

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **24-00441-hb**

Order

The relief set forth on the following pages, for a total of 11 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
07/17/2024**



Entered: 07/17/2024

A handwritten signature in black ink, appearing to read "John L. Curran".

Chief US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Matthew Ryan Niemiec,

Debtor(s).

C/A No. 24-00441-HB

Chapter 13

**ORDER IMPOSING SANCTIONS ON
JOSEPH M. BOCHICCHIO, PLLC**

THIS MATTER came before the Court for a hearing on July 3, 2024, on the Rule to Show Cause issued on June 13, 2024.¹ Appearances were made by attorney Corry Brannen (“Brannen”) of Joseph M. Bochicchio, PLLC (the “NC Firm”) on his own behalf and on behalf of the NC Firm, creditor J. Cameron Halford, and Christine D. Loftis, counsel for Chapter 13 Trustee Gretchen D. Holland (the “Trustee”). Benjamin R. Matthews, counsel for Debtor Matthew Ryan Niemiec, and W. Harrison Penn, counsel for creditor Myron B. Boloyan, also appeared by phone to listen to the hearing. The Court finds as follows.

FINDINGS OF FACT

On January 4, 2024, Debtor Matthew Ryan Niemiec, a South Carolina resident and attorney licensed to practice in South Carolina, filed a Chapter 13 petition in the U.S. Bankruptcy Court for the Western District of North Carolina (the “WDNC”) (C/A No. 24-30009). Brannen, an attorney of the NC Firm, signed the petition as counsel for Niemiec. On Part 6 of the petition, in response to the prompt “Why you are choosing *this district* to file for bankruptcy”, the box checked indicated: “Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.” The petition, schedules, and statements filed by the NC Firm, however, indicate Niemiec’s residence and law office are located in South Carolina, and Niemiec has lived

¹ ECF No. 39.

in South Carolina at least the past three (3) years.² Further, Niemiec claimed exemptions on Schedule C under South Carolina law, and the major creditors disclosed reside here—including two (2) South Carolina attorneys that were formerly associated with Niemiec. A foreclosure action regarding Niemiec’s South Carolina residence was pending in a South Carolina court at filing.

The NC Firm filed a Disclosure of Compensation of Attorney for Debtor (Form B2030) reflecting that Niemiec agreed to pay the firm a total of \$5,000.00—\$2,000.00 paid prior to filing and the rest to be paid through the plan.³

On January 16, 2024, the WDNC issued a Notice of Chapter 13 Bankruptcy Case (Official Form 309I) providing notice to parties in interest of various deadlines and of the § 341 meeting that would be held by the Chapter 13 Trustee in the WDNC Jenny P. Holman (the “WDNC Trustee”) on February 15, 2024.⁴

On February 1, 2024, approximately one (1) month after the case was filed, the NC Firm filed a motion indicating that various parties to the case had consented to the transfer of venue to the U.S. Bankruptcy Court for the District of South Carolina (the “DSC”). The next day, a Consent Order was entered in the WDNC, stipulated and agreed to by Dan D’Agostino and W. Harrison Penn⁵ on behalf of Boloyan, the NC Firm (by Brannen) on behalf of Niemiec, and the WDNC Trustee transferring the case to this Court, which now bears the above caption. All pleadings filed in the WDNC court are now a part of the records of this Court. In the Consent Order, the NC Firm represented that “[a]lthough the Debtor believes that the WDNC Bankruptcy Court is a proper

² On the Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107), in response to the question, “During the last 3 years, have you lived anywhere other than where you live now?”, the box “No” is checked.

³ ECF No. 1.

⁴ No confirmation hearing was set, however, as Niemiec had not yet filed a plan.

⁵ Penn’s signature block appears on the order, though no /s/ is next to his name, and his signature block indicates he was seeking admission to the WDNC *pro hac vice*.

venue for the Chapter 13 Case, the assets to be administered in the Chapter 13 Case are located in South Carolina and the majority of Debtor’s scheduled creditors are located in South Carolina.”

