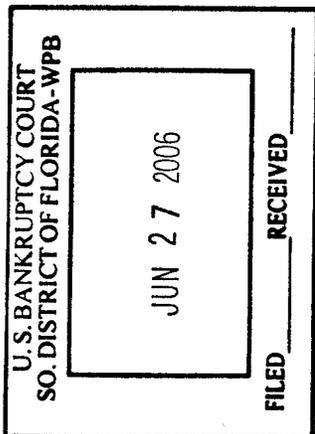




Paul G. Hyman Judge
United States Bankruptcy Court



**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

IN RE:

CASE NO.: 03-32158-BKC-PGH
CHAPTER 7

James F. Walker,
DEBTOR(S).

ORDER DENYING DEBTOR, JAMES F. WALKER AND DEBTOR'S COUNSEL, GARY J. ROTELLA, ESQUIRE AND GARY J. ROTELLA & ASSOCIATES, P.A.'S MOTION TO STRIKE, REMOVE AND SEAL FROM COURT FILE MARY ALICE GWYNN'S RESPONSE TO DEBTOR'S EMERGENCY MOTION FOR EXTENSION, CONTINUANCE AND MODIFICATION OF RULING DATED MAY 26, 2006 [C.P. - NON-ASSIGNED] [C.P. 1575]; AND MOTION FOR SANCITONS [SIC] AGAINST MARY ALICE GWYNN PURSUANT TO 28 U.S.C. § 1927 AND 11 U.S.C. § 105 AND DENYING REQUESTED RELIEF IN MARY ALICE GWYNN'S AMENDED REPLY

THIS MATTER came before the Court on June 16, 2006, upon James F. Walker's ("Debtor") and Gary J. Rotella, Esquire and Gary J. Rotella & Associates, P.A.'s (collectively "Rotella") *Motion to Strike, Remove and Seal from Court File Mary Alice Gwynn's Response to Debtor's Emergency Motion for Extension, Continuance and Modification of Ruling Dated May 26, 2006 [C.P. - Non-Assigned] [C.P. 1575]; and Motion for Sancitons [sic] Against Mary Alice Gwynn*

Pursuant to 28 U.S.C. § 1927 and 11 U.S.C. § 105 (the “Motion”) [C.P. 1582], *Mary Alice Gwynn’s (“Gwynn”) Reply to Debtor, James F. Walker, and Debtor’s Counsel, Gary J. Rotella, Esquire’s Motion to Strike, Remove and Seal from Court File Mary Alice Gwynn’s Response to Debtor’s Emergency Motion for Extension, Continuance and Modification of Ruling Dated May 26, 2006 and Motion for Sanctions Against Mary Alice Gwynn Pursuant to 28 U.S.C. § 1927 and 11 U.S.C. § 105 (the “Reply”)* [C.P. 1595] and *Amended Reply to Debtor, James F. Walker, and Debtor’s Counsel, Gary J. Rotella, Esquire’s Motion to Strike, Remove and Seal from Court File Mary Alice Gwynn’s Response to Debtor’s Emergency Motion for Extension, Continuance and Modification of Ruling Dated May 26, 2006 and Motion for Sanctions Against Mary Alice Gwynn Pursuant to 28 U.S.C. § 1927 and 11 U.S.C. § 105 (the “Amended Reply”)*¹ [C.P. 1599].

As stated in prior orders, this is the most over-litigated case to come before the undersigned in his twelve and one-half years on the bench and the series of events leading to this Order are a perfect example. On May 26, 2006, the Court conducted an evidentiary hearing on Susan Lundborg’s (“Lundborg”) *Motion To: (1) Quash Subpoena And Enter Protective Order, And For Contempt And Sanctions Against Debtor And His Counsel For Violation Of The Mediation Order; (2) Dismiss All Sanctions Motions Of Debtor And His Counsel Against Her; and (3) Enlarge Her Time To Complete The Record And Issues With Respect To Appeals Affected By Debtor’s Sanctions Motions* (the “Lundborg Contested Matter”) [C.P. 1317]. Gwynn was not a party to the Lundborg Contested Matter. At the close of the hearing, Rotella requested that the Court set a date to hear testimony from Mr. Robin B. Brownrigg (“Brownrigg”), a real estate appraiser with Bahamas Realty,

¹ Gwynn filed the Amended Reply because she inadvertently filed the Reply before final revisions were made. Therefore, the Court shall only make reference to the Amended Reply throughout this Order.

