

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SANDRA RENA ROBBINS,

Plaintiff,

v.

Case No: 2:25-cv-409-JES-NPM

STEVEN E. MARTIN, JONATHAN
BIERFELD, and MARTIN LAW
FIRM, P.L.,

Defendants.

OPINION AND ORDER

This matter comes before the Court on defendants' request for Order to Show Cause (Doc. #16) filed on June 19, 2025, as part of defendant's Response in Opposition to Plaintiff's Motion to Remand to State Court. On July 2, 2025, the Court deemed plaintiff's Motion to Remand withdrawn but directed a response to the request for an Order to Show Cause. (Doc. #24.) On July 9, 2025, plaintiff filed a Response (Doc. #25).

I.

On April 18, 2025, plaintiff filed a Complaint in state court for Legal Malpractice, Misrepresentation, Breach of Fiduciary Duty. (Doc. #4.) Plaintiff Sandra Robbins (Robbins or plaintiff) alleged that she entrusted the Martin Law Firm, P.L. and its attorney Jonathan Bierfeld (collectively defendants) to represent her in the filing of a petition for bankruptcy relief under Chapter

13 of the Bankruptcy Code. Plaintiff further alleges that defendants converted the case to a Chapter 7 proceeding without notice, consent, or legal necessity, thus exposing her to asset liquidation and litigation by way of an adversary proceeding. All four counts of the State court complaint asserted claims under state law.

On May 16, 2025, defendants removed the case to federal court based on 28 U.S.C. § 1331 and 28 U.S.C. § 1334 because the alleged legal malpractice action arose from plaintiff's bankruptcy case. (Doc. #1.) Plaintiff's motion to remand has been withdrawn (Doc. #23), but defendants continue to request the award of reasonable attorney fees and expenses, as well as an order requiring an explanation concerning the misrepresentations about cases and citation to "non-existent case law." (Doc. #16 at 10.) The only remaining issue is whether sanctions are appropriate.

II.

The Court discusses each of the cases which defendants assert either did not exist or were mis-quoted.

A. Baker

Plaintiff cited to Baker v. BDO Seidman, LLP, No. 6:15-cv-1220-Orl-37GJK, 2015 WL 5009340, at 2 (M.D. Fla. Aug. 20, 2015) for the proposition that "legal malpractice claims against accountants related to a bankruptcy filing were not core proceedings" and should be remanded. (Doc. #14 at 4.) Defendants

state that the case does not exist. Plaintiff concedes that the citation is incorrect, and that the actual case is a non-binding California case, Baker v. BDO Seidman, L.L.P., 390 F. Supp. 2d 919 (N.D. Cal. 2005). (Doc. #25 at 2.) In Baker, the case was removed pursuant to Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 312 (2005) ("claims recognized under state law that nonetheless turn on substantial questions of federal law"). Plaintiff concedes that the case did not involve bankruptcy but stands by the "essence of the holding" as correct.

B. In re Republic Reader's

Plaintiff quoted "Where a matter can be timely adjudicated in a state forum, remand promotes the interest of judicial economy and discourages forum shopping" from In re Republic Reader's Serv., Inc., 81 B.R. 422, 426 (Bankr. S.D. Tex. 1987). (Doc. #14 at 5.) Defendant states that the statement does not exist in the case holding. (Doc. #16 at 7-8.) This is not specifically disputed by plaintiff and the Court agrees that the quotation does not exist.

The discussion on the cited page is about permissive abstention and whether the district court could abstain from certain core or noncore proceedings if in "the interest of justice or in the interest of comity with state courts or respect for state law." In re Republic Reader's Serv., Inc., 81 B.R. 422, 426 (Bankr. S.D. Tex. 1987) (quoting 28 U.S.C. 1334(c)(1)). The case goes on to note that "[t]he mere presence of state law issues is

not enough to recommend abstention, for virtually every issue which arises within the context of a bankruptcy case involves state law to at least some degree." Id. In response, plaintiff states: "The Plaintiff recognizes that the use of quotations concerning the stated ruling and underlying basis for it while borne out by the opinion can be misleading. Both 'quoted' concepts in the ruling, i.e., forum shopping and a timely state court adjudication clearly part of the authority relied upon by the Plaintiff." (Doc. #25 at 3.) Plaintiff references the factors considered by the Court:

