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OF THE NINTH CIRCUIT

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ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NV-12-1228-KiDJu
)		
BOBBY JOE WALLACE and BRIDGET)	Bk. No.	10-24125
JANINE WALLACE,)		
)		
Debtors.)		
)		
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ABEL ROSALES; ROBERT PIKE;)		
GARY AARDEMA; AARDEMA &)		
LONDON,)		
)		
Appellants,)		
)		
v.)		
)		
BOBBY JOE WALLACE; BRIDGET)		
JANINE WALLACE,)		
)		
)		
Appellees.)		
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O P I N I O N

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

Filed - April 9, 2013

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

Honorable Linda B. Riegler, Bankruptcy Judge, Presiding

APPEARANCES: David Mincin, Esq. argued for Appellants Abel Rosales, Robert Pike, Gary Aardema and Aardema & London; Christopher P. Burke, Esq. argued for Appellees Bobby Joe Wallace and Bridget Janine Wallace.

Before: KIRSCHER, DUNN and JURY, Bankruptcy Judges.

1 KIRSCHER, Bankruptcy Judge:

2
3 This is the second appeal stemming from a bankruptcy court
4 order finding appellants Abel Rosales ("Rosales"), Robert Pike
5 ("Pike"), Gary Aardema, Esq. ("Aardema") and Aardema & London
6 (collectively "Appellants") in contempt for violating the
7 discharge injunction and awarding debtors Bobby J. Wallace
8 ("Wallace") and Bridget J. Wallace (collectively "Debtors")
9 monetary sanctions in the amount of \$4,660.00 ("First Contempt
10 Order"). In the first appeal, the Panel affirmed in part and
11 vacated and remanded in part.

12 Appellants now appeal the bankruptcy court's subsequent order
13 finding them in contempt for failing to comply with the First
14 Contempt Order, compelling them to pay the ordered sanctions award
15 and sanctioning them an additional \$1,250.00 for their contempt
16 ("Second Contempt Order"). This Second Contempt Order was issued
17 prior to the Panel's decision on the First Contempt Order.

18 We hold that a sanctions award for misconduct is unlike a
19 money judgment, and the bankruptcy court may use its contempt
20 powers to enforce compliance with a previously issued sanctions
21 order when the sanctioned party fails to comply with that prior
22 order. We AFFIRM.

23 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

24 **A. The first appeal (NV-11-1681)**

25 A more detailed background of this case can be found in the
26 Panel's Memorandum entered in the parties' first appeal on June
27 26, 2012. Prior to Debtors' bankruptcy, Rosales and Pike had each
28 entered into a contract with Wallace, a California licensed

1 contractor, to drill and install wells at their respective
2 properties in California. Rosales and Pike claimed they were
3 damaged by Wallace's negligence in installing the wells. Aardema
4 represented Rosales and Pike in their claims against Wallace in
5 California. Claims filed against Wallace's surety bond were
6 denied. Appellants were preparing civil litigation against
7 Wallace, his business and the bond company when they received
8 notice of Debtors' bankruptcy filed in Nevada.

9 Debtors filed a chapter 7¹ bankruptcy case on July 29, 2010.
10 They listed Appellants as unsecured creditors in their Schedule F.
11 Debtors received their discharge on November 2, 2010. Appellants
12 did not dispute receiving notice of Debtors' discharge.

13 Although the automatic stay had already been dissolved due to
14 Debtors' discharge under § 362(c)(2)(C), on November 3, 2010,
15 Rosales and Pike moved for relief from stay to pursue a state
16 court action in California against Wallace in hopes of recovering
17 damages from Wallace's commercial general liability insurance
18 policy ("CGL policy") and/or surety bond. Debtors did not oppose
19 the motion. The bankruptcy court granted the stay relief motion
20 on January 4, 2011. The stay relief order specifically directed
21 that any recovery against Wallace be limited to the extent of
22 proceeds from the CGL policy and/or surety bond.

