NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. SC-07-1335-DoKMk
ECV DEVELOPMENT, LLC,	Bk. No. 07-00052
Debtor.	
DANIEL HOLBROOK; SUPPA, TRUCCHI,& HENEIN, LLP,	
Appellants,	
v.	**MEMORANDUM**[1]
EMERALD BAY FINANCIAL, INC.; C.N.A. FORECLOSURE SERVICE, INC.; UNIFIED MORTGAGE SERVICES, INC.; STUART WEINSHANKER; FBO FIRST TRUST CORPORATION; NORMAN BENNETT; BETTY WALLACE; MILAN KISER; MARIKA MOLIN,	
Appellees.	

Argued and Submitted on January 23, 2008
at San Diego, California

Filed - March 7, 2008

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

Honorable John J. Hargrove, Chief Bankruptcy Judge, Presiding

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Before: Donovan,[2] Klein, and Markell, Bankruptcy Judges.

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[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 R. 8013-1.

[2] Hon. Thomas B. Donovan, U.S. Bankruptcy Judge for the Central District of California, sitting by designation.

INTRODUCTION

This is an appeal from the bankruptcy court's order sanctioning Daniel Holbrook (Holbrook), the principal of debtor ECV Development, LLC (ECV), and the law firm of Suppa, Trucchi & Henein, LLP (Law Firm) (collectively, Appellants), jointly, in the amount of $12,016 and the Law Firm, solely, in the amount of $1,000 for the filing of a second bankruptcy petition shortly after its first bankruptcy petition was dismissed. The sanctions were awarded to Emerald Bay Financial, Inc. (Emerald Bay), and other investors (collectively, Appellees or Investors). We AFFIRM.

STATEMENT OF FACTS

On August 27, 2002, Emerald Bay made 23 individual loans in the amount of $32,000 each to Olive XXIII, LLC (Olive XXIII). Each loan was secured by a deed of trust on one of Olive XXIII's 23 vacant lots located in El Centro, California (collectively, the Property). At the same time, Emerald Bay made loans to Olive XXIII in the amounts of $54,000 and $134,000, also secured by the Property.[3] Emerald Bay assigned all its interests under the notes to investors and later reacquired some of its interests.

By 2003, Olive XXIII had defaulted in its payments on all the Loans, and one of the Investors, Emvest Mortgage Fund, Inc. (Emvest), initiated foreclosure proceedings. The foreclosure sale was scheduled for October 8, 2003 (Foreclosure Attempt 1).

[3] The 25 loans are referred to collectively, as applicable, as the Loans.

Olive XXIII filed a petition for chapter 11[4] relief (Olive 1) the day before the foreclosure sale.

During Olive 1, the bankruptcy court ordered monthly adequate protection payments. Eight months later, Olive XXIII defaulted on its adequate protection payments. At an order to show cause hearing on June 24, 2004, it was revealed that three prior monthly payments were made on Olive XXIII's behalf by the AtVantage Group, Inc. (AtVantage).[5] The bankruptcy court determined that the AtVantage payments, made without prior approval of the court or U.S. Trustee, were a gift from AtVantage to Olive XXIII.

Olive XXIII's attorney requested a continuance of the June 24, 2004 hearing on a then pending relief from stay motion asserting that the default in monthly adequate protection payments had been caused solely by Olive XXIII's need to complete its funding arrangements and that his client was in a position to retire all the Loans. Despite Olive XXIII's request, the bankruptcy court declined to continue the stay relief hearing, granted relief from stay, and dismissed Olive 1 with a 180-day bar against re-filing.

Less than a week after dismissal of Olive 1, Olive XXIII filed suit (State Court 1) in the Imperial County Superior Court

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[4] For the purposes of this memorandum, and unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1352, as revised by The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L. 109-8, Apr. 20, 2005, 119 Stat. 23 ("BAPCPA"). All two digit rule references are to the Federal Rules of Civil Procedure and all four digit rule references are to the Federal Rules of Bankruptcy Procedure.

[5] Holbrook is the principal officer of AtVantage and also the principal officer of the debtor, ECV.

seeking a preliminary injunction against foreclosure. On August 5, 2004, Olive XXIII voluntarily dismissed its injunction suit in response to the Investors' motion for judgment on the pleadings. A foreclosure sale was scheduled for August 10, 2004 (Foreclosure Attempt 2).

While Olive XXIII claimed in June to have funds to retire all the Loans, on August 9, 2004, the day before Foreclosure Attempt 2, AtVantage, through Holbrook, paid Emerald Bay $165,951.33 to retire only the $54,000 loan. Olive XXIII then executed a quitclaim deed for the Property in favor of AtVantage, in consideration of the $165,951.33 payment, the three prior adequate protection payments, and other promises made by Holbrook.[6]

On March 23, 2005, AtVantage transferred title to the Property by grant deed to ECV, a newly formed limited liability company. The apparent consideration for the grant deed was ECV's promise to pay AtVantage $406,619. The new entity, ECV, was formed with three managers and one member, AtVantage. Six days after its formation, ECV picked up where its predecessors had left off; it filed suit (State Court 2) in the Imperial County Superior Court, *inter alia,* to quiet title against Emerald Bay and the Investors.

