

MAR 04 2013

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

1 In re:) BAP Nos. CC-12-1306-DKiPa and
2) CC-12-1307-DKiPa
3 M.P. CONSTRUCTION COMPANY, INC.,) (Related Appeals)
4)
5 Debtor.) Bk. No. 2:11-bk-40293-BR
6)
7)
8 M.P. CONSTRUCTION COMPANY, INC.;)
9 GREGORY M. SALVATO,)
10)
11 Appellants,)
12)
13 v.) **M E M O R A N D U M**¹
14)
15 SHERMAN WONG; CAROLYN WONG,)
16)
17 Appellees.)
18)

Argued and Submitted on February 22, 2013
at Pasadena, California

Filed - March 4, 2013

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Barry Russell, Bankruptcy Judge, Presiding

19
20 Appearances: Gregory M. Salvato of Salvato Law Offices appeared
21 and argued for Appellants, M.P. Construction Company,
22 Inc. and Gregory M. Salvato; Debby L. Watson of
23 Public Agency Law Group appeared and argued for
24 Appellees, Sherman Wong and Carolyn Wong.

Before: DUNN, KIRSCHER and PAPPAS, Bankruptcy Judges.

25
26 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 finding that a corporate chapter 7² petition was filed
2 "completely without legal foundation," the bankruptcy court
3 dismissed the bankruptcy case pursuant to § 707(a) and imposed
4 monetary sanctions on the corporation and its attorney. We AFFIRM.

5 I. FACTS

6 Appellant M.P. Construction Company, Inc. ("MP Construction")
7 was formed for the purpose of conducting a "family-owned"
8 construction business. The shareholders of MP Construction are
9 Mario Piumetti and his wife, Ana Piumetti.³ The California
10 Contractors State License Board issued contractor's license number
11 710014 to MP Construction on July 20, 1995. For purposes of the
12 required contractor's bond, Mr. Piumetti was designated the
13 "Responsible Managing Officer."⁴

14 On November 22, 2005, appellees Sherman and Carolyn Wong
15 contracted with MP Construction to perform a high-end residential
16 remodel of their home. The Wongs paid MP Construction \$1,614,563.84
17 for services which originally were estimated to cost \$995,000.

19 ² Unless otherwise indicated, all chapter and section
20 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
21 all rule references are to the Federal Rules of Bankruptcy
22 Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure
23 are referred to as Civil Rules.

24 ³ Although Mrs. Piumetti holds 50% of the shares of
25 MP Construction, she apparently was not involved in the operation of
26 the business.

27 ⁴ A corporation qualifies for a contractor's license through
28 a responsible managing officer ("RMO"). Cal. Bus. & Prof. Code
29 § 7068(b)(3). Mr. Piumetti was the RMO for MP Construction.

1 MP Construction did not satisfactorily complete the remodel.

2 After MP Construction sued the Wongs to collect approximately
3 \$75,000 in unpaid invoices, the Wongs counterclaimed for breach of
4 contract, asserting, inter alia, defective work and excessive
5 billing. On August 15, 2009, following a week-long arbitration, a
6 panel of three arbitrators issued an interim arbitration award
7 ("Interim Award") in favor of the Wongs in the amounts of
8 \$308,711.86 for project costs and \$218,646.00 for labor overcharges.
9 Against these amounts, MP Construction was credited \$75,909.12 for
10 its unpaid invoices owed by the Wongs. A final arbitration award
11 ("Arbitration Award") was issued November 4, 2009, awarding the
12 Wongs an additional \$149,873.47 for arbitration costs and attorneys'
13 fees. On January 7, 2010, the Los Angeles Superior Court granted
14 the Wongs' petition to confirm the Arbitration Award and entered
15 judgment ("Judgment") against MP Construction in the amount of
16 \$601,322.22. The Wongs have collected only \$12,500 on the judgment;
17 the source of those funds was MP Construction's surety.⁵

18 As a result of the Judgment, the contractor's license held by
19 MP Construction was suspended.⁶

20

21 ⁵ A condition precedent to the issuance of a contractor's
22 license is that the applicant or licensee file a contractor's bond
23 in the amount of \$12,500. Cal. Bus. & Prof. Code § 7071.6(a).

24 ⁶ The failure by a licensee to maintain a sufficient bond,
25 including a bond in an amount of any unsatisfied judgment, subjects
26 the contractor's license to suspension or revocation. See Cal. Bus.
& Prof. Code § 7071.15. Further, § 7071.11(b) precludes the
renewal, reissuance, or reinstatement of a contractor's license

(continued...)

1 On July 31, 2009, a new entity, Avenue 35 Construction Co.,
2 Inc. ("Avenue 35"), was incorporated by the three adult children of
3 Mario and Ana Piumetti - Domenica Piumetti, Mario Piumetti, Jr., and
4 Pietro Piumetti, each of whom was a one-third shareholder of
5 Avenue 35. On August 13, 2009, Avenue 35 entered into a purchase
6 agreement with MP Construction pursuant to which Avenue 35 acquired
7 MP Construction's assets for the price of \$120,000. To facilitate
8 this transaction, Mr. Piumetti loaned each of his children \$40,000.⁷
9 The \$120,000 purchase price received by MP Construction was used to
10 pay undocumented loans Mr. Piumetti asserted he was owed by
11 MP Construction. Additionally, Mr. Piumetti thereafter sold all of
12 the transferred assets to third parties, ostensibly on behalf of
13 Avenue 35. However, none of the funds received from these sales was
14 deposited to the bank accounts of either Avenue 35 or
15 MP Construction.

16 Sometime thereafter, Mr. Piumetti attempted to transfer his
17 contractor's license from MP Construction to Avenue 35. Again, his

18 _____
19 ⁶(...continued)
20 while a judgment in excess of the contractor's bond remains
21 unsatisfied.

22 ⁷ For a quick summary and citations to the record relating
23 to the creation of Avenue 35 and the transactions between and among
24 Mr. Piumetti, his children, Avenue 35, and MP Construction, see n.3
25 in the Wongs' response brief filed in CC-12-1307 (the appeal from
26 the order granting the motion to dismiss). A number of these facts
were the subject of MP Construction's evidentiary objections to the
declaration of the Wongs' counsel, many of which were sustained. As
a result, MP Construction and Mr. Salvato oppose the Wongs'
reference to these facts on appeal.

1 efforts were hampered by the California Business and Professions
2 Code. In particular, § 7071.17(j) precludes an entity from
3 receiving a license if the RMO for that entity was affiliated with a
4 judgment debtor whose license was suspended based on an unsatisfied
5 judgment. Section 7071.17(f) contains an exception where the
6 unsatisfied judgment has been discharged in a bankruptcy proceeding.

7 On July 15, 2011, MP Construction filed a voluntary chapter 7
8 petition. Schedules A and B filed with the petition reflect that
9 MP Construction had no assets as of the petition date.

10 MP Construction responded to question 1 of the Statement of
11 Financial Affairs by disclosing that the business had been sold on
12 August 12, 2009. On August 30, 2011, Mr. Piumetti filed a
13 Certificate of Dissolution for MP Construction with the California
14 Secretary of State. The certificate states that: (1) "the
15 corporation has been completely wound up and is dissolved," (2) "the
16 corporation's known debts and liabilities have been paid as far as
17 its assets permitted," and (3) "the known assets have been
18 distributed to the persons entitled thereto."

19 The Wongs utilized the discovery procedures available to them
20 pursuant to Rule 2004 to depose Mr. Piumetti, Mrs. Piumetti,
21 Domenica Piumetti, and Mario Piumetti, Jr. With the aid of evidence
22 gleaned from these depositions, the Wongs file a motion to dismiss
23 MP Construction's bankruptcy case on the grounds that the Petition
24 was not filed in good faith where a corporation was not entitled to
25 a chapter 7 discharge and where MP Construction had no assets to
26 distribute to its creditors on the petition date. The Wongs also

1 filed a motion for sanctions against MP Construction and its
2 attorney, Appellant Gregory M. Salvato, pursuant to Rule 9011.⁸

3 MP Construction opposed the Wongs' motions, asserting that it
4 had a valid bankruptcy purpose when it filed the Petition such that
5 neither dismissal nor sanctions were appropriate. In his
6 declaration in support of the opposition, Mr. Piumetti stated that,
7 as an officer and shareholder of MP Construction, he caused the
8 Petition to be filed because:

9 a. [MP Construction] could not pay its debts and
10 outstanding obligations at the time of the petition date;

11 b. to stop the pending judgment collection actions
12 against [MP Construction] where [MP Construction] had
13 limited resources and no assets; and

14 c. to reinstate and transfer [MP Construction's]
15 California State contractor's license to [Avenue 35].

