lamborghini Exclusive, Inc.*, 307 F.3rd 1332 (11th Cir. 2002), which requires a court to take into consideration the financial circumstances of the party being sanctioned. During the time between entry of the order granting Defendant's Motion for Sanctions and the instant hearing, Defendant and Plaintiff's former counsel, Mowrey & Biggins,

P.A., reached a settlement pursuant to which Mowrey & Biggins paid an undisclosed amount to the Defendant. The amount of that settlement has been provided to the Court *in camera* and will be considered in determining the appropriate amount to be assessed against Plaintiff Revell. Defendant is seeking reimbursement of attorneys' fees and costs plus expert witness expenses up to a maximum of \$76,142.29.

The evidence presented at the hearing regarding Plaintiff's financial circumstances was sketchy, confusing, and incomplete. The only evidence presented by the Defendant consisted of printouts of records from the Leon County Property Appraiser reflecting various parcels of real property in which Plaintiff is listed as having an ownership interest. Plaintiff's evidence consisted of her testimony regarding her current income and expenses, the nature of the properties which she admits owning, the debt and cash flow associated with those properties, and her denial of having an ownership interest in two properties of which the public records show that she is a part owner.

The evidence, as viewed in a light most favorable to Plaintiff, reflects that she owns four (4) income producing properties. The only indication of value for these properties is that shown in the Property Appraiser's records which reflect the 2004 assessed value and most recent sales information, including sales prices. While neither of these represent a true current market value for the property, a very conservative minimum value can be gleaned from this data. These properties include an apartment complex purchased in March 2003 for \$1,070,000 which is subject to a first mortgage of approximately \$880,000; a duplex on Jackson Bluff Road purchased in May of 2002 for \$63,800 and currently valued for tax purposes at \$77,678, subject to a first mortgage of approximately \$64,000; a parcel on Frankie Lane with three mobile homes, purchased in October of 2001 for \$55,000 and subject to a first mortgage of about \$90,000; a two acre mobile home park

on Spring Oaks Lane with six (6) rentable mobile homes purchased in August of 2001 for \$141,500 subject to first mortgage in the amount of \$155,000. Using the greater of the assessed taxable value or the most recent purchase price of the various properties, the total value of the property which Plaintiff admits owning is \$1,344,178 encumbered by \$1,189,000 in first mortgages. Plaintiff testified that in addition to the first mortgage debt on the properties, she recently gave her mother a blanket mortgage in the amount of \$600,000 to secure prior loans to Plaintiff, including the monies which Plaintiff invested into Messer Mobile Homes which were the basis for the initiation of this adversary proceeding. The circumstances surrounding those funds are set forth fully in the order on Defendant's Counter Motion for Summary Judgment (Docket # 132) entered June 11, 2002.

In addition to the properties Plaintiff admits to owning, the records submitted reflect that on October 4, 2004, Plaintiff, together with her parents and sister, purchased an apartment complex at 333 Conradi Street for a purchase price of \$3,050,000 and they gave a mortgage to Premier Bank on that property to secure a promissory note not to exceed \$2,000,000. Notwithstanding the documents filed in the public records, Plaintiff and her mother both deny that Plaintiff has any ownership interest in that property and that the mortgage and warranty deed, signed and properly witnessed in accordance with Florida law, were erroneously filed. Plaintiff testified that there was a second set of documents that did not reflect her as owner which should have been filed. Also, in addition to the duplex on Jackson Bluff Road, which Plaintiff owns jointly with her sister, she and her sister also own a duplex on Patrick Avenue purchased at the same time as the Jackson Bluff duplex and for the same price. Plaintiff testified that while both duplexes are in both names, each sister claim one as her own, to the exclusion of the other. Nevertheless, record title to both duplexes is still in Plaintiff's name.

In her testimony, Plaintiff attempted to paint a picture of her living in near poverty, just barely being able to cover the negative cash flow of several of her properties while at the same time paying back her debt to her mother. In her testimony she detailed (without any supporting documentation) her income and expenses on a monthly basis. Noteworthy on the expense side of her ledger is that she is making per \$750 a month car payment, \$600 a month credit card payments, \$350 a month payments on ex-husband's truck until she can sell it, \$250 a month contribution to her church and \$1,000 a month to her mother towards the \$600,000 blanket mortgage on her properties. Of the \$600,000 debt to her mother, \$200,000 represented funds her mother advanced to pay her ex-husband during their recent divorce, although no explanation was given for the \$200,000 payment. She further testified that in March of 2005, she sold her homestead to her brother who merely took over payments on a \$180,000 mortgage with no money coming to Plaintiff. She presented no evidence as to the value of the home but did testify that she had owned it since 1997. She offered no explanation as to why, after eight years of ownership, she had no equity in the house.

As previously stated, this Court is required to consider the party's ability to pay sanctions in arriving at the amount to be imposed. As the 11th Circuit stated in *Martin*, 307 F.3d at 1332:

Sanction orders must not involve amounts that are so large that they seem to fly in the face of common sense, given the financial circumstances of the party being sanctioned. What cannot be done must not be ordered to be done (citation omitted) and, sanctions must never be hollow gestures; their bite must be real. For the bite to be real, it has to be a sum that the person might actually pay. A sanction which a party clearly cannot pay does not vindicate the Court's authority because it neither punishes nor deters.

In determining the amount of sanction here, I am not bound by merely applying a mathematical test based on Plaintiff's current cash flow. The evidence presented demonstrates that she and her family members are heavily invested in income producing real estate. Even by her own admission, she owns property conservatively valued at over \$1,300,000, and based on the public records, she has

an interest in property valued at close to \$4,500,000. She has demonstrated that in the past, her parents have been a ready source of funds to help her out when she either needed or wanted money. Given her history of fraud and deception as recounted in the decision granting summary judgment to Defendants, I do not find her protestations of poverty to be credible. The overall circumstances reflect that she, at least, “might actually pay” a substantial sum, which will serve to reimburse Defendant for sums that she had to expend in defense of this action.

While the Affidavit of C. Edwin Rude, Jr., Defendant’s attorney reflect a total sum of \$76,142.24, in fees, costs and expenses, that sum includes \$7,068.58 expended subsequent to the Order Awarding Sanctions. These fees will not be considered in making the award for two reasons. First, they did not result from the sanctionable conduct but, instead, merely represent effort to collect. More importantly, the history of this action since the entry of the sanctions order indicates that these fees are excessive in view of what has transpired. Since the entry of the sanctions order, the Court has made every effort to bring this matter to conclusion, with the Defendant doing very little absent the Court’s prompting. The Court *sua sponte* has scheduled seven (7) status conferences in the 2½ years since the entry of the sanctions order, with most of those conferences continued at Defendant’s request in order to obtain more time for discovery to take place. Nevertheless, after 2½ years to prepare, the only evidence presented by Defendant’s counsel was a few pages of public records downloaded on a computer. What counsel did with all of the discovery he purportedly conducted I have no idea. However, none of the results were presented to the Court.

Having considered Plaintiff Dardra Revell’s ability to pay, together with the conduct leading to the imposition of sanctions, the fees, costs and expenses incurred by Defendant, and the secret

settlement reached with Mowrey & Biggins, I find that sanctions shall be imposed against Plaintiff Dardra Revell in the amount of \$30,000, payable to defendant Chrystal Messer. A separate final judgment will be issued.

DONE AND ORDERED at Tallahassee, Florida, this 23rd day of August ,
2005.



LEWIS M. KILLIAN, JR.
Bankruptcy Judge