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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	AZ-06-1238-SPaD
)		AZ-06-1243-SPaD
7	RICHARD C. BRUMGARD and KAY E.)			
	BRUMGARD,)	Bk. No.	02-04327
8)		
	Debtors.)	Adv. No.	02-00117
9)		
	_____)		
10	JOHN R. YOUNG; MARGARET ANN)			
	YOUNG; FREDERICK G. GAMBLE,)			
11)		
	Appellants/Cross-Appellees,)			
12)		
	v.)		MEMORANDUM ¹	
13)		
	RICHARD C. BRUMGARD; KAY E.)			
14	BRUMGARD; ROBERT M. FERRIER,)			
	Friend of the Court,)			
15)		
	Appellees/Cross-Appellants.)			
16)		
	_____)		

Argued and Submitted on January 18, 2007
at Phoenix, Arizona

Filed - June 7, 2007

Appeal from the United States Bankruptcy Court
for the District of Arizona

Hon. Eileen W. Hollowell, Bankruptcy Judge, Presiding.

Before: SMITH, PAPPAS and DUNN, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 After years of representing to the bankruptcy court that
2 John and Margaret Young (the "Youngs") had owned an unavoidable
3 judgment against the debtors since 1989, John Young ("Young") and
4 his attorney, Frederick Gamble ("Gamble"), admitted to the court
5 that the judgment had not been transferred to the Youngs until
6 2002. The court thereupon issued an order to show cause why
7 sanctions should not be imposed against Gamble and Young
8 (collectively, "Appellants") for the misrepresentation. After
9 Appellants were given the opportunity to defend their actions,
10 the court entered sanctions against them both pursuant to its
11 inherent authority. A timely notice of appeal was filed on June
12 30, 2006, and a timely cross-appeal was filed on July 10, 2006.
13 We AFFIRM in part, REVERSE in part, and VACATE and REMAND in
14 part.

15 I. FACTS

16 A. The Pearce Judgment

17 In November 1985, Richard and Kay Brumgard ("Debtors")
18 purchased a parcel of land from John and Barbara Pearce (the
19 "Pearces"). Debtors purchased the property for \$75,000, which
20 was accomplished by a down payment of \$20,000 and the granting of
21 a carry back note to the Pearces for the balance ("Pearce Note").
22 The Pearce Note was secured by what would ultimately be a junior
23 deed of trust on the property.²

24
25 ² Initially, the Pearce Note was secured by a first
26 position deed of trust on the property. In May 1986, Debtors
27 entered into a financing agreement with another party which led
28 to them obtaining a subordination agreement from the Pearces that
caused the Pearce Note to be secured by the second deed of trust
on the property.

1 In 1987, the senior lienholder foreclosed on the property,
2 thereby rendering the Pearce Note unsecured. Consequently, the
3 Pearces initiated a lawsuit against Debtors. On November 27,
4 1989, Debtors stipulated to the entry of judgment on the Pearce
5 Note in the amount of \$48,052.82 (the "Pearce Judgment"). The
6 Pearce Judgment was recorded against the property on April 3,
7 1990.

8 The Pearces subsequently sold the Pearce Judgment to Young
9 Builders, Inc. ("YBI") and Coulter Cadillac on September 24,
10 1990. At the time of sale, YBI was a shell company which
11 borrowed funds from the Youngs in order to make the purchase.

12 In September 1994, under the mistaken belief that he had
13 obtained ownership of the Pearce Judgment through YBI's 1988
14 partial liquidation³, Young signed and filed a renewal affidavit
15 for the Pearce Judgment. He filed another renewal affidavit in
16 October 1999.

17 In 2002, YBI distributed all of its assets to the Youngs.
18 During this distribution, the Pearce Judgment was transferred to
19 the Youngs.⁴

21 ³ In July 1988, the Youngs sold the business assets of YBI
22 to a key employee, Carl Rowe. After the sale, the remaining
23 assets of the company were distributed to the Youngs in a tax-
free partial liquidation.

24 ⁴ It is unclear when YBI transferred the Pearce Judgment to
25 the Youngs. Pleadings in related bankruptcy cases seem to
26 indicate that it occurred in June 1991; however, if the chain of
27 title is traced back to when the Pearce Judgment was first
28 recorded (April 1990), the paper trail shows that the transfer
did not occur until 2002, when YBI was in effect liquidated for a
second time. This factual inconsistency is addressed later in
the discussion.

1
2 B. The Bankruptcy Cases

3 1. The Youngs' and Related Entities' Bankruptcy Cases

4 In October 1990, Debtors obtained a judgment against the
5 Youngs for more than \$3 million. Unable to either pay or post
6 the bond necessary to stay the judgment while on appeal, the
7 Youngs filed a chapter 11⁵ petition to obtain the benefits of the
8 automatic stay. The Youngs' schedules did not list the Pearce
9 Judgment as one of their assets, but instead listed the note
10 receivable from YBI for \$30,000 as a liquidated debt.

