

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
LAND PAVING COMPANY,)	CASE NO. BK87-2050
)	
DEBTOR)	A88-20
)	
STATE OF NEBRASKA, ex rel.)	
ROBERT M. SPIRE, Attorney General,)	CH. 11
)	
Plaintiff)	
)	
vs.)	
)	
LAND PAVING COMPANY and)	
ANTHONY E. DOMBROWSKI,)	
)	
Defendant)	

MEMORANDUM

A hearing was held on May 23, 1988, on the motions to dismiss and motions for sanctions by defendants, Land Paving Co. (debtor) and Anthony Dombrowski. Paul F. Festersen, P.C., appeared on behalf of debtor; William Lindsay, Jr., appeared on behalf of Anthony Dombrowski; David Cygan appeared on behalf of the State of Nebraska. At the hearing the Court ordered the defendants to provide to the Court citations of authority with regard to the appropriate parties to be sanctioned. This memorandum is the Court's findings of fact and conclusions of law as required by Bankr. R. 7052.

Land Paving Co. became a Chapter 11 debtor on or about July 20, 1987. On February 11, 1988, the State of Nebraska brought this adversary proceeding, requesting the Court to declare nondischargeable under 11 U.S.C. § 523(a) a debt owed by defendants to the State. The complaint was signed by Yvonne Gates, Assistant Attorney General. On March 21, 1988, the complaint was amended. This pleading was signed by David Cygan, Assistant Attorney General. After the filing of the complaint and its amendment and before the answer deadline, defendants' attorneys corresponded with the State, suggesting that the adversary proceeding be withdrawn because: (1) Land Paving Co. is a debtor under 11 U.S.C. § 523(a); (2) Anthony Dombrowski is not a debtor.

FILED
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Judith M. Napier
Clerk, U.S. Bankruptcy Court
By _____
Denny

Defendants' attorneys pointed out that by the plain language of Section 523, it does not apply to corporations. Further, defendants' attorneys suggested that if they were obligated to answer the complaint and litigate the adversary proceeding they would incur needless expense because of the alleged frivolity of the complaint. State did not respond to defendants' correspondence, which resulted in defendants bringing these motions to dismiss and motions for sanctions.

Bankr. R. 9011 reads in 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 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, to cause delay, or to increase the cost of litigation. ... 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 or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

Bankr. R. 9011(a).

The Court finds as a fact that 11 U.S.C. § 523 applies only to individual debtors, not to corporations. See 3 Collier on Bankruptcy ¶ 523.03 (15th ed. 1988). Thus, Section 523(a) is irrelevant in corporate cases. The Court also finds as a fact that Anthony Dombrowski is not a debtor in this Court or any other bankruptcy court. Consequently, the Court fails to see how the State can ask for a declaration of nondischargeability when Mr. Dombrowski is not asking for a discharge in the first place.

The State had ample opportunity to withdraw its complaint and failed to do so. Under existing law, the complaint is unwarranted, and the Court finds that the complaint does not set forth a good faith argument for the extension, modification or reversal of the present law.

Therefore, under the authority of Bankr. R. 9011(a) the Court imposes sanctions in the amount of defendants' attorneys' fees as provided by defendants' affidavits:

Land Paving Co.	\$3,731.99
Anthony Dombrowski	\$1,989.00

These sanctions shall be imposed against Yvonne Gates, David Cygan and the State of Nebraska jointly and severally. Nebraska has waived its sovereign immunity by filing a claim in the bankruptcy proceeding and by initiating this adversary proceeding. 11 U.S.C. §§ 105, 106 (1987). Payment is to be made through the Clerk of the Bankruptcy Court within 30 days.

Judgment is entered in favor of defendants and against plaintiff the State of Nebraska and its legal counsel, Yvonne Gates and David Cygan.

Separate journal entry to be entered this date.

DATED: July 14, 1988.

BY THE COURT:


Chief Judge