

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

IN RE:

JOE S. REAMS, III &
KATHLEEN H. REAMS

Case No.: 01-70935-LMK

Debtors

Chapter 12

ORDER DENYING DEBTORS' MOTION FOR SANCTIONS

THIS MATTER came on for hearing on August 16, 2005, upon the Debtors' Motion for Sanctions against the United States government and various agents of the same (collectively, the Government)(Doc. 232). This is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. §§ 151 and 157(b)(2). For the reasons set forth herein, Debtor's Motion will be denied.

FACTS

The Debtors filed their Chapter 12 bankruptcy petition on September 28, 2001. At the time the Debtors filed their petition, they were tobacco farmers operating under the former quota system for tobacco farmers, wherein tobacco farmers received subsidies through the tobacco marketing quota and related price support programs authorized by Title III of the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949. For the past several years, in accordance with the result of the Tobacco Farmers Class Action suit, there has been legislation introduced in Congress that would eliminate the tobacco quota system and replace it with a buyout program to transition tobacco farmers into other types of farming. To account for this possibility, the Debtors included a provision in their plan which proposed to include such funds in the plan should the funds become available during the life of the plan (§ 5.04). The Debtors' Third Amended Plan (the Plan) was confirmed on August 19, 2003 (Doc. 124).

After confirmation of the Plan, Congress passed the American Jobs Creation Act of 2004 (the Act). Title VI of the Act ended the tobacco marketing quota and price support loan programs and in their place created the Tobacco Transition Payment Program (TTPP). The

TTPP provides payments over a ten-year period to quota holders and producers of quota tobacco to help them make the transition from the federally regulated quota program. Under the quota system, the Debtors were both holders and producers, and thus they are entitled to receive both types of payments from the TTPP. The Department of Agriculture promulgated regulations under which they will proceed to implement the provisions of the TTPP. Such rules were generally effective as of March 30, 2005. 7 CFR § 1463. The rules include a provision which states that TTPP payments “shall be made without regard to questions of title under State law and without regard to any claim or lien . . .” 7 CFR § 1463.111.

The Debtor, Joe Reams, testified that in order to receive payments under the TTPP, the Debtors were required to contract with the Farm Service Agency (FSA) of the Department of Agriculture. The contracts had to first be approved for payment at the local level and then at the national level. After the contracts were approved, payment of the first installment of the TTPP money would be electronically deposited in an account designated by the Debtors.

Michael Allbritton is the county executive director of the FSA and was responsible for locally processing the TTPP contracts. Mr. Reams testified that he spoke with Mr. Allbritton on at least a weekly basis to try to apprise him of the issues that might surround the disbursement of the TTPP payments. Mr. Reams further testified that he understood that on Friday, July 8, 2005, Mike Graham of FSA called Allbritton and asked him to hold the Debtors’ contract and not approve it with the rest of the contracts that were up for approval on that date. Mr. Reams testified that his father and everyone else he knew that would be receiving TTPP funds had their contracts approved locally on Friday, July 8, 2005, and payment was electronically deposited in their accounts on Tuesday, July 12, 2005. However, despite Mr. Reams’s diligence in preparing Mr. Allbritton for the issues that might arise with his particular payment, Mr. Allbritton told the Debtor that he was unsure of what to do since the Debtors were in bankruptcy, that he had never dealt with Chapter 12, and that he wanted to talk to Assistant U.S. Attorney Benjamin Beard before making any disbursement decisions to ensure that he was acting properly. It appears that

Allbritton was unable to get in touch with Mr. Beard because Hurricane Dennis hit the Pensacola area (where Mr. Beard is located) on Sunday, July 10, and the U.S. Attorney's office in Pensacola was closed the first part of the next week.