Ltd. The Court granted Rotella's request, and ordered Rotella to file and provide Lundborg's counsel with a copy of Brownrigg's appraisal report by June 2, 2006, set an evidentiary hearing to hear testimony from Brownrigg for June 8, 2006 and required Rotella to produce Brownrigg for deposition prior to June 8, 2006 (collectively the "Lundborg Contested Matter Deadlines"). On May 30, 2006, Rotella filed a fourteen page *Emergency Motion for Extension, Continuance and Modification of Ruling Dated May 26, 2006 [C.P. - Non Assigned]* (the "Continuance Motion") [C.P. 1535]. In the Continuance Motion, Rotella requested that the Lundborg Contested Matter Deadlines be continued because Brownrigg was not available to testify on June 8, 2006 and Brownrigg would require an additional thirty days to complete the appraisal report. Instead of a two to three page simple motion requesting a continuance based upon unavailability, the Continuance Motion consisted of fourteen pages of derogatory comments relating to opposing attorneys in the case and seven paragraphs seeking a continuance. The Continuance Motion was heard on June 2, 2006, and the Court orally granted the Continuance Motion in part based only on Brownrigg's unavailability, rather than Rotella's request for additional time for investigation. The Court continued the June 8, 2006 hearing to June 15, 2006 and extended the time for Rotella to provide Lundborg's counsel with a copy of Brownrigg's report to noon on June 13, 2006. Gwynn appeared telephonically at the hearing on the Continuance Motion, and the Court ruled that she had no standing to make arguments on the Continuance Motion. Twelve days later, on June 14, 2006, Gwynn filed a *Response to Debtor's Emergency Motion for Extension, Continuance and Modification of Ruling Dated May 26, 2006 [C.P. - Non-Assigned]* (the "Response to the Continuance Motion") [C.P. 1573]. On June 15, 2006, the Court entered an *Order Denying Requested Relief in Mary Alice Gwynn's Response to Debtor's Emergency Motion for Extension,*

Continuance and Modification of Ruling Dated May 26, 2006 (the “Order”) [C.P. 1576]. In the Order, the Court noted that the Response to the Continuance Motion, while characterized as a response, sought affirmative relief and should have been filed as a “motion.” The Court further found that it resolved “most, if not all, of the allegations contained in Gwynn’s Response” in various orders entered throughout this case. Based upon the derogatory comments directed toward Rotella and the Court, the Court also referred the Response to the Continuance Motion to the Florida Bar for investigation as to whether the Response to the Continuance Motion violates Rule 4-8.2(a) of the Florida Bar’s Rules of Professional Conduct, entitled “Maintaining the Integrity of the Profession: Judicial and Legal Officials.”²

One day after the Order was entered, Rotella filed the Motion arguing that Gwynn had no standing to file the Response to the Continuance Motion because she was not a party to the Lundborg Contested Matter nor did she represent a party to the Lundborg Contested Matter. Rotella also contends that the allegations contained in the Response to the Continuance Motion are libelous and false. As a result, Rotella requests that the Court strike the Response to the Continuance Motion, return it to Gwynn and seal it from the court file. Lastly, Rotella seeks compensatory and punitive sanctions against Gwynn pursuant to 28 U.S.C. § 1927 and 11 U.S.C. § 105, presumably for incurring attorney’s fees and costs in preparing the Motion. In the Amended Reply, Gwynn claims

² The Court notes that a copy of its April 26, 2006 *Memorandum Order* (the “Memorandum Order”) [C.P. 1472] was provided to the Florida Bar for investigation of Gwynn’s unprofessional conduct as an attorney before this Court throughout the proceeding. A copy of the Court’s June 7, 2006 *Order: 1) Denying Mary Alice Gwynn’s Motion for Rehearing and Reconsideration of the Court’s Sua Sponte Order Directing Mary Alice Gwynn, Esq., to Stop Filing Notices of Filing [C.P. 1531]; 2) Imposing Sanctions; and 3) Striking Court Paper Nos. 1529 and 1530* (the “Sanctioning Order”) [C.P. 1550] was also forwarded to the Florida Bar for inclusion in their investigation of Gwynn’s unprofessional conduct. The Court is unaware of any actions taken by the Florida Bar regarding these referred matters.

that the Response to the Continuance Motion, “gave the Court and the public-at-large the true picture of what occurred in this Bankruptcy proceeding” The Amended Reply again makes numerous derogatory comments towards Rotella, other parties involved in the case, and the Court. Gwynn asks the Court to deny the Motion and seeks other affirmative relief.