23 Appellants filed the state court action against Wallace and
24 other defendants in April 2011 ("Complaint"). Despite the
25 bankruptcy court's conditional order, the Complaint did not refer

26
27 ¹ Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 to the CGL policy or the insurer, and the prayer for relief sought
2 general, special and punitive damages against all defendants,
3 including Wallace individually.

4 In September 2011, Debtors moved to reopen their chapter 7
5 case and to find Appellants in contempt for violating the
6 discharge injunction as allowed under § 105 ("First Contempt
7 Motion"). Appellants opposed the motion, contending the Complaint
8 complied with the stay relief order and that it was never their
9 intent to pursue Wallace individually. At the hearing in November
10 2011, the bankruptcy court acknowledged that Wallace had to be
11 named in the Complaint to trigger coverage by his insurer.
12 However, the Complaint sought damages from Wallace individually
13 and failed to specify that Rosales and Pike were seeking damages
14 against the insurance policy only, as required by the stay relief
15 order and Ninth Circuit law. Accordingly, the bankruptcy court
16 found that Appellants had violated the discharge injunction. It
17 rejected Appellants' contentions that the Complaint complied with
18 the stay relief order and was not an act to collect on a
19 discharged debt. The court further rejected as a "lame excuse"
20 Appellants' argument that the Complaint, which was prepared before
21 the bankruptcy, was "boilerplate" and inadvertently filed,
22 particularly since the Complaint had still not been amended some
23 seven months later.

24 The bankruptcy court granted the First Contempt Motion,
25 finding Appellants in contempt of the discharge injunction and
26 imposing sanctions of \$260.00 for the reopening fee, \$1,400.00 for
27 Debtors' attorney's fees incurred in bringing the motion, and
28 \$3,000.00 for punitive damages, for a total of \$4,660.00. The

1 First Contempt Order was entered on November 17, 2011. Appellants
2 timely appealed. They did not post a bond or seek a stay of the
3 First Contempt Order pending appeal.

4 On appeal, the Panel agreed the Complaint failed to specify
5 that recovery would be limited only to Wallace's insurance
6 proceeds, and that the prayer for punitive damages showed an
7 intent to sue Wallace personally, as such damages would not likely
8 be recoverable under his CGL policy or surety bond. Accordingly,
9 the Panel concluded that the bankruptcy court did not err in
10 determining that Appellants' conduct was willful and a continuing
11 violation of the discharge injunction and that sanctions were
12 warranted. The Panel affirmed the bankruptcy court's award of
13 \$260.00 for the reopening fee and \$1,400.00 for the attorney's
14 fees, but vacated and remanded the \$3,000.00 punitive damages
15 award because the court did not articulate sufficient findings
16 under Rule 7052 to support it.

17 **B. The current appeal**

18 According to the First Contempt Order entered on November 17,
19 2011, Appellants were to pay all monetary sanctions within 60 days
20 of entry of the order - i.e., by no later than January 16, 2012:

21 IT IS HEREBY ORDERED that Wallace's Motion to Reopen
22 Chapter 7 Under U.S.C. § 350 and F.R.B.P. 5010 to Hold
23 Creditors in Contempt and an Order [Judgment] Sanctioning
the Creditors for Violation of the Discharge Injunction
11 U.S.C. § 524(a)(2) is granted,

24 IT IS HEREBY FURTHER ORDERED that Rosales, Pike, Aardema
25 individually, and Aardema & London violated the discharge
injunction;

26 IT IS HEREBY FURTHER ORDERED that Rosales, Pike, Aardema
27 individually, and Aardema & London are sanctioned as set
28 out below, with the parties having joint and several
liability;

1 IT IS HEREBY FURHTER [sic] ORDERD [sic] that Rosales,
2 Pike, Aardema individually, and Aardema & London are to
reimburse Wallace the fee to reopen this case of \$260.00;

3 IT IS HEREBY FURTHER ORDERED that Debtors attorney,
4 Christopher P. Burke, is awarded attorney fees of
\$1,400.00;

5 IT IS HEREBY FURTHER ORDERED that punitive damages are
6 awarded in the amount of \$3,000.00;

7 IT IS HEREBY FURTHER ORDERED all monetary sanctions are
8 to be paid within sixty (60) days of this Order
[Judgment] being signed[.]