Unsatisfied with the way the TTPP process was proceeding, the Debtor filed a Motion to Compel Turnover of the TTPP funds on Friday, July 15, 2005 (Doc. 231) along with the instant Motion. The Debtors' TTPP contract was approved locally on or about July 15, 2005, and the payments to the Debtors were electronically deposited in the Debtors' account on July 20, 2005. Mr. Reams testified that when he received the money, he immediately got a cashier's check and paid his Plan payments, Farmers & Merchant's Bank, and got the transmission fixed in his truck so that he could take on other jobs. He stated that he was responsible for extra interest charges from the time he alleges he "should" have received payment, July 12, 2005, to the time when he actually received payment, July 20, 2005, eight days later.

The Debtors' Motion arises out of the circumstances surrounding the approval of their contract and subsequent payment. The Debtors allege that sanctions are appropriate in this matter because the Government intentionally delayed the entry of the Debtors' contract, resulting in untimely payment of the TTPP money to the Debtors, which the Debtors say caused them damage in the form of accruing interest on loans they would have paid with the TTPP money. The Motion seeks sanctions under Rule 9011 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. §§ 105 and 362.

DISCUSSION

Bankruptcy courts have both statutory contempt powers and inherent contempt powers which allow the court to impose sanctions for certain activity and behaviors. *Jove Engineering, Inc. v. Internal Revenue Service (In re Jove Engineering, Inc.)*, 92 F.3d 1539 (11th Cir. 1996). In this case, the Court will consider its power under Rule 9011 and Sections 105 and 362 of the Bankruptcy Code, as well as its inherent authority to award sanctions.

First, the Debtors' reliance on Rule 9011 as a source for sanctions is misplaced. Rule

9011 addresses a lawyer's certification of papers that he or she signs and submits to the court. There are no papers or filings that the Debtor alleges fall within the ambit of Rule 9011; thus, Rule 9011 is inapplicable to the instant case, and no sanctions will be awarded under Rule 9011.¹

Next, the Debtors allege that the delay in disbursement of the TTPP funds to them was a violation of the automatic stay, because such delay was perpetuated in order to "force or coerce a full repayment" of the debt to the government. Section 362 of the Bankruptcy Code articulates the scope of the automatic stay in bankruptcy proceedings. It provides, in relevant part, that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6). "An individual injured by any willful violation of [such a stay] shall recover actual damages . . ." 11 U.S.C. §362(h). A violation is considered willful if the creditor knew the automatic stay was in effect and intended the actions which violated the stay. *In re Driggers*, 204 B.R. 70, 72 (Bankr. N.D. Fla. 1996)(citing *Jove Engineering*, 92 F.3d at 1555). It is unclear to the Court how delaying the payment of TTPP proceeds to the Debtors eight days qualifies as an act to collect the debt. The Government made no demand for payment and did not initiate any actions against the Debtors to recover the debt in violation of the automatic stay. The fact that Mr. Allbritton wanted to discuss the matter with Mr. Beard before certifying the contract is understandable and even admirable. Mr. Allbritton and the others working at FSA were simply trying to determine how to implement a brand new program. The Court understands the Debtors' frustration with Mr. Allbritton's failure to address the likely problems with the payment prior to the contracts being ready to certify, but this lack of

¹Even if the Debtors' allegations had been based on conduct of the kind covered by Rule 9011, sanctions would still not be appropriate, because the motion is on its face procedurally deficient. The "safe harbor" provision of Rule 9011 requires that a motion for sanctions be served on the respondent 21 days before it is filed with the court, and the docket reflects that the instant Motion was served on the Government the same day it was filed with the Court. *See, In re Kirk-Murphy Holding, Inc.*, 313 B.R. 918 (Bankr. N.D. Fla. 2004).

preparation does not rise to a violation of the automatic stay which might give rise to damages. There was no evidence that the Government did anything with the intent to coerce the Debtors to pay their debt or that would constitute an attempt to collect the debt. In fact, once Mr. Allbritton spoke to Mr. Beard regarding the payment's status, Mr. Beard transmitted a letter to the Debtors' attorney indicating that the payment would be made in due course. Thus, I cannot find that the Government's actions in the delay in the payment of the TTPP money violated the automatic stay in any way, and accordingly, no sanctions shall be awarded under §362.