11 Shortly thereafter, in January 1991, Young Builders, Inc.,
12 Profit Sharing and Retirement Trust⁶ (the "Trust") filed for
13 chapter 11 relief. On March 20, 1991, an order of joint
14 administration was entered for the Trust and the Youngs' cases.

15 During the pendency of the jointly administered chapter 11
16 cases, the bankruptcy court entered an order providing that the
17 state court receivership action based on the Pearce Judgment,
18 which had been removed to the bankruptcy court, would be remanded
19 to state court unless YBI filed its own petition or assigned the
20 Pearce Judgment to the Youngs. In response to that order,
21 pleadings were filed by the Trust's lawyers asserting that the

22 _____
23 ⁵ Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
25 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
enacted and promulgated prior to the effective date (October 17,
2005) of The Bankruptcy Abuse Prevention and Consumer Protection
Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

26 ⁶ The Trust is a pension plan for the employees of YBI that
27 was created prior to the sale of the company to Carl Rowe. The
28 Trust has approximately 21 beneficiaries, including the Youngs,
who also act as trustees of the Trust.

1 Pearce Judgment had been transferred to the Youngs on June 3,
2 1991, in satisfaction of YBI's obligation to the Youngs.

3 On March 4, 1993, the Arizona Court of Appeals reversed the
4 \$3 million judgment against the Youngs. Released from personal
5 liability to Debtors, the Youngs' sought and obtained dismissal
6 of their chapter 11 case. The Trust's bankruptcy case remained
7 pending until April 2000 when it was dismissed.

8 In 1995, the Internal Revenue Service demanded that the
9 Youngs pay a tax assessment. Unable to pay the assessment
10 immediately, they filed for chapter 13 relief. The only
11 judgments listed on their schedules were "judgments for
12 attorneys' fees" against Debtors at a value of \$0. The schedules
13 did not list any receivables due from YBI.

14 The Youngs' chapter 13 plan was confirmed on January 30,
15 1996. A few months later, they "irrevocably" assigned three
16 judgments, including the Pearce Judgment, to Gamble as payment
17 for his legal services (the "Gamble Judgments").⁷ After
18 obtaining information about the assignment, the court entered
19 sanctions against the Youngs and Gamble for engaging in wrongful
20 conduct by "intentionally and in bad faith failing to disclose
21 the existence of the Gamble Judgments and, therefore, concealing
22 assets of their Chapter 13 estate and probably committing fraud
23 on the court." Memorandum Decision, App. 1 at 11-12, Sept. 1,
24 2005. The bankruptcy court also held that the Gamble Judgments
25 were acquired in an attempt to gain a tactical advantage over
26 Debtors in their state court litigation.

27 ⁷ The Gamble Judgments include the Pearce Judgment, the
28 Brumgard Judgment, and the two attorneys' fees awards.

1 The Youngs moved for reconsideration, which was denied, and
2 then appealed the sanctions order to this Panel. We sustained
3 the bankruptcy court's findings of bad faith and the imposition
4 of sanctions.

5 On August 4, 1998, the Youngs received their chapter 13
6 discharge and the case was closed.

7 2. Debtors' Chapter 13 Bankruptcy Case

8 As a result of state court litigation between Debtors, the
9 Youngs, and entities associated with the Youngs, Debtors filed a
10 chapter 13 petition in September 2002. The Youngs filed a proof
11 of claim in the case which was partially based on their asserted
12 ownership interest in the Pearce Judgment.

13 Not surprisingly, litigation between the parties quickly
14 ensued in this bankruptcy case. Summary judgment motions were
15 filed regarding the enforceability of the Pearce Judgment. In
16 connection with these motions, the court issued the following
17 tentative ruling on July 8, 2004:

18 The Gamble Judgments . . . , which were the subject of
19 the Sanctions Order, were unenforceable against the
20 Debtors under principles of judicial estoppel. [The
21 court] left open the possibility that the Pearce
22 Judgment . . . might not be subject to the estoppel
23 ruling, if the evidence demonstrated that it was not an
24 asset of the Young's [sic] Chapter 13 bankruptcy
25 estate.

26 Memorandum Decision at 13, Sept. 1, 2005.

27 Prior to adopting the tentative ruling, the court held an
28 evidentiary hearing and provided the parties the opportunity to
file post-hearing briefs. After consideration of all the
evidence, the court entered its memorandum decision on September
1, 2005. The memorandum decision not only adopted the tentative

1 ruling, but also determined that a further hearing was warranted
2 to consider the imposition of sanctions against Appellants.
3 Specifically, the court expressed concern about certain
4 inconsistencies in Young's testimony regarding the ownership of
5 the Pearce Judgment, including assertions made in previous
6 bankruptcy cases filed by the entities related to the Youngs, in
7 judgment renewal affidavits, and in pleadings filed in the
8 pending bankruptcy case.

