

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

IN RE:)	
)	
LEORY CARTER SMITH)	CASE NO. 03-10992
DEBTOR)	
_____)	
IN RE:)	
)	
LOUISE M SMITH)	CASE NO. 04-10633
DEBTOR)	

OPINION AND ORDER DENYING DEBTORS' MOTION FOR SANCTIONS

These cases came before the court on November 7, 2006 for hearing upon the Debtors' Motion for Sanctions against Timothy L. Hanson pursuant to Bankruptcy Rule 9011(b)(1), (2), & (3). The Motion for Sanctions relates to a Motion for Relief from Stay that was filed with the court by Timothy L. Hanson on behalf of Branch Banking and Trust Company (BB&T) on October 9, 2006. The Certificate of Service indicates that the Motion for Relief from Stay was mailed to Debtors' attorney on October 9, 2006. The Motion for Relief from Stay alleged that the Debtors were delinquent in their obligation to BB&T and that cause existed to lift the stay as to BB&T's collateral, the Debtors' residence located at 1026 County Road Home, Reidsville, North Carolina 27320. The motion was set for hearing at 9:30 a.m. on October 24, 2006. On October 23, 2006, Debtors' attorney filed with the court the Response to Relief from the Automatic Stay and the Motion for Sanctions against Timothy L. Hanson. The Certificates of Service indicate that the response and the motion were mailed on October 23, 2006. Mr. Hanson apparently did not receive either the response or the motion before the hearing on October 24,

2006, and the hearing scheduled for October 24, 2006 was continued to November 7, 2006. No mention of the Motion for Sanctions was made at the October 24th hearing.

On November 7, 2006, the court heard the arguments for the Motion for Relief from Stay and continued the Motion for Relief to November 27, 2006 based upon the substantial equity cushion in the property. The court then heard arguments on the Motion for Sanctions. The Debtors alleged that the filing of the Motion for Relief from Stay violated Bankruptcy Rule 9011. The Debtors contended that they were current in their mortgage payments and that the Motion for Relief from Stay was intended to harass and cause unnecessary legal delay. Mr. Hanson moved to dismiss the Motion for Sanctions because the Debtors did not comply with Bankruptcy Rule 9011(c)(1)(A), commonly known as the “safe harbor” provision. The court took the matter under advisement and is now prepared to rule.

Bankruptcy Rule 9011(c) provides, in pertinent part, that:

(1) *How Initiated.*

(A) *By Motion* The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected

Fed.R.Bankr.P 9011(c)(1)(A). Rule 9011(c)(1)(A) sets forth a two-step process for properly filing a motion for sanctions with a court: First the motion must be served on opposing counsel; then, after twenty-one days, the party seeking sanctions must make sure that the motion has not been withdrawn or appropriately corrected before filing the motion with the court. In re Sammon, 253 B.R. 672, 678 (Bankr. D.S.C. 2000). This “safe harbor” provides an opportunity for parties to avoid the imposition of sanctions against them. Id. at 679. Courts are in agreement that the notice and opportunity to withdraw provided for by Rule 9011 are mandatory and that if

a moving party does not comply with the “safe harbor” provisions, the motion for sanctions must be denied. Id. (“Debtors did not comply with the procedural requirements of the rule; therefore, the request for sanctions pursuant to Fed.R.Bankr.P. 9011 cannot be granted); In re Smith, 230 B.R. 437, 440 (Bankr. N.D. Fla. 1999) (“The debtors’ request for sanctions and attorney’s fees must also fail procedurally [because] [t]he debtors failed to file according to the procedures outlined in Rule 9011.”); In re Engel, 246 B.R. 784, 789 (Bankr. M.D. Pa. 2000) (“Because there was apparently no advance service of the Motion here, the sanction request under the Federal Rule of Bankruptcy Procedure 9011 cannot be considered.”); In the Matter of Rucker, 278 B.R. 262, 266 (Bankr. M.D. Ga. 2001) (“Movant’s motion for sanctions did not comply with the ‘safe harbor’ provision of Rule 9011(c)(1)(A) and sanctions may not be awarded under Rule 9011.”).

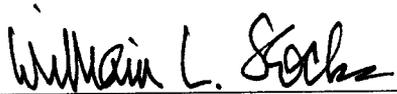
Because Rule 11 of the Federal Rules of Civil Procedure is “essentially identical” to Bankruptcy Rule 9011, bankruptcy courts also look to cases applying Rule 11. In re McNichols, 258 B.R. 892, 899 (Bankr. N.D. Ill. 2001). The cases applying Rule 11 have come to the same conclusion regarding Rule 11(c)(1)(A). 2 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 11.22[1][b] (3d ed. 2006) (“This ‘safe-harbor’ provision is a mandatory procedural prerequisite. Sanctions imposed without compliance are subject to reversal.”) (citing Hedges v. Yonkers Racing Corp., 48 F.3d 1320, 1323, 1328 (2d Cir. 1995); Omega Sports, Inc. V. Sunkyong Am., Inc., 872 F. Supp. 201, 203 (E.D. Pa. 1995); Elliot v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995); Morganroth & Morganroth v. DeLorean, 123 F.3d 374, 384 (6th Cir. 1997); Gordon v. Unifund CCR Partners, 345 F.3d 1028, 1029-1030 (8th Cir. 2003); Radcliffe v. Rainbow Constr. Co., 254 F.3d 772, 788-89 (9th Cir. 2001)).

As laid out above, Debtors’ attorney mailed the Motion for Sanctions to Timothy L.

Hanson on October 23, 2006. Debtors' attorney then filed the motion with the court the next day, October 24, 2006. Because Debtors' attorney did not comply with Rule 9011(c)(1)(A), his Motion for Sanctions must be denied.

IT IS SO ORDERED.

This 20th Day of November, 2006.



WILLIAM L. STOCKS
United States Bankruptcy Judge