

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

ST. STEPHENS THE GREAT, LLC

Debtor.

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Case No. 08-33689-H1-7

**MOTION FOR SANCTIONS AGAINST
J. MARK BREWER AND THE LAW FIRM OF BREWER & PRITCHARD, P.C.**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 7 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY. To the Honorable Marvin Isgur,
United States Bankruptcy Judge:

Randy W. Williams, chapter 7 trustee (the "Trustee") of the estate of St. Stephens the Great, LLC (the "Debtor"), files this Motion for Sanctions.

Summary of Relief Requested

1. On August 28, 2008, this Court held a hearing on the Trustee's Motion to Dismiss this case. The Motion was granted with prejudice. The Court found that the case was filed in bad faith. The Court reserved jurisdiction to consider any sanctions motions filed in this matter. The Trustee hereby requests that the Court enter sanctions against J. Mark Brewer and the law firm of Brewer & Pritchard, P.C. for filing this case in bad faith, and that said sanctions be, for among other things, reimbursement of the time and expenses spent by the Trustee and a punitive award to discourage such behavior in the future payable to the Clerk of Court. The Trustee also asks the Court to consider whether sanctions should be entered against St. Stephen the Great Charitable Trust and Philip W. Brewer.

Background

2. The Debtor filed a voluntary chapter 11 case on June 4, 2008 [Docket No. 1]. The case was converted to chapter 7 based on the Motion of the U.S. Trustee [Docket No. 8]. The Trustee was appointed on June 26, 2008.

3. J. Mark Brewer is an attorney licensed to practice before this Court and the Chairman of the Debtor.

4. It is undisputed by Mr. Brewer that St. Stephens the Great, Ltd. is a corporation chartered in the United Kingdom. He claims that he is "authorized" to use the designation of LLC for St. Stephen the Great, Ltd. However, the term Limited Company in the United Kingdom is not synonymous with the U.S. concept of limited liability company. At one time, the Debtor operated bookstores in England and Wales. It operated the bookstores on behalf of the registered charity, St. Stephens the Great Charitable Trust. On June 2, 2008, St. Stephens the Great Registered Charity terminated its agreement with the Debtor to operate the stores,

effectively stripping it of its only asset. (See Exhibit 1 attached hereto). Mr. Brewer admitted at the hearing on August 28, 2008 that the entity to whom operating rights was transferred (ENC Management Company) is another company set up by him and his brother Philip Brewer. The following web site has some interesting information about ENC and the Brewers, <http://cartoonchurch.wordpress.com/2008/06/10/who-are-the-enc-management-company/>.

5. The chapter 11 schedules reflect that the Debtor owns no assets. [Docket No. 16]. Neither the schedules nor statement of financial affairs disclose the relationship between the Debtor and St. Stephen the Great Registered Charity or ENC. Further there is no disclosure of a bank account even though the schedules and statement of financial affairs disclose that the Debtor allegedly handled significant sums of money. The Statement of Financial Affairs shows that tens of thousands of dollars were paid to the Brewer & Pritchard PC law firm pre-petition for services rendered and the filing of this case. [Docket No. 15, pp 5 and 9].

6. The Court was not informed of the existence of ENC at the time of the status conference on June 25, 2008.

7. It is clear from Mr. Brewer's arguments to the Court on August 28, 2008 that the above referenced and numbered case was filed to protect St. Stephens the Great Registered Charity, ENC and himself from claims being made related to the bookstores in the United Kingdom. For example, see the attached Exhibit 2 from the Employment Tribunals of England and Wales. It is also without question that at the time of filing, there were no assets of the Debtor to reorganize.

Request for Sanctions

8. The Trustee seeks compensatory sanctions as well as sanctions to deter Mr. Brewer and his firm from similar future conduct. Mr. Brewer and his firm engaged in a concerted

scheme to mislead this Court and to file a bad faith bankruptcy case. Mr. Brewer's action in failing to disclose the true name of the Debtor and the cancellation of its contract and assignment of those rights to another closely held company of Mr. Brewer is a fraud on this Court. A "fraud on the court" is an intentional act by an officer of the Court to deflect the Court from knowing all of the facts necessary to make an appropriate judicial decision on the matter before it. *Pearson v. First NH Mortgage Corp.*, 200 F.3d 30, 37 (1st Cir. 1999). Brewer's failure to properly identify the Debtor, his conflicts in representing the Debtor while simultaneously being its chairman, and his position in ENC and St. Stephen the Great Registered Charity are all matters of significance that should have been disclosed, but as the docket and pleadings in this case reflect, none of these key events was disclosed. Further, at the initial status conference Mr. Brewer failed to inform the Court that there was no longer any business of the Debtor to reorganize because of the cancellation of the agreement to operate the bookstores and the assignment of those rights to ENC.

9. Brewer violated his duty of candor to the Court as well as other provisions of the Texas Disciplinary Rules by attempting to persuade the Court to allow this case to proceed.¹ Brewer's actions may also violate Title 18 of the United States Code.