After the case was transferred, the Court issued a Notice of Chapter 13 Bankruptcy Case (Official Form 309I) setting forth a new date for a § 341 meeting to be held in South Carolina on March 25, 2024—over a month after the original scheduled date—and setting a confirmation hearing for May 9, 2024.⁶ After a continuance, the § 341 meeting was finally concluded on April 22, 2024.

At a hearing held in this Court on June 6, 2024, on the Trustee’s motion to dismiss the case for non-payment and to consider confirmation of the proposed Chapter 13 plan, Niemiec testified that the statement in the petition that he had lived in the WDNC for the longest part of the one hundred and eighty (180) days prior to filing for bankruptcy was incorrect. He further testified that the NC Firm was aware of that fact before filing the petition with the WDNC and that the NC Firm counseled him that there was a sufficient “nexus of connection” to justify filing the case in the WDNC rather than this Court.⁷

On June 13, 2024, the Court issued the Rule to Show Cause reciting the above-stated facts and requiring Brannen and the NC Firm to appear before the Court on July 3, 2024, to show cause why the engagement agreement with Niemiec should not be cancelled, why any fees paid by Niemiec to the firm should not be disgorged and any claim for the remainder of fees due forfeited, and why further sanctions should not be imposed. The Rule to Show Cause was served on Brannen and the NC Firm⁸ and required any responses be filed by June 26, 2024. However, no response was filed.

⁶ See docket text of ECF No. 11, entered Feb. 12, 2024.

⁷ See ECF No. 38, Order Denying Confirmation of Plan and Setting Deadlines.

⁸ ECF Nos. 40 and 42.

The Court held the show cause hearing on July 3, 2024.⁹ Brannen conceded that the representation on the petition that over the last one hundred and eighty (180) days before filing the petition Niemiec lived in the WDNC area longer than in any other district was incorrect but asserted that it was a mistake rather than an intentional misrepresentation. However, there is no dispute that the filing of the case in the WDNC was intentional and not a mistake. He noted that Niemiec’s South Carolina residential address was listed on the petition and asserted that the “mistake” would have been discovered and the petition would have been amended had the case proceeded in the WDNC long enough to allow the § 341 meeting to be held there. Brannen stated the case was filed in the WDNC because Niemiec lives just across the North Carolina-South Carolina border, has appeared before the federal courts of North Carolina in his law practice (no details were provided), shops in North Carolina, and travels through North Carolina, and because it would take Niemiec less time to travel to and from the WDNC courthouse than to and from this Court’s courthouse. None of these assertions, however, would support the filing of the case in the WDNC pursuant to applicable authorities.¹⁰

At the hearing, Brannen alleged that the NC Firm refunded Niemiec some of the retainer he paid, though no evidence substantiating that allegation was provided.

Halford, a South Carolina resident and creditor in this case holding a judgment that attaches to Niemiec’s South Carolina residence, stated that the filing of the case in the WDNC has caused delay and supported the imposition of sanctions against the NC Firm payable to creditors. Counsel

⁹ After the Rule to Show Cause was issued but prior to the hearing, Benjamin R. Matthews filed an amended petition on behalf of Niemiec. ECF No. 55, filed June 27, 2024.

¹⁰ Brannen was given until July 10, 2024, to provide the Court with such authority, but he did not do so.

for the Trustee agreed that there does not appear to have been any reason for the case to have been filed in the WDNC and that sanctions appear warranted.

CONCLUSIONS OF LAW

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and the Court may enter a final order.

- [A] case under title 11 may be commenced in the district court for the district—
- (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or
 - (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

28 U.S.C. § 1408. Bankruptcy courts in North Carolina follow “the majority of courts in holding that the venue requirements of 28 U.S.C. § 1408 are mandatory, not optional.” *In re Zagaroli*, No. 18-50524, 2018 WL 3486767, at *1 (Bankr. M.D.N.C. July 18, 2018) (citations omitted) (citing *In re Temi Holdings LLC*, No. 15-31795, 2016 WL 3225972, at *2 (Bankr. W.D.N.C. June 2, 2016)). The WDNC has held “[i]mproper venue may be waived, often by inaction of the other parties in interest in the case.” *Temi Holdings LLC*, 2016 WL 3225972, at *2 (citing *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979)). However, “[i]f venue is improper, and if a timely objection is lodged by a party in interest, the bankruptcy case must be dismissed or transferred to a proper judicial district.” *Id.* (quoting *In re Perkins*, No. 13-30747, 2013 WL 1934936, at *2 (Bankr. W.D.N.C. May 9, 2013)); *see also* Fed. R. Bankr. P. 1014(a)(2) (“If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on

its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.”).

