UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	**Chapter 13**
	:	
SANDRA C. REDANTE	:	
	:	**Bky. No. 17-11550 ELF**
Debtor	:	
	:	

M E M O R A N D U M

I. INTRODUCTION

On September 5, 2017, this court, sua sponte, scheduled a hearing to consider whether it should impose sanctions on Keith D. Sklar ('Mr. Sklar") and Candyce Smith-Sklar ("Ms. Smith-Sklar"), Debtor Sandra C. Redante's attorneys, for violation of Fed. R. Bankr. P. 9011. The September 5, 2017 Order gave Mr. Sklar and Ms. Smith-Sklar notice that the conduct at issue under Rule 9011 was (1) the filing of bankruptcy schedules that failed to disclose the Debtor's ownership interest in certain real property; and (2) the filing of a response to a motion for relief from the automatic stay that included certain factual allegations that subsequently were not borne out and appeared to lack any evidentiary support. The Order also provided that the court would consider the reasonableness of the compensation received by counsel under 11 U.S.C. § 329.

The hearing was held on September 27, 2017. Mr. Sklar attended the hearing. Ms. Smith-Sklar did not.

At the hearing, Mr. Sklar implied that he, not Ms. Smith-Sklar, was in charge of the Debtor's representation. He appeared to assume full responsibility for the actions taken by his law office to the exclusion of Ms. Smith-Sklar. Mr. Sklar vigorously defended his actions, insisting that his office was "owed an apology" for having to appear at a Rule 9011 hearing.

I have accepted Mr. Sklar's representation that he, not Ms. Smith-Sklar, is the responsible attorney in this matter and therefore, I will not consider imposing any sanctions on Ms. Smith-Sklar. See Finding of Fact Nos. 15-16 & n.5, infra.

As for Mr. Sklar, he is not entitled to an apology. To the contrary, I conclude that Mr. Sklar violated Fed. R. Bankr. P. 9011 by causing his office to file bankruptcy schedules that included material factual omissions. In doing so, he presented factual material that was based on legal contentions not warranted by existing law or nonfrivolous argument for the extension, modification or reversal of existing law. In addition, the factual material Mr. Sklar presented was not formed after an inquiry reasonable under the circumstances. See Fed. R. Bankr. 9011(b).

To remedy this violation of Rule 9011, I will require Mr. Sklar to attend at least four (4) hours of continuing legal education courses on the subject matter of consumer bankruptcy representation.[1]

II. FACTS

The Prior Case

1. On September 14, 2015, Adriano Redante and Sandra Redante ("the Joint Debtors") filed a chapter 7 voluntary bankruptcy petition. (Bky. No. 15-16603, Doc. #1) ("the Prior Case").
2. In the Prior Case, the Joint Debtors were represented by Keith D. Sklar ("Mr. Sklar") of the Law Offices of Sklar Smith-Sklar.

[1] In respects other than those described in this Memorandum, Mr. Sklar's representation of the Debtor has been competent. The Debtor's chapter 13 plan was confirmed by the court by order dated October 17, 2017. (Bky. No. 17-11550, Doc. #73). Therefore, I will not exercise my authority under 11 U.S.C. §329(b) to reduce the compensation that Mr. Sklar requested for his representation of the Debtor in this case.

3. In their Schedule A filed in the Prior Case, the Joint Debtors disclosed their joint ownership of five (5) real properties:

    49 Dieter Avenue, Morrisville, PA ("the Residence Property");[2]

    12 Roebling Avenue, Trenton, NJ ("12 Roebling");

    309 Park Lane, Trenton, NJ ("309 Park Lane");

    1315 S. Clinton Avenue, Trenton, NJ;

    864 Roebling Avenue, Trenton, NJ ("864 Roebling");

    (the last four (4) properties, collectively, "the Trenton Properties").

4. The next day, September 15, 2015, the Debtors filed an Amended Statement of Intention pursuant to 11 U.S.C. §512(a)(2)(A). (Bky. No. 15-16603, Doc. #10).

5. In the Amended Statement of Intention, the Debtors stated that their intention was to:

    a. claim the Residence Property as exempt, retain the property and reaffirm the mortgage debt on the property; and

    b. surrender the Trenton Properties.

    (Id.).