9 Footnote 1 in the First Contempt Order states:

10 Under the Federal Rules of Bankruptcy Procedure an Order
11 is the equivalent of a judgment. See Fed. R. Bankr.
P. 9001(7) and 9002(5).

12 After January 16 passed without any payment from Appellants,
13 Debtors moved under § 105 to hold Appellants in contempt, to
14 compel payment and to be awarded additional sanctions and
15 attorney's fees for Appellants' failure to comply with the First
16 Contempt Order ("Second Contempt Motion"). Debtors requested
17 additional sanctions of \$500.00, plus \$750.00 for attorney's fees
18 incurred in filing the motion.

19 Appellants opposed the Second Contempt Motion, contending
20 that because of the First Contempt Order's language in footnote 1
21 and other references to it as an "Order [Judgment]," it was
22 actually a money judgment, and the appropriate remedy to enforce a
23 money judgment under Civil Rule 69(a) was a writ of execution, not
24 a motion for contempt. Therefore, argued Appellants, Debtors'
25 Second Contempt Motion was not the proper procedure for enforcing
26 payment.

27 The bankruptcy court held a hearing on the Second Contempt
28 Motion on February 29, 2012. Counsel for Appellants announced

1 that his clients were willing to pay the sanctions awarded in the
2 First Contempt Order to settle the matter, and that his firm had a
3 check payable to Debtors' attorney in the full amount to deposit
4 with the court registry. Counsel then argued that his clients
5 were not ignoring the First Contempt Order, but they opposed the
6 Second Contempt Motion because they believed the First Contempt
7 Order was a money judgment, and therefore Debtors' remedy was to
8 execute on the judgment, not bring contempt proceedings. Debtors'
9 counsel noted that Appellants did not offer a check until after
10 the 60 days had run and Debtors had filed the Second Contempt
11 Motion. The bankruptcy court took the matter under advisement and
12 continued the hearing until April 11, 2012.

13 The continued hearing went forward on April 11. After
14 hearing further argument from the parties, the bankruptcy court
15 granted the Second Contempt Motion:

16 All right. Well, I'm going to grant [Debtors'] motion.
17 While it's true the order may be ambiguous in suggesting
18 it's a judgment, the point was this was my order because
the attorney parties didn't abide by a court order that
is by the code provisions.

19 They have exacerbated that by failing to obey my order to
20 pay, so they are in contempt, and they must pay the money
over.

21

22 The original money be paid by tomorrow. \$500 a day for
23 every day it's not paid. I'm also going to allow
additional sanctions of \$500 for having to bring the
motion and attorneys fees of \$750.

24

25 So the order is that they must pay. That they are in
26 contempt. The order was a contempt order which is
enforceable by this Court. It's not merely a judgment
which is enforceable by execution.

27 It must be paid by . . . Monday by noon. For every day
28 thereafter, \$500 a day plus \$500 sanctions and \$750 in
attorneys fees to be paid by -- **those moneys be paid by**

1 **April 20th** (emphasis added).

2 Hr'g Tr. (Apr. 11, 2012) 5:6-13, 21-24; 6:4-12. Immediately after
3 the hearing, counsel for Appellants paid the \$4,660.00 awarded in
4 the First Contempt Order in full.

5 The bankruptcy court entered the Second Contempt Order on
6 April 18, 2012. The Court found Appellants in contempt, ordered
7 them to pay the original sanctions award of \$4,660.00 by April 16,
8 2012, sanctioned them an additional \$500.00 for every day the
9 \$4,660.00 was not timely paid, and sanctioned them an additional
10 \$1,250.00 to be paid by April 20, 2012 - \$500.00 for their
11 contempt in not paying the original sanctions award within 60 days
12 as ordered, and \$750.00 in attorney's fees for Debtors' need to
13 file the Second Contempt Motion. Appellants timely appealed.