9 On September 1, 2005, the bankruptcy court issued an order
10 to show cause "why sanctions should not be entered against
11 [Appellants] for misrepresenting the ownership of a judgment and
12 deed of trust . . . in [Debtors'] case." Order to Show Cause at
13 1, Sept. 1, 2005. Pursuant to the order, if the court found
14 sanctions to be appropriate, such sanctions could include,
15 without limitation,

- 16 (a) disallowance of claims;
- 17 (b) award of attorneys fees to the Debtors;
- 18 (c) entry of an order barring Fred Gamble from
19 practice in the U.S. Bankruptcy court for the
20 District of Arizona;
- 21 (d) a referral regarding Fred Gamble to the
22 professional misconduct committee of the State Bar
23 of Arizona; and
- 24 (e) referral to the Office of the United States
25 Trustee to determine if there have been violations
26 of 18 U.S.C. §152(3) or (4).

27 Id. at 1-2. The court issued an amended order to show cause on
28 September 19, 2005. The amended order informed Appellants that
it would be issuing sanctions, if any, pursuant to its inherent
authority and Rule 9011.

The sanctions hearing was held on January 31, 2006. Both
Young and Gamble testified. Appellants' position was:

Young was confused from 1989 until 2003 about what
[YBI] owned when it was liquidated and, therefore,

1 incorrectly believed, and informed his lawyers, that
2 the Youngs individually owned the Pearce Judgment. His
3 confusion was not deliberate or willful and, therefore,
4 no sanctions should be imposed against him. Gamble
5 reasonably relied upon his client's statements that the
6 Youngs individually owned the Pearce Judgment from 1994
7 to 2003. He was entitled to rely on his client for
8 information, and even if such reliance was negligent,
9 it was not done in bad faith, was not objectively
10 unreasonable and, therefore, no sanctions should be
11 imposed.

12 Memorandum Decision (Sanctions) at 8-9, June 2, 2006.

13 The bankruptcy court found that Appellants' explanations did
14 not adequately explain what had happened in the earlier
15 bankruptcy cases. In particular, the court focused on the fact
16 that it had been YBI which had filed the ex parte receivership
17 complaint in state court in 1990 and not the Youngs. It observed
18 that if the Youngs believed they personally owned the Pearce
19 Judgment, then they, and not YBI, would have filed the
20 receivership complaint. In addition, it would not have been
21 necessary for the Trust's chapter 11 lawyer to file pleadings in
22 the removed receivership case, which affirmatively stated that
23 YBI assigned the Pearce Judgment to the Youngs on a specific
24 date. The Trust would have simply asserted that the Pearce
25 Judgment had been distributed to the Youngs as part of the 1988
26 liquidation of YBI. Moreover, the court opined that the Youngs
27 had a duty to make sure that ownership of the Pearce Judgment was
28 listed in their schedules filed in their 1990 chapter 11
29 bankruptcy case. They did not list the judgment, calling into
30 question their stated belief that they owned it.

31 The court also found that Young's testimony did not explain
32 the representations made in the Trust's and the Youngs'
33 bankruptcy cases about the ownership of the Pearce Judgment.

1 Instead, his testimony provided a different representation about
2 its ownership. Both could not be true. Consequently, the court
3 found the pleadings filed in the Youngs' chapter 11 case as the
4 more accurate representation because they were closer in time to
5 the distribution of YBI's assets. According to those pleadings,
6 the Pearce Judgment would have been transferred to the Youngs on
7 June 3, 1991.

8 Further, the court held that under principles of claim
9 preclusion and the doctrine of judicial estoppel, Appellants
10 could not argue that their assertions that YBI owned the Pearce
11 Judgment until 2002 were accurate, and therefore, such assertions
12 could serve as the basis for the imposition of sanctions for
13 engaging in bad-faith litigation tactics. The Youngs had
14 affirmatively alleged in their chapter 11 bankruptcy case that
15 the Pearce Judgment had been assigned to them in order to assure
16 that the state court receivership action would remain in
17 bankruptcy court. Thus, the court found that the doctrine of
18 judicial estoppel precluded the Youngs from asserting that YBI
19 owned the Pearce Judgment until 2002. In this regard, the court
20 stated that

21 [t]he mid-change of position regarding the ownership of
22 the Pearce Judgment; the lack of disclosure regarding
23 the inconsistency of that claim from the claims made in
24 the [Youngs' and the Trust's] bankruptcy cases; and the
25 meritless argument that the earlier representations
26 about the ownership of the Pearce Judgment were
27 mistakes, were objectively unreasonable assertions made
to achieve the improper purpose of avoiding an adverse
ruling. The attempts to assure that the Pearce
Judgment would be held to be enforceable by
misrepresenting its ownership constitute the type of
bad-faith conduct which warrant [sic] the imposition of
sanctions.

28 Memorandum Decision (Sanctions) at 16, June 2, 2006.

1 Based on the foregoing, the court entered the following
2 sanctions pursuant to its inherent authority:

3 1. The Youngs are barred and enjoined from enforcing
4 against [Debtors], their property, or property of
5 their bankruptcy estate, the following judgments
6 entered in Pinal County superior court:

7 Pearce Judgment (CIV 37525)
8 Brumgard Judgment (CIV 36326)
9 Attorneys fees #1 (CIV 36224)
10 Attorneys fees #2 (CIV 36224)
11 Attorneys fees (CV 94-042091)

12 2. The Youngs shall be liable to pay one-third of
13 [Debtors'] reasonable attorneys fees and costs
14 incurred after July 8, 2004 in litigating issues
15 before this court.

