

SIGNED.



Dated: September 12, 2007

James M. Marlar
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	Chapter 13
DAVID LYNN WEIK,)	No. 4:07-bk-00958-JMM
_____ Debtor.)	Adversary No. 4:07-ap-00036-JMM
DAVID LYNN WEIK,)	MEMORANDUM DECISION RE:
Plaintiff,)	SANCTIONS
vs.		
BETTY SHINN,		
_____ Defendant.)	

Before the court is a pleading filed by the Plaintiff, entitled "Motion for Sanctions." Before ruling on the motion, the court must first place it within the context of the pending adversary complaint, and determine whether the relief requested is truly in the nature of a "sanction," as that term is traditionally used in litigation, or if it instead represents some type of offset or other defense against Betty Shinn's claim as a secured creditor, or is a mis-categorized pleading.

BACKGROUND

A. The Chapter 13 Case

This is a voluntary chapter 13 case, which the Debtor filed on June 1, 2007. On July 9, 2007, the Debtor filed his chapter 13 plan, wherein he proposed to pay his unsecured creditors approximately 20% on their claims over a 36-month period. To date, that plan has not been confirmed.

1 **B. The Adversary Proceeding**

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3 One of the Debtor's creditors is Betty Shinn, the owner/proprietor of Pantano Stables. Ms.
4 Shinn, unless matters have changed, currently boards a string of the Debtor's horses, at \$70 per month per
5 horse, beginning July 15, 2007. This arrangement has apparently been stabilized since July 15, 2007, and
6 is presumably continuing.

7 At the time the chapter 13 was filed, the Debtor claimed ownership of ten horses. See
8 Exhibit "A" attached. It was against this livestock that Ms. Shinn claimed an agister's lien of approximately
9 \$2,946.00, for unpaid feed/board billings.

10 The Debtor disputed the amount owed to Ms. Shinn, but does not appear to seriously contest
11 her lien claim. Thus, this adversary proceeding has been refined to that issue. It still needs to be set for
12 trial.

13 After hearings in this court on June 27, 2007, the Debtor secured a buyer for two horses of
14 value. In addition, the Debtor gave away one other horse, because it had severe physical problems and had
15 no intrinsic value. No objection to the disposition of the three horses was made by any party.

16 On August 1, 2007, this court approved the sale of "Colonel" and "Lou" to Ms. Carol Grubb
17 for \$1,900.00. From that sale amount, the court ordered that \$950.00 thereof be applied against Ms. Shinn's
18 lien claim.¹ To date, this court assumes that this order was followed.

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20 **C. Motion for Sanctions**

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22 On July 31, 2007, within the adversary proceeding, the Debtor filed what he categorizes as
23 a "Motion for Sanctions" against both Ms. Shinn and her attorney:

- 24 1. for not fully disclosing facts or evidence;
25 2. to cease interference with current or future sales; and
26

27
28 ¹ If Ms. Shinn's lien claim was initially \$2,946, it reduced to \$1,996, by virtue of said payment.

1 Other sales have apparently fallen through for various reasons. As this court has noted, the
2 proper procedure to sell a horse is to file a motion with the court. There need not be any contact between
3 the parties. The court will rule on any such request promptly.

4 The incidents of alleged "interference" by Ms. Shinn or her counsel are too vague for the
5 court to rule upon. If the Debtor wishes to sell a horse, all he need do is procure a buyer, and ask the court
6 to approve it.

7 Even if it could do so, this relief is not a Rule 11 "sanction."

8 The sanction motion will be DENIED on this second claim.

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10 **C. Offsets**

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12 The offset claims are not appropriate "sanctions" motions under FED. R. CIV. P. 11. Instead,
13 since the events in question have allegedly occurred since the original complaint was filed, such new
14 allegations should be addressed in a supplemental pleading, pursuant to FED. R. CIV. P. 15(d) (made
15 applicable by FED. R. BANKR. P. 7015). This procedure is required so that the opposing party may have an
16 appropriate opportunity to defend the new allegations.

17 In short, a post-complaint offset is not a sanctionable offense under Rule 11.

18 Accordingly, the relief sought under this third ground shall be DENIED.

19
20 **CONCLUSION**

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22 An order will be entered which:

- 23 1. DENIES Plaintiff's sanctions request in its entirety, and also DENIES his
24 request to enlarge the response time;
- 25 2. DENIES Plaintiff's request for oral argument on the sanctions motion; and
- 26 3. VACATES the hearing previously set on this item for September 18, 2007
27 at 9:30 a.m.

28 DATED AND SIGNED ABOVE

1 COPIES served as indicated below on the
2 date signed above:

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17 By /s/ M. B. Thompson
18 Judicial Assistant

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EXHIBIT A

List of Debtor's Horses

Sold or Given Away

1. Colonel: Sold with Lou for \$1900
2. Lou: Sold with Colonel for \$1900
3. Name Unknown: Given away

On Hand

4. Chance
5. Pet
6. Rosha
7. Diamond
8. Tahoe
9. Lil Girl
10. Name Unknown