14 Although not having paid the additional \$1,250.00 sanction as
15 ordered by April 20, 2012, Appellants moved for stay pending
16 appeal of the Second Contempt Order on April 23, 2012. Appellants
17 contended that when Debtors' counsel circulated the proposed
18 order, they argued that the court had not given a specific date
19 for payment of the additional \$1,250.00 sanction at the April 11
20 hearing. Appellants asked to be given until May 11, 2012, to pay
21 the additional \$1,250.00.

22 Debtors opposed Appellants' motion for stay pending appeal,
23 contending it was devoid of any legal or factual basis. Attached
24 to their opposition was a portion of the April 11 transcript
25 showing that the bankruptcy court had ordered the additional

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1 \$1,250.00 sanction be paid by April 20.²

2 The bankruptcy court denied the stay motion, notwithstanding
3 Appellants' non-appearance at the April 30, 2012 hearing. The
4 related order was entered on May 11, 2012. The Panel entered an
5 order on June 6, 2012, granting Appellants' emergency motion for
6 stay pending appeal on the condition that Appellants' cash
7 supersedeas bond of \$1,250.00 be deposited with the bankruptcy
8 court.

9 **II. JURISDICTION**

10 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
11 and 157(b)(2)(O). Where the contempt proceeding is the sole
12 proceeding before the court, an order of civil contempt finding a
13 party in contempt of a prior final judgment and imposing sanctions
14 is a final appealable order. Shuffler v. Heritage Bank, 720 F.2d
15 1141, 1145 (9th Cir. 1983). Therefore, we have jurisdiction under
16 28 U.S.C. § 158.

17 **III. ISSUE**

18 Did the bankruptcy court abuse its discretion in granting the
19 Second Contempt Motion and holding the Appellants in contempt for
20 failing to comply with the original sanctions award?

21

22

23 ² After April 20 passed without any payment from Appellants,
24 Debtors moved to hold Appellants in contempt of the Second
25 Contempt Order, to compel payment and requested an additional
26 sanction of \$25,000.00 and \$1,000.00 for attorney's fees ("Third
27 Contempt Motion"). A hearing was set for June 6, 2012.

28 Appellants opposed the Third Contempt Motion. They contended
that despite their objections to the circulated proposed Second
Contempt Order setting a deadline of April 20 for payment of the
additional \$1,250.00 sanction and Debtors' refusal to give them a
reasonable time to pay, Debtors "unilaterally" set April 20 as the
due date. In reviewing the bankruptcy court docket, no activity
has occurred on the Third Contempt Motion since it was filed.

1 **IV. STANDARDS OF REVIEW**

2 An award or denial of sanctions under § 105(a) is reviewed
3 for abuse of discretion. Nash v. Clark County Dist. Attorney's
4 Office (In re Nash), 464 B.R. 874, 878 (9th Cir. BAP 2012)(citing
5 Missoula Fed. Credit Union v. Reinertson (In re Reinertson), 241
6 B.R. 451, 454 (9th Cir. BAP 1999)); see also Hilao v. Estate of
7 Marcos, 103 F.3d 762, 764 (9th Cir. 1996)(order granting or
8 denying a motion for civil contempt is reviewed for abuse of
9 discretion). Likewise, we review a bankruptcy court's
10 interpretation of its own order for an abuse of discretion.
11 Arenson v. Chi. Mercantile Exch., 520 F.2d 722, 725 (7th Cir.
12 1975). A bankruptcy court abuses its discretion if it applied the
13 wrong legal standard or its findings were illogical, implausible
14 or without support in the record. TrafficSchool.com, Inc. v.
15 Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

16 **V. DISCUSSION**

17 **A. Contempt under § 105**

18 Contempt proceedings are governed by Rule 9020, which states
19 that Rule 9014 governs a motion for an order of contempt. The
20 bankruptcy court has the authority to impose civil contempt
21 sanctions under § 105(a).³ Knupfer v. Lindblade (In re Dyer), 322
22 F.3d 1178, 1189-90 (9th Cir. 2003); Renwick v. Bennett (In re
23 Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002); Walls v. Wells
24 Fargo Bank, 276 F.3d 502, 507 (9th Cir. 2002); In re Nash, 464

25 _____
26 ³ Section 105(a) provides in relevant part:

27 The court may issue any order, process, or judgment that is
28 necessary or appropriate to carry out the provisions of this
title.