10. Moreover, Brewer filed this case in the United States to gain a stay against the claims of creditors against himself individually, ENC and St. Stephen the Great Registered Charity. Mr. Brewer argued to the Employment Tribunal that the proceedings before it were stayed by operation of 11 U.S.C. §362. He expressed displeasure with the Trustee when he informed Mr. Brewer that the Trustee did not agree that administrative matters related to

¹ The Texas Rules of Disciplinary Conduct are incorporated by Rule 1A of the Rules of Discipline of the Southern District of Texas. This Court has the inherent authority to regulate the practice of attorneys before it. Rule 10 of the Rules of Discipline of the Southern District of Texas. Broader relief is governed by Rule 5 of the Rules of Discipline of the Southern District of Texas.

regulatory issues under United Kingdom employment law were not stayed and that in any event, Mr. Brewer should provide copies of records requested in connection with those proceedings to the Tribunal and the Trustee. All of the foregoing conduct violates Bankruptcy Rule 9011.

11. This Court has the inherent authority to protect the integrity of the bankruptcy process by the imposition of appropriate sanctions. *In re Rainbow Magazine, Inc.*, 77 F.3d 278 (9th Cir. 1996). As was noted by the Ninth Circuit in that case, “[t]here can be little doubt that the bankruptcy courts have the inherent power to sanction vexatious conduct presented before the court.” *Id.* at 284.

12. The appropriate sanction for committing a fraud on the court is not limited to the harm caused but should be determined with a view toward deterring future conduct. *Pearson v. First NH Mortgage Corp.*, 200 F.3d 30, 42 (1st Cir. 1999). The Trustee requests that monetary sanctions be imposed against Mr. Brewer and his law firm in an amount of not less than \$10,000 in order to compensate the Trustee for his costs incurred in responding to the wrongful acts and presenting same to this Court. The Trustee also seeks his attorney’s fees and expenses of \$5,000 incurred in the filing and prosecution of this motion. Should the motion be granted and the order appealed, the Trustee seeks a further award of \$25,000 in attorney’s fees for an unsuccessful appeal to the United States District Court, an additional \$40,000 for an unsuccessful appeal to the Fifth Circuit and an additional \$50,000 if an application for writ of certiorari is filed with the United States Supreme Court and the writ is denied. In the event any monetary sanctions imposed herein are not paid within fifteen (15) days of entry of the order granting the sanctions then the Trustee requests that an additional sanction of \$100.00 a day be imposed for the failure to comply with the terms of the order.

13. Finally, with respect to deterring future conduct, the Trustee requests that Mr.

Brewer and his firm be sanctioned an additional \$10,000 payable to the Clerk of Court and that Mr. Brewer be required to complete 20 hours of continuing legal education in the area of legal ethics over the next year and file a certificate of completion with the Court.

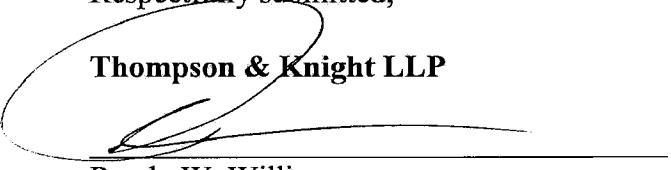
14. At best, as this Court has already found, Mr. Brewer's conduct was in bad faith. The Trustee submits as set forth herein that such bad faith also amounts to a fraud on the Court. At worst, his conduct violates § 157 of Title 18 and possibly other statutes. As an attorney and a law firm, Mr. Brewer and Brewer & Pritchard owe a duty of candor and honesty to this Court and to the bankruptcy process. The acts that are the subject of this motion violate that duty. In addition, the filing of this case in the United States where almost every creditor is located in the United Kingdom brings disrepute to the Bankruptcy Courts of the United States as they are being used as a haven for a party attempting to escape justice where it was formed and where it did business. Mr. Brewer seeks to use the designation of St. Stephen as a charity to somehow suggest that his conduct does not bear scrutiny. In fact, just the opposite should be true, any attempt by an alleged charity to escape or defer its obligations should be subject to the utmost in candor and disclosure so that no question of impropriety exists. Here, just the opposite is demonstrated by Mr. Brewer's conduct, and he and his firm must bear responsibility for these actions and make amends to this Court, the Trustee and most significantly the bankruptcy process so that creditors, especially those in a situation like this who are looking at the system from outside U.S. borders, can see that parties who would attempt to subvert the law to escape their responsibilities will be punished.

15. Accordingly, the Trustee requests that the Court grant the Trustee's motion, enter sanctions consistent with the foregoing and grant such other relief as is just.

Dated: September 4, 2008.

Respectfully submitted,


Thompson & Knight LLP



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**Attorney for Randy W. Williams,
Trustee**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly served by ecf or United States first class, with proper postage affixed, to all parties listed on the attached Service List on this 4th day of September, 2008.



Randy W. Williams

Label Matrix for local noticing
0541-4
Case 08-35314
Southern District of Texas
Houston
Thu Sep 4 16:00:30 CDT 2008

4
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

DISCOVER
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End of Label Matrix
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Bypassed recipients 0
Total 21