6. On October 14, 2015, the court entered an order granting relief from the automatic stay by default to Deutsche Bank Trust Company Americas, Trustee ("Deutsche") with respect to 864 Roebling to permit foreclosure proceedings to go forward against that property. (Id., Doc. #24).

7. On October 28, 2015, the court entered an order granting relief from the automatic stay by default to Deutsche with respect to 12 Roebling to permit foreclosure proceedings to go forward. (Id., Doc. #30).

[2] The Joint Debtors reside in the Morrisville, PA property.

8. Also on October 28, 2015, the court entered an order granting relief from the automatic stay by default to Deutsche with respect to 309 Park Lane to permit foreclosure proceedings to go forward. (Id., Doc. #29).[3]

9. The Prior Case was administered as a no asset case.

10. On December 22, 2015, the court granted the Debtors their chapter 7 discharge and closed the Prior Case. (Id., Doc. #'s 37-38).

The Present Case: Nondisclosure of the Ownership of the Trenton Properties

11. On March 6, 2017, Sandra Redante ("the Debtor") commenced the present chapter 13 bankruptcy case ("the Present Case"). (Bky. No. 17-11550, Doc. #1).[4]

12. The bankruptcy petition was electronically filed and signed by Ms. Smith-Sklar, Mr. Sklar's law partner, and was accompanied by the required schedules and statements. (Id.).

13. In Schedule A/B, the Debtor disclosed her ownership of only one (1) real property, the Residence Property.

14. When the Present Case was filed, the Debtor still owned at least one (1), if not more, of the Trenton Properties.

15. After the initial bankruptcy filings were made on March 6, 2017, Ms. Smith-Sklar filed no additional documents in the case; thereafter, all of the Debtor's documents were electronically filed by Mr. Sklar.

---

[3] With respect to the three (3) properties referenced in Findings of Fact Nos. 6-8, Deutsche was acting in its capacity as trustee of a securitized trust that asserts that it is the mortgagee.

[4] All further citations to a "Doc. #" in this Opinion will be to documents in the Present Case.

16. Mr. Sklar was involved in the preparation of the petition and schedules and made a conscious decision to advise the Debtor not to disclose her ownership of the Trenton Properties in Schedule A/B. (See Doc. # 76, September 27, 2017 Hearing Transcript (hereafter "Tr.") at 3).[5]

The Present Case: The Stay Relief Motion

17. On August 9, 2017, Deutsche filed a Motion for Relief from the Automatic Stay ("the Stay Relief Motion") seeking authority to enforce its rights under the mortgage as mortgagee with respect to 12 Roebling. (Doc. #41).

18. In the Stay Relief Motion, Deutsche asserted that the Debtor had not paid any monthly installments on the mortgage loan since the commencement of her chapter 13 bankruptcy case.

19. On August 24, 2017, the Debtor filed a response to the Stay Relief Motion ("the Response"). (Doc. #45).

20. The Response was electronically filed by Mr. Sklar.

---

[5] Rule 9011 applies to an attorney who presents a document to the court. Fed. R. Bankr. P. 9011(b). Findings of Fact Nos. 15-16 are significant because the petition and schedules (which contained the omissions in Schedule A) were filed by Ms. Smith-Sklar, not Mr. Sklar. However, at the very outset of the September 27, 2017 hearing, Mr. Sklar stated, "I originally filed this petition without the [Trenton] properties on the Chapter 13 Petition and rightfully so." (Tr. at 3). In these circumstances, I find it appropriate to consider Ms. Smith-Sklar as having acted only ministerially and to treat the bankruptcy schedules as having been presented to the court by Mr. Sklar.

In any event, as explained below, Mr. Sklar continued to advocate the propriety of his conduct at the September 27, 2017 hearing. Rule 9011 applies to an attorney who "later advoc[ates] a position taken in a document previously filed with the court." Fed. R. Bankr. P. 9011(b); see also In re Evergreen Sec., Ltd., 384 B.R. 882, 931 (Bankr. M.D. Fla. 2008). Therefore, it is indisputable that Mr. Sklar is accountable under Rule 9011 for the nondisclosure of the Trenton Properties in the Debtor's bankruptcy schedules.

21. In the Response, the Debtor objected on the ground that she had "made all the mortgage payments" and "[r]eceipts will be supplied at the hearing."