1 B.R. at 880.

2 To find a party in civil contempt, the court must find that
3 the offending party knowingly violated a definite and specific
4 court order, and the moving party has the burden of showing the
5 violation by clear and convincing evidence. In re Dyer, 322 F.3d
6 at 1190-91. The burden then shifts to the contemnors to
7 demonstrate why they were unable to comply. FTC v. Affordable
8 Media, 179 F.3d 1228, 1239 (9th Cir. 1999). A person fails to act
9 as ordered by the court when he fails to take all the reasonable
10 steps within his power to insure compliance with the court's
11 order. Shuffler, 720 F.2d at 1146-47 (internal quotations and
12 citations omitted).

13 **B. Analysis**

14 **1. The First Contempt Order was not a money judgment.**

15 Appellants first contend that because the language in the
16 First Contempt Order was in direct conflict, no "definite and
17 specific court order" existed as a basis for civil contempt when
18 not obeyed. Specifically, Appellants argue that while footnote 1
19 indicates that the First Contempt Order is a judgment, other
20 language states that the amounts awarded are to be paid in 60
21 days. Further, specific language in the order awards Debtors
22 certain sums of money for punitive damages and attorney's fees and
23 costs, which Appellants argue leads one to conclude that the First
24 Contempt Order is a money judgment. Therefore, contend
25 Appellants, they were not clear whether the First Contempt Order
26 was a money judgment (which they assert must be enforced through a
27 writ of execution) or simply a sanctions order to be paid within a
28 set period of time.

1 Although the bankruptcy court acknowledged in its oral ruling
2 that the First Contempt Order may be ambiguous by suggesting it
3 was a judgment, the court noted that the point of the order was to
4 sanction Appellants for willfully violating the discharge
5 injunction under § 524(a)(2). Upon further consideration of
6 Appellants' ambiguity argument, the bankruptcy court then
7 specifically found that the order was a contempt order enforceable
8 by the court and not merely a judgment enforceable by execution.

9 We accord substantial deference to the bankruptcy court's
10 interpretation of its own orders and will not overturn that
11 interpretation unless we are convinced it amounts to an abuse of
12 discretion. Marciano v. Fahs (In re Marciano), 459 B.R. 27, 35
13 (9th Cir. BAP 2011). See Hallett v. Morgan, 296 F.3d 732, 739-40
14 (9th Cir. 2002)(special consideration is given to the trial
15 court's interpretation of its own orders); Colonial Auto Ctr. v.
16 Tomlin (In re Tomlin), 105 F.3d 933, 941 (4th Cir. 1997)(the
17 bankruptcy judge who has presided over a case from its inception
18 is in the best position to clarify the court's rulings).

19 We are not convinced that the bankruptcy court's
20 interpretation of the First Contempt Order was an abuse of
21 discretion. Despite footnote 1 implying that it was a judgment by
22 referring to Rules 9001(7) and 9002(5), these Rules merely provide
23 definitions for the word "Judgment" as "any appealable order" and
24 "any order appealable to an appellate court." We fail to see how
25 these definitions would transform what is clearly an order to pay
26 monetary sanctions within a specified time period into a money
27 judgment.

28 If Appellants were truly concerned with whether the First

1 Contempt Order was an order to pay or a money judgment, they could
2 have sought clarification from the bankruptcy court before the 60
3 days expired. Their conduct certainly does not meet the standard
4 under Shuffler to take all reasonable steps within one's power to
5 insure compliance with the court's order. We also see no evidence
6 in the record that Appellants ever objected to the form of the
7 First Contempt Order, either before or after it was entered.
8 Appellants' contentions here appear to be nothing more than a
9 delay tactic to avoid paying a sanction they believe was wrongly
10 imposed in the first place.⁴

11 **2. The contempt proceeding was proper.**

12 Appellants also argue that because the First Contempt Order
13 was a money judgment, Debtors' remedy for enforcement of payment
14 was through a writ of execution, not through contempt proceedings.
15 We have already concluded that the First Contempt Order was not a
16 money judgment. However, even if it were, we reject Appellants'
17 argument.