16 [3.] Gamble is liable for two-thirds of [Debtors']
17 reasonable attorneys fees incurred in litigation
18 before this court from and after July 8, 2004; and

19 [4.] The court will refer the question of any further
20 discipline to the Arizona State Bar Disciplinary
21 Commission by sending it a copy of this decision.

22 Id. at 21 & 25.

23 In order to determine the amount of reasonable attorneys
24 fees and costs, the court instructed counsel for Debtors to file
25 fee affidavits. Both Debtors' bankruptcy counsel and state court
26 counsel filed affidavits, to which Appellants responded.

27 On June 12, 2006, Appellants filed a "Motion to Alter or
28 Amend Judgment," arguing that the sanctions judgment did not 1)
conform to the evidence presented and 2) was contrary to law (the
"reconsideration motion"). Specifically, they maintained that
neither of them had presented a frivolous claim concerning the
chain of title of the Pearce Judgment nor had there been any
violation of Federal Rule of Civil Procedure 11 or the Arizona

1 Supreme Court's Ethical Rule 3.3⁸. Additionally, they complained
2 that the court misapplied the doctrine of judicial estoppel
3 because not all the elements were present. They requested that
4 the court alter its findings to eliminate the sanctions.

5 The court denied the reconsideration motion and subsequently
6 entered the following judgments:

- 7 1. Against John and Ann Young:
8 a. \$9,832.17 in favor of Waterfall, Economidis,
9 Caldwell, Hanshaw & Villamana, P.C.
10 b. \$1,540 in favor of A. Thomas Cole
11 2. Against Frederick G. Gamble:
12 a. \$19,664.33 in favor of Waterfall, Economidis,
13 Caldwell, Hanshaw & Villamana, P.C.
14 b. \$3,080 in favor of A. Thomas Cole.

15 Memorandum Decision Regarding Attorneys' Fees Award at 3, June
16 26, 2006.

17 Appellants appealed on June 30, 2006. Debtors filed a
18 cross-appeal on July 10, 2006.

19 **II. JURISDICTION**

20 The bankruptcy court had jurisdiction under 28 U.S.C.
21 §§ 1334 and 157(b) (1). We have jurisdiction under 28 U.S.C.
22 § 158.

23 **III. ISSUES**

- 24 A. Whether the bankruptcy court abused its discretion in
25 imposing sanctions for Appellants' misrepresentations.
26 B. Whether the sanctions were punitive in nature, and
27 therefore, beyond the scope of the court's inherent
28 authority.

⁸ Ethical Rule 3.3(a) (1) states

A lawyer shall not knowingly make a false statement of
fact or law to a tribunal or fail to correct a false
statement of material fact or law previously made to
the tribunal by the lawyer.

- 1 C. Whether Debtors have standing to bring the cross-appeal.
2 D. Whether the bankruptcy court abused its discretion by
3 reducing the amount of attorneys' fees requested by Debtors.

4 IV. STANDARD OF REVIEW

5 A bankruptcy court's award of sanctions is reviewed for an
6 abuse of discretion. Miller v. Cardinale (In re Les DeVille),
7 361 F.3d 539, 547 (9th Cir. 2004). We also review a bankruptcy
8 court's decision regarding the proper amount of legal fees to be
9 awarded for an abuse of discretion. Law Offices of David A.
10 Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 596 (9th Cir.
11 2006). An abuse of discretion will be found if the bankruptcy
12 court bases its decision on an erroneous view of the law or
13 clearly erroneous factual findings. Cooter & Gell v. Hartmarx
14 Corp., 496 U.S. 384, 405 (1990). With respect to sanctions, a
15 bankruptcy court's factual findings are given great deference.
16 F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc., 244 F.3d
17 1128, 1135 (9th Cir. 2001).

18 Standing is a legal issue reviewed de novo. Loyd v.
19 PaineWebber, Inc., 208 F.3d 755, 758 (9th Cir. 2000).

20 V. DISCUSSION

21 A. Inherent Power

22 It has long been understood that bankruptcy courts are
23 "courts of justice." See Chambers v. NASCO, Inc., 501 U.S. 32,
24 43 (1991). As courts of justice, they

25 are universally acknowledged to be vested, by their
26 very creation, with power to impose silence, respect,
27 and decorum, in their presence, and submission to their
28 lawful mandates. . . . These powers are "governed not
by rule or statute but by the control necessarily
vested in courts to manage their own affairs so as to
achieve the orderly and expeditious disposition of
cases."

1 Id. (citations omitted). Because this inherent power is a
2 separate and distinct source of authority from any federal
3 statute or rule, a court may sanction bad faith conduct pursuant
4 to its inherent authority even when the same conduct may also be
5 punished under another sanctioning statute or rule. Miller v.
6 Cardinale (In re Les DeVille), 280 B.R. 483, 495 (9th Cir. BAP
7 2002), aff'd, 361 F.3d 539 (9th Cir. 2004).