22. Neither the Debtor nor counsel appeared at the hearing on the Stay Relief Motion.

23. On September 5, 2017, the court granted the Stay Relief Motion. (Doc. #50).

24. On September 6, 2017, the day after the entry of the order granting the Stay Relief Motion, Mr. Sklar filed a praecipe withdrawing the Response to the Stay Relief Motion. (Doc. #53).

The Rule 9011 Hearing

25. Also on September 5, 2017, the court entered an order scheduling a hearing on September 27, 2017 ("the Rule 9011 Hearing")[6] and requiring Mr. Sklar and Ms. Smith-Sklar to show cause why they should not be found to have violated Fed. R. Bankr. P. 9011(b)(1), (2) and (3) "by failing to disclose the Debtor's ownership interest in the Property and by filing the response to the Motion alleging that all post-petition payments had been made to Deutsche." (Doc. #52). See Fed. R. Bankr. P. 9011(c)(1)(B).[7]

26. The Rule 9011 Hearing was held, as scheduled, on September 27, 2017.

27. Mr. Sklar, apparently unaware that the hearing was scheduled by the court sua sponte, commenced the hearing by launching an uninformed attack on "the Trustee:"

> MR. SKLAR: I'm taken back by notice to appear today for any number of reasons. First of all, all it took was a little due diligence from the part of the Trustee or whoever filed the Order to Show Cause to figure out that

[6] I note that Mr. Sklar's withdrawal of the Response to the Stay Relief Motion not only came after the granting of that motion, but also after the entry of the court's order scheduling the Rule 9011 Hearing.

[7] Rule 9011(c)(1)(B) provides: "On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto."

the proper party that should be standing here is Deutsche Bank, not us.

. . .

This is a simple error on our part. When we caught it we fixed it. However, the reason we're here is because the Trustee, who was not present, surprise, evidently doesn't know the rules.

(Tr. at 2-3).[8]

28. Shortly thereafter, when the court focused on the first of the two (2) grounds stated in the Order scheduling the Rule 9011 Hearing (i.e., the failure to disclose the Debtor's ownership of the Trenton Properties), Mr. Sklar defended his position as follows:

MR. SKLAR: There would be no reason in God's green earth for my client or my office to think that under Schedule A she has to list those properties.

---

[8] This was not the only issue as to which Mr. Sklar sought to deflect blame on someone else.

The day before the Rule 9011 Hearing, at the conclusion of Mr. Sklar's appearance at a hearing on a different matter in this case, the court, fortunately, mentioned that the Rule 9011 Hearing was scheduled the next day. At that point, Mr. Sklar was unaware of the hearing. He acknowledged this the next day during the Rule 9011 Hearing. In doing so, Mr. Sklar initially blamed his legal assistant for his failure to read the Order scheduling the Rule 9011 Hearing and calendaring it, but soon reversed course.

THE COURT: Why . . . weren't [you] aware of a hearing that was scheduled[?]

MR. SKLAR: Because I was told it was for - - again I called my administrative assistant and reamed her, but I was told it was for relief of the automatic stay and it had already been adjudicated or settled with the mortgage company, payments had been provided.

After the court read Mr. Sklar the text of the Order scheduling the hearing, the colloquy continued.

THE COURT: What's ambiguous about that that makes it look like this is a continuation of a stay relief order?

MR. SKLAR: I didn't say that.

THE COURT: You just want to blame your legal assistant; is that it?

MR. SKLAR: No, no, I can't blame her, it's my obligation to look and when you told me about it yesterday, I went and looked and I took care of it last night, got the documents I needed for today and I appeared here this morning.

(Tr. at 18-19).

> They were surrendered in a previous bankruptcy two years ago. The fact that the mortgage company has done nothing to foreclose on it other than to get relief from the automatic stay, simply is good enough for my client and myself to believe it doesn't get listed; and it certainly shows my client's intent that she does not have an interest in the property. The property belongs to the mortgage company and there's no reason for us to think that they haven't foreclosed on it or they haven't sold it.

(Tr. at 6-7).

29. With respect to the second ground stated in the Order scheduling the Rule 9011 Hearing (i.e., filing of the Response to the Stay Relief Motion alleging that all post-petition payments had been made on the mortgage securing the loan on 12 Roebling), Mr. Sklar acknowledged that filing the Response was a mistake that he tried to depict as a "simple error." (Tr. at 3).

