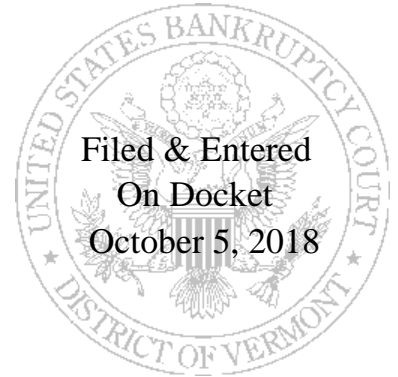


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:
Nicholas and Amanda Gravel,
Debtors.

Chapter 13 Case
11-10112

In re:
Allen and Laurie Beaulieu,
Debtors.

Chapter 13 Case
11-10281

In re:
Matthew and Emilie Knisley,
Debtors.

Chapter 13 Case
12-10512

Appearances: Mahesha Subbaraman, Esq.
Subbaraman PLLC
Minneapolis, Minnesota
For the Trustee

Alexandra Edelman, Esq.
Primmer Piper Eggleston & Cramer, PC
Burlington, Vermont
For the Creditor

SCHEDULING ORDER
REGARDING TRUSTEE’S MOTION AND DISTRICT COURT’S REMAND

On October 3, 2018, the Court held a hearing (“the Hearing”) on its Supplemental Notice of Hearing on the District Court’s Remand Order (doc. #102¹; the “Notice”). The Notice stated the purpose of the Hearing was to give the parties an opportunity to present oral argument with respect to their “view of the scope and content of legal issues to be addressed in response to the Remand Order.” The Notice also preliminarily identified the issues before this Court as follows:

- (i) whether some amount of monetary sanctions is authorized by the “other appropriate relief” language of 3002.1(i)(2), and if so, the source and extent of this Court’s authority to impose such monetary sanctions under Rule 3002.1;
- (ii) whether there is a monetary sanction that is less than “serious,” and “short of ... the scope and type” of monetary sanction this Court imposed on PHH that is both warranted by the facts and circumstances of these cases and within the authority of this Court to impose; and

¹ All document docket numbers refer to the numbers assigned to them on the docket in the case of Matthew and Emilie Knisley (#12-10512), unless otherwise indicated; all such documents are docketed in all three of the above-captioned cases.

- (iii) whether there is cause, and it would be consistent with the mandates of Rule 3002.1, to refer the matter to the District Court for the imposition of punitive sanctions.

Finally, the Notice stated the Court would make a final determination identifying the issues the parties must address to satisfy the Remand Order, after the Hearing, and would then grant counsel an opportunity to file memoranda of law, prior to rendering a decision, not inconsistent with the Remand Order, on the open legal issues.

On the afternoon of October 1, 2018, i.e., less than two days before the Hearing, the Trustee filed a 16-page document captioned as “Motion & Memorandum of Law for: (1) Reimposition of Substantial Punitive Non-Contempt Sanctions Against PHH; (2) Certification under 28 U.S.C. § 158(d)(2); and (3) Issuance of a Stay Pending Appeal” (doc. # 104, “the Trustee’s Motion”). At the Hearing, the Trustee stated he did not file a notice of motion with his Motion, expect PHH to respond to his Motion, or expect the Court would address his Motion at the Hearing, but felt it served the principles of both judicial economy and fair play for him to have filed the Motion in advance of the Hearing. The Court stated it would not address the merits of the Trustee’s Motion at the Hearing, or prior to giving PHH an opportunity to respond to that Motion. PHH vigorously criticized the timing of, and rationale for, the filing of the Trustee’s Motion.²

The Hearing proceeded, as scheduled, with each party presenting their views regarding the scope of legal issues to be addressed pursuant to the Remand Order. PHH requested leave to brief all five issues it presented on appeal to the District Court – and said it could do so in the context of the three issues this Court identified – as well as the standing question it raised for the first time in the recently-dismissed appeal before the Second Circuit (doc. # 96). It insisted the Court should rule on the legal issues raised in the Remand Order, prior to considering the late-filed Trustee’s Motion. By contrast, the Trustee asserted that under the circumstances of this contested matter, the explicit findings of the District Court, and the applicable direct appeal statute [11 U.S.C. § 158(d)(2)], this Court must certify a direct appeal to the Second Circuit. Therefore, the Trustee urged this Court to rule on his Motion prior to addressing the legal issues raised in the Remand Order. The Trustee asserts a direct appeal would serve judicial economy because a ruling from the Second Circuit could provide clear guidance on the questions of first impression both the District Court’s Remand Order and this Court’s Notice have identified as the open legal issues.

² PHH went so far as to argue the Trustee’s filing of the Motion violated the Notice, alleging the Notice prohibited the parties from filing any further documents or memoranda of law until after the Hearing. The Court rejects that argument as without merit; the Notice had no prohibitions in it. The Court reaches no other conclusions with respect to PHH’s arguments in opposition to the Trustee’s Motion, since PHH presented them without benefit of a reasonable period of time to research and carefully consider the arguments in the Trustee’s Motion.