Although there was no violation of the stay in delaying the TTPP payments, there does appear to be a technical violation of the automatic stay arising from the Government's initiation of a foreclosure suit against the Debtors and Mr. Reams's parents in which the complaint appears to seek a deficiency judgment against the Debtors. The land that is the subject of that foreclosure suit, however, is land that belongs to Mr. Reams's parents. The Government represented to the Court that the inclusion of the request for personal relief against the Debtors was inadvertent and that nothing has been done in furtherance of this suit. The Debtor did not testify that he suffered any harm from being named in the lawsuit, and it has not gone forward against the Debtors. Section 362(h) requires that an individual be injured by a willful violation of the automatic stay before he can recover damages related to the violation. Since the Debtors have not suffered any damages due to this technical violation of the stay, they are not entitled to an award of sanctions for such violation.

The Debtors cite 11 U.S.C. §105 as an alternative theory for recovering sanctions against the Government. Section 105 recognizes the court's authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. A purpose of Section 105 is "to assure that the administrative processes established by the Bankruptcy Code are able to provide for the prompt and fair administration of bankruptcy cases." *In re Ambotiene*, 316 B.R. 25, 35 (Bankr. E.D.N.Y. 2004). Section 362 provides for mandatory damages ("individual injured . . . shall recover actual damages")11 U.S.C. §362(h)(emphasis

added) if a willful violation of the stay occurs and an individual is injured. *Jove Engineering*, 92 F.3d 1559. Section 105, however, is discretionary, and it can provide an independent source of relief for violations of the automatic stay where § 362 may not be applicable; for example, it can be useful in cases where the debtor is a corporation and is therefore not an “individual” who can recover damages under § 362(h). *Id.* at 1554, 1559. A sanctions order under § 105 would be appropriate in those circumstances as it may be necessary to carry out the provisions of the Code, but is unnecessary in this case, as the Debtors are clearly individuals, and therefore if sanctions were warranted for a violation of the automatic stay, then they could be awarded under Section 362(h). However, as stated above, the Court cannot find that any sanctionable violation of the automatic stay occurred, and thus the Motion for sanctions under § 105 must also fail.

Distinct from the statutory provisions which grant the Court contempt power are the Court’s inherent powers of contempt. “[C]ourts possess inherent powers which ‘necessarily result . . . from the nature of their institution . . . [and] cannot be dispensed with in a Court, because they are necessary to the exercise of all other[] [powers].’” *Jove Engineering*, 92 F.3d 1539 (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)). Inherent powers are available so that a court may “achieve the orderly and expeditious disposition of cases.” *Chambers*, 501 U.S. at 43. However, a court must exercise its inherent power with “restraint and discretion” because of the “potency” of inherent power. *Id.* at 44-45. A “primary aspect” of that discretion is the ability of the court to determine an appropriate sanction for “conduct which abuses the judicial process.” *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575 (11th Cir. 1995). The inherent power to sanction is “both broader and narrower” than other means of imposing sanctions.” *Id.* It is broader in that while “each of the other mechanisms for imposing sanctions reaches only certain individuals or conduct, the inherent power extends to a full range of litigation abuses.” *Id.* Therefore, although certain conduct may not be violative of Rule 9011 or § 362, it does not mean that such conduct necessarily escapes sanctions altogether. *Id.* Conversely, the inherent power to sanction is narrower than other mechanisms of sanction because of the standard to which behavior must

descend to be sanctionable under the court's inherent contempt power: "invocation of a court's inherent power requires a finding of bad faith." *Id.* (citing *Chambers*, 501 U.S. at 49). Bad faith conduct includes conduct that is "vexatious, wanton or oppressive." *Hardy v. United States of America (In re Hardy)*, 97 F.3d 1384, 1389, FN3 (11th Cir. 1996) (citing *Mroz*, 65 F.3d at 1575). No evidence was presented regarding any bad faith on the part of the Government in the delay of the TTPP money. The Court accepts the Government's explanation that such delay was relatively minor (only eight days), and that the delay was the result of the local official's desire to seek the advice of counsel prior to disbursing the money to individuals who are debtors in a Chapter 12 bankruptcy. The program is still new, and the official was unfamiliar with bankruptcy law and procedure. Although it would have been better had FSA worked this out at Mr. Reams' urging prior to mid-July, it is not indicative of bad faith that they did not.