30. When pressed for further details, Mr. Sklar explained that:

- consistent with his office's policy to object to "any and all objections filed by mortgage companies," his legal assistant prepared an objection, (Tr. at 10, 20);[9]
- he approved its filing even though he "didn't bother to read it in its entirety," (Tr. at 11);
- although the Stay Relief Motion referred to 12 Roebling, Mr. Sklar failed to read the Motion closely enough and assumed that Deutsche was seeking relief from stay with respect to the Residence Property, (Tr. at 15-16);
- in consulting with the Debtor, he understood that she believed that she had made all of her postpetition monthly payments on the mortgage on the Residence Property, (Tr. at 14, 20-21);
- as a result of the error regarding the address of the property that was the subject of the Stay Relief Motion, and believing that the Debtor was current on her residential mortgage payments, and further believing that any motion seeking relief for the

[9] Mr. Sklar stated that he files an objection "to every single motion a mortgage company makes because in 9 times out of 10 they're frivolous." (Tr. at 20). He added that it is his practice to consult with his client about the factual allegation in a stay relief motion except when the motion is filed "right at the beginning" of the case, a mortgagee practice that, apparently, he considers improper. (Tr. at 20).

Trenton properties was unnecessary, Mr. Sklar filed the Response on the Debtor's behalf.[10]

[10] Although he conceded that filing the Response was an error, Mr. Sklar, once again, sought to pin at least some of the blame elsewhere, this time on Deutsche.

> MR. SKLAR: Deutsche Bank is not here and should be here. They filed a frivolous claim and then they filed a frivolous motion for relief of the automatic stay that they already had.

(Tr. at 8).

Apparently, Mr. Sklar's view is that the stay relief order entered in the Prior Case on October 28, 2015 remained in force after the entry of the discharge and closure of that case and overrode the automatic stay created by the filing of the Present Case on March 6, 2017.

> MR. SKLAR: It's already been decided and there's nothing in the code that I believe you can find me that says otherwise. They already have stay relief. They don't need to file it again and that's why we're here because they filed a frivolous motion.

(Tr. at 9).

As a starting point, it is a fundamental principle of bankruptcy law that, unless subject to a statutory exception stated in 11 U.S.C. §362(b), the filing of a bankruptcy petition operates as an automatic stay of a broad range of creditor conduct. See 11 U.S.C. §362(a). This is true even if the debtor filed the petition in bad faith, in which case the bankruptcy court has the authority to grant retroactive relief from the automatic stay through an annulment of the stay. See In re Myers, 491 F.3d 120, 128 (3d Cir. 2007). But even in the annulment context, the automatic stay goes into effect and has legal force until annulled by a subsequent court order.

There are situations in which an order granting relief from the automatic stay in a prior case may prevent the automatic stay from arising in a subsequent bankruptcy case. For example, a court may grant in rem relief from the automatic stay as to specific property under 11 U.S.C. §362(d)(4). Even before the enactment of §362(d)(4) in 2005, in order to prevent abuse of the bankruptcy system, courts invoked their authority under 11 U.S.C. §105 to grant stay relief with the additional effect that the stay would not arise in a subsequent bankruptcy case as to a particular creditor and property. See, e.g., In re Hamer, 2000 WL 1230496, at *6–8 (E.D. Pa. Aug. 18, 2000); In re Feldman, 309 B.R. 422, 426 (Bankr. E.D.N.Y. 2004).

The order entered in the Prior Case, granting Deutsche relief from the automatic stay as to 12 Roebling included no provision for any prospective effect in a subsequent bankruptcy filing. Therefore, there is no reasonable basis to believe, in this case, that the automatic stay did not go into effect upon the commencement of the Present Case. Accord In re Mixson, 2002 WL 34561635, at *6 (Bankr. E.D. Pa. Sept. 27, 2002) ("award of stay relief in one case not res judicata of that issue in a later case"); In re Glendenning, 243 B.R. 629, 638 (Bankr. E.D. Pa. 2000) (same).

Mr. Sklar's suggestion that an unadorned order granting relief from the automatic stay in a prior case prevents the automatic stay from arising in a subsequent case evinces a shocking ignorance of bankruptcy law fundamentals.