The Order fully resolved the issues raised by the Response to the Continuance Motion. As a result, the Court finds that there was no need for a response by Rotella and thus no grounds for an award of sanctions as requested in the Motion. In addition, under the circumstances in this case, as particularly described in the Memorandum Order, the Court chooses not to exercise its discretion to award sanctions to Rotella. *In re Mroz*, 65 F.3d 1567, 1575 (11th Cir. 1995) (citing *Chambers*, 501 U.S. 32, 42-43 (1991)).

As to Rotella’s request that the Court strike the Response to the Continuance Motion, return it to Gwynn and seal it from the court file, 11 U.S.C. § 107(b) provides that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may -

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

The statute’s enforcing rule states that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or

regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.” Fed. R. Bankr. P. 9018. Both Section 107(b) and Bankruptcy Rule 9018 are similar to the provisions of Rule 26(c) of the Federal Rules of Civil Procedure, which permits a court to “make any order which justice so requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way . . .” *In re 50-Off Stores, Inc.*, 213 B.R. 646, 650 (Bankr. W.D. Tex. 1997) (quoting Fed. R. Civ. P. 26(c)). It should also be noted that Rule 12(f) of the Federal Rules of Civil Procedure permits a court to strike any scandalous matter from a pleading. Courts are cognizant of the general rule that public access to court records and proceedings ought to be insured, in order to preserve public confidence in the integrity of the judicial process. *Id.* (internal citation omitted). “By the same token, section 107(b) (and, for that matter, Rule 26(c) of the Federal Rules of Civil Procedure) are congressionally sanctioned exceptions to this rule, and represent an entrustment of a certain amount of discretion to a trial judge to limit public access when, in the words of Rule 26(c), ‘justice so requires.’” *Id.* While Gwynn’s statements in the Response to the Continuance Motion were egregious, without factual foundation and unprofessional, the Court finds that “justice” does not require the striking or sealing of the Response to the Continuance Motion.

In the Sanctioning Order, the Court found that Gwynn was improperly attempting to “influence this Court by filing numerous notices of filing containing inappropriate hearsay documents that are unrelated to any pending contested or adversary proceeding.” The Court indicated that “Gwynn admitted that her filing of newspaper articles, other hearsay documents, and

documents from cases before other courts and judges, was to give the Court ‘notice of what transpired.’” The Court ordered that Gwynn shall be fined, “at the rate of \$250.00 each, for any future documents filed pursuant to notices of filing,” Based upon Gwynn’s statement in the Amended Reply that the Response to the Continuance Motion was filed in order to give “the Court and the public-at-large the true picture of what occurred in this Bankruptcy proceeding . . . ,” the Court finds that Gwynn continues to seek to prejudice this Court in violation of the Florida Bar Rules of Professional Conduct and in violation of the Sanctioning Order. Rule 4-3.5(a) of the Florida Bar’s Rules of Professional Conduct prohibits a lawyer from seeking to influence a judge except as permitted by law or rules of the court. The Court is herewith forwarding a copy of this Order to the Florida Bar for inclusion in their investigation of Gwynn’s unprofessional conduct. Furthermore, the Court finds that the Amended Reply seeks affirmative relief, which should have been sought by the filing of a separate “motion.” Accordingly, having reviewed the Motion, the Amended Reply, applicable law, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. The Motion is **DENIED** without prejudice to Rotella pursuing a libel claim in state or federal court.
2. The relief sought in the Amended Reply is **DENIED**.
3. Gwynn shall pay \$250.00, made payable to the Clerk United States Courts, as a fine for violating the Sanctioning Order within ten (10) days from the entry of this Order.

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