The Debtors appear to seek this Court's determination that the Government did not follow its own regulations in the disbursement of the payments, and that this failure to follow the rules constituted sanctionable conduct or was somehow indicative of bad faith. The Court declines to adopt the Debtors' contention in this instance, because the regulation is not at all clear on the duties of the Government. The regulation in question deals with offsets and assignments of TTPP payments. 7 CFR § 1463.111. Section 1463.111 provides that "TTPP payments made to any person under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien . . ." It is clear from the testimony and the record that the Debtors were entitled to the TTPP payments, but, despite this right to the funds, it does not appear that there is a specified time that the Debtors were guaranteed to receive the funds. Mr. Reams's testimony that everyone he knew got their TTPP money on a certain day does not prove that he was entitled to get his money on that same date under the regulations or under any other law. Further, Mr. Allbritton did not hold up the Debtors' TTPP payments due to any questions of title under State law or with regard to a claim or lien, but rather, held up the payments so that he could be comfortable that he was not running afoul of the Bankruptcy Code by certifying payment to the

Debtors. Again, this is reasonable conduct and does not demonstrate bad faith. It is not vexatious, wanton or oppressive. Accordingly, no sanctions will be imposed in this instance.

Although no sanctions are appropriate in this matter, the Court would like to note that it is singularly unimpressed by the way in which this proceeding has evolved. Many of the issues in the case could have been resolved had counsel simply communicated with each other. Debtors' counsel filed the instant Motion the same day that the Government approved the Debtors' TTPP contract, and eight days does not seem like an excessive amount of time to allow the Government to ensure that it handled the Debtors' payment correctly. While Debtors' counsel's chosen course of action may not have been completely warranted by the circumstances of the case, it may have been justified by the stance taken by opposing counsel. The Court is particularly troubled by the letter dated July 14, 2005, from Mr. Beard, Government's counsel, to Mr. Wynn, counsel for the Debtor, which was attached to the Debtors' Statement of Need for an Emergency Hearing, filed with the Court on July 15, 2005 (Doc. 234). In this letter Mr. Beard informs Mr. Wynn that he will no longer communicate with him by e-mail or by phone. This refusal to communicate is in violation of Local Rules of the United States District Court for the Northern District of Florida, which have been adopted by the Court and which require communication between attorneys. While the Court can appreciate the frustration that often comes along with dealing with opposing counsel, the Court cannot condone the refusal of one attorney to speak professionally with another attorney over the telephone or through e-mail. Notwithstanding the Court's disappointment, while the behavior of the attorneys in this case has not been admirable, it has also not been sanctionable.

CONCLUSION

The record is devoid of any indication that the Government acted in bad faith with regard to delaying the Debtors' TTPP payments, and thus the Court is unable to use its inherent authority to impose sanctions on the Government for the delay. Further, as no violation of the automatic stay occurred which resulted in any damage to the Debtors, sanctions are also unavailable under

§§ 362 and 105 of the Bankruptcy Code, and Bankruptcy Rule 9011 is inapplicable to the instant case. Accordingly, it is hereby

ORDERED and ADJUDGED that the Debtors' Motion for Sanctions against the Government is DENIED.

DONE and ORDERED in Tallahassee, FL, on September 22nd, 2005.

A handwritten signature in black ink, appearing to read "L. M. Killian, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

Hon. Lewis M. Killian, Jr.
U.S. Bankruptcy Judge

cc: All parties in interest