31. Mr. Sklar also implied, erroneously, that promptly after filing the Response, Ms. Smith-Sklar noticed the mistake and "[w]e immediately filed a praecipe to withdraw the answer." (Tr. at 11).

32. In fact, the Response was not withdrawn until after the Stay Relief Motion was granted and the court entered the Order scheduling the Rule 9011 Hearing. See Finding of Fact No. 24 and n.6, supra.

III. DISCUSSION

A. Fed. R. Bank. P. 9011

1.

Fed. R. Bankr. P. 9011 provides:

> (b) 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 contention 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 . . . .

(emphasis added). Rule 9011(c) authorizes a court to impose sanctions for violations of Rule 9011(b).[11]

[11] Even without Rule 9011(b)(2), a federal court retains inherent powers to control the proceedings and the conduct of the parties involved. Glatter v. Mroz, 65 F.2d 1567, 1574 (11th Cir. 1995) (citing Chambers v. NASCO, Inc., 501 U.S. 32 (1991)). These inherent powers include "the power to control and discipline attorneys appearing before it." Id. at 1575 (citing Ex parte Burr, 22 U.S. (9 Wheat.) 529, 531 (1824). Frequently, the inherent power is exercised when the court rules or statutes

In accordance with Rule 9011(b)(2), legal contentions an attorney presents to a court must be supported by existing law. See, e.g., 10 Collier on Bankruptcy ¶9011.04[46][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2016) A violation of Rule 9011(b)(2) occurs when an attorney asserts an erroneous application or statement of the law, even if the attorney genuinely believes the proffered contention to be true:

> The evaluation whether a claim or defense is warranted or supported by a nonfrivolous argument also is measured by an objective standard. Specifically, in evaluating whether Rule 9011(b)(2) has been satisfied or violated, the court must employ an objective standard of reasonableness under the circumstances. No showing of bad faith is necessary. The subjective state of mind of the offending attorney or party has no bearing. Rule 9011's objective standard eliminates any "empty-head pure-heart" justification for claims or arguments that lack a reasonable basis in fact and law.

In re Freeman, 540 B.R. 129, 138–39 (Bankr. E.D. Pa. 2015) (quotations and citations omitted); see also In re Mroz, 65 F.3d 1567, 1573 (11th Cir. 1995) (under Rule 9011, the court must first determine whether the party's claim is objectively frivolous and then, if it is, whether the attorney should have been aware that it was frivolous).

Employing this standard, courts have sanctioned attorneys for Rule 9011(b) violations due to an attorney's erroneous belief in the law or complete lack of understanding of the Bankruptcy Code. See In re Turner, 519 B.R. 354 (Bankr. S.D. Fla. 2014) (sanctioning an attorney, in part, due to the attorney's continued frivolous pursuit of reconsideration of a dismissal order); In re Lafeminia, 2006 Bankr. LEXIS 630, *7 (Bankr. M.D.N.C. Feb. 17, 2006) (sanctioning an attorney for failing to advise three clients to complete credit counseling, making it "painfully clear . . . that [the attorney] had no grasp of the requirements of section 109 nor the consequences of a failure to comply with such

(such as 28 U.S.C. §1927) are not "up to the task" of remedying improper conduct. See, e.g., Chambers, 501 U.S. at 50. In this case, it is unnecessary to invoke the court's inherent powers.

requirements."); In re Pettey, 288 B.R. 14 (Bankr. D. Mass. 2003) (sanctioning an attorney for filing a bankruptcy petition despite the debtor's lack of eligibility and the attorney's erroneous legal contention seeking to excuse ineligibility).

2.

Rule 9011(b) also requires that an attorney undertake "an inquiry reasonable under the circumstances" that the factual contentions have evidentiary support. Fed. R. Bankr. P. 9011(b)(3). "The concern of Rule 9011 is not the truth or falsity of the representation in itself, but rather whether the party making the representation reasonably believed it at the time to have evidentiary support." In re Taylor, 655 F.3d 274, 282 (3d Cir. 2011). Thus, with respect to factual representations made to the court, an attorney's conduct also is measured by an objective standard and Rule 9011 does not require that the attorney acted in bad faith. Id.; accord Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Account, 618 F.3d 277, 297 (3d Cir. 2010), as amended (Dec. 7, 2010).