The court enumerated several facts to consider in its reference to the District Court recommending "permissive abstention" to the state court which included "whether the proceeding was filed in bankruptcy for **the purpose of forum shopping.**" The other factors noted by the court were: "1). The existence of two closely related proceedings based upon state law or a state law cause of action; 2). The absence of any basis for jurisdiction other than section 1334(3); 3). **The likelihood that the proceeding can be timely adjudicated in a state court forum;** 4). The extent to which state law issues predominate; and 5). The degree of relatedness the proceeding has to the bankruptcy case," (emphasis added).

The Plaintiff recognizes that the use of quotations concerning the stated ruling and underlying basis for it while borne out by the opinion can be misleading. Both "quoted" concepts in the ruling, i.e., forum shopping and a timely state court adjudication clearly part of the authority relied upon by the Plaintiff.

(Doc. #25 at 3.) Although no citation is provided, these factors are peppered throughout pin cite 428. None of this was argued in the Motion to Remand, even if plaintiff claims it is "clearly part of the authority relied upon."

C. Eastus

In the Motion to Remand, after citing an inaccurate direct quote from In re Republic Reader's, plaintiff added: "See also *Eastus v. Blue Bell Creameries, L.P.*, 97 F.3d 100, 106 (5th Cir. 1996) ("The court must weigh in favor of remand where a non-core proceeding presents state law issues better left to state court.')." (Doc. #14 at 5.) Defendant states that this quotation also does not exist. (Doc. #16 at 7-8.) Again, plaintiff does not address or dispute that the quotation does not exist, and the Court agrees that the quotation does not exist. What is discussed on pin cite 106 is when "State law predominates," district courts may remand separate and independent state claims if state law predominates the individual claim. The case does not involve bankruptcy or legal malpractice, but plaintiff states "[t]hus, *Eastus, id.*, does stand for the principle that state law of action, malpractice in this instant case, would be better left to the state court where "state law predominates." (Doc. #25 at 4.)

D. Kircher

Plaintiff argued in the Motion to Remand that "[t]he burden of establishing federal jurisdiction rests squarely with the party

seeking removal. See *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 644 n.12 (2006). Defendants have not met this burden[.]” (Doc. #14 at 3.) Defendant argues that this is not the holding in the case because Kircher was about whether a remand to state court could be reviewed by a circuit court of appeals under 28 U.S.C. § 1447(d).

Without addressing the citation of footnote 12, which is unrelated to any relevant issues at hand, plaintiff responds simply that the reference “does not accurately state the holding in the case.” (Doc. #25 at 4.) “In the sense that the issue in *Kircher*, *id.*, concerned the lack of subject matter jurisdiction in the District Court, it is conceded that the citation by the Plaintiff is not accurate.” (Id.)

E. Hirsch

In the Motion to Remand, plaintiff argued that state law governed, and federal jurisdiction did not lie “merely because the conduct occurred in the context of a bankruptcy proceeding.” (Doc. #14 at 4.) “As reaffirmed in *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1095 (2d Cir. 1995), malpractice and fiduciary duty claims brought by a trustee or debtor in possession are generally non-core proceedings governed by state law. These claims do not invoke federal questions and do not belong in bankruptcy court.” (Id.) Defendant argues “[t]hat is not what was reaffirmed in *Hirsch*, and it is irresponsible to misrepresent the meaning to the Court.” (Doc. #16 at 8.) In response, plaintiff concedes that

"the only similarity between the instant case and *Hirsch, id.*, is the application of state law." (Doc. #25 at 5.)

F. Generally

Defendants argue that some of plaintiff's support is "peculiar" and that sanctions are warranted when "inventing direct quotations" to "create support where none exist is inappropriate." (Doc. #16 at 9-10.) In response, plaintiff offers this statement:

As a solo practitioner handling evolving litigation demands for a client with limited resources, undersigned counsel is committed to ensuring both accuracy and access to justice. While preparing the initial filing, undersigned counsel was coping with significant health issues and, in good faith, sought limited outside assistance with legal research to meet the deadline.

