

(Cite as: 1994 WL 832007 (Bankr.D.Vt.))

In re ST. JOHNSBURY TRUCKING COMPANY, INC., Debtor.

**The OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ST. JOHNSBURY
TRUCKING**

COMPANY, INC., et ano., Plaintiffs,

v.

BANKERS TRUST COMPANY, Defendant/Plaintiff In Counterclaim,

v.

**ST. JOHNSBURY TRUCKING COMPANY, INC., and William S. Clifford, Defendants
In**

Counterclaim.

Bankruptcy 93-B-43136 (FGC).

Adv. No. 93-1073 (FGC).

United States Bankruptcy Court, D. Vermont.

Nov. 1, 1994.

Burton M. Freeman, Bankers Trust Company, New York City.

Adam C. Harris, O'Melveny & Myers, New York City.

Leo T. Crowley, Winthrop, Simpson, Putnam & Roberts, New York City.

**ORDER COMMENCING PROCEEDING TO DETERMINE WHETHER SANCTIONS SHOULD BE
IMPOSED**

FRANCIS G. CONRAD, Bankruptcy Judge.

***1** Upon the Court's own motion to commence a proceeding to determine whether conduct of Bankers Trust Company, its attorneys O'Melveny & Myers and Winthrop, Stimson, Putnam & Roberts, and certain individuals (the "Persons", as defined below) violates Rule 9011 of the Federal Rules of Bankruptcy Procedure and/or constitutes the perpetration of fraud upon the United States Bankruptcy Court for the District of Vermont, or other sanctionable conduct ("Sanctions Proceeding"); and upon all prior proceedings, pleadings and papers in this adversary proceeding ("Adversary Proceeding") and in Chapter 11 Case No. 93-B-43136 (FGC) ("Chapter 11 Case") in the United States Bankruptcy Court for the Southern District of New York ("New York Court"); and it appearing to the Court that the conduct of the Persons brought to the attention of the undersigned judge on or about September 28, 1994, constitutes a prima facie case of violations of Rule 9011 and a prima facie case of perpetrations of fraud upon this Court and the New York Court; and upon William M. Clifford's Supplemental Opposition to Confirmation of the Amended Joint Chapter 11 Plan, dated September 27, 1994, and the exhibit to that paper, filed in the New York Court; and upon the Declaration of Sara L. Chenetz, dated September 28, 1994, and the exhibit to that paper, filed in the New York Court; and upon the proceedings held in open court in the New York Court on September 29, 1994; and the undersigned judge having directed in open court on September 29, 1994 that Ropes & Gray ("R&G") conduct the Sanctions Proceeding in this Court and that Marcus Montgomery Wolfson P.C. ("MMW") conduct a Sanctions Proceeding in the New York Court; and upon the declaration of James L. Sigel, dated October 3, 1994; and due deliberation having been had, it is hereby

ORDERED, as follows:

1. The Court hereby commences the Sanctions Proceeding to determine whether sanctions should be imposed against any or all of the following persons ("Persons"): Bankers Trust Company, Burton M. Freeman, O'Melveny & Myers, Adam C. Harris, Winthrop, Stimson, Putnam & Roberts, and Leo T. Crowley. The rules applicable to a contested matter under Fed. R. Bankr. P. 9014 shall apply to the Sanctions Proceeding.
2. The Sanctions Proceeding shall address whether or not any or all of the Persons committed or participated in violations of Rule 9011, the perpetration of fraud upon the Court, the conduct of unreasonable and vexatious proceedings, or other sanctionable conduct in or in connection with this Adversary Proceeding.
3. R&G is hereby charged and directed to investigate and to proffer evidence, arguments, pleadings and papers to the Court concerning the actions and conduct of the Persons in and in connection with the Adversary Proceeding from which the Court may determine whether or not sanctions should be imposed by this Court against any or all of such Persons pursuant to Fed. R. Bankr. P. 9011, Fed. R. Civ. P. 26(g) (made applicable by Fed. R. Bankr. P. 7026), 11 U.S.C. § 105(a), 28 U.S.C. § 1927, and the Court's inherent powers to regulate the conduct of attorneys appearing before it. R&G is authorized to employ all methods of discovery available under the Federal Rules of Bankruptcy Procedure, and to issue subpoenas pursuant to Fed. R.

Bankr. P. 9016, for purposes of the Sanctions Proceeding.

***2** 4. Because of the prima facie circumstances recited above, all claims of privilege including, but not limited to, the attorney-client privilege and the work product protection, and any claim of privilege concerning trial preparation materials within the scope of Fed. R. Bankr. P. 7026 relating to this Adversary Proceeding, which have been or which could have been asserted by or on behalf of any of the Persons (collectively, "Privileges") are terminated. The Persons shall not assert any Privileges in connection with the Sanctions Proceeding. Privileged communications between the Persons and counsel engaged for purposes of representation in the Sanctions Proceeding shall not be included within the Privileges terminated by the foregoing sentence; provided that no claim of privilege shall be effective with respect to any communication that occurred on or before September 28, 1994.

5. Each of the Persons shall inform R&G not later than October 7, 1994, of the identify of its/his counsel, if any, in the Sanctions Proceeding.

6. The Court will convene a conference on Nov. 15, 1994, at 2:00 p.m., to establish a schedule for the completion of discovery in the Sanctions Proceeding.

7. Each of the Persons is hereby directed to deliver to R&G, not later than ten (10) days after service of this Order: (a) all documents that each Person withheld from disclosure in the Adversary Proceeding based on any of the Privileges; and (b) all documents as to which any of the Privileges has been or could have been asserted concerning (i) the prosecution of the Adversary Proceeding; (ii) the investigation of any fact or legal question relating to the Adversary Proceeding; (iii) any transactions and occurrences at issue in the Adversary Proceeding; (iv) any use made or contemplated to be made of the fact of the existence of any aspect of the Adversary Proceeding; (v) any reference to the Adversary Proceeding or its subject matter in any documents, arguments or testimony submitted by any Person in the Chapter 11 Case in the New York Court; and (vi) any reference to the Adversary Proceeding or its subject matter made by any Person in any negotiations, or agreements, or mediation.

8. All documents produced by or testimony given by any entity (as defined in 11 U.S.C. § 101 (41)) in the Sanctions Proceeding, whether in compliance with the directives of this Order or obtained in discovery or otherwise, may be used in the Adversary Proceeding and in the Sanctions Proceeding to be commenced in the Chapter 11 Case in the New York Court, and shall be made accessible to MMW upon request to R&G. R&G may, in its discretion and for purposes of efficiency and economy, proceed jointly with MMW with any discovery and in the receipt and/or review of documents and testimony.

9. The Ropes & Srey is directed to serve a copy of this Order pursuant to Fed. R. Bankr. P. 7004 upon each of the Persons at the addresses set forth on Schedule A on or before Nov. 5, 1994, by first-class mail. Such service shall be good and sufficient notice of the

commencement of the Sanctions Proceeding.

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