In determining the reasonableness of the attorney's inquiry, the court should consider: the amount of time available to the signer for conducting the factual and legal investigation; the necessity for reliance on a client for the underlying factual information; the plausibility of the legal position advocated; whether the case was referred to the signer by another member of the Bar and the complexity of the legal and factual issues implicated. Taylor, 655 F.3d at 284.

B. Mr. Sklar's Legal Contention Violated Rule 9011

Mr. Sklar's core legal theory justifying his conduct was his position that the Debtor had no obligation to disclose her ownership of the Trenton Properties because she had stated her intention

of surrendering those properties to the mortgagees in her prior chapter 7 bankruptcy case.[12] This legal contention is frivolous and Mr. Sklar should have been aware that it lacked merit.

1.

11 U.S.C. §521 sets forth a debtor's duties in filing a bankruptcy petition. Included among these requirements is the duty to

> within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property

11 U.S.C. §521(a)(2)(A).

Significantly, the hanging paragraph following §521(a)(2)(B) states:

> except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title except as provided in section 362(h) . . . .[13]

11 U.S.C. §521(a)(2) (emphasis added).

Courts have held that the hanging paragraph quoted above means what it says. The statement of intention required by §521 is for notice purposes only. It does not alter the property rights of any party. In re Gregory, 572 B.R. 220, 232–33 (Bankr. W.D. Mo. 2017); In re Hooker,

---

[12] To be precise, it is not clear from the record that the Debtor retained her interest in all four (4) of the Trenton Properties as of the date she commenced the Present Case. But what is clear is that Deutsche, the mortgagee of 12 Roebling, has asserted that the Debtor continued to own that property and therefore, it needed relief from the automatic stay in order to commence or resume foreclosure proceedings. Thus, while Mr. Sklar presented no evidence one way or the other regarding the ownership status of the other three (3) properties, it is clear that the Debtor owned at least one (1) of the Trenton Properties.

[13] 11 U.S.C. §362(h) does not apply in the circumstance presented here. That section relates to leases and personal property.

2013 WL 11246004, at *3 (Bankr. M.D. Fla. Dec. 12, 2013) (citing In re Stephens, 2013 Bankr. LEXIS 1202, *3 (Bankr. N.D.N.Y. Mar. 28, 2013)). The legal proposition that filing a document stating an intention, pursuant to 11 U.S.C. §521, to surrender real property to a mortgagee effects a transfer of ownership to the mortgagee is nothing short of preposterous.

An analogous issue arises in chapter 13 cases. Under 11 U.S.C. §1322(b)(9), a chapter 13 plan may provide for the vesting of property of the estate in the debtor or another entity. The existence of §1322(b)(9) shows the fallacy in Mr. Sklar's theory in at least three (3) ways.

First, by negative implication, the existence of the vesting power through a chapter 13 plan and the absence of any comparable statutory provision in chapter 7 evidences a chapter 7 debtor's lack of authority to transfer property of the estate -- through §521 or otherwise.

Further, most courts have held that, notwithstanding the express vesting power granted chapter 13 debtors in §1325(b)(5), that section does not permit confirmation of a plan that vests title to a secured creditor if that creditor objects to accepting ownership of the property. See In re Brown, 563 B.R. 451, 455–56 (D. Mass. 2017).

Finally, 11 U.S.C. §1325(a)(5)(C) permits a chapter 13 plan to be confirmed if the plan provides for the "surrender" of the collateral to the creditor. The existence of both §1322(b)(9) and §1325(a)(5)(C) demonstrate that surrender and vesting are not the same. Surrender means making the property available to be taken; vesting means transferring title. E.g., HSBC Bank USA, N.A. v. Zair, 550 B.R. 188, 192–93 (E.D.N.Y. 2016). Thus, a chapter 13 debtor may "surrender" a property to a secured creditor or attempt to vest property to a secured creditor, but cannot force title to vest to a secured creditor over the objection of the creditor. Surrender merely opens the door, but does not change property rights. If surrender does not alter property rights in chapter 13, where a debtor has enhanced powers, a fortiori, it does not do so in a chapter 7 case through 11 U.S.C. §521.

Against this overwhelming legal authority, Mr. Sklar presented no argument why the Statement of Intention filed in the Prior Case affected the Debtor's ownership of the Trenton Properties, other than, perhaps, his fervent wish that it were so. That subjective belief does not rise to the level required by Rule 9011 -- that the legal position is supported by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.

2.

The result of Mr. Sklar's implausible legal theory was the Debtor's nondisclosure of her interests in real property. This is no small failing.

"Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." In re Yonikus, 974 F.2d 901, 904 (7th Cir. 1992). Disclosure for consumer debtors is "at the very core of the bankruptcy process" and is "part of the price debtors pay for receiving the bankruptcy discharge." In re Colvin, 288 B.R. 477, 481 (Bankr. E.D. Mich. 2003); see also In re Gonzalez, 2001 WL 34076427, at *2 (Bankr. C.D. Ill. Aug. 22, 2001) (the debtor's duty to disclose "is uncompromising" because "[t]he integrity of the bankruptcy system depends upon a full and honest disclosure by debtors of all of their assets"). Complete and accurate disclosure is a necessary element to ensure the trustee and creditors can evaluate a bankruptcy case. In re Morgan, 2013 WL 4067591, at *6 (Bankr. N.D. Ill. Aug. 12, 2013).

C. Mr. Sklar Failed to Undertake an Inquiry Reasonable Under the Circumstances

The debtor's duty of disclosure impacts the obligations of debtor's counsel. "[I]t can be expected and assumed that debtors will rely upon their attorneys for help in drafting their schedules and assigning values to assets. In re Shannon, 2010 WL 1246691, at *4 (E.D. Mich. Mar. 25, 2010).

Therefore, competent representation requires that an attorney review the schedules for accuracy before they are filed. Id.; accord In re Engel, 246 B.R. 784, 794 (Bankr. M.D. Pa. 2000).

Mr. Sklar's inexcusable misapprehension of the law appears to have caused a second, related violation of Rule 9011. Perhaps because he truly (though incorrectly) believed that the Statement of Intention filed in the Prior Case resulted in a transfer of the Debtor's ownership rights in the Trenton Properties to other parties, it appears that Mr.Sklar made no effort to investigate the status of the Trenton Properties before the Debtor filed bankruptcy schedules that omitted any mention of those properties. I draw this inference from Mr. Sklar's statement:

> The [properties] were surrendered in a previous bankruptcy two years ago. The fact that the mortgage company has done nothing to foreclose on it other than to get relief from the automatic stay, simply is good enough for my client and myself to believe it doesn't get listed; and it certainly shows my client's intent that she does not have an interest in the property. The property belongs to the mortgage company and there's no reason for us to think that they haven't foreclosed on it or they haven't sold it.

(Tr. at 6-7).

At best, this passage suggests that Mr. Sklar simply assumed that the mortgagees had completed the foreclosure process prior to the commencement of the Present Case. But that is an unreasonable assumption. There are many reasons why a foreclosure and sheriff's sale may not have been completed between October 2015 and March 2017.

A reasonable inquiry in this case would have included, at a minimum, questioning the Debtor and requesting her to provide any foreclosure documents that she may have received since relief from the automatic stay was granted in the Prior Case. Considering the ease with which attorneys can access court records or order judgment and title searches, a reasonable inquiry also necessarily would have included procuring some type of judgment or title search to ascertain the then current status of title to the Trenton Properties. See generally In re Bailey, 321 B.R. 169, 182–

83 (Bankr. E.D. Pa. 2005) (attorney violated Rule 9011 by failing to make reasonable inquiry when attorney did not check bankruptcy court dockets before filing a debtor's bankruptcy petition in violation of a bar order entered in a prior case).

There has been no suggestion that the bankruptcy case or the schedules were filed under some extraordinary time pressure. Indeed, if the Debtor required the immediate protection of the automatic stay to protect the Residence Property or for some other reason, she could have filed her chapter 13 petition without all of her bankruptcy schedules. See Fed. R. Bankr. P. 1007(c). But that is not what occurred here. The petition and schedules were filed together, suggesting that the Debtor and Mr. Sklar were in control of the filing timetable.

The simple fact here is that Mr. Sklar made no inquiry, much less a reasonable one, regarding the status of the Trenton Properties. Consequently, he violated Rule 9011(b).

