

The document below is hereby signed.

Dated: September 24, 2012.



*S. Martin Teel, Jr.*

**S. Martin Teel, Jr.  
U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
MARTHA A. AKERS,	)	Case No. 07-00662
	)	(Chapter 13)
Debtor.	)	
_____	)	
	)	
MARTHA A. AKERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No.
	)	12-10020
BEAL BANK, <i>et. al</i> ,	)	
	)	Not for publication in
Defendants.	)	West's Bankruptcy Reporter.

MEMORANDUM DECISION RE BEAL BANK'S  
MOTION TO DISMISS AMENDED COMPLAINT  
AND TO ENJOIN ADDITIONAL FILINGS WITHOUT ADVANCE COURT APPROVAL

Before the court is Beal Bank's motion to dismiss the amended complaint filed by Martha A. Akers and to enjoin Akers from making additional filings against Beal Bank without advance court approval. The court will dismiss the adversary proceeding and grant an appropriately tailored injunction. Putting aside the untimeliness of Akers' opposition to Beal Bank's motion, that opposition only reinforces the propriety of this ruling.

The allegations in Akers' amended complaint's paragraphs 3 and 4 are essentially identical to paragraph 5 of her original complaint. For the reasons stated in part III of the *Memorandum Decision* ruling on the motion to dismiss the original complaint, the amended complaint fails to state a claim upon which relief can be granted. Once again, Akers has not objected that Beal Bank was paid, under the plan, more than it was entitled to. Instead, she claims that the \$31,586.74 amount of Beal Bank's proof of claim was excessive, without asserting that she did not even owe the \$11,266.78 (plus \$4,695.86 in interest) that was paid pursuant to the \$31,586.74 claim. Accordingly, her allegations regarding the proof of claim fail to show that the court could grant her any relief for purposes of addressing issues that come within this court's limited subject matter jurisdiction. Once again Akers has failed to allege facts demonstrating that determining how much of the unpaid balance of Beal Bank's claim should be allowed would serve a purpose in Akers' bankruptcy case. She can seek a determination in that regard only in a court of competent jurisdiction, if it is not foreclosed by the doctrine of *res judicata* as Beal Bank appears to contend.

## II

In dismissing the other claims in the original complaint, the court found that it lacked subject matter jurisdiction over the claims. Similar claims are asserted here: paragraphs 2, 5, and 16-19 of the amended complaint allege that Beal Bank misapplied payments and failed to pay real estate taxes timely. As in the case of the prior complaint, the court lacks subject matter jurisdiction over these claims for the reasons stated in part II of the *Memorandum Decision* addressing the motion to dismiss the original complaint.

## III

The balance of the amended complaint makes conclusory allegations of fraud and violation of statutes and the Constitution, in addition to allegations of misconduct by the bankruptcy judge. Any claims thereby alleged plainly must be dismissed for lack of subject matter jurisdiction or, alternatively, for failure to state a claim upon which relief can be granted.<sup>1</sup>

## IV

For the reasons stated in Beal Bank's motion, it is appropriate to issue an injunction against Akers' filing further papers in this court against Beal Bank without leave of this

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<sup>1</sup> Although the District of Columbia has been named as a defendant, the amended complaint, like the original complaint, alleges no claim against the District of Columbia.

court. Beal Bank's memorandum in support of its motion states that "[b]ecause Ms. Akers has abused courts from several jurisdictions, the Court should enjoin [sic] her from filing suit against her creditors in any jurisdiction. See *Dantzler v. United States EEOC*, 810 F. Supp. 2d 312, 319 (D.D.C. 2011) (injunctions may reach beyond issuing court)." I decline to issue that broad an injunction. Other creditors are not parties to this adversary proceeding, and although Akers has filed many unsuccessful actions, most have not been repeated filings against a previous defendant. Moreover, the other courts in which Akers has sued Beal Bank will be able to issue injunctions if Akers persists in filing frivolous papers against Beal Bank, and I decline to engage in an intensive investigation of Akers' filings in those courts, whose jurisdiction and powers are not as narrowly circumscribed as this court's under 28 U.S.C. §§ 157 and 1334(b), to ascertain whether injunctive relief against filing in those courts is appropriate.

Beal Bank's proposed order would enjoin Akers from filing *in forma pauperis*, but the fee under item 6 of the Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930) is not charged when a debtor is the plaintiff. Moreover, Beal Bank's memorandum in support of its motion to dismiss failed to address the issue of barring *in forma pauperis* filings. In any event, if the court grants any request by Akers for leave to file a paper, the court

can consider at that time the issue of allowing the filing to be *in forma pauperis* (if that is an applicable issue). Accordingly, I will not issue an injunction barring Akers from filing *in forma pauperis*.

V

Beal Bank's memorandum in support of its motion also seeks its costs, citing "F. R. C. P. 11(b) and 28 USCS § 1927. ('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.')." The court will allow Beal Bank to recover its taxable costs, but not attorney's fees. The procedures of Fed. R. Bankr. P. 9011 (the analog of Fed. R. Civ. P. 11) have not been followed here (as no separate Rule 9011 motion was served on Akers, and she was not given the protection of Rule 9011's 21-day safe harbor). Even if 28 U.S.C. § 1927 applies to a non-attorney litigant (*compare Wages v. IRS*, 915 F.2d 1230, 1235-36 (9th Cir. 1990) (§ 1927 applies), *with Sassower v. Field*, 973 F.2d 75, 80 (2d Cir. 1992) (§ 1927 is inapplicable)), Beal Bank's request, read narrowly, was only for costs. When Beal Bank has not clearly flagged its request as one for attorney's fees, I will not proceed to address imposing fees under § 1927.

VI

A judgment follows.

[Signed and dated above.]

Copies to: All counsel of record.