At the conclusion of the Hearing, the Court took the matter under advisement. It informed the parties it would issue a scheduling order specifying how much time each party would have to file a memorandum of law in response to the Remand Order, when the Court would consider the Trustee's Motion, and how much time PHH would have to respond to that Motion. PHH's counsel requested 30 days to file any memorandum of law and the Trustee did not request a different amount of time.


Having considered the parties' arguments, the timing of the Trustee's filing of his Motion, the unique procedural and legal questions at issue in these cases, and the length of time this contested matter has been pending, THE COURT FINDS as follows:

- A. Although the Trustee's Motion was filed on the eve of the Hearing, its filing was valuable in framing the options for future proceedings and did not violate any order or Notice of this Court.
- B. PHH must have an opportunity to file a response and memorandum of law before the Court rules on the Trustee's Motion.
- C. PHH was not prejudiced by the Trustee's failure to comply with Vt. LBR 9013-1(b), under the unique circumstances of this contested matter and the Court's determination not to address the Trustee's Motion until PHH has a reasonable time to consider and respond to that Motion.
- D. The only additional Remand issue either party suggested, to supplement the legal issues identified in the Notice, was the PHH request to consider the Trustee's standing in this contested matter.
- E. There is cause to proceed expeditiously since this contested matter has been pending since June 2016, and it would be most expedient for the parties to file their memoranda of law on both the Remand issues and the Trustee's Motion at the same time so regardless of whether the Court decides to address the Motion or Remand issues first, it will have all necessary memos of law.
- F. If the governing statute mandates certification of a direct appeal, this Court will issue that certification for the purpose of obtaining guidance from the Second Circuit on the legal issues of first impression this Court adjudicated in its decision and the District Court pointed out in its Remand Order.
- G. Since it is clear the Trustee has already prepared his arguments with respect to the Remand Order issues, it will impose little if any additional burden on the Trustee to require him to file a memorandum of law on the Remand issues at this time.
- H. Since PHH indicated it could respond to the Trustee's Motion in 30 days, requiring PHH to file its response to the Trustee's Motion, simultaneous with its filing of the Remand memorandum of law appears unlikely to cause an undue burden on PHH.
- I. PHH's request that the Court also consider whether the Trustee has standing to continue to pursue this contested matter raises an important question that warrants briefing. See Warth v. Sedin, 422 U.S. 490 (1975). Moreover, adding this issue is cause for PHH to file its Remand memorandum of law first.
- J. All arguments and legal issues that were before the trial and appellate courts in this matter have been resolved other than those set forth in the Notice and this Order and therefore are not to be included in any memos of law filed hereunder.

Based on these findings, the parties' arguments at the Hearing, the Trustee's Motion, and the record in these three cases, IT IS HEREBY ORDERED as follows:

1. In connection with the Remand, the parties' memoranda of law shall be strictly limited to the issues set forth in the Notice except that PHH may also address whether the Trustee has prudential standing to pursue relief in this matter, and if it does so, the Trustee may respond to that argument.
2. The parties shall limit their arguments in their Remand memoranda of law to the issues set forth in this Order, and exercise the requisite care and restraint necessary to avoid exceeding that scope of issues.
3. To the extent PHH's arguments at the Hearing constituted a request for leave to address any issue other than the three identified above plus the Trustee's prudential standing, that request is **denied**.
4. **By November 6, 2018**, PHH
 - (a) shall file a response to the Trustee's Motion with a supporting memorandum of law ("PHH's Motion Response"), and
 - (b) shall file a memorandum of law on the Remand issues identified in this Order ("PHH's Remand Memo").
5. If the Trustee wishes to file a reply to PHH's Motion Response (a "Trustee's Motion Reply"), he must do so **by November 13, 2018**, and after the earlier of the Trustee's Motion Reply or November 14, 2018, the Trustee's Motion shall be deemed fully submitted.
6. The Trustee shall file a Response to the PHH's Remand Memo, with a supporting memorandum of law, (the "Trustee's Remand Response"), **by November 20, 2018**.
7. If PHH wishes to file a reply to the Trustee's Remand Response ("PHH's Remand Reply"), it must do so **by November 27, 2018**, and after the earlier of PHH's Motion Reply or November 28, 2018, the Remand Issue shall be deemed fully submitted.
8. The parties may propose a modification to this briefing and response schedule by filing a joint stipulation and proposed order, provided they do not seek to significantly delay full submission of either the Remand issues or the Trustee's Motion.
9. Unless otherwise ordered by the Court, there will be no further hearing on either the Trustee's Motion or the Remand Order.
10. The Trustee's request for a waiver of the duty to comply with Vt. LBR 9013-1(b), with respect to the Trustee's Motion is **granted**.

October 5, 2018
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge