

MAR 04 2013

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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NOT FOR PUBLICATION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

5	In re:)	BAP No.	NV-12-1375-JuKiD
)		
6	JOWELL A. HERNANDEZ and)	Bk. No.	10-15867
	ANNA LEE G. HERNANDEZ,)		
7)		
	Debtors.)		
8	_____)		
)		
9	HAINES & KRIEGER, L.L.C.,)		
)		
10	Appellant,)		
)		
11	v.)	M E M O R A N D U M *	
)		
12	NATIONAL CAPITAL MANAGEMENT)		
	LLC,)		
13)		
	Appellee.)		
14	_____)		

Argued and Submitted on January 25, 2013
at Las Vegas, Nevada

Filed - March 4, 2013

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

Honorable Bruce T. Beesley, Bankruptcy Judge, Presiding

Appearances: David Kreiger of Haines & Krieger, L.L.C.
 appeared for appellant Haines & Krieger, L.L.C.;
 Dustin Andrew Johnson of Muckleroy Johnson
 appeared for appellee National Capital
 Management, LLC.

Before: JURY, KIRSCHER and DUNN, Bankruptcy Judges.

* 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 Chapter 13¹ debtors Jowell A. Hernandez and Anna Lee G.
2 Hernandez filed an objection to National Capital Management,
3 LLC's (NCM) proof of claim (POC) contending, among other things,
4 that NCM failed to provide documentation showing that it had
5 standing to file the claim or that it had an enforceable debt
6 against them under § 502(b)(1). The bankruptcy court overruled
7 their objection, finding debtors' Schedule F, which listed a
8 credit card debt owed to GE Capital/Sam's Club, constituted an
9 evidentiary admission of the debt contained in NCM's POC.

10 NCM subsequently sought sanctions against debtors'
11 attorneys, Haines & Krieger, L.L.C. (Haines), on the grounds
12 that Haines' claim objection was not well grounded in fact or
13 law in violation of Rule 9011. NCM further alleged that Haines
14 engaged in a persistent pattern of filing meritless claim
15 objections in the present case and numerous bankruptcy cases in
16 the District of Nevada. The bankruptcy court granted NCM's
17 motion and awarded sanctions, payable to NCM, in the amount of
18 \$3,000. This appeal followed.

19 Without a more detailed explanation of the reasoning for
20 imposing sanctions based on Haines' "persistent pattern" of
21 filing "meritless" claim objections, the manner in which the
22 bankruptcy court exercised its discretion cannot be determined.
23 Further, it does not appear that the safe harbor requirement
24 under Rule 9011 was met. Accordingly, we VACATE the bankruptcy

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 and
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure and "Civil Rule" references are to the Federal Rules of
Civil Procedure.

1 court's order and REMAND the matter for the bankruptcy court to
2 provide a more detailed explanation as to why it considered
3 Haines' claim objections meritless under the standards of
4 Rule 9011 in Bankruptcy Case Nos: 08-21495, 09-26913, 10-19054,
5 10-20824, 10-21466, and 10-31316, and to explain how the safe
6 harbor requirement was met.

7 **I. FACTS**

8 On April 5, 2010, debtors filed their chapter 13 petition.
9 In Schedule F, debtors listed a credit card debt of \$2,274 owed
10 to "Gemb/Sam's Club Dc." Debtors listed the account number's
11 last four digits as 7699 and indicated that the credit card had
12 an open date of 8/1/09 and was last active 3/5/10. They left
13 blank the corresponding columns which would identify the debt as
14 "contingent, unliquidated, or disputed."

15 On April 29, 2010, NCM filed its POC (claim 4-1) in the
16 amount of \$2,389.44, which was approximately 5% greater than the
17 sum on debtors' Schedule F for their Sam's Club credit card
18 debt. Under the heading "Account Information", NCM showed the
19 last four digits of the account number as 4623, not the same
20 four digit number listed on debtors' Schedule F. The
21 Supplemental Account Summary attached to the POC stated, among
22 other things, that NCM was the successor to GE Capital/Sam's
23 Club, that the date of the loan was 8/1/09 and that the last
24 payment date was 3/5/10.

25 **The Claim Objection**

26 On February 28, 2012, debtors filed an objection to NCM's
27 POC alleging that the claim lacked prima facie validity because
28 it was based on an insufficient writing in violation of

1 Rule 3001(c) and that the claim was not supported by any written
2 evidence of an enforceable agreement or a contract between NCM
3 and debtors or between debtors and an alleged predecessor-in-
4 interest in violation of § 502(b)(1).

5 Citing Campbell v. Capital One Bank, 336 B.R. 430 (9th Cir
6 BAP 2005) and Heath v. Am. Express Related Servs. Co., Inc.
7 (In re Heath), 331 B.R. 424 (9th Cir. BAP 2005), debtors further
8 contended that their objection was not simply based on NCM's
9 violation of Rule 3001(c). Debtors asserted that they had
10 listed the claim as disputed on the filed bankruptcy schedules,
11 they objected to charges, interest and fees that they believed
12 were included in the claim and they disputed that NCM could
13 assert a valid basis under state law to enforce the obligation.
14 Finally, debtors maintained that their objection was supported
15 by the district court case, In re Tran, 2007 WL 1470900 (S.D.
16 Tex. 2007), and other bankruptcy cases from Texas, Oklahoma, and
17 Ohio. Debtors argued that, collectively, these cases stood for
18 the proposition that a claim based on a credit card debt needed
19 to attach documentation showing some verification of ownership
20 by the claimant when the debt has been transferred or assigned
21 to comply with Rule 3001(c) and, if such documentation was not
22 attached, the POC was not entitled to prima facie validity under
23 Rule 3001(f). In that event, debtors submitted that the burden
24 of proof remained on the creditor (citing In re Long,
25 353 B.R. 1, 14 (Bankr. D. Mass. 2006) (POC not entitled to prima
26 facie validity when documentation evidencing security interest
27 or proof of perfection is not attached to POC) and In re White,
28 2008 WL 269897 (Bankr. N.D. Tex. 2008) (noting that while claim

1 objection arose from the lack of documentation, the burden was
2 on creditor to prove ownership of the claim in the same manner
3 as if they were suing the debtor in state court)). For all
4 these reasons, debtors requested that NCM's claim be disallowed.

5 NCM filed a response reiterating the information on the
6 Supplemental Account Summary. NCM admitted that its POC did not
7 have supporting documents attached, but argued that its POC had
8 the account's unique identifiers: (1) the card was issued by
9 GE Capital, issuer of Sam's Club credit cards; (2) the sixteen
10 digit account number contained the digits 7699 as indicated on
11 debtors' Schedule F; (3) the date of the loan was 8/1/09; and
12 (4) the balance of \$2,389.44 was owed. With respect to the
13 account number, NCM pointed out that debtors' Schedule F and
14 NCM's POC disclosed different four digit portions of the same
15 sixteen digit account number.² NCM also pointed out that
16 debtors' Schedule F listed, without dispute, an unsecured claim
17 for the credit card debt owed to Sam's Club, with an account
18 containing the digits 7699, having an opened date of 8/1/09 and
19 owing a balance of \$2,274. In other words, NCM argued that its
20 POC had almost identical information about the debt owed to
21 Sam's Club as the undisputed listing in debtors' Schedule F.
22 Citing In re Minbatiwalla, 424 B.R. 104, 116 (Bankr. S.D.N.Y.
23 2010), NCM further asserted that debtors' judicial admission
24 that they owed the debt shifted the burden to them to refute the
25 claim even though NCM's POC may have lacked prima facie validity

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27
28 ² It remains a mystery as to what the last four digits of
the account number actually are.

1 for lack of sufficient documentation.

2 NCM's remaining argument was that Haines "mass produced"
3 its claim objections which were nothing more than a "collection
4 of general restatements of the law that [d]ebtors' counsel uses
5 as a facade to give the appearance that its papers are somehow
6 not frivolous." NCM indicated that Haines filed nine other
7 objections in debtor's case which were identical.³ NCM further
8 identified numerous bankruptcy cases in the District of Nevada
9 where Haines allegedly filed meritless claim objections –
10 Bankruptcy Case Nos. 08-21495, 09-26913, 10-20824, 10-21466, and
11 10-31316. NCM asserted that it gave debtors' counsel the
12 required 21-day notice under Rule 9011(c)(1)(A) and also noted
13 that it might request the court to order debtors' counsel to pay
14 its fees associated with responding to objections related to
15 claim 4-1 in debtors' case and responding to objections to
16 claim 9-1 in Bankruptcy Case No. 10-19054.

17 On April 17, 2012, the bankruptcy court heard argument on
18 debtors' claim objection and overruled it. The transcript
19 states in relevant part:

20 THE COURT: I have looked at your pleadings. I'm going to
21 overrule your objection. Your firm, not you, but your firm -
22 . . . has I think a pattern of filing objections that have no
23 merit whatsoever. Go back to your office and tell them to stop
24 because if I get more of these I'm going to start sanctioning
25 your firm. Approximately, how much time did it take you to
26 oppose this?

25 ³ These objections are not part of the record on appeal.
26 However, our cursory review of the various pleadings which are on
27 the docket shows that indeed Haines filed the identical objection
28 to nine other POCs. This case amply demonstrates the problems
which arise due to boilerplate objections – one size does not fit
all.

1 MR. ALDOUS [sic]: Your Honor, I'm sorry. I'll have to go
2 through and look at my billing for this one.

3 THE COURT: Okay. I'm not going to sanction them this
4 time. But if I see any more of these, I'm going to start
5 sanctioning probably [\$]1,000 or \$2,000, and I don't think your
6 firm wants to have that happen, but stop filing frivolous
7 objections.

8 MR. ALDOUS: Sure. And, your Honor, if I may speak in our
9 defense? In this case there's really nothing tying National
10 Capital Management to the Sam's Club debt. The only evidence he
11 presented was the debtors' own schedules saying they owed money
12 to Sam's Club.

13 THE COURT: That's an admission. That's an evidentiary
14 admission.

15 MR. ALDOUS: But he's not Sam's Club.

16 THE COURT: Okay.

17 MR. MUCKLEROY: Your Honor, that transfer occurred prior to
18 the filing of the claim, so we weren't required to file that
19 documentation. If the objection specifically stated that there
20 was an issue regarding that, that's what we were provided.
21 However, the objection states a false statement, your Honor,
22 actually. It states on page 3, [i]t disputes the objected-to
23 claim on the filed bankruptcy schedules. That is blatantly
24 false.

25 THE COURT: I agree. I agree. Your objection is
26 overruled. Go back and tell your office, all the lawyers who
27 work there, that they've got to stop doing this and all the
28 paralegals that work there that they've got to stop doing this.

MR. ALDOUS: Understood.

The Sanctions

On May 24, 2012, NCM filed its Rule 9011 motion for
sanctions against Haines. NCM asserted that the basis for
debtors' objection to its POC was that they disputed the claim
on their Schedules. According to NCM, debtors' counsel made a
"patently false factual contention that ha[d] no evidentiary
support" and therefore, they were subject to sanctions. NCM
further argued that there was no legal basis for disallowance of
its insufficiently documented claim when the claim corresponded

1 to a scheduled and undisputed debt. Thus, NCM argued, the
2 remedy of disallowance was not warranted by existing law. NCM
3 also again noted Haines' persistent pattern of filing baseless
4 claim objections in bankruptcy cases in the District of Nevada.
5 The motion made reference to NCM's compliance with the safe
6 harbor but did not attach the letters or proposed motion to
7 demonstrate the proper timeline.

8 On June 12, 2012, Haines filed its opposition to NCM's
9 motion for sanctions. Haines argued that debtors' claim
10 objection met the standards for Rule 9011 because it believed
11 NCM's POC was defective. Haines acknowledged that while the POC
12 referenced a debt scheduled by debtors, it did not show how NCM
13 acquired the prior creditor's rights. Haines further contended
14 that its various case citations supported its position.
15 Finally, Haines maintained that NCM's motion for sanctions under
16 Rule 9011 was procedurally defective because NCM filed its
17 motion after the bankruptcy court had already decided the
18 matter, thereby depriving Haines of the safe harbor period and
19 its ability to withdraw the objection. In the end, Haines
20 informed the bankruptcy court that it had changed its practices
21 to provide more clarity in its objections to claims regarding
22 specific defects.

23 On June 25, 2012, the bankruptcy court heard the matter.
24 At the hearing, the bankruptcy court clarified that it had not
25 previously denied sanctions and that NCM's counsel sent Haines
26 two letters, one at the end of March and the other on April 3,
27 2012, prior to the April 17, 2012 hearing on the claim

1 objection.⁴ Those letters purportedly alerted Haines of the
2 Rule 9011 violation, but the court made no specific finding that
3 the letters actually complied with the safe harbor requirement
4 under Rule 9011(c)(1)(A). NCM's counsel reiterated that it
5 pursued the motion because Haines engaged in a persistent
6 pattern of filing objections to its claims and then, after NCM
7 responded and came to court, Haines would withdraw the
8 objection. Apparently because it had found debtors "admitted"
9 the debt in their Schedules, the bankruptcy court placed the
10 burden of proof on Haines to come forth with evidence that NCM
11 was not the successor in interest to GE Capital/Sam's Club. The
12 court asked Haines if it had any such evidence and Haines
13 replied that it did not. Accordingly, the bankruptcy court
14 awarded NCM its attorneys' fees of \$3,000 in defending the
15 objections to its claim in this case and the other bankruptcy
16 cases noted.

17 On July 18, 2012, the court entered the order granting
18 NCM's motion for sanctions. The order stated that Haines filed
19 objections to NCM's POC's in Bankruptcy Cases Nos. 09-26913
20 (Dkt. Nos. 81, 83, 96, 97, and 112); 10-20824 (Dkt. Nos. 116,
21 184 and 188; 10-31316 (Dkt. Nos. 54 and 63); 10-21466 (Dkt. Nos.
22 69 and 95); 08-21495 (Dkt. Nos. 42, 75, 78 and 79); and 10-19054
23 (Dkt. Nos. 83 and 85).⁵ The order further stated that NCM filed

24
25 ⁴ The hearing transcript contains a verbal exchange between
26 the court and NCM's counsel which makes it clear the court did
not have copies of the letters or any proposed motion.

27 ⁵ Haines' claim objections with respect to these cases are
28 not in the record on appeal nor are the transcripts of the
(continued...)

1 a motion in this case alleging that Haines engaged "in a
2 persistent pattern of filing meritless claims objections in this
3 case as well as other bankruptcy cases in the district." The
4 "Court conclude[d] that such objections to NCM's claims were
5 filed with no or nearly no inquiry into the circumstances,
6 contained factual allegations that were false and put forth
7 legal contentions that were not warranted by existing law and
8 that the filing of such objections constituted a pattern on
9 behalf of Haines & Kreiger, L.L.C. and that such a persistent
10 pattern is legal grounds for sanctions pursuant to [Rule]
11 9011(b)(1)-(3)."

12 **The Appeal**

13 On July 23, 2012, debtors filed a notice of appeal of the
14 order. On November 5, 2012, the Panel issued an order that gave
15 Haines fourteen days to file a written response indicating
16 whether it would substitute as the appellant and pursue the
17 appeal filed by debtors. Haines filed a timely response and on
18 November 7, 2012, the Panel entered an order substituting Haines
19 as the appellant in place of debtors in this appeal.

20 **II. JURISDICTION**

21 The bankruptcy court had jurisdiction over this proceeding
22 under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (B). We have
23 jurisdiction under 28 U.S.C. § 158.

24 **III. ISSUE**

25 Did the bankruptcy court abuse its discretion in granting
26

27 ⁵(...continued)
28 hearings on the objections provided.

1 NCM's motion for sanctions under Rule 9011?

2 **IV. STANDARD OF REVIEW**

3 We review all aspects of a bankruptcy court's decision to
4 impose Rule 9011 sanctions for abuse of discretion. Valley
5 Nat'l Bank v. Needler (In re Grantham Bros.), 922 F.2d 1438,
6 1441 (9th Cir. 1991). A bankruptcy court abuses its discretion
7 when it applies the incorrect legal rule or its application of
8 the correct legal rule is "(1) illogical, (2) implausible, or
9 (3) without support in inferences that may be drawn from the
10 facts in the record." United States v. Loew, 593 F.3d 1136,
11 1139 (9th Cir. 2010) (quoting United States v. Hinkson, 585 F.3d
12 1247, 1261-62 (9th Cir. 2009)(en banc))(internal quotation marks
13 omitted).

14 **V. DISCUSSION**

15 Rule 9011 states in relevant part:

16 (b) Representation to the court

17 By presenting to the court . . . a petition, pleading,
18 written motion, or other paper, an attorney or
19 unrepresented party is certifying that to the best of
20 the person's knowledge, information, and belief,
21 formed after an inquiry reasonable under the
22 circumstances,--

21 (1) it is not being presented for any improper
22 purpose, such as to harass or to cause unnecessary
23 delay or needless increase in the cost of litigation;

23 (2) the claims, defenses, and other legal contentions
24 therein are warranted by existing law or by a
25 nonfrivolous argument for the extension, modification,
26 or reversal of existing law or the establishment of
27 new law;

25 (3) the factual contentions have evidentiary support
26 or, if specifically so identified, will likely have
27 evidentiary support after a reasonable opportunity for
28 further investigation or discovery;

1 “The language of Rule 9011 parallels that of [Civil
2 Rule] 11. Therefore, courts analyzing sanctions under Rule 9011
3 may appropriately rely on cases interpreting [Civil Rule] 11.”
4 Winterton v. Humitech of N. Cal., LLC (In re Blue Pine, Inc.),
5 457 B.R. 64, 75 (9th Cir. BAP 2011) (citing Marsch v. Marsch
6 (In re Marsch), 36 F.3d 825, 829 (9th Cir. 1994)).

7 **A. Standards for Imposition of Sanctions Under Rule 9011**

8 Under the Rule, a filing is frivolous if it is “both
9 baseless – lacks factual foundation – and made without a
10 reasonable and competent inquiry.” In re Blue Pine, Inc.,
11 457 B.R. at 75 (citing Townsend v. Holman Consulting Corp.,
12 929 F.2d 1358, 1362 (9th Cir. 1991) (en banc)). The attorney
13 “has a duty to conduct a reasonable factual investigation as
14 well as to perform adequate legal research that confirms that
15 his position is warranted by existing law (or by a good faith
16 argument for a modification or extension of existing law).” Id.
17 (citing Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir.
18 2002)). “Thus, a finding that there was no reasonable inquiry
19 into either the facts or the law is tantamount to a finding of
20 frivolous.” Id. (citing Townsend, 929 F.2d at 1362).

21 To determine whether Haines violated Rule 9011, the
22 bankruptcy court must have judged Haines’ conduct under an
23 objective standard of reasonableness. G.C. & K.B. Invs., Inc.
24 v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003) (citing Townsend,
25 929 F.2d at 1362)). The reasonableness of attorney conduct is
26 measured against “the conduct of a competent attorney admitted
27 to practice before the involved court.” In re Grantham Bros.,
28 922 F.2d at 1441.

1 **B. The Claim Objection In this Case Was Not Frivolous**

2 Haines objected to NCM's POC on not one, but several
3 grounds.⁶ Haines challenged NCM's POC because it lacked
4 documentary proof under Rule 3001(c)(1) and thus contended that
5 the POC was not entitled to prima facie validity. Haines also
6 asserted as a defense under § 502(b)(1) that NCM failed to
7 provide evidence of an enforceable contract that would entitle
8 it to make the claim against debtor under Nevada law.⁷ Finally,
9 the claim objection included a statement that debtors disputed
10 the "objected to claim on the Filed Bankruptcy Schedules." For
11 all these reasons, Haines' requested the disallowance of NCM's
12 POC.

13 A fair reading of Haines' claim objection shows that its
14 argument regarding the lack of documentation was directed
15 towards the prima facie validity of NCM's POC and the burden of
16 proof in the claims objection process. Specifically, Haines
17 questioned NCM's standing to file the claim and maintained,
18 because of that deficiency, debtors had no evidentiary burden to
19 overcome in objecting to NCM's POC.

20 Haines' citation to In re Tran, 369 B.R. 312 (S.D. Tex.

21 _____
22 ⁶ At the sanctions hearing, NCM again complained that the
23 sole basis for Haines' objection was that debtors disputed the
24 claim in their schedules. The court appeared to agree with that
25 assertion.

26 ⁷ Although Haines' discussion in its claim objection on this
27 point was cursory, there are specific statutes in Nevada that
28 address actions brought to collect a credit card debt owed to a
purchaser of credit card debt. See Nev. Rev. Stat. 97A.160,
97A.165. The bankruptcy court did not address Haines' argument
under § 502(b)(1) because it overruled Haines' claim objection on
other grounds.

1 2007) supported its arguments. In Tran, the debtor objected to
2 eCast Settlement Corp.'s POCs because eCast, who was an assignee
3 of three banks which allegedly issued credit cards to Tran, was
4 a "stranger" and therefore she owed them no money. ECast
5 responded by providing addition evidence consisting primarily of
6 general assignment agreements between eCast and the three banks,
7 but those assignments did not specifically identify Tran or her
8 respective accounts. At an evidentiary hearing, eCast was
9 assigned the burden to overcome Tran's objections. ECast
10 attempted to introduce evidence supporting its POCs, but the
11 assignments were excluded as hearsay. In the end, the
12 bankruptcy court found that eCast failed to file a proper POC
13 based upon a writing and thus its POCs were not entitled to
14 prima facie validity. Therefore, the court found that under
15 Fifth Circuit law, Tran had no evidentiary burden to overcome in
16 objecting to eCast's claims. The bankruptcy court also found
17 that eCast failed to satisfy its evidentiary burden of providing
18 the validity and amounts of its claims under a contractual
19 analysis under Texas law and thus disallowed its POCs. On
20 appeal, the district court affirmed.⁸

21
22 ⁸ In a different context, we have held that "standing is
23 prerequisite to the evidentiary benefits set forth in
24 Rule 3001(f)." Veal v. Am. Home Mortg. Servicing, Inc.
25 (In re Veal), 450 B.R. 897 (9th Cir. BAP 2011). There, the Panel
26 reasoned that "Rule 3001(f) states that a proof of claim is prima
27 facie evidence of the validity and amount of the claim if it is
28 both executed and filed in accordance with the Rule, and Rule
3001(b) requires that a claim be executed by the creditor or its
authorized agent. . . . if a claim is challenged on the basis of
standing, the party who filed the proof of claim must show that
it is either the creditor or the creditor's authorized agent in
(continued...)

1 The other cases cited by Haines also legally supported its
2 position. In re Rochester, 2005 WL 3670877 (Bankr. N.D. Tex.
3 2006)(holding that for a claim based upon a writing, the
4 underlying documents and the assignment or transfer document are
5 needed to comply with Rule 3001(c)); In re Kendall, 380 B.R. 37
6 (Bankr. N.D. Okla. 2007) (same). Thus, objectively, Haines'
7 claim objection was warranted by existing law and thus could not
8 have violated 9011(b)(2).⁹

9 NCM conceded that it had attached no documentation to its
10 POC,¹⁰ but argued that its POC still provided sufficient indicia
11 of the claim's validity and amount in light of debtors'
12 admissions on their schedules. Thus, according to NCM, there
13 was enough information in the POC to shift the burden of
14 production to debtors. See In re Minbatiwalla, 424 B.R. at 113
15 (citing In re Jorczak, 314 B.R. 474, 483 n.11 (Bankr. D. Conn.
16 2004) ("[W]hen a 'proof of claim' [against an estate surplus]
17 has been filed in a chapter 7 case and the chapter 7 debtor
18 objects to the same but scheduled the relevant claim as

19 _____
20 ⁸(...continued)
21 order to obtain the benefits of Rule 3001(f)." Id. at 922.

22 ⁹ See also In re Samson, 392 B.R. 724, 733 (Bankr. N.D. Ohio
23 2008) ("There is . . . no bright-line test to determine the
24 sufficiency of the written materials submitted by the creditor
25 for purposes of Bankruptcy Rule 3001."); In re Heath, 331 B.R. at
432 ("There is no uniform standard for what must be contained in
a summary.")(pertaining to credit card debt).

