

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:

JACK T. HOLLADAY,

Debtor.

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§
§
§
§

CASE NO. 03-34333-H4-7

United States Courts
Southern District of Texas
FILED

SEP 24 2003

Michael N. Milby, Clerk

HEA CLINIC, P.A.'S MOTION FOR SANCTIONS
AND MOTION FOR PROTECTIVE ORDER

IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING, AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY (20) DAYS FROM THE DATE YOU WERE SERVED AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF.

IF A PARTY REQUESTS EMERGENCY CONSIDERATION, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT ALLOWS A SHORTER RESPONSE TIME THAN TWENTY (20) DAYS, YOU MUST RESPOND WITHIN THAT TIME. IF THE COURT SETS AN EMERGENCY HEARING BEFORE THE RESPONSE TIME WILL EXPIRE, ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS. IF AN EMERGENCY HEARING IS NOT SET, YOU MUST RESPOND BEFORE THE RESPONSE TIME EXPIRES.

TO THE HONORABLE WILLIAM R. GREENDYKE,
UNITED STATES BANKRUPTCY JUDGE

COMES NOW, HEA Clinic, P.A. ("HEA") and files this its Motion for Sanctions against Mr. Craig Cavalier ("Mr. Cavalier"), counsel for Debtor Jack T. Holladay and Motion for Protective Order and in support thereof will show as follows:

I.
BACKGROUND

1. Debtor, Jack T. Holladay ("Debtor"), filed for Relief under Chapter 7 of the United States Bankruptcy Code on or about March 25, 2003. The bankruptcy case was filed as a

means for Debtor to avoid his obligations on a judgment to HEA. HEA is virtually the only unsecured creditor in this case.

2. Debtor is a renowned eye surgeon who makes in excess of \$400,000 per year. Despite his large income and two estate homes, Debtor has listed only approximately \$8,000 in property on his schedules. As HEA discovers more assets, Debtor has amended his schedules. As HEA delves into further financial information relevant to its objection to exemptions and objection to discharge, Debtor's counsel has engaged in tactics designed to intimidate and impede HEA and its counsel. As set forth in more detail below, Debtor's counsel's misconduct consists of verbal and physical threats and actions, failure to produce documents, as well as the filing of groundless pleadings.

II.
MR. CAVALIER HAS MADE THREATS
AGAINST THREE WOMEN IN THIS CASE

3. Mr. Cavalier has engaged in intimidation tactics and unconscionable behavior in this case. Mr. Cavalier has threatened HEA's counsel, as well as two separate court reporters reporting depositions for HEA.

4. Mr. Cavalier first made physical and verbal threats against HEA's counsel on September 9, 2003 while HEA's counsel was attempting to elicit relevant testimony from Debtor's accountant, Randal Bro. On September 9, 2003, Mr. Bro was deposed and questioned regarding the value of Debtor's property. Mr. Bro testified that he had been in Debtor's house approximately twenty (20) times in the last few years. See, Bro Deposition, Page 9, Lines 19-24, attached hereto as Exhibit 1 and incorporated herein for all purposes. Mr. Bro also testified that he prepared a financial statement only months before Debtor's bankruptcy case was filed, valuing Debtor's personal property at \$60,000.

5. When HEA's counsel questioned Mr. Bro as to whether or not he thought the values set forth on Debtor's bankruptcy schedules were reasonable, based upon his personal knowledge (which included preparing prior financial statements placing a value on the personal property, as well as personally being in Debtor's house on numerous occasions), Mr. Cavalier went into a fit of rage.

6. Mr. Cavalier came over the table at Ms. Prewitt, threatened her physically, shaking his finger inches from her face. When asked if Mr. Cavalier was threatening her, Mr. Cavalier repeated twice "maybe I am". See, Exhibit 1, Page 16, Lines 4-25, Page 17, Lines 1-14. When Ms. Prewitt tried to describe the incident on the record, Mr. Cavalier became even more enraged. The attached deposition transcripts do not adequately describe Mr. Cavalier's conduct. A copy of the audiotape of the depositions described herein will be played at the evidentiary hearing of this matter. Mr. Cavalier's inability to control himself was more amusing than alarming at this point, but his conduct worsened as set forth below.