While this does not absolve ultimate responsibility, it provides important context for the citation errors that occurred. These were not made with any intent to mislead but rather arose from oversight during a period of constrained capacity. Undersigned counsel takes full ownership of the record and remains committed to candor, professionalism, and respectful compliance with this Court's orders.

(Doc. #25 at 5.) Plaintiff concludes with an apology asking the Court to "grant grace in lieu of sanctions." (Id. at 5-6.)

III.

Defendants seek sanctions pursuant to Fed. R. Civ. P. 11(b) and (c), as well as 28 U.S.C. § 1927 and the Court's inherent power to order sanctions for plaintiff's misrepresentation and/or "fake"

cases cited in the Motion to Remand (Doc. #14). The Court addresses each basis.

A. Rule 11

Rule 11(b) states that:

By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies 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, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely 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 belief or a lack of information.

Fed. R. Civ. P. 11(b). The Rule 11 standard, as recently stated by the Eleventh Circuit:

Rule 11 sanctions are warranted when a party files a pleading or motion that "(1) has no reasonable factual basis; (2) is based on a legal theory that has no reasonable chance of

success and that cannot be advanced as a reasonable argument to change existing law; and (3) is filed in bad faith for an improper purpose." []

Rule 11 imposes an affirmative duty on an attorney to conduct a reasonable inquiry into both the facts and the law before filing a pleading or motion. [] When deciding whether to impose sanctions under Rule 11, a district court must conduct a two-step inquiry, determining "(1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleadings should have been aware that they were frivolous." [] A factual claim is frivolous when it has no reasonable factual basis. [] A legal claim is frivolous when it has no reasonable chance of succeeding. [] When the attorney's evidence is "merely weak," but supports a claim under existing law after a reasonable inquiry, sanctions are unwarranted. Sanctions are warranted, however, when the attorney exhibits "a deliberate indifference to obvious facts." []

If the attorney failed to make a reasonable inquiry, then "the court must impose sanctions despite the attorney's good faith belief that the claims were sound." [] The reasonableness of the inquiry depends on the circumstances of the case. []

In addition, an attorney's obligations with respect to the contents of pleadings or motions are not measured solely as of the time when the pleading or motion is initially filed with the court, but also at the time when the attorney, having learned the claims lack merit, reaffirms them to the court. [] "That the contentions contained in the complaint were not frivolous at the time it was filed does not prevent the district court from sanctioning [the attorney] for his continued advocacy of them after it should have been clear that those contentions were no longer tenable." []

Gulisano v. Burlington, Inc., 34 F.4th 935, 941-43 (11th Cir. 2022) (internal citations omitted). “Under Rule 11’s ‘safe harbor’ provision, the party seeking sanctions must serve a copy of the motion on the opposing party 21 days before filing a motion for sanctions under Rule 11.” Dudar v. State Farm Fire & Cas. Ins., No. 23-12788, 2024 WL 3580079, at *1 (11th Cir. July 30, 2024) (citing Fed. R. Civ. P. 11(c)(2)).

While counsel failed to make a “reasonable inquiry” regarding the validity of the citations before filing the motion, defendant did not comply with the safe harbor provision of Rule 11 to allow counsel to address the issue before seeking sanctions from the Court. The request for counsel to show cause does not suffice. “The purpose of the safe-harbor provision is to permit correction of the alleged violation without imposing sanctions.” Dudar, at *1 (citing Peer v. Lewis, 606 F.3d 1306, 1315 (11th Cir. 2010)). The motion will be denied under Rule 11.

