

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

Transmittal Sheet for Opinions for Publishing and Posting on Website

Will this opinion be Published? No

Bankruptcy Caption: In re John McAniff

Adversary Caption: Joel Schechter, Trustee v. John McAniff

Bankruptcy No. 02 B 38990

Adversary No. 03 A 4408

Date of Issuance: July 21, 2004

Judge: A. Benjamin Goldgar

Appearance of Counsel:

Attorney for Debtor: George Vogl, Law Offices of Peter Francis Geraci, Chicago, IL

Attorney for Trustee: Joel A. Schechter, Law Offices of Joel A. Schechter, Chicago, IL

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 7
)	
JOHN McANIFF,)	No. 02 B 38990
)	
Debtor.)	Judge Goldgar
_____)	
)	
JOEL A. SCHECHTER, Trustee,)	
)	
Plaintiff,)	
v.)	No. 03 A 4408
)	
JOHN McANIFF,)	
)	
Defendant.)	

ORDER IMPOSING SANCTIONS AGAINST DEBTOR

This adversary proceeding is currently set for trial tomorrow, July 22, 2004. On May 24, 2004, when the court set the matter for trial, the court entered a final pretrial order. The final pretrial order required the parties on or before July 1, 2004 to exchange and file with the court a list of witnesses to be called, a list of exhibits to be introduced into evidence, and a marked set of the exhibits themselves. The final pretrial order also made clear that sanctions would follow from a failure to comply with the order's requirements. It stated:

- a. Any exhibit not listed and exchanged in accordance with this Order will not be admitted into evidence. A party who fails to exchange and file the list of exhibits that this Order requires may be precluded from introducing any exhibits into

evidence.

b. Any witness not identified and listed in accordance with this Order will be barred from testifying at trial. A party who fails to exchange and file with the court the list of witnesses that this Order requires may be barred from presenting any witnesses.

(Final Pretrial Order dated May 24, 2004).

In compliance with the final pretrial order, trustee Joel Schechter duly filed and served his lists and exhibits. Debtor John McAniff, on the other hand, did not. As of today, some three weeks after the July 1 deadline passed, McAniff still has filed no list of witnesses, no list of exhibits, and no exhibits. Nor has McAniff ever sought additional time to file them. In essence, McAniff has chosen to ignore these critical parts of the final pretrial order (although for some reason he has signed on to the joint stipulation of facts the order requires).

This is unacceptable. The court relies on the final pretrial order and the materials filed pursuant to it to be properly prepared for trial. Far more important, the parties depend on the final pretrial order for their own trial preparation: they expect to know in advance the witnesses they will hear and the exhibits they will see. And rightly so. Compliance with the pretrial order prevents the proverbial “trial by ambush” that the Federal Rules of Civil Procedure are designed to prevent. See *Erskine v. Consolidated Rail Corp.*, 814 F.2d 266, 272 (6th Cir. 1987).

Because a pretrial order is a critical tool for “narrowing the issues and expediting the trial,” *In re Maurice*, 21 F.3d 767, 773 (7th Cir. 1994), failure to comply with the

court's final pretrial order is sanctionable under Rule 16(f). See Fed. R. Civ. P. 16(f) (made applicable by Fed. R. Bankr. P. 7016). Federal trial courts have broad (though admittedly not limitless) discretion in choosing a suitable sanction for a party's violation of a pretrial order. *Hatton v. Spencer (In re Hatton)*, 204 B.R. 477, 486 (E.D. Va. 1997); *Schilling v. O'Bryan*, 246 B.R. 271, 278 (Bankr. W.D. Ky. 1999).

One available sanction is an order barring the offending party from offering evidence at trial. Rule 16(f) incorporates Rule 37(b)(2)(B), which permits an order "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence." Fed. R. Civ. P. 37(b)(2)(B). In *Maurice*, the court approved just such a sanction, stating: "When one party fails to comply with a court's pre-hearing order without justifiable excuse, thus frustrating the purposes of the pre-hearing order, the court is certainly within its authority to prohibit that party from introducing witnesses or evidence as a sanction." *Maurice*, 21 F.3d at 773; see also *Hartwick v. Craig (In re Craig)*, 2004 WL 1490427 at *2 (Bankr. N.D. Ill. June 29, 2004) (Goldgar, J.); *People ex rel. Ryan v. Monahan (In re Monahan)*, 2000 WL 527753 at *3-4 (Bankr. N.D. Ill. May 1, 2000).

An order of this kind against McAniff is entirely appropriate here. The final pretrial order made quite clear that the parties "must exchange and file" exhibits, "must exchange and file" a list of the exhibits, and "must exchange and file" a list of witnesses, all by July 1. There was no ambiguity whatever about the final pretrial order. Yet despite its unambiguous requirements, McAniff did not file what he had to file. As a

consequence, neither the court nor the trustee has the slightest idea what is coming at trial. If it was McAniff's plan to lie in wait and then pounce on his unsuspecting opponent tomorrow, that plan must be – and will be – foiled.

For these reasons, IT IS HEREBY ORDERED:

Debtor John McAniff is barred from calling any witnesses and introducing any exhibits at the trial set for July 22, 2004. The debtor's participation at trial is limited to cross-examination and argument. *See Smith v. Chicago School Reform Bd. of Trustees*, 165 F.3d 1142, 1145 (7th Cir. 1999).

Dated: July 21, 2004

ENTER: _____
A. Benjamin Goldgar
United States Bankruptcy Judge