7. The court reporter for the Randal Bro's deposition was Ms. Carol Sofianopoulos. Mr. Cavalier has verbally abused Ms. Sofianopoulos, implying that she was unethical and that she tried to assist HEA in an impartial manner in this case. Attached hereto as Exhibit 2 is a true and correct copy of a letter written from Mr. Cavalier to Ms. Sofianopoulos after the Randal Bro deposition. Attached hereto as Exhibit 3 is a true and correct copy of a letter from Ms. Sofianopoulos requesting no further oral communications with Mr. Cavalier. Ms. Sofianopoulos told HEA's counsel that after Mr. Cavalier called her, his intimidation tactics left her shaken and feeling violated. Ms. Sofianopoulos has informed HEA's counsel that she will not attend any depositions at which Mr. Cavalier is present.

8. On Wednesday, September 10, HEA's counsel took the deposition of Dr. Janes, Debtor's partner. Debtor's deposition was scheduled to take place a few days later. At the

or not he intended to produce a financial statement to HEA which HEA had, for months, formally and repeatedly requested be produced. On September 10, Dr. Janes had just testified that he believed that Debtor had in fact prepared a financial statement in connection with a note from Holladay Janes Holdings Inc. made payable to Bank of America. HEA's counsel asked Mr. Cavalier, on the record, if the financial statement discussed by Dr. Janes would be produced prior to Debtor's deposition a few days later. HEA's counsel pressed the issue on the record because, as HEA's counsel had made clear to Mr. Cavalier on numerous occasions, HEA did not want to depose Dr. Holladay until it had the financial statement. Mr. Cavalier became enraged, and threatened to call security because HEA's counsel requested an answer as to whether or not the financial statement would be produced prior to Debtor's deposition the following Tuesday.¹ Attached hereto as Exhibit 4 is a true and correct copy of the excerpt from Dr. Janes' deposition testimony. The audiotape and witness testimony will provide a better indication of Mr. Cavalier's violent eruption. Mr. Cavalier, still in an uncontrollable rage, declared the deposition over and had Dr. Janes leave the office and stood waiting while Mr. Holmes, counsel for the Trustee, also exited the building.

9. Mr. Cavalier made it very apparent that he was going to take some action that he did not want to be made a part of the record. He kept insisting that the court reporter go off the record. He was still enraged. The court reporter, in accordance with the rules and HEA's counsel's instructions, remained on the record. Mr. Cavalier stood with both arms outstretched across the door to the reception area clearly blocking any exit from the conference room.

10. Mr. Rick Canady, a representative of HEA was present at the examination of Dr. Janes. Mr. Canady left Mr. Cavalier's office with Dr. Janes and Mr. Holmes to use the restroom

¹ HEA's counsel readily admits that after months of being bullied by Mr. Cavalier, she also became angry and responded to Mr. Cavalier's intimidation tactics. A reference was made in the record to Mr. Cavalier being sanctioned by this Court to give blood. The prior sanction against Mr. Cavalier involved "economic blood" in that he was required to submit the names of all of his partners for pro bono appointments.

10. Mr. Rick Canady, a representative of HEA was present at the examination of Dr. Janes. Mr. Canady left Mr. Cavalier's office with Dr. Janes and Mr. Holmes to use the restroom in the building hallway, outside of Mr. Cavalier's suite of offices. Mr. Canady checked the lock on the door to Mr. Cavalier's office suite before he left to use the restroom and it was unlocked. When he attempted to return to the office a moment later, the door had been locked despite the fact that it was approximately 4:00 p.m. in the afternoon. Mr. Canady pulled on the door, trying to get in, but Mr. Cavalier did not let him back into the locked offices. Mr. Canady saw Mr. Cavalier blocking the door, trapping HEA's counsel inside through the glass front conference room. The office suite appeared to be empty except for Mr. Cavalier, the court reporter, Ann Shea and HEA's counsel. Mr. Canady was on the opposite side of a glass conference wall which faces into the hallway of the building outside Mr. Cavalier's office suite and was not ever allowed to gain re-entry that day.