8 "The inherent sanction authority allows a bankruptcy court
9 to deter and provide compensation for a broad range of improper
10 litigation tactics." Knupfer v. Lindblade (In re Dyer), 322 F.3d
11 1178, 1197 (9th Cir. 2003). Accordingly, it is within a court's
12 inherent power to enter sanctions against a party who willfully
13 disobeys a court order or acts in bad faith. Fink v. Gomez, 239
14 F.3d 989, 991 (9th Cir. 2001). For sanctions to be justified,
15 there must be a finding that a party acted "in bad faith,
16 vexatiously, wantonly, or for oppressive reasons." Chambers, 501
17 U.S. at 44.

18 Bad faith can be shown by a party "delaying or disrupting
19 the litigation or by hampering enforcement of a court order."
20 Hutto v. Finney, 437 U.S. 678, 689 n.14 (1978). A finding of bad
21 faith does not require a showing that the sanctioned acts consist
22 of making untruthful statements or frivolous arguments or
23 objections. Fink, 239 F.3d at 992. Sanctions are justified
24 provided the parties acted with "the improper purpose of
25 attempting to gain tactical advantage in another case." Id.
26 Nevertheless, sanctions will be barred if the sanctionable
27 conduct amounts to only recklessness and nothing more. Id. at
28 994-95.

1 Here, the bankruptcy court found that Appellants acted with
2 subjective bad faith. The sanctionable conduct of Young and
3 Gamble included engaging in improper litigation tactics to avoid
4 the impact of the tentative ruling by taking a position that was
5 patently inconsistent with previous representations concerning
6 the ownership of the Pearce Judgment.

7 In reviewing the prior related bankruptcy cases, it is clear
8 that from June 1991, the Youngs represented to the court that
9 they owned the Pearce Judgment. This representation is first
10 evidenced in a pleading filed by the Youngs in response to the
11 bankruptcy court's minute order entered in their chapter 11
12 bankruptcy case that required YBI to assign the Pearce Judgment
13 to the Youngs or have the state court receivership action related
14 to it remanded to state court. Based on this document and other
15 pleadings filed in the Youngs' and their related entities'
16 bankruptcy cases, which repeatedly asserted that the Youngs
17 individually owned the Pearce Judgment, the bankruptcy court,
18 along with Debtors and creditors, believed the Youngs to be the
19 rightful owners.

20 Significantly, at the evidentiary hearing in May 2005, which
21 addressed the validity of various judgments held by the Youngs,
22 Appellants asserted for the first time that the chain of title
23 showed that the Youngs had not become the owners of the Pearce
24 Judgment until 2002, when YBI liquidated for a second time,
25 because there had been no formal assignment of the Pearce
26 Judgment from YBI to them. Although this information had been
27 discovered by Gamble in 2003 and provided nonchalantly through
28 exhibits filed in anticipation of trial, the lack of

1 documentation evidencing the assignment was conveniently never
2 fully disclosed or explained to the court until after the
3 issuance of the tentative ruling. In fact, Appellants were still
4 filing pleadings which maintained that the Youngs owned the
5 Pearce Judgment as late as May 28, 2004, less than three months
6 before the court issued its tentative ruling.

7 From the record it can be inferred that the purpose in
8 asserting that the Youngs did not own the Pearce Judgment until
9 2002 was to avoid the unfavorable tentative ruling. The
10 tentative ruling indicated that the Pearce Judgment would be
11 unenforceable unless it was shown to have not been an asset of
12 the Youngs during their chapter 13 bankruptcy case. If the
13 Youngs could prove this, then they would hold an enforceable
14 judgment secured by an unavoidable consensual lien on the
15 property in which Debtors claimed a homestead exemption.⁹

16 Appellants argue that because there is no documentary
17 evidence of a transfer of the Pearce Judgment from YBI to the
18 Youngs, the assertions that YBI owned the judgment until 2002 are
19 accurate and cannot, therefore, be the basis for the imposition
20 of sanctions for engaging in bad faith litigation tactics. This
21 argument lacks merit.

22 Under the doctrine of judicial estoppel, a court has the
23 discretionary power to prevent a party from gaining an advantage
24 by litigating on one theory that is inconsistent with a
25 successful theory previously litigated. New Hampshire v. Maine,
26 532 U.S. 742, 749-50 (2001). In determining whether to apply the

27 ⁹ The Pearce Judgment is the only judgment which cannot be
28 avoided under state or federal law as impairing Debtors'
homestead exemption.

1 doctrine, the following factors are examined: 1) whether the
2 "party's later position [is] 'clearly inconsistent' with its
3 earlier position;" 2) "whether the party succeeded in persuading
4 a court to accept that party's earlier position, so that judicial
5 acceptance of an inconsistent position in a later proceeding
6 would create 'the perception that either the first or second
7 court was misled;" and 3) "whether the party seeking to assert
8 an inconsistent position would derive an unfair advantage or
9 impose an unfair detriment on the opposing party if not
10 estopped." Id. at 750-51.

