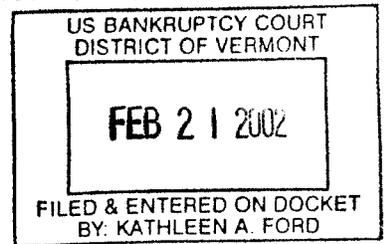


**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



In re:  
**East Hill Manufacturing Corp.,  
Debtor.**

**Chapter 11 Case  
#97-11884**

#349-1

*Appearances: Paul S. Kulig, Esq.  
Rutland, VT  
Attorney for Bank One*

*Jesse T. Schwidde, Esq.  
Glinka & Schwidde  
Rutland, VT  
Attorney for debtor*

*John Norton-Griffiths  
Rutland, VT  
Pro se Secured Creditor*

**MEMORANDUM OF DECISION  
DENYING *SUA SPONTE* MOTION FOR SANCTIONS UNDER RULE 9011  
AGAINST NORTON-GRIFFITHS**

The matter before the Court is the Court’s *sua sponte* request for John Norton-Griffiths, *pro se*, to show a basis in law and fact for his second Motion for Sanctions Under Bankruptcy Rule 9011, filed on December 18, 2001 against Paul S. Kulig, Esq., counsel for the creditor, Charter One Bank (hereafter “the Bank”). Mr. Norton-Griffiths requested Bankruptcy Rule 9011 sanctions based upon allegations that Attorney Kulig wrongfully failed to withdraw the Bank’s claim against the debtor. Pursuant to the hearing held on January 29, 2002, the opposition submitted by Attorney Kulig, and the record, this Court denied the motion for sanctions both on the merits and because Mr. Norton-Griffiths lacked standing to seek such relief pursuant to the prior decisions of this Court and the U.S. District Court. Concerned that this successive motion for sanctions by Mr. Norton-Griffiths not only lacked legal and factual merit but reflected the potential for an abusive filing in violation of Bankruptcy Rule 9011, this Court advised the movant of its concerns with respect to Rule 9011 and directed Mr. Norton-Griffiths to substantiate the legal and factual underpinnings for his motion. Mr. Norton-Griffiths responded by filing his *Secured Creditor John Norton-Griffiths’ Memorandum of Facts and Law Supporting Motion Pursuant to F.R.B.P. 9011* [Dkt. #343-1]. For the reasons set forth on the record at the hearing held on January 29, 2002, this Court’s denial of Mr. Norton-Griffiths’

request for Rule 9011 relief stands, and shall not be disturbed based upon anything filed subsequent to that hearing. For the reasons set forth below, the Court finds that Mr. Norton-Griffiths has presented a sufficient legal and factual basis for his most recent motion to avoid imposition of sanctions under Rule 9011 at this time.

### DISCUSSION

Bankruptcy Rule 9011 provides in pertinent part:

- (b) **REPRESENTATIONS TO THE COURT.** By presenting to the court ... a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the persons'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, a motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection (b). It shall be served as provided in Rule 7004.

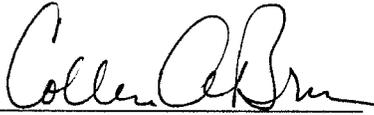
The Court, on its own authority, directed Mr. Norton-Griffiths to substantiate the basis for his second motion for sanctions so it could determine whether the he was, in fact, in violation of the foregoing provision. This Court takes the mandates of Rule 9011 seriously and expect all litigants to conduct themselves in compliance with Rule 9011. This Court also believes special consideration must be given to the obstacles facing parties who choose proceed without benefit of counsel, and recognizes the latitude accorded *pro se* parties pursuing relief in federal courts in this Circuit. See Patrick v. LeFevre, 745 F.2d 153, 160 (2<sup>nd</sup> Cir.

1984)(Second Circuit has “long evinced a sensitivity toward the plight of the uncounselled [party] attempting to navigate the technically-laden road to the courthouse.”). Thus, in cases such as this the Court must balance the handicap under which a *pro se* party is proceeding against the importance of maintaining the standards set by Rule 9011. Ultimately, the Court will not countenance bad faith or abusive filings designed to harass opposing parties or their counsel, in violation of Rule 9011, by any party, but may allow the *pro se* status of the litigant to be a factor in determining whether the litigant should be given extra time to remedy improper conduct and in determining what sanctions to impose under Rule 9011. The original papers filed in connection with the subject motion failed to set forth any specific legal basis for the relief sought, and appeared to be seeking the same relief that had already been denied by this Court (Littlefield, J.), the U.S. District Court and the U.S. Court of Appeals for the Second Circuit.

Upon a careful review of the response filed by Mr. Norton-Griffiths, it appears that notwithstanding the legal deficiencies in his second motion for sanctions under Rule 9011, it does not appear that the motion was filed with a complete absence of law and fact, or the requisite bad faith, to warrant Rule 9011 sanctions *sua sponte*. While the case law and factual contentions set forth by Mr. Norton-Griffiths do not substantiate relief under Rule 9011 against Attorney Kulig or alter his lack of standing to seek the requested relief, this Court is satisfied that *sua sponte* sanctions against Mr. Norton-Griffiths are not warranted at this time.

Based on the foregoing, the court will not impose sanctions pursuant to Bankruptcy Rule 9011 upon Mr. Norton-Griffiths in connection with this motion.

February 21, 2002  
Rutland, Vermont

  
Colleen A. Brown  
United States Bankruptcy Judge

NOTE:

Although the movant may have designated additional parties to receive this document, the court has served copies of this document only on the parties named below. If a designated party is not listed, they are not in the court's database as a party to this case.

Notice sent to:

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