26 ¹⁰ After the bankruptcy court heard and ruled on Haines'
27 objection to NCM's POC, further amendments to Rule 3001 took
28 effect on December 1, 2012. Those amendments, which do not apply
to this case, were intended to standardize the proofs of claim
and supporting documentation filed by assignees.

1 undisputed, the burden is on the debtor to offer some adequate
2 level of explanation as to why his scheduling of that claim as
3 undisputed was incorrect.") (credit card claim)). NCM further
4 argued at the claims objection hearing that Haines' statement in
5 the objection that debtors "disputed the objected to claim on
6 the Filed Bankruptcy Schedules" was "false".

7 The bankruptcy court agreed, essentially adopting NCM's
8 argument that debtors had admitted in their Schedule F owing the
9 debt set forth in NCM's POC. Therefore, it followed that the
10 objected-to claim could not have been "disputed" in those same
11 schedules and thus the statement in the claim objection was
12 "false." It is true, of course, that Haines' statement was
13 indeed incorrect because NCM was nowhere to be found on debtors'
14 schedules. This is not surprising in light of Haines' objection
15 to NCM's claim based on its lack of standing.

16 However, when Haines' statement about the "disputed" debt
17 is considered in relation to the claim objection as a whole, see
18 Townsend, 929 F.2d at 1364, we do not believe that this single
19 statement was so significant as to cause Haines to be liable for
20 sanctions for violating Rule 9011(b)(3). There are no hard and
21 fast rules for describing the role of the debtor's schedules to
22 fill in gaps in a POC that otherwise lacks prima facie
23 evidentiary status under Rule 3001(f). See In re Minbatiwalla,
24 424 B.R. at 116-17 (discussing the various approaches to the
25 role of the debtor's schedules in claim objection proceedings).
26 Further, because debtors can amend the schedules at any time
27 before the case is closed, a change in the listing from
28 undisputed to disputed has no effect on the burden associated

1 with the claim and the courts will not rely on such admissions.
2 Heath, 331 B.R. at 431. See also In re Veal, 450 B.R. at 921
3 ("admissions" in debtors' bankruptcy schedules not conclusive
4 evidence on issue of claimant's standing); B-Real, LLC v.
5 Melillo (In re Melillo), 392 B.R. 1, 6 (1st Cir. BAP 2008)
6 (information in the debtor's bankruptcy schedules that tended to
7 establish the existence of the underlying debt "provide[d] an
8 inadequate showing of the Appellant's ownership as a
9 transferree.").

10 **C. Persistent Pattern of "Meritless" Claims Objections**

11 Our inquiry into the appropriateness of the sanctions does
12 not end here because the Rule 9011(b)(1) improper purpose
13 inquiry remains. Even if the claim objection in this case is
14 not considered frivolous, "if a court finds that a motion or
15 paper, . . . , is filed in the context of a persistent pattern
16 of clearly abusive litigation activity, it will be deemed to
17 have been filed for an improper purpose and sanctionable."
18 Aetna Life Ins. Co. v. Alla Med. Servs., Inc., 855 F.2d 1470,
19 1476 (9th Cir. 1988). On this record, we cannot tell whether
20 Haines' conduct rises to the level of abusive litigation
21 activity that Rule 9011 was meant to protect against – namely
22 conduct that harasses, causes unnecessary delay, or needlessly
23 increases the cost of litigation. See Rule 9011(b)(1).

24 Because the sanction motion was a contested matter subject
25 to Rule 9014, the bankruptcy court was required to make findings
26 of fact, either orally on the record, or in a written decision.
27 See Rule 9014(c) (incorporating Rule 7052, which in turn
28 incorporates Civil Rule 52). "These findings must be sufficient

1 to enable a reviewing court to determine the factual basis for
2 the court's ruling." In re Veal, 450 B.R. at 919.