In *Temi*, the debtor filed a petition in the WDNC. *Id.* at *1. The debtor was a company located in Rock Hill, SC and its principal assets were in South Carolina. *Id.* Its only connection to North Carolina was that its counsel who filed the case was licensed in North Carolina and based in Charlotte, NC. *Id.* The debtor’s decision to file in the WDNC “was simply a matter of convenience”, as the WDNC courthouse was closer to the debtor than the DSC courthouse. *Id.* While the debtor conceded that it failed to satisfy the venue requirements of 28 U.S.C. § 1408, it urged the WDNC to exercise its equitable powers to retain jurisdiction because the WDNC would be a more convenient location than the DSC. *Id.* at *2. The WDNC rejected that argument and transferred the case to the DSC, stating that while Congress may consider a change to the venue statutes to permit filings in the federal court physically closest to a debtor’s residence, the WDNC’s sole function is to implement the clear and unambiguous venue statutes. *Id.* at *3 (citing *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 461 (2002)).

Bankruptcy Rule 9011 provides:

(a) Signature

Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name....

(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,—

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

- (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; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(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 sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

...

- (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 an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

Fed. R. Bankr. P. 9011. A sanction imposed under Rule 9011 “shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated” and “may consist of, or include, directives of a nonmonetary nature” and “an order to pay a penalty into court”. Fed. R. Bankr. P. 9011(c)(2). An assertion of law violates Rule 9011(b)(2) “when, applying a standard of objective reasonableness, it can be said that a reasonable attorney in like circumstances could not have believed his actions to be legally justified.” *In re Kersner*, 412 B.R. 733, 743 (Bankr. D. Md. 2009) (quoting *In re Sargent*, 136 F.3d 349, 352 (4th Cir. 1998)).¹¹

“Standing alone, the filing of a bankruptcy case in an improper venue might not warrant sanctions under Rule 9011.” *In re Henry*, No. A16-00405-GS, 2017 WL 2874461, at *6 (Bankr. D. Alaska July 5, 2017). However, sanctions may be warranted when there is no good faith basis

¹¹ Though the quoted material concerns Fed. R. Civ. P. 11(b)(2), the *Kersner* court applied it in discussing Fed. R. Bankr. P. 9011 and the text of Fed. R. Bankr. P. 9011(b)(2) and Fed. R. Civ. P. 11(b)(2) are substantively identical.

in fact or law to support the filing of the petition in the improper venue. *See id.* *See also In re Ktona*, 329 B.R. 105, 108 (Bankr. M.D. Fla. 2005) (indicating sanctions for filing a bankruptcy case in an improper venue may be warranted when there is no basis in law or in fact to file the petition in the improper venue and the filing of the petition causes unnecessary delay and needless increase in the cost of litigation). For example, in *Henry*, the Court imposed sanctions against debtor’s counsel under Rule 9011 because there was no basis to file in Alaska and the filing, which was made to conceal from the debtor the attorney’s failure to timely file the petition on her behalf, was frivolous and done for an improper purpose. *Henry*, 2017 WL 2874461, at *7. In *Ktona*, the Court imposed sanctions under Rule 9011 against debtor and debtor’s counsel because they intentionally filed the petition in an improper venue in bad faith to delay pending litigation against the debtor. *Ktona*, 329 B.R. at 109. *See also In re Ross*, 312 B.R. 879, 893 (Bankr. W.D. Tenn. 2004) (citing cases where courts have imposed Rule 9011 sanctions for knowingly filing in an improper venue).