16 Decl. of Mario Piumetti at 1:12-18. Mr. Piumetti further explained
17 that he had been advised by the California Contractors State License
18 Board that because of MP Construction's inability to satisfy the
19 Wongs' money judgment against it, MP Construction would have to file
20 a bankruptcy case before MP Construction's contractor's license
21 could be transferred to Avenue 35. Mr. Piumetti stated that after
22 the Petition had been filed, the State of California issued a
23 contractor's license to Avenue 35 and that he was the qualifying
24

25 ⁸ The Wongs also filed a motion for relief from stay ("Stay
26 Motion"). Although MP Construction opposed the Stay Motion, it has
not appealed the order granting the Stay Motion.

1 individual, the RMO, for purposes of the contractor's bond.⁹

2 Mr. Salvato filed his own declaration to support the opposition
3 to the sanctions motion in which he identified the reasons he had
4 filed MP Construction's Petition:

5 a. to stay the ongoing and apparently endless state court
6 judgment debtor proceedings and to bring all such
7 proceedings into one forum;

8 b. to disclose and have the Debtor certify under oath
9 that it truly had no assets, which fact the [Wongs] would
10 not accept or believe;

11 c. to end the corporate life of [MP Construction] which
12 had sold its assets and had no further business, and its
13 principal was retiring and in ill health; and

14 d. most importantly, because Mr. Piumetti had been
15 advised by the California Contractors State License Board
16 that because he had not paid on a contractor's license
17 bond, he could not transfer his license to another entity
18 (the company formed by his children, [Avenue 35]) unless
19 and until [MP Construction] had filed a bankruptcy
20 proceeding.

21 Decl. of Gregory M. Salvato, Esq. at 1:22-2:6 (emphasis in
22 original). Mr. Salvato further stated that he had contacted the
23 California Contractors State License Board and was advised that even
24 though MP Construction would not be eligible for a discharge in
25 bankruptcy, a bankruptcy filing nevertheless would be required to
26 effect a transfer of MP Construction's contractor's license to
another entity.¹⁰ Id. at 2:7-11.

23 ⁹ The bankruptcy court sustained the Wongs' hearsay
24 objection to Mr. Piumetti's declaration regarding what he had been
25 told by the California Contractors State License Board.

26 ¹⁰ The bankruptcy court sustained the Wongs' hearsay
(continued...)

1 The bankruptcy court opened the hearing on the Wongs' motions
2 by asking Mr. Salvato whom he was representing, MP Construction or
3 Mr. and Mrs. Piumetti. Ultimately, the bankruptcy court ruled that
4 there was "absolutely . . . no legitimate purpose" for
5 MP Construction's Petition. Instead, the bankruptcy court found
6 that the Petition was filed to benefit only the Piumettis.
7 Specifically, the purpose of the Petition was to stop the Wongs'
8 collection efforts¹¹ and to effectuate the transfer of the
9 construction license to Avenue 35, which the bankruptcy court found
10 to be "totally outrageous." Based upon those findings, the
11 bankruptcy court dismissed MP Construction's case. The bankruptcy
12 court also granted the Wongs' motion for sanctions under Rule 9011,
13 and awarded the Wongs \$20,446.00, representing \$20,000 of attorneys'
14 fees and \$446 in costs the Wongs incurred as a result of the
15 improper bankruptcy filing. The sanctions award was entered,

16

17 ¹⁰(...continued)
18 objection to Mr. Salvato's declaration regarding what he had been
19 told by the California Contractors State License Board.

20 ¹¹ Although the Judgment was against MP Construction only,
21 the Piumettis, as officers and shareholders of MP Construction, were
22 the persons to whom the Wongs necessarily looked for information
23 about MP Construction's affairs. Nevertheless, the Piumettis appear
24 to have construed the Wongs' efforts to trace MP Construction's
25 assets to be harassment of them individually. In their response to
26 the Wongs' motion for relief from stay, the Piumettis, through their
corporation, assert: "The [Wongs'] claim has already been reduced
to Judgment in the Superior Court. What the [Wongs] are seeking is
the ongoing right to continue harassing [MP Construction's]
principals despite the fact that [MP Construction] has disclosed its
lack of available assets from which any recovery may be made."

1 jointly and severally, against MP Construction and Mr. Salvato.

2 MP Construction timely appealed the dismissal of its bankruptcy
3 case. MP Construction and Mr. Salvato's appeal of the sanctions
4 order also was timely filed.