11 Here, Appellants' current representation that YBI owned the
12 Pearce Judgment until 2002 is inconsistent with the Youngs'
13 earlier position that it was transferred to them in 1991. Also,
14 the purpose behind the alleged assignment in 1991 was to allow
15 the state court receivership action to remain in bankruptcy
16 court. If the Youngs had never represented to the court that an
17 assignment had occurred, then the state court receivership action
18 would likely have been remanded pursuant to Debtors' request.
19 The court clearly relied on the Youngs' representation in finding
20 that it had jurisdiction over the state court receivership.
21 Furthermore, if Appellants were permitted to change direction and
22 to assert that the Youngs did not own the Pearce Judgment until
23 2002, they would have been able to escape the negative impact of
24 the tentative ruling and maintain an unavoidable judgment that
25 would be unaffected by Debtors' homestead exemption. In our
26 view, the court correctly found that Appellants were judicially
27 estopped from asserting that the Youngs did not own the Pearce
28 Judgment until 2002.

1 Under these circumstances, we cannot conclude that the court
2 abused its discretion in sanctioning Appellants pursuant to its
3 inherent authority. As the bankruptcy court correctly notes, if
4 this had been "a case where there were simply inconsistent
5 statements made about the ownership of a judgment in what is a
6 very long-lasting and factually complicated case, sanctions would
7 not have been necessary." Order Denying Motion for
8 Reconsideration at 2, June 20, 2006. However, this is not the
9 case.

10 In sum, the record adequately supports the bankruptcy
11 court's finding of bad faith sufficient to warrant the imposition
12 of sanctions.

13 B. Nature of the Sanctions

14 Appellants next contend that the sanctions, which awarded
15 attorneys' fees and invalidated certain judgments, are punitive
16 in nature and thus beyond the court's inherent authority.
17 Specifically, Appellants argue that the fees awarded were not
18 limited to services solely related to issues concerning ownership
19 of the Pearce Judgment. Because the award allows virtually all
20 attorneys' fees and costs incurred from July 8, 2004, to the date
21 of the award, regardless of the nature of the services, the award
22 is not simply compensatory in nature - it is punitive. On this
23 point, we agree.

24 A bankruptcy court's inherent sanction authority only allows
25 it to issue civil sanctions. Dyer, 322 F.3d at 1197. A sanction
26 will be allowed provided it is either compensatory or is designed
27 to coerce compliance. Price v. Lehtinen (In re Lehtinen), 332
28 B.R. 404, 412 (9th Cir. BAP 2005). To the extent that a sanction

1 does not so operate, it is punitive in nature. Id. A punitive
2 sanction cannot stand whatever the degree of the party's
3 culpability. Dyer, 322 F.3d at 1197; Lehtinen, 332 B.R. at 412.
4 As will be explained below, in this case, the sanctions orders go
5 beyond being compensatory in nature and appear designed to punish
6 Appellants for their bad faith litigation tactics.

7 1. Attorneys' Fees Awarded

8 The bankruptcy court allowed, as a sanction, Debtors'
9 reasonable attorneys' fees and costs incurred after July 8, 2004,
10 to the date of the award. In awarding the \$4,620 to Mr. Cole
11 (Debtors' state court counsel) and the \$29,496.50 to Waterfall,
12 Economidis, Caldwell, Hanshaw & Villamana P.C. (Debtors'
13 bankruptcy counsel), the court awarded all fees requested
14 provided proper time sheets, describing the services performed,
15 were filed. The court's stated justification was that "[t]he fee
16 award [was] intended to be a sanction for bad-faith litigation
17 conduct and is, therefore, not limited to the time spent
18 responding solely to claims about the ownership of the Pearce
19 Judgment." Memorandum Decision Regarding Attorneys' Fees Award
20 at 2, June 26, 2006.

21 While it is true that the sanction need not be limited to
22 the time spent responding to claims concerning the ownership of
23 the Pearce Judgment, the sanction cannot be so broad as to
24 provide for payment of all of Debtors' attorneys' fees, whether
25 related to issues surrounding the Pearce Judgment or not. To
26 fully compensate Debtors for the sanctionable conduct, they need
27 only be provided an award of attorneys' fees that reflects
28 litigation costs associated with the Pearce Judgment. Because

1 the bankruptcy court did not distinguish between costs and
2 expenses incurred in relation to the Pearce Judgment and those
3 incurred for other litigation purposes, we hold that the court
4 abused its discretion by entering sanctions that are substantial
5 and punitive in nature, and therefore, beyond the scope of its
6 inherent authority.

7 Further, the court did not provide any indication in its
8 decision or order that the award of attorneys' fees was designed
9 to coerce compliance. The record does not indicate that
10 Appellants violated any court order for which the bankruptcy
11 court sought compliance.

12 Based on the foregoing, we VACATE the sanctions orders
13 concerning the award of attorneys' fees and REMAND the issue for
14 further findings as to what amount of the fees represented
15 litigation costs and expenses incurred in connection with the
16 Pearce Judgment.