3 Although the record indicates that the bankruptcy court was
4 concerned with Haines' conduct in other bankruptcy cases, the
5 court never made specific factual findings with respect to the
6 claim objections which were part of Haines' "persistent pattern
7 of filing meritless claim objections" as stated in its order.
8 The transcript of the sanctions hearing shows the following
9 discussion:

10 THE COURT: . . . It appears to me you've tried to sidestep
11 the Court's objection by moving back a step and listing claims
with an unfounded dispute. . . . That's how it appears to me.

12 MR. ALDOUS: Okay. Is there a specific case you're
13 . . . referring to?

14 THE COURT: We'll discuss that later.

15 MR. ALDOUS: Okay.

16 THE COURT: I'm having a meeting with the other judges this
afternoon to see if we can address this globally.

17 MR. ALDOUS: Okay.

18 While a bankruptcy court's discretion in imposing sanctions
19 under Rule 9011 is substantial, discussion of its analysis is
20 crucial both to insure that its discretion has not been abused
21 and to properly inform the involved parties of the precise basis
22 upon which any sanctions have been imposed. If each of the
23 claims objections was "meritless" as stated in the court's
24 order, the bankruptcy court should have discussed each objection
25 and told Haines why it was without merit. Instead, the
26 bankruptcy court simply said: "We'll discuss that later."
27 Accordingly, neither Haines nor this court can discern the
28 precise basis upon which the sanctions were imposed. "[W]hen

1 the record does not contain a clear basis for the court's
2 ruling, we must vacate the court's order and remand for further
3 proceedings." In re Veal, 450 B.R. at 920.

4 **D. Safe Harbor**

5 Generally, as an initial inquiry, the bankruptcy court must
6 determine whether the party seeking sanctions complied with the
7 so-called safe harbor provision. Rule 9011(c)(1)(A) sets forth
8 the requirements for how a motion for sanctions is initiated.
9 The Rule requires that a motion must be served, but not filed or
10 be presented to the court if the challenged paper, claim,
11 defense, contention, or denial is withdrawn or appropriately
12 corrected within 21 days after service or within another time
13 the court sets. The safe harbor requirements have been
14 described as follows: "The movant serves the allegedly
15 offending party with a filing-ready motion as notice that it
16 plans to seek sanctions. After 21 days, if the offending party
17 has not withdrawn the filing, the movant may file the Rule 11
18 motion with the court." Truesdell v. S. Cal. Permanente Med.
19 Grp., 293 F.3d 1146, 1151 (9th Cir. 2002).

20 The bankruptcy court made no express finding that the safe
21 harbor requirement under Rule 9011(c)(1)(A) was met and the
22 record on this point is sparse. NCM made a vague reference at
23 the sanctions hearing that it sent Haines two letters
24 accompanied by a proposed motion but none of those documents
25 were in the record on appeal. As a result, there is no
26 indication that the letters/motion were timely served.

27 Haines raised the issue of the safe harbor in the
28 bankruptcy court, but does not specifically pursue the issue on

1 appeal. Although we generally do not consider a matter on
2 appeal that is not specifically and distinctly argued in
3 appellant's opening brief, Affordable Housing Dev. Corp. v.
4 Fresno, 433 F.3d 1182, 1193 (9th Cir. 2006), we consider the
5 issue here because the Ninth Circuit has stated that the safe
6 harbor requirement is not only strictly enforced, but is
7 mandatory. Holgate v. Baldwin, 425 F.3d 671, 677 (9th Cir.
8 2005); Barber v. Miller, 146 F.3d 707 (9th Cir. 1998). Further,
9 informal letters or warnings do not meet the safe harbor
10 requirements. Barber, 146 F.3d at 710-11. "It is the service
11 of the motion that gives notice to a party and its attorneys
12 that they must retract or risk sanctions." Radcliffe v. Rainbow
13 Constr. Co., 254 F.3d 772, 789 (9th Cir. 2001). It does not
14 appear that the bankruptcy court followed this precedent.

15 VI. CONCLUSION

16 For the reasons stated, we VACATE the sanctions order and
17 REMAND to the bankruptcy court to allow it to make specific
18 factual findings and conclusions of law as to why sanctions
19 under Rule 9011 were warranted based on Haines' "persistent
20 pattern" of filing "meritless" claim objections and to also
21 articulate findings which support a conclusion that the moving
22 party complied with the safe harbor requirements.