D. The Response to Deutsche's Stay Relief Motion

Finally, I briefly address the factually erroneous Response to the Stay Relief Motion.

There are a number of troubling things that came to light during the hearing. Most prominent were Mr. Sklar's admission that he did not read the Response in its entirety before directing that it be filed and his statement that, at least in some situations, he files responses to motions for relief from the automatic stay without even consulting the debtor or making any factual inquiry. Also troubling was Mr. Sklar's shocking ignorance regarding basic legal principles regarding the automatic stay provision of the Bankruptcy Code, 11 U.S.C. §362, in cases involving the filing of serial bankruptcy petitions. See n.10, supra. Further, Mr. Sklar's suggestion that he promptly discovered and corrected his error in filing the Response when, in fact, he withdrew the Response only after the Stay Relief Motion was granted and the Rule 9011 Hearing was scheduled was misleading and perhaps disingenuous.

Nevertheless, I see no further need to make additional Rule 9011 violation findings. First and foremost, while under the mistaken belief that the Stay Relief Motion related to the Residence Property, Mr. Sklar did consult with the Debtor and engage in a reasonable inquiry to gather the evidence needed to defend the motion he thought had been filed against her. Of course, he prepared a defense to an unfiled motion. But it is also significant that, in the end, Mr. Sklar did not defend the Stay Relief Motion, and it does not appear that Deutsche was unduly delayed in obtaining the relief it sought.

Taking into account all of the circumstances, including the fact that I have determined that Mr. Sklar is subject to Rule 9011 sanctions on other grounds which, hopefully, will cause some positive change in his conduct, I see no benefit in belaboring this particular issue. Instead, I accept that the filing of the Response was a mistake or an oversight on Mr. Skar's part, that attorneys are human and make mistakes and that Rule 9011, especially when raised by the court sua sponte, is not intended to be a remedy for every error an attorney might make.

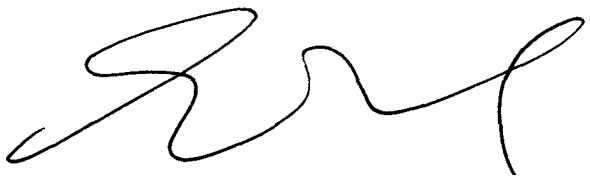
E. Sanction

Rule 9011(c)(2) provides that an appropriate sanction may consist of nonmonetary directives, the payment of a penalty into the court or, in some circumstances, the payment of legal expenses incurred by another party resulting from the violation of the rule. Fed. R. Bankr. P. 9011(c)(2). Whatever sanction is determined to be appropriate, the purpose to be served is "to deter undesirable future conduct." DiPaolo v. Moran, 407 F.3d 140, 146 (3d Cir. 2005). In this regard, this court is afforded broad discretion in determining the appropriate sanction. Langer v. Monarch Life Ins. Co., 966 F.2d 786, 811 (3d Cir. 1992).

In this case, Mr. Sklar's cardinal failing was a lack of understanding of fundamental principles of bankruptcy law. Consequently, the appropriate sanction here is to require Mr. Sklar to

attend legal education and certify to this court that he has done so. The combination of public access to this Memorandum and the benefits of additional education hopefully will accomplish the deterrent effect Rule 9011 is meant to provide.

An appropriate order follows.



Date: January 4, 2018

ERIC L. FRANK
CHIEF U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	**Chapter 13**
	:	
SANDRA C. REDANTE	:	
	:	**Bky. No. 17-11550 ELF**
Debtor	:	
	:	

O R D E R

AND NOW, for the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** and **DETERMINED** that:

1. Keith D. Sklar, Esquire ("Mr. Sklar") violated Fed. R. Bankr. P. 9011(b) in the course of representing the Debtor in the above bankruptcy case.
2. On or before **April 30, 2018**, Mr. Sklar shall attend, in-person, and complete a minimum of four (4) hours of continuing legal education on devoted to the subject of consumer bankruptcy law.
3. On or before **May 14, 2018**, Mr. Sklar shall file a certification with court demonstrating his compliance with the requirements of Paragraph 2 above.

Date: January 4, 2018

ERIC L. FRANK
CHIEF U.S. BANKRUPTCY JUDGE