UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	BKY 4-88-639
DAKOTA RAIL, INC, A SOUTH DAKOTA CORPORATION,	
Debtor.	
JEROME D. ROSS,	ADV 4-92-186
Plaintiff,	
-v.-	
THOMAS G. LOVETT, JR., ELLI M.A. MILLS, KIMBERLY HUGHES, SHERRY ENZLER, McLEOD COUNTY REGIONAL RAIL AUTHORITY, RONALD J. McGRAW, CECIL SELLNESS, AND SHELDON NIES,	FINDINGS, CONCLUSIONS, AND ORDER FOR JUDGMENT OF SANCTIONS
Defendants.	

At Minneapolis, Minnesota, August 21, 1992.

Per my directions at the conclusion of the July 8, 1992 hearing on defendants' motions to dismiss and for summary judgment, defendants Elli Mills, Kimberly Hughes, and Thomas Lovett have submitted applications for the award of costs and expenses incurred in connection with this case.[1]

Bankruptcy Rule 9011 provides in relevant part:

> The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good

[1] The imposition of sanctions under Rule 9011 is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O) even when the sanctions arise in a non-core adversary proceeding. Chicago Bank v. Amalgamated Trust and Savings Bank (In re Memorial Estates, Inc.), 116 B.R. 108, 111 (N.D. Ill. 1990).

> faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case. . . . If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

Fed. R. Bank. P. 9011. The original complaint filed in McLeod County District Court, and all subsequent papers filed by the plaintiff were signed by the plaintiff, Jerome D. Ross, himself. According to rule 9011, Mr. Ross' signature on all such documents constitutes a certificate that they were well grounded in fact, supported by existing law or good faith arguments for the extension, modification or reversal of existing law, and were not interposed for any improper purpose. I conclude that Mr. Ross' signed such documents in violation of rule 9011 because they were not well grounded in fact, because there was no reasonable inquiry into the law, and because they were interposed for the purpose of harassing the defendants.

There is some dispute among the circuits as to whether a plaintiff can be sanctioned under Federal Rule of Civil Procedure 11 (from which Bankruptcy Rule 9011 is derived) for filing a frivolous claim in state court which is later removed to federal court. As noted by the court in Nichols, et al v. Firestone Tire & Rubber Co., 127 F.R.D. 526 (D. Neb. 1989), the Eighth Circuit has

not addressed the issue. Nichols, 127 F.R.D. at 527. However, I agree with the court's analysis in Nichols, and choose to follow those courts holding that a plaintiff can be sanctioned for filing a frivolous claim in state court if he continues to pursue the claim in federal court after removal. Nichols, 127 F.R.D. at 528; Herron v. Jupiter Transportation Co., 858 F.2d 332, 336 (6th Cir. 1988); Foval v. First National Bank of Commerce, 841 F.2d 126, 130 (5th Cir. 1988). As the Sixth Circuit explained in Herron v. Jupiter Transportation Co.,

> Rule 11 was promulgated to deter the flow of frivolous claims into federal court. Permitting plaintiffs to continue to litigate a frivolous claim in federal court after removal from state court, when a reasonably diligent inquiry at that time would have disclosed the complaint to be without support either in fact or law, would undercut the full force intended by Rule 11.

Herron, 858 F.2d at 336. Accordingly, an attorney or a party appearing pro se is under a continuing duty to reevaluate its case, and where a frivolous complaint is filed in state court 9011 sanctions will be proper after removal to bankruptcy court where the attorney or pro se party continues to pursue the complaint. Nichols, 127 F.R.D. at 528; see also Herron 858 F.2d at 336. To the extent that the opinions of the Second, Fourth and Ninth circuits hold otherwise, I believe they are subject to the same infirmities discussed by the court in Nichols. See Nichols, 127 F.R.D. at 528 (explaining Hurd v. Ralph's Grocery Co., 824 F.2d 806 (9th Cir. 1987); and Kirby v. Allegheny Beverage Corp., 811 F.2d

253 (4th Cir. 1987); and criticizing Stiefvater Real Estate Inc. v. Hinsdale, 812 F.2d 805 (2d Cir. 1987).

Ross' complaint filed in McLeod County District Court is wholly frivolous. As I discussed at length on the record at the July 8, 1992 hearing in this matter, none of the counts in the complaint had any basis in law whatsoever, and the majority of them failed to state any recognizable theory of recovery. To the extent any of the counts actually did allege recognized theories of recovery, there were no facts alleged which could possibly have been construed to support any of such theories, and I seriously doubt that any such facts could be alleged. Had Ross made any reasonable inquiry into the facts or law relevant to this case the complaint never would have been brought in the first place. Instead he continued to pursue this matter after removal, filing an amended complaint without seeking leave therefor, and a motion to abstain and remand to state court.

This is simply a case of a disgruntled debtor who lost his business through the chapter 11 reorganization process. Rather than allow the proponents of the successful plan to have the benefit of their bargain he is doing everything possible to force them to incur ongoing costs and mire them in endless litigation. He has succeeded in wasting the time and money not only of the successful proponents, but also of the former chapter 11 trustee and this court. It simply must stop.

Mr. Ross is entitled to represent himself if he so chooses, but he must abide by the rules of this court, and that includes

Bankruptcy Rule 9011. Since Ross continued to pursue this matter after removal to the bankruptcy court and continued to file pleadings even though a reasonable inquiry would have revealed that there was no basis in fact or in law for the complaint, he is in violation of Rule 9011. Accordingly, sanctions are in order.

Counsel for Elli Mills and Kimberly Hughes has submitted an itemization of the time spent in connection with this case which appears to be reasonable and warranted. Counsel lists attorneys' fees in the amount of $3,765.50 and expenses of $172.70. Counsel for Thomas Lovett has also submitted an itemization but the amount requested is significantly higher, listing fees of $9,804.00 and expenses of $618.56. I feel that such fee request is unreasonably high and accordingly should be reduced. Recognizing, however, that counsel for Lovett prepared not only a motion for dismissal but also a motion for summary judgment, I will only reduce his fee request by 25%, awarding a total of $7,353.00 in fees and $618.56 in costs.

ACCORDINGLY, IT IS HEREBY ORDERED: the plaintiff, Jerome D. Ross, is sanctioned according to Bankruptcy Rule 9011 and shall pay the reasonable costs and expenses incurred by defendants Elli Mills and Kimberly Hughes in the amount of $3,765.50 attorneys' fees and $172.70 expenses, and incurred by Thomas Lovett in the amount of $7,353.00 attorneys' fees and $618.56 expenses.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Nancy C. Dreher
United States Bankruptcy Judge