Section 329 of the Bankruptcy Code provides that, if compensation to debtor’s counsel for services in connection with a bankruptcy case exceeds the reasonable value of any such services, the Court may cancel the engagement agreement or order the return of such compensation, to the extent excessive, to the debtor. *See* 11 U.S.C. § 329(b). Bankruptcy courts are authorized by the Bankruptcy Code to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This equitable power under § 105 includes the power to issue orders of civil contempt. *Palazzo v. Bayview Loan Servicing LLC*, No. DLB-20-2392, 2023 WL 2743357, at *8 (D. Md. Mar. 31, 2023) (citing 11 U.S.C. § 105(a); *In re Walters*, 868 F.2d 665, 669 (4th Cir. 1989)). Pursuant to this authority, “bankruptcy courts can. . .enter monetary sanctions for civil contempt.” *Allen v. Fitzgerald, Tr. for Region Four*, No.

7:18-cv-00134, 2019 WL 6742996, at *3 (W.D. Va. Dec. 11, 2019) (internal quotation marks and citations omitted). “A federal court also possesses the inherent power to regulate litigants’ behavior and to sanction a litigant for bad-faith conduct.” *Id.* (quoting *In re Weiss*, 111 F.3d 1159, 1171 (4th Cir. 1997)).¹²

The record before the Court indicates that the NC Firm knowingly signed and filed a petition in the WDNC that misrepresented that in the one hundred and eighty (180) days preceding the petition date, Niemiec lived in the WDNC area longer than in any other district. The record before the Court reflects there was no factual or legal basis whatsoever to file the case in the WDNC. The factual misrepresentation in the original petition and the filing in an improper venue was a waste of judicial resources and caused unnecessary delay and additional expenses to creditors and the bankruptcy estate. As a result, any amounts paid or agreed to be paid have exceeded the reasonable value of any services rendered or that could be rendered by the NC Firm under § 329.

Moreover, to deter similar abuse, sanctions under Bankruptcy Rule 9011 and § 105 and use of the Court’s inherent authority are warranted. By signing the petition and counseling Niemiec to file in the WDNC, the NC Firm misrepresented to the Court that the legal contentions therein were warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law and that the allegations and other factual contentions had evidentiary support. There was simply no factual or legal basis under the bankruptcy venue statute (28 U.S.C. § 1408) to file Niemiec’s petition in the WDNC.

¹² It appears the restrictions and remedies of Section 526 are not applicable because the NC Firm is not a “debt relief agency” as defined in 11 U.S.C. § 101(12A) because Niemiec is not an “assisted person” as defined in 11 U.S.C. § 101(3) because it appears the value of his non-exempt assets is too high.

The bankruptcy venue statute is controlling and there is no equitable exception to file in a venue that is more convenient. What was deemed more convenient to Niemiec and the NC Firm served to harass or to cause unnecessary delay or needless increase in the cost of litigation for creditors. Under these circumstances, a reasonable attorney could not have believed filing a petition in the WDNC to be legally justified. Therefore, sanctions against the NC Firm in the amount of \$5,000.00 are warranted. As Niemiec also signed the petition including the misrepresentation, the sanctions are not due to him and are not reduced by any amount the NC Firm may have returned to Niemiec. Instead, the sanctions shall be paid to the Trustee for distribution to creditors in this case. Should the Trustee need direction regarding distribution of such funds, such may be requested by further motion.

IT IS, THEREFORE, ORDERED:

1. Pursuant to 11 U.S.C. § 329, the retainer agreement between Debtor Matthew Ryan Niemiec and Joseph M. Bochicchio, PLLC is void and cancelled;
2. Pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, and the Court's inherent authority, Joseph M. Bochicchio, PLLC shall pay \$5,000.00 to Chapter 13 Trustee Gretchen D. Holland by **August 1, 2024**, for distribution to creditors, to be added to rather than credited against any amounts due from Niemiec under the Chapter 13 plan;
3. Joseph M. Bochicchio, PLLC shall file proof of Chapter 13 Trustee Gretchen D. Holland's receipt of \$5,000.00 by **August 8, 2024**; and
4. Should Joseph M. Bochicchio, PLLC fail to timely comply with paragraphs (2) and (3) above, the Court may impose additional sanctions, including fines, to induce compliance without further notice or hearing.