18 Appellants are correct in that, generally, the proper means
19 to secure compliance with a money judgment is to seek a writ of
20 execution. Hilao v. Estate of Marcos, 95 F.3d 848, 854 (9th Cir.
21 1996); Shuffler, 720 F.2d at 1147; Aetna Cas. & Sur. Co. v.

22 _____
23 ⁴ Appellants imply that the First Contempt Order must be a
24 money judgment because orders to pay a sum of money are
25 enforceable as a money judgment under Nevada law. See Nev. Rev.
26 Stat. 15.040 ("Enforcement of order for payment of money.
27 Whenever an order for the payment of a sum of money is made by a
28 court, it may be enforced by execution in the same manner as if it
were a judgment."). We disagree. This statute does not
necessarily transform an order to pay into a money judgment.
Furthermore, even if the Contempt Order was a money judgment, the
permissive statutory language - "may" - does not appear to
preclude the use of a contempt proceeding to compel payment.

1 Markarian, 114 F.3d 346, 349 (1st Cir. 1997); Combs v. Ryan's Coal
2 Co., 785 F.2d 970, 980 (11th Cir. 1986)(although trial court may
3 use the remedy of contempt to enforce an earlier judgment, when a
4 party fails to satisfy a court-imposed money judgment the
5 appropriate remedy is a writ of execution, not a finding of
6 contempt).

7 Civil Rule 69(a),⁵ made applicable here by Rule 7069, governs
8 the procedure that applies to the enforcement of a money judgment
9 in federal court. Carnes v. Zamani, 488 F.3d 1057, 1059 (9th Cir.
10 2007). Under Civil Rule 69(a)(1), "[a] money judgment is enforced
11 by a writ of execution, unless the court directs otherwise." In
12 Shuffler, after property owners engaged in conduct in direct
13 contravention of a stipulated judgment ordering them to pay
14 \$190,000 into escrow for the benefit of the foreclosing bank by a
15 certain date and granting the bank the right to conduct a trustee
16 sale if the owners had not timely made the payment, the
17 foreclosing bank brought contempt proceedings against the property
18 owners for failing to comply with the stipulated judgment. , 720
19 F.2d at 1147. In holding that a contempt proceeding was not the
20 proper method for enforcing the judgment, the Ninth Circuit
21 stated, "we do not interpret the exception to execution to permit
22 a federal court to 'enforce a money judgment by contempt or

23
24 ⁵ Civil Rule 69(a)(1) provides:

25 A money judgment is enforced by a writ of execution, unless
26 the court directs otherwise. The procedure on execution - and
27 in proceedings supplementary to and in aid of judgment or
28 execution - must accord with the procedure of the state where
the court is located, but a federal statute governs to the
extent it applies.

1 methods other than a writ of execution, except in cases where
2 established principles so warrant.'" Shuffler, 720 F.2d at 1148
3 (citations omitted). Therefore, to the extent the order of
4 contempt was intended to enforce payment of the \$190,000 money
5 judgment, it could not be sustained. Id.

6 Despite Civil Rule 69's mandate for the proper enforcement of
7 money judgments, we are persuaded by the Seventh Circuit's holding
8 in Cleveland Hair Clinic, Inc. v. Puig that a court's monetary
9 sanction for a contemnor's misconduct is not an "ordinary" money
10 judgment, and therefore the use of the contempt power is a proper
11 method to enforce a sanction for misconduct. 106 F.3d 165, 166
12 (7th Cir. 1997)("Use of the contempt power is an appropriate way
13 to enforce a sanction for misconduct, which is not an ordinary
14 money judgment.")(citing Alpern v. Lieb, 11 F.3d 689, 690 (7th
15 Cir. 1993)). See Loftus v. Se. Pa. Transp. Auth., 8 F.Supp.2d
16 464, 468 (E.D. Pa. 1998), aff'd, 187 F.3d 626 (3d Cir. 1999)
17 (table case)(citing Cleveland Hair Clinic and holding that the use
18 of the contempt power to enforce a sanction for misconduct is
19 appropriate because a sanction for misconduct is not an ordinary
20 money judgment); Eng. v. Goodcents Holdings, Inc., 2009 WL
21 2835201, at *2 (N.D. Ga. Aug. 31, 2009)(rejecting plaintiff's
22 argument that a writ of execution was exclusive remedy for
23 violating prior sanctions order and holding that contempt
24 proceeding was proper remedy for plaintiff's failure to comply
25 with the order awarding defendant attorney's fees for plaintiff's
26 unreasonable continuation of litigation); SD Prot., Inc. v. Del
27 Rio, 587 F.Supp.2d 429, 434-36 (E.D.N.Y. 2008)(holding party in
28 contempt for failing to comply with prior order to pay monetary