11. HEA's counsel informed Mr. Cavalier that as long as he was going to stand there attempting to intimidate her that she was not going to go off of the record. HEA's counsel requested the court reporter to accompany her to the elevator with the tape recorder on so she could safely exit. HEA's counsel was afraid of what Mr. Cavalier would do once they were off the record based on his prior express threats and violence eruptions. Ms. Ann Shea, the court reporter for Dr. Janes' examination, did not believe that she could accommodate HEA's counsel's request. Accordingly, there was a standoff with HEA's counsel afraid to go off the record with Mr. Cavalier still in the middle of a rage. During this twenty-minute standoff, Mr. Canady was pulling on the front door trying to get in. Mr. Cavalier never did let Mr. Canady back into the office. From the building hallway, Mr. Canady could see into the glassed in conference room and would see Mr. Cavalier blocking HEA's counsel's exit. At least three

court reporter as to how to safely exit the building. The second Ms. Prewitt shut the door to the conference room, Mr. Cavalier came raging back and threw the door open banging it against the wall.

13. HEA's counsel was trapped by Mr. Cavalier for approximately twenty minutes, and had to continue to watch Mr. Cavalier in his office and wait until he was distracted to run out of the office with her client and rush to the elevator, both fearing for their safety.

14. After Ms. Prewitt left, Mr. Cavalier threatened Ms. Ann Shea, the court reporter that day, and said that he was going to file a grievance against her, despite the fact that she had done nothing wrong. Ms. Shea finally submitted to Mr. Cavalier's threats and granted Mr. Cavalier's demand to go back on the record. Mr. Cavalier made these threats against a court reporter so that he could go back on the record and state "off the record".

III.
MR. CAVALIER HAS INTENTIONALLY
PRECLUDED HEA FROM OBTAINING
RECORDS AND OTHER RELEVANT EVIDENCE

15. As outlined in more detail, in HEA's Motion for Continuance, Mr. Cavalier has failed to produce critical documents in this case. Mr. Cavalier has intentionally withheld documents and other information from HEA, and has engaged in sanctionable conduct. On September 22, 2003, one day before the scheduled hearing on Debtor's exemptions, Mr. Cavalier magically produced a document titled "Personal Financial Statement" which he claims is not a financial statement. Attached hereto as Exhibit 5 and incorporated herein for all purposes is a true and correct copy of the financial statement produced on September 22 and a cover letter from Mr. Cavalier.

16. HEA sent a Notice of 2004 Examination to Debtor on April 22, 2003, requesting, inter alia, all financial statements. A true and correct copy of the deposition notice is attached

hereto as Exhibit 6 and is incorporated herein for all purposes. After HEA postponed Debtor's deposition two times, Mr. Cavalier produced a few more, but not all of the documents requested.

17. HEA sent a Notice of Deposition of Randal Bro along with Subpoena Duces Tecum on September 3, 2003. Mr. Cavalier filed a Motion to Quash, as he has done with every deposition notice in this case. Prior to filing the Motion to Quash, HEA's counsel had agreed to the demands made by Mr. Cavalier that the deposition take place at his office. Nonetheless, Mr. Cavalier filed a Motion to Quash the deposition based on the location of the deposition. The response to the Subpoena Duces Tecum served on Mr. Bro on September 3, 2003 was not timely because of Mr. Cavalier's conduct. Mr. Cavalier intentionally delayed producing documents until the last business day before Mr. Bro's deposition. He claimed that the original notice and subpoena duces tecum to Mr. Bro was not effective. Despite the fact that HEA had previously informed Mr. Cavalier, in writing, that they felt they had been significantly overcharged by Mr. Cavalier's copy service of choice, DPI, Mr. Cavalier insisted that DPI was the only company that he would allow to make copies of Mr. Bro's records. Attached here as Exhibit 7 and incorporated herein for all purposes is a copy of an electronic communication to Mr. Cavalier expressing dissatisfaction with DPI's copy service.

