

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

IN RE:

Dwayne Johnson and Shaki Juanita
Franklin-Johnson,

Debtor(s).

C/A No. 19-00890-HB

Chapter 13

**ORDER SANCTIONING MOSS &
ASSOCIATES, ATTORNEYS, P.A.**

THIS MATTER came before the Court for a hearing on August 22, 2024, on the Rule to Show Cause issued on July 31, 2024,¹ and the response thereto of the United States Trustee (the “UST”).² Appearances were made by B. Keith Poston on behalf of the UST, Andrew A. Powell on behalf of Chapter 13 Trustee Annemarie B. Mathews (the “Trustee”), and Jason T. Moss (“Moss”) on behalf of Moss & Associates, Attorneys, P.A. (the “Firm”), counsel of record in this case for Debtors Dwayne Johnson and Shaki Juanita Franklin-Johnson.³ Debtors did not appear. An employee of the Firm testified, and Moss proffered information.

FINDINGS OF FACT

On February 14, 2019, Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of the Firm as counsel to initiate the above-captioned case. A plan was confirmed⁴ and later modified.⁵

Years later, Debtors completed their payments through the Trustee, and on June 6, 2024, the Trustee filed a Report of Trustee of Completion of Plan Payments by Debtors, certifying to the Court that Debtors had completed the payments due to the Trustee under the confirmed plan. On the same date, the Trustee filed a Notice to Debtors of Plan Completion and Notification of Need

¹ ECF No. 122.

² ECF No. 124, filed Aug. 16, 2024.

³ Linda K. Barr on behalf of the UST also appeared by telephone to listen to the proceedings.

⁴ ECF No. 43.

⁵ ECF No. 62.

to File Request for Discharge, providing Debtors notice that, if they believed they were entitled to a discharge, they must prepare, sign, and file a Certification of Plan Completion and Request for Discharge (“Certification”) and Notice (“Notice”) pursuant to SC LBR 3015-5, and that their failure to do so could result in the closing of the case without a discharge.⁶

On July 1, 2024, the Firm—using Moss’ CM/ECF credentials—filed the Certification and Notice on behalf of Debtors.⁷ The Certification requires information relevant to Debtors’ eligibility for a discharge, referencing obligations and compliance with, among other things, 11 U.S.C. §§ 111, 522(q)(1), 1322(b)(5), and 1328(a), as applicable. The Certification lists “/s/” and each Debtors’ name on the signature line, and provides at the top “[t]he above-captioned debtor certifies under penalty of perjury that the following are true and correct....” The Certification does not require the signature of Debtors’ counsel, but the accompanying Notice requesting action was signed by Moss. Thereafter, based on the representations set forth in that filing, the Court entered an Order on July 24, 2024, granting a discharge under § 1328(a) to Debtors.⁸

On July 24, 2024, shortly after the discharge order was entered, Debtors filed correspondence *pro se*.⁹ In the correspondence, Debtors indicated that they did not sign the Certification and that, prior to it being filed, they informed the Firm that they did not want to move forward with a request for discharge until they completed negotiations with a creditor. On July 25, 2024, the Court entered an Order requiring the Firm to file proof of compliance with SC LBR 9011-4(a)(1) regarding Debtors’ signatures on the Certification by July 30, 2024.¹⁰ On July 29, 2024, the Firm filed a copy of an unsigned email dated July 29, 2024, that appears to be from

⁶ ECF No. 108.

⁷ ECF No. 115.

⁸ ECF No. 116.

⁹ ECF No. 117.

¹⁰ ECF No. 118.

Debtor Shaki Juanita Franklin-Johnson to the Firm indicating that Debtors wished to move forward with discharge.¹¹

On July 31, 2024, the Court entered the Rule to Show Cause indicating that the email did not address compliance with SC LBR 9011-4 and therefore Moss and the Firm had failed to comply with the July 25, 2024, Order and to comply with SC LBR 9011-4, and requiring Moss to appear before the Court on August 22, 2024, on behalf of the Firm to show cause why sanctions should not be imposed for failure to comply with the Order and SC LBR 9011-4. Responses were due by August 15, 2024, but the Firm did not file a response.