1 sanction imposed for delaying litigation).

2 In Cleveland Hair Clinic, the district court imposed
3 sanctions of approximately \$100,000 against defendants' attorney
4 after determining that he and his clients had engaged in
5 sanctionable misconduct in connection with litigation. 106 F.3d
6 at 166. When the attorney violated the sanctions order by
7 refusing to pay, the court subsequently found him in contempt,
8 adding a daily fine of \$300 to the principal obligation until
9 payment had been made. The attorney appealed the additional
10 sanctions order. In affirming the district court, the Seventh
11 Circuit held that the court's use of contempt power was an
12 appropriate way to enforce the underlying sanctions for the
13 attorney's misconduct because it is not an ordinary money
14 judgment. Id.

15 In Loftus, the district court entered an order imposing
16 sanctions of \$4,000 in attorney's fees against the plaintiff's
17 attorney for continuing to pursue what was clearly a frivolous
18 lawsuit. 8 F.Supp.2d at 466. When plaintiff's attorney failed to
19 comply with the sanctions order, defendants moved for civil
20 contempt. As part of his defense, plaintiff's attorney argued
21 that the court's sanctions order was a money judgment and should
22 have been enforced by a writ of execution rather than through
23 contempt proceedings. Citing Cleveland Hair Clinic, the district
24 court rejected this proposition as "legally incorrect," and held
25 that the contempt power to enforce a sanction for misconduct was
26 appropriate because it is not an ordinary money judgment. Id. at
27 468. "The distinctions between sanctions and money judgments are
28 warranted in light of public policy. While sanctions for

1 misconduct implicates [sic] the very integrity of the Court's
2 processes, enforcement of a money judgment as between private
3 parties is best left to the creditor-debtor mechanisms provided
4 for in the Federal Rules of Civil Procedure." Id.

5 Appellants' reliance on Shuffler, Markarian and Combs is
6 misplaced. The issue in those cases was not the defendant's
7 failure to pay ordered sanctions for misconduct. Based on the
8 authority cited above, we conclude that the First Contempt Order
9 awarding Debtors sanctions for Appellants' willful violation of
10 the discharge injunction is distinguishable from an ordinary money
11 judgment. As such, it was not improper for the bankruptcy court
12 to conduct a contempt proceeding and hold Appellants in contempt
13 for their failure to pay the sanctions award imposed by the First
14 Contempt Order.

15 VI. CONCLUSION

16 The First Contempt Order was definite and specific,
17 Appellants had knowledge of the order, and they disobeyed it by
18 not paying the sanctions imposed within 60 days of entry of the
19 order. Accordingly, the bankruptcy court did not abuse its
20 discretion in entering the Second Contempt Order holding them in
21 contempt, compelling payment of the original sanctions award and
22 awarding additional sanctions. We AFFIRM.⁶

23
24
25 ⁶ Appellants in this appeal have not raised any issue over
26 the appropriateness of the awarded sanctions in the Second
27 Contempt Order. As noted above, Appellants raised whether the
28 bankruptcy court abused its discretion in allowing Debtors to
enforce a previous contempt order through a subsequent contempt
proceeding. Given Appellants' failure to question the
appropriateness of the sanctions awarded in the Second Contempt
Order, the Panel renders no opinion on the sanctions award.