B. 28 U.S.C. § 1927

Title 28, § 1927 reads that:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927. “[T]he plain language of the statute imposes three essential requirements for an award of sanctions under § 1927:”

First, the attorney must engage in “unreasonable and vexatious” conduct. Second, that “unreasonable and vexatious” conduct must be conduct that “multiplies the proceedings.” Finally, the dollar amount of the sanction must bear a financial nexus to the excess proceedings, *i.e.*, the sanction may not exceed the “costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”

Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230, 1239 (11th Cir. 2007) (quoting Peterson v. BMI Refractories, 124 F.3d 1386, 1396 (11th Cir. 1997)). To trigger § 1927, “the party moving for sanctions must show objective bad faith,” which usually means showing the “attorney acted ‘knowingly or recklessly.’” Hyde, 962 F.3d at 1310 (quoting Schwartz v. Millon Air, Inc., 341 F.3d 1220, 1225 (11th Cir. 2003)).

While counsel’s citations were misleading, incorrect, or contained blatantly misquoted material, the motion to remand was immediately withdrawn. It does not appear that counsel acted knowingly or recklessly, and defendant has not shown objectively that the misconduct was in bad faith. The motion will be denied under Section 1927.

C. Court’s Inherent Powers

“A court may impose sanctions for litigation misconduct under its inherent power[s].” Eagle Hosp. Physicians, LLC v. SRG

Consulting, Inc., 561 F.3d 1298, 1306 (11th Cir. 2009) (citations omitted). “These powers are necessarily vested in courts to manage their affairs to ‘achieve the orderly and expeditious disposition of cases.’” In re Mroz, 65 F.3d 1567, 1575 (11th Cir. 1995) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)).

To trigger the Court’s inherent powers, “the party moving for sanctions must show subjective bad faith.” Hyde v. Irish, 962 F.3d 1306, 1310 (11th Cir. 2020) (emphasis in original) (citations omitted). That means showing “intentional and not just reckless behavior.” J.C. Penney Corp., Inc. v. Oxford Mall, LLC, 100 F.4th 1340, 1346 (11th Cir. 2024) (citing Purchasing Power, LLC v. Bluestem Brands, Inc., 851 F.3d 1218, 1224–25 (11th Cir. 2017)). “A finding of bad faith is warranted where an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent. A party also demonstrates bad faith by delaying or disrupting the litigation or hampering enforcement of a court order.” Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998) (citation omitted). This showing can be done with either (1) direct evidence of subjective bad faith or (2) evidence of conduct “so egregious that it could only be committed in bad faith.” Hyde, 962 F.3d at 1310 (quoting Purchasing Power, 851 F.3d at 1224–25). Negligent conduct “by itself”, does not warrant sanctions. Id. at 1311 (citing Purchasing Power, 851 F.3d at 1225).

Once a showing of subjective bad faith is made, the full force of the Court's inherent powers is unleashed, and the Court can utilize its discretion to impose wide-ranging sanctions against any offending party for a full range of litigation abuses. Mingo v. Sugar Cane Growers Co-op. of Fla., 864 F.2d 101, 102 (11th Cir. 1989) ("The sanctions imposed can range from a simple reprimand to an order dismissing the action with or without prejudice."); In re Sunshine Jr. Stores, Inc., 456 F.3d 1291, 1304 (11th Cir. 2006) ("Federal courts have the inherent power to impose sanctions on parties, lawyers, or both."); Chambers, 501 U.S. at 46 ("[T]he inherent power extends to a full range of litigation abuses.").

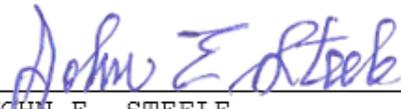
"Because of their very potency, inherent powers must be exercised with restraint and discretion," and a "primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." Chambers, 501 U.S. at 44-45. "[I]f a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party." Id. at 46. (citations omitted). While the Court finds counsel's careless and inaccurate citations to be a disservice to the court, the parties, and the process of seeking justice in the case, the Court will not impose monetary sanctions at this time.

Accordingly, it is hereby

ORDERED:

Defendants' request for an Order to Show Cause (Doc. #16) is **GRANTED** to the extent that counsel was required to respond and did so. The Court declines to impose monetary sanctions, but warns attorney Tesha Allison, Florida Bar No. 108538, that any other similar incident in ANY case before this Court will not be viewed with such leniency.

DONE and ORDERED at Fort Myers, Florida, this 28th day of July 2025.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Parties of Record