17 2. The State Court Judgments

18 In addition to awarding attorneys' fees against Young, the
19 bankruptcy court also barred and enjoined the Youngs from
20 enforcing against Debtors the following state court judgments:

21 1) Pearce Judgment (CIV 37525), 2) Brumgard Judgment (CIV 36326),
22 3) Attorneys' Fees #1 (CIV 36224), 4) Attorneys' Fees #2 (CIV
23 36224), and 5) Attorney's Fees (CV 94-042091). The court found
24 this part of the sanction to be non-punitive in nature because,
25 other than the Pearce and Brumgard Judgments, the judgments were
26 junior to a number of large consensual liens on Debtors'
27 property. Debtors had received their discharge, which the Youngs
28

1 had not objected to, causing them to have no personal liability
2 for any of the judgments.

3 The value of a sanction does not determine whether it is a
4 civil sanction or a criminal sanction. See Dyer, 322 F.3d at
5 1192. Consequently, barring enforcement of the judgments, even
6 if of little value to the Youngs, could be punitive if Young has
7 no subsequent opportunity to reduce or avoid the sanction through
8 compliance or the sanction is not compensatory. See id.

9 Here, the only judgment that is within the bankruptcy
10 court's inherent authority to enjoin and bar enforcement is the
11 Pearce Judgment. Appellants' bad faith conduct stemmed from
12 misrepresenting the ownership of the Pearce Judgment. Enjoining
13 enforcement of it is an obvious compensatory sanction for the
14 bankruptcy court to award.

15 The other judgments, however, bear no relation to the
16 Appellants' bad faith conduct. The Brumgard Judgment was
17 obtained through an uncontested summary judgment based upon a
18 personal note Brumgard had guaranteed to Young, and all the
19 Attorneys' Fees Judgments were awarded in connection with the
20 initial state court complaint filed by Debtors in 1986. While
21 the Brumgard Judgment and the Attorneys' Fees #1 and #2 Judgments
22 (a.k.a. the Gamble Judgments) were previously involved in a
23 sanctions order entered in the Youngs' chapter 13 case, there is
24 no evidence, nor even any suggestion, that Appellants ever
25 misrepresented the ownership or nature of these judgments in the
26 pending bankruptcy case.¹⁰ Because there was no bad faith

27 ¹⁰ In the Youngs' chapter 13 case, the assignment of the
28 Gamble Judgments from the Youngs to Gamble was voided by the
court, and Gamble was ordered to transfer the Gamble Judgments to

(continued...)

1 finding by the court as to actions taken by Appellants in
2 Debtors' bankruptcy case concerning these judgments, there is no
3 basis for barring the Youngs from enforcing them as a
4 compensatory sanction. Further, there is no indication that this
5 part of the sanction was intended to coerce Appellants to comply
6 with a court order. Therefore, the bankruptcy court abused its
7 discretion when it awarded the sanction that barred and enjoined
8 Young from enforcing the Brumgard Judgment and the Attorneys'
9 Fees Judgments. Accordingly, we AFFIRM the sanctions order as to
10 the Youngs in regards to the Pearce Judgment and REVERSE as to
11 all other judgments.

12 C. Standing

13 Appellants provide two bases upon which it should be found
14 that Debtors lack standing to bring their cross-appeal. First,
15 Debtors failed to identify the bankruptcy court's ruling on
16 standing, which found they lacked standing at the sanctions
17 hearing, as an issue on appeal. Thus, Debtors are bound by this
18 failure. Second, Debtors do not meet the "aggrieved persons"
19 standard for appellate standing since they are not directly and
20 adversely pecuniarily affected by the court's order. Based on
21 the foregoing, Appellants request that Debtors' cross-appeal be
22 dismissed and their opening brief on cross-appeal be stricken.

23
24 ¹⁰ (...continued)
25 the chapter 13 trustee. Even though the record is not clear on
26 whether this transfer ever occurred, the Youngs obtained a
27 discharge and the case was closed on August 4, 1998. Thus, any
28 part of the Gamble Judgments that was not used for the benefit of
the Youngs' creditors became property of the Youngs when the
trustee filed his final report and the case was closed. 11
U.S.C. § 554(c) (property "not otherwise administered at the time
of the closing of a case is abandoned to the debtor").

1 To have standing to appeal a decision of a bankruptcy court,
2 the appellant must be a "person aggrieved" by the court's order.
3 Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.),
4 177 F.3d 774, 777 (9th Cir. 1999). An appellant is aggrieved if
5 he was "'directly and adversely affected pecuniarily by an order
6 of the bankruptcy court; in other words, the order must diminish
7 the appellant's property, increase its burdens, or detrimentally
8 affect its rights." Id. (citing Fondiller v. Robertson (Matter
9 of Fondiller), 707 F.2d 441, 442 (9th Cir. 1983)).