18. Mr. Cavalier refused to allow documents produced by Mr. Bro to be copied because he claimed to have never heard of Medleh Group, a well known copying company. Accordingly, HEA did not receive documents from Mr. Bro in a timely manner.

19. When HEA was finally allowed to obtain documents produced by Mr. Bro, they obtained substantial numbers of documents which were responsive to the discovery requests previously made to Debtor. Debtor had never suggested that these documents were in the possession of Mr. Bro. If HEA had not incurred the expenses of deposing Mr. Bro, HEA would have never obtained documents which Debtor was required to produce in this case. Within those

documents were some, but not all, of the financial statements which had been previously requested from Debtor on numerous occasions.

IV.
MR. CAVALIER HAS ABUSED THE SYSTEM
AND FILED FRIVOLOUS PLEADINGS


20. After refusing to comply with discovery requests for months, Mr. Cavalier has the audacity to file a motion for sanctions against HEA's counsel for continuing the Debtor's deposition until Mr. Cavalier finally complied with HEA's discovery request. Mr. Cavalier's motion for sanctions against HEA's counsel was groundless, filed in bad faith, contains facts known by Mr. Cavalier to be completely untrue (including, but not limited to a statement that HEA's counsel questioned Debtor for two hours at the 341 meeting), and was meant to further intimidate HEA's counsel so she wouldn't proceed with appropriate actions against Mr. Cavalier for the acts described herein.

21. Based upon Mr. Cavalier's egregious conduct in this case, HEA requests sanctions against Mr. Cavalier personally in an amount of not less than \$50,000.00.

22. Based upon Mr. Cavalier's blatant threats against HEA's counsel made on the record and his even more egregious behavior off of the record, HEA requests that all further depositions in this case be taken at the United States Federal Courthouse with either a U. S. Marshall or court appointed magistrate present, with all costs to be borne by Mr. Cavalier.

WHEREFORE, PREMISES CONSIDERED, HEA Clinic, P.A. respectfully requests that the Court hold an evidentiary hearing on this Motion for Sanctions, that Debtor be ordered to pay HEA \$50,000.00 in sanctions, that Debtor's counsel be ordered to produce all documents requested by HEA in this case, including but not limited to any and all financial statements executed by the Debtor in the last five years, that all further depositions in this case be taken under the parameters set forth herein with all costs assessed against Mr. Cavalier, personally and for such other and further relief to which it may be justly entitled.

LOCKE LIDDELL & SAPP LLP

By:  _____

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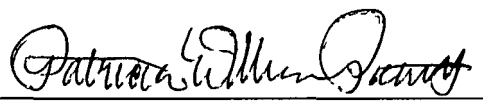
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CERTIFICATE OF SERVICE

I do hereby certify that on this 24th day of September, 2003 a true and correct copy of the foregoing document, was served upon Defendant's counsel, Craig H. Cavalier, by facsimile to (713) 621-4779, and by regular mail to 3555 Timmons Lane, Suite 1450, Houston, Texas 77027, to the Chapter 7 Trustee, William G. West, Trustee's Counsel, Mike Holmes, the United States Trustee and all parties on the attached service list.



Patricia Williams Prewitt

Electronic Court Filing
Bankruptcy Documents
effective 3/15/02

Exhibits & Attachments

The original exhibit or attachment to this document has not been imaged pursuant to BLR5005 and the Administrative Procedures for Electronic Filing adopted by this Court.

The movant:

- 1) may supplement the original filed document with a Summary of Exhibits (Appendix "D" to the Administrative Procedures), and
- 2) shall furnish complete paper copies of exhibits and attachments to other parties on request.

Amended BLR5005 and the Administrative Procedures for Electronic Filing can be viewed at www.txs.uscourts.gov