The UST's response called the Court's attention to other cases filed by the Firm involving its non-compliance and alleged non-compliance with SC LBR 9011-4, and counsel for the UST elaborated on this assertion at the August 22, 2024, hearing.¹² After consideration of the record, the Court finds that the Firm did not establish that Debtors had signed the Certification—a document intended to be signed and filed under penalty of perjury, that the Firm failed to establish that it had express documented permission from the Debtors to affix their signatures or that it retained sufficient evidence of the Debtors' permission to sign the document and the document's contents, and the Firm did not provide such documents for review upon order of the Court. Although Debtors appear now to have no issues with the filing of the document, that subsequent ratification is an inadequate substitute, and the filing of the Certification indicating their signatures without Debtors' authorization to do so was a misrepresentation to the Court that at best caused unnecessary delay in resolving this bankruptcy case.

¹¹ ECF No. 121.

¹² *See, e.g., In re Haynes*, C/A No. 23-03130-eg, ECF No. 48.

DISCUSSION AND 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.

Local Rule 9011-4 provides, in relevant part:

....The filing of the document(s) by the CM/ECF filer constitutes a certification that the filer obtained, prior to filing, either the original, physical signature or express documented permission from the signer to affix the signer's signature to the document and file it, and that the filer has verified that the authorizing signer is in fact the signer.... Filing any document using a CM/ECF login and password or the Court's claim interface constitutes the filer's signature for purposes of signing the document under Fed. R. Bankr. P. 9011.

.... **Retention of Original.** Unless otherwise provided by statute, rule, or order, the CM/ECF Participant is not required to obtain or retain original signatures where the signer has expressly authorized in writing or electronically that the document be filed with that signer's digital or electronic signature affixed. However, the filer must retain sufficient evidence of the signer's permission to sign a particular document and the document's contents as follows: if the case is dismissed, for a period of three (3) years; or if not dismissed, until the case or adversary proceeding is closed and the appeal time has passed and, if applicable, the time within which a discharge of the debtor may be revoked has passed. Under order of the Court, such documents must be provided for review to parties.

SC LBR 9011-4(a)(1) and (2). *See also* Fed. R. Bankr. P. 5005(a)(2)(C) ("A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature."); Fed. R. Bankr. P. 5005(a)(2)(D) ("A paper filed electronically is a written paper for purposes of these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.").

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)).

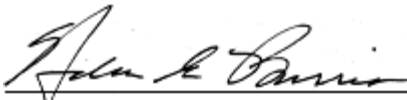
The Firm violated SC LBR 9011-4. This violation is especially troubling since the Certification contains information provided by Debtors *under penalty of perjury* that make representations to the Court and parties in interest, and request action from the Court. Moreover, the Firm's filing of the Certification violates Bankruptcy Rule 9011, as no reasonable attorney in like circumstances could have believed that filing the Certification with Debtors' signatures and accompanying Notice to be justified under applicable law.

The Court concludes that a \$1,000.00 sanction is warranted under the facts of this case to deter similar conduct in the future. The seriousness of this violation was discussed in detail at the hearing, and this violation may be considered in any future determination of whether the Firm has engaged in a pattern or practice of violating SC LBR 9011-4. The minimal sanction is determined with the understanding that Moss and the Firm appreciate the seriousness of compliance, and is entered without prejudice to the right of any party in interest to raise additional instances of non-compliance and requests for other or further relief as a result.

IT IS, THEREFORE, ORDERED THAT, pursuant to SC LBR 9011-4 and Fed. R. Bankr. P. 9011, Moss & Associates, Attorneys, P.A. shall pay \$1,000.00 to Debtors Dwayne Johnson and Shaki Juanita Franklin-Johnson **within fifteen (15) days of the entry of this Order** and shall file proof of Debtors' receipt of such funds **within twenty (20) days of the entry of this Order**.

FILED BY THE COURT
08/28/2024




Chief US Bankruptcy Judge
District of South Carolina