10 Our review of the record shows that the sanctions orders
11 have a direct and immediate impact on Debtors' pecuniary
12 interests. The sanctions orders render Gamble liable for two-
13 thirds of Debtors' reasonable attorneys fees incurred in
14 litigation before the bankruptcy court from and after July 8,
15 2004, and Young liable for the remaining one-third. As a result,
16 the sanctions orders directly and adversely affect Debtors'
17 pecuniary interest. The fact that Debtors did not timely appeal
18 the court's ruling that they lacked standing to speak at the
19 sanctions hearing is irrelevant to determining their standing on
20 appeal. Based on the sanctions orders, Debtors' are "aggrieved
21 persons," and thus, have standing to appeal the sanctions orders
22 and "Memorandum Decision Regarding Attorneys' Fees Award" entered
23 June 26, 2006.

24 D. Reduction In Attorneys' Fees

25 It is within the bankruptcy court's discretion to determine
26 reasonable compensation for services rendered in bankruptcy
27 proceedings. Sw. Media, Inc. v. Rau, 708 F.2d 419, 422 (9th Cir.
28 1983). In determining the amount of compensation to be allowed,

1 courts are given great deference in their review of a fee
2 application pursuant to § 330 and Rule 2016. See Gill v.
3 Wittenburg (In re Fin. Corp. of America), 114 B.R. 221, 224 (9th
4 Cir. BAP 1990).

5 In order to receive compensation for services rendered and
6 reimbursement of expenses, an attorney must file an application
7 with the court. Fed. R. Bankr. P. 2016(a). "Because the
8 [attorney] has the burden of establishing that he or she is
9 entitled to the fees requested, the application requires
10 sufficiently detailed records of the time spent and the matters
11 addressed." Locke v. Walsh (In re Travel Headquarters, Inc.),
12 140 B.R. 260, 261 (9th Cir. BAP 1992); see Roderick v. Levy (In
13 re Roderick Timber Co.), 185 B.R. 601, 606 (9th Cir. BAP 1995) ("a
14 court should only award fees to the level that has been proven to
15 be actual, necessary and reasonable. Any lesser requirement
16 would make the applicant's burden of proof a mere shell.").
17 Based on the application, the court may then determine, in its
18 own discretion, the amount owing for reasonable, actual, and
19 necessary services rendered and expenses incurred. Travel
20 Headquarters, 140 B.R. at 262; 11 U.S.C. § 330(a)(1)(A)-(B).

21 "The bankruptcy court has sua sponte authority to 'award
22 compensation that is less than the amount of compensation that is
23 requested.'" Eliapo, 468 F.3d at 597 (citing 11 U.S.C.
24 § 330(a)(2)). This is especially true in cases where time
25 records are not kept. Sw. Media, 708 F.2d at 427 n.11; Hale v.
26 U.S. Trustee (In re Basham), 208 B.R. 926, 932 (9th Cir. BAP
27 1997); Travel Headquarters, 140 B.R. at 262.

28

1 In awarding Debtors' requested attorneys' fees, the court
2 found that "it would be unreasonable for [it] to 'write up'
3 Debtors' state court counsel's time to make up for time that
4 counsel did not bother to record or charge to the Debtors."
5 Memorandum Decision Regarding Attorneys' Fees Award at 2, June
6 26, 2006. Accordingly, the court awarded only the amount of fees
7 Thomas Cole had recorded and charged to Debtors. This caused his
8 attorney's fee request of \$14,000 to be reduced to \$4,620.

9 Debtors believe that the bankruptcy court abused its
10 discretion in arbitrarily reducing Cole's attorney's fees by
11 \$9,380. Cole's fees were reasonable and should have been
12 approved pursuant to his affidavit without him being required to
13 file a detailed listing of the specific services performed.
14 Bankruptcy courts approve brokers' commissions and contingent
15 legal fees without requiring detailed listings of the specific
16 services provided, so long as they are reasonable. Debtors
17 maintain that this situation should have been treated no
18 differently.

19 The record indicates that Cole failed to keep
20 contemporaneous time records, inform Debtors of his increased
21 hourly rate, or bill Debtors for services performed. It was not
22 until the court informed Debtors that it would be awarding
23 attorneys' fees sanctions that Cole created time records to
24 substantiate his services. As the fact finder, the bankruptcy
25 court has great discretion in evaluating the sufficiency of the
26 evidence provided by an attorney in support of the fees being
27 requested. See Roderick Timber Co., 185 B.R. at 606. In light
28 of this discretion and the lack of detail of the services

1 rendered by Cole, we cannot conclude that the bankruptcy court
2 clearly erred in reducing Cole's fees to the amount that had been
3 contemporaneously recorded and billed to Debtors.

4 **VI. CONCLUSION**

5 For the foregoing reasons, we AFFIRM the bankruptcy court's
6 award of sanctions against Appellants. However, in regards to
7 the nature of the sanctions imposed, we VACATE and REMAND both
8 sanctions orders for further findings as to the amount of
9 attorneys' fees awarded. We also AFFIRM in part and REVERSE in
10 part the sanctions order against Young that bars the Youngs from
11 enforcing certain judgments. Finally, we AFFIRM the bankruptcy
12 court's reduction in Cole's requested attorney's fees.

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