5 II. JURISDICTION

6 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
7 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

8 III. ISSUES

9 Whether the bankruptcy court erred when it determined that
10 cause existed pursuant to § 707(a) to dismiss the chapter 7 case of
11 MP Construction.

12 Whether the bankruptcy court abused its discretion when it
13 dismissed the no asset chapter 7 case of MP Construction.

14 Whether the bankruptcy court abused its discretion when it
15 imposed sanctions on MP Construction and Mr. Salvato for filing the
16 Petition without a legitimate bankruptcy purpose.

17 IV. STANDARDS OF REVIEW

18 We review issues of statutory construction and conclusions
19 of law de novo. Ransom v. MBNA Am. Bank, N.A. (In re Ransom),
20 380 B.R. 799, 802 (9th Cir. BAP 2007), aff'd, 577 F.3d 1026 (9th
21 Cir. 2009), aff'd, 131 S.Ct. 716 (2011). In the context of a motion
22 to dismiss, first "we review de novo whether a type of misconduct
23 can constitute 'cause' under § 707(a)." Sherman v. SEC
24 (In re Sherman), 491 F.3d 948, 969 (9th Cir. 2007). Then we review
25 the bankruptcy court's decision to grant a motion to dismiss for
26 "cause" for an abuse of discretion. Id.

1 We review all aspects of an award of sanctions for an abuse of
2 discretion. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405
3 (1990); Price v. Lehtinen (In re Lehtinen), 332 B.R. 404, 411 (9th
4 Cir. BAP 2005), aff'd, 564 F.3d 1052 (9th Cir. 2009); In re Nguyen,
5 447 B.R. 268, 276 (9th Cir. BAP 2011)(en banc).

6 We apply a two-part test to determine whether the bankruptcy
7 court abused its discretion. United States v. Hinkson, 585 F.3d
8 1247, 1261-62 (9th Cir. 2009)(en banc). First, we consider de novo
9 whether the bankruptcy court applied the correct legal standard to
10 the relief requested. Id. Then, we review the bankruptcy court's
11 fact findings for clear error. Id. at 1262 & n.20. We must affirm
12 the bankruptcy court's fact findings unless we conclude that they
13 are "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in
14 inferences that may be drawn from the facts in the record.'" Id.

15 V. DISCUSSION

16 I. The Bankruptcy Court Did Not Abuse Its Discretion When It 17 Dismissed MP Construction's Bankruptcy Case

18 Section 707(a) authorizes a bankruptcy court to dismiss a
19 chapter 7 case "for cause":

20 (a) The court may dismiss a case under this chapter only
21 after notice and a hearing and only for cause, including -

22 (1) unreasonable delay by the debtor that is
23 prejudicial to creditors;

24 (2) nonpayment of any fees and charges required under
25 chapter 123 of title 28; and

26 (3) failure of the debtor in a voluntary case to
file, within fifteen days of such additional time as
the court may allow after the filing of the petition
commencing such case, the information required by

1 paragraph (1) of section 521(a), but only on a motion
2 by the United States trustee.

3 It is not disputed that subparagraphs 1, 2 and 3 are not the "cause"
4 for which the bankruptcy court dismissed MP Construction's case.

5 As with many of the Appellants' arguments in these appeals, we
6 find troubling Appellants' apparent suggestion that, inversely, the
7 mere absence of these reasons entitles them to some inference that
8 there is not cause for dismissal. See MP Construction's Opening
9 Brief in BAP No. CC-12-1397 at 19:25-20:9; 26:16-25; 30:3-9. This
10 "suggestion" ignores the word "including" which precedes
11 subparagraphs 1, 2, and 3 of § 707(a), and fails to recognize the
12 body of case law discussing what constitutes cause in the absence of
13 the conditions in subparagraphs 1, 2, and 3.

14 The Ninth Circuit test for determining whether "cause" exists
15 to dismiss pursuant to § 707(a) is well established:

16 If the asserted "cause" is contemplated by a specific Code
17 provision, then it does not constitute "cause" under
18 § 707(a) If, however, the asserted "cause" is not
19 contemplated by a specific Code provision, then we must
20 further consider whether the circumstances asserted
21 otherwise meet the criteria for "cause" for [dismissal]
22 under § 707(a).

23 In re Sherman, 491 F.3d at 970 (citing Neary v. Padilla
24 (In re Padilla), 222 F.3d 1184, 1193-94 (9th Cir. 2000)).

25 No provision of the Bankruptcy Code provides a remedy for the
26 asserted cause, i.e., that the filing of the Petition was improper
in the first instance because it provided no benefit to
MP Construction. Thus, under Ninth Circuit precedent, the
bankruptcy court was required to determine whether under the

1 circumstances surrounding the filing of the MP Construction
2 bankruptcy case there was misconduct sufficient to constitute
3 "cause" for dismissal. On appeal, "we review de novo whether a type
4 of misconduct can constitute 'cause' under § 707(a)." In re
5 Sherman, 491 F.3d at 969.

6 As articulated by the bankruptcy court, it is fundamental that
7 bankruptcy relief is available for two overriding reasons: to
8 provide the "honest but unfortunate" debtor a fresh start through
9 the discharge provisions of the Bankruptcy Code, and to provide for
10 the fair and equitable distribution of a debtor's assets to his
11 creditors. See Sherwood Partners, Inc. v. Lycos, Inc., 394 F.3d
12 1198, 1203 (9th Cir. 2005). It is undisputed that MP Construction
13 was not eligible for a bankruptcy discharge.¹² Further, the record
14 establishes with absolute certainty that MP Construction had no
15 assets to distribute to its creditors. Accordingly, the bankruptcy
16 court did not err when it determined that "cause" existed to dismiss
17 MP Construction's case pursuant to § 707(a). The bankruptcy case
18 was filed not for the purpose of securing bankruptcy relief for
19 MP Construction, but for the purpose of protecting and benefitting
20 MP Construction's principals. On this record, the bankruptcy court
21 did not abuse its discretion when it dismissed MP Construction's
22 bankruptcy case.

23
24

25 ¹² Section 727(a)(1) provides: "The court shall grant the
26 debtor a discharge, unless - (1) the debtor is not an individual
. . . ."

1 II. The Bankruptcy Court Did Not Abuse Its Discretion When
2 It Awarded Sanctions Against MP Construction and Mr. Salvato

3 Rule 9011 states in relevant part:

4 (b) Representation to the court

5 By presenting to the court . . . a petition,
6 pleading, written motion, or other paper, an attorney or
7 unrepresented party is certifying that to the best of the
8 person's knowledge, information, and belief, formed after
9 an inquiry reasonable under the circumstances,--

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

10 (2) the claims, defenses, and other legal contentions
11 therein are warranted by existing law or by a nonfrivolous
12 argument for the extension, modification, or reversal of
existing law or the establishment of new law;

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

15 "The language of Rule 9011 parallels that of [Civil Rule] 11.

16 Therefore, courts analyzing sanctions under Rule 9011 may

17 appropriately rely on cases interpreting [Civil Rule] 11."

18 Winterton v. Humitech of N. Cal., LLC (In re Blue Pine, Inc.),

19 457 B.R. 64, 75 (9th Cir. BAP 2011) (citing Marsch v. Marsch

20 (In re Marsch), 36 F.3d 825, 829 (9th Cir. 1994)).

21 Rule 9011(c)(1)(A) generally provides a "safe harbor" to the
22 filing party; he or she can avoid exposure to a sanctions order by
23 withdrawing the offending pleading. The "safe harbor" is created by
24 notice ("Safe Harbor Notice") to the offending party that unless the
25 offending pleading is withdrawn or corrected within 21 days from the
26 date of the Safe Harbor Notice, the noticing party intends to file a

1 motion for sanctions under Rule 9011. Rule 9011(c)(1)(A) provides
2 an exception for the filing of a petition.¹³ Because the Wongs
3 sought sanctions under Rule 9011 based upon Mr. Salvato's filing of
4 MP Construction's petition the fact that Mr. Salvato was not given a
5 Safe Harbor Notice does not preclude the bankruptcy court from
6 imposing Rule 9011 sanctions against either appellant.

7 Under Rule 9011, a filing is frivolous if it is "both baseless
8 – lacks factual foundation – and made without a reasonable and
9 competent inquiry." In re Blue Pine, Inc., 457 B.R. at 75 (citing
10 Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir.
11 1991) (en banc)). The attorney "has a duty to conduct a reasonable
12 factual investigation as well as to perform adequate legal research
13 that confirms that his position is warranted by existing law (or by
14 a good faith argument for a modification or extension of existing
15 law)." In re Blue Pine, Inc., 457 B.R. at 75 (citing Christian v.
16 Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002)). "Thus, a
17 finding that there was no reasonable inquiry into either the facts
18 or the law is tantamount to a finding of frivolous." In re Blue

19
20 ¹³ Rule 9011(c)(1)(A) provides in relevant part:

21 ". . . The motion for sanctions may not be filed with or presented
22 to the court unless, within 21 days after the service of the motion
23 (or such other period as the court may prescribe), the challenged
24 paper, claim, defense, contention, allegation, or denial is not
25 withdrawn or appropriately corrected, except that this limitation
shall not apply if the conduct alleged is the filing of a petition
in violation of subdivision (b). . . ."

26 (emphasis added).

1 Pine, Inc., 457 B.R. at 75 (citing Townsend, 929 F.2d at 1362).

2 The bankruptcy court must apply an objective standard of
3 reasonableness to determine whether an attorney has violated
4 Rule 9011. G.C. & K.B. Invs., Inc. v. Wilson, 326 F.3d 1096, 1109
5 (9th Cir. 2003) (citing Townsend, 929 F.2d at 1362). The
6 reasonableness of attorney conduct is measured against "the conduct
7 of a competent attorney admitted to practice before the involved
8 court." Valley Nat'l Bank v. Needler (In re Grantham Bros.),
9 922 F.2d 1438, 1441 (9th Cir. 1991).

10 The bankruptcy court determined that the filing of the
11 MP Construction Petition was improper (1) because MP Construction
12 would not benefit from the bankruptcy case, and (2) filing the case
13 to effect a transfer of the contractor's license was not a valid
14 purpose. We agree. We do not credit Mr. Salvato's argument on
15 appeal that MP Construction was entitled to utilize a chapter 7
16 bankruptcy case for a "public burial." As demonstrated by the
17 Certificate of Dissolution filed postpetition for MP Construction
18 with the California Secretary of State, there is a valid process
19 under state law to end the existence of a corporation, an entity
20 created under state law.

21 "It was never the intent, nor is there any admissible evidence
22 to show that MP Construction filed its bankruptcy to avoid the bond
23 requirement for reinstatement of its California contractor's
24 license." MP Construction's Opening Brief in BAP No. CC-12-1307 at
25 27:14-16. We find it disingenuous for Mr. Salvato, as counsel for
26 MP Construction, to make this statement in a brief on appeal. In

1 directing the filing of MP Construction's bankruptcy case, it was
2 expressly the intent of Mr. Piumetti to circumvent the requirements
3 of the California Business and Professions Code that the Judgment be
4 paid as a condition to transferring his contractor's license to
5 Avenue 35, not only as evidenced by the declarations Mr. Piumetti
6 and Mr. Salvato filed in opposition to the Wongs' motions, but also
7 as stated repeatedly on the record at the hearing on the motion for
8 sanctions.

9 Neither do we credit the assertion on appeal that "there is a
10 lack of authority clarifying § 7071.17(f) [of the Cal. Bus. & Prof.
11 Code] and its application in bankruptcy court." Section 7071.17(f)
12 merely recognizes the effect of a discharge in bankruptcy. As no
13 discharge was available to MP Construction, we fail to see how the
14 application of § 7017.17(f) is relevant in this case.

15 On the record before us, it is indisputable that
16 MP Construction's petition was not filed for any valid bankruptcy
17 purpose. Accordingly, the bankruptcy court did not abuse its
18 discretion when it entered the sanctions order against Mr. Salvato.
19 By its terms, however, Rule 11 relates to the implicit certification
20 made when an offending document is signed. Because both
21 MP Construction and Mr. Salvato signed the Petition, the bankruptcy
22 court did not abuse its discretion when it imposed sanctions jointly
23 and severally against both MP Construction and Mr. Salvato.

24 MP Construction and Mr. Salvato appeal only the granting of the
25 sanctions motion, not the amount of sanctions awarded. Thus, any
26 issue that the bankruptcy court might have abused its discretion in

1 the amount of the sanctions award has been waived for purposes of
2 this appeal. Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d
3 912, 919 (9th Cir. 2001)(issues not specifically argued in opening
4 brief are waived).

5
6 VI. CONCLUSION

7 The bankruptcy court's determination that "cause" existed to
8 dismiss MP Construction's bankruptcy case is supported by the
9 record. Accordingly, the bankruptcy court did not abuse its
10 discretion when it granted the Wongs' motion to dismiss. Having
11 determined that the bankruptcy case had been filed for an improper
12 purpose, the bankruptcy court did not abuse its discretion when it
13 granted the Wongs' motion for sanctions against MP Construction and
14 Mr. Salvato. We AFFIRM the orders of the bankruptcy court.