The superior court granted ECV's request for a temporary restraining order on March 30, 2005, and after a hearing granted a preliminary injunction on June 2, 2005, again delaying the Investors' foreclosure efforts.

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[6] The reference to "other promises made by Holbrook" is found in the Bankruptcy Appellate Panel's (Panel) earlier memorandum disposition affirming the bankruptcy court's earlier order dismissing ECV's first chapter 11 case.

After several months of discovery, Emerald Bay and four other Investors, all named as defendants in ECV's State Court 2, moved for summary judgment on ECV's complaint. On May 26, 2006, the state court granted summary judgment in favor of the Investors. Subsequently, the holders of the Loans rescheduled the foreclosure sale for June 27, 2006 (Foreclosure Attempt 3). The day before the sale, Olive XXIII filed its second chapter 11 bankruptcy petition (Olive 2), claiming an ownership interest in the Property and thereby delaying foreclosure again.

On July 25, 2006, the state court denied ECV's motion for reconsideration of the summary judgment order in favor of the Investors. Three days later, on July 28, 2006, ECV filed a "bare bones" chapter 11 bankruptcy petition (ECV 1) listing its challenged interests in the Property as its only assets. In addition, on July 31, 2006, ECV returned to State Court 2 to appeal the summary judgment order and the order denying the motion for reconsideration.

In August 2006, Olive 2 was consolidated with ECV 1. One month after consolidation, the bankruptcy court dismissed Olive 2 as having been filed in "bad faith." On September 25, 2006, Emerald Bay and two other Investors filed a motion to dismiss or convert ECV 1 to a case under chapter 7. On October 20, 2006, ECV filed a motion to employ Law Firm, retroactively.[7] The motion to dismiss was granted on November 9, 2006, and ECV 1 was dismissed as a bad faith filing.

The Investors rescheduled the foreclosure sale for January 9, 2007 (Foreclosure Attempt 4), a date that was more than three years after the Investors' foreclosure efforts had commenced.

[7] Law firm had represented ECV since ECV's State Court 2 was filed on March 29, 2005.

ECV appealed the dismissal of ECV 1 on December 7, 2006. That same day, an escrow account managed by Holbrook was opened in the name of Pacifica West Financial, Inc. (Pacifica), and Pacifica's escrow designee opened communications with the Investors, apparently to elicit interest in settlement. The correspondence exchanged is not furnished in the record by either side. Appellees assert the correspondence was overly vague and nonspecific. The correspondence, according to Appellees' position, lacked both a purchase price and any concrete payment offer. Appellants have directed us to no other evidence in the record.

On January 8, 2007, the day before the then-scheduled foreclosure sale, ECV filed with the bankruptcy court an emergency motion for stay pending appeal. At the same time, ECV also filed a second chapter 11 bankruptcy petition (ECV 2).[8] Ten days later, the bankruptcy court denied ECV's motion for a stay.[9] On January 26, 2007, the Investors filed a motion for relief from stay in ECV 2. The bankruptcy court granted the motion on February 23, 2007, ruling that ECV 2 was part of "a scheme involving an attempt to delay and hinder debtor's creditors, as well as a scheme involving multiple bankruptcy filings affecting the real property at issue."

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[8] ECV's second bankruptcy petition was signed by Holbrook and Raymond Lee, an attorney in the Law Firm.

[9] There is a discrepancy regarding the date the bankruptcy court's Order Denying Motion For Stay Pending Appeal was entered. The stamp on the first page of the order reads "Entered Jan. 19, 2006." The date line on bate stamped page 203, line 14, reads "January 18, 2007." As ECV 1 was not filed until July 28, 2006, January 18, 2007 is correct. The latter date is consistent with Judge Hargrove's signature on the order dated January 18, 2007.

At the hearing, the bankruptcy court found that there had been no change in circumstances since ECV had requested an emergency stay pending appeal in January or since the bankruptcy court's dismissal of ECV 1. The court also noted that ECV's multiple bankruptcy cases likely violated the "single estate rule" and suggested that the Investors file a motion for sanctions against the Law Firm under Rule 9011. Appellees' motion for sanctions was filed on March 7, 2007, and scheduled for hearing on May 16, 2007.

On March 7, 2007, ECV filed with the Panel a motion for stay pending appeal of the dismissal of ECV 1. The Panel denied the motion two weeks later. On March 20, 2007, after the Panel denied ECV's motion for a stay, ECV filed in State Court 2 an ex parte motion to enforce ECV's 2005 preliminary injunction order. Three days later, the superior court denied the motion, ruling, *inter alia*, that ECV did not have standing to enforce the injunction and that the motion did not make out a prima facie case for relief. The Property was sold at an April 2, 2007 foreclosure sale (Foreclosure Attempt 5) to Emerald Bay and other Investors.

The day before the bankruptcy court was to hear Appellees' sanctions motion, ECV filed an ex parte motion to continue the hearing. The bankruptcy court denied the motion for a continuance. At the May 16, 2007 hearing on Appellees' sanctions motion, attorney Samy S. Henein appeared on behalf of both the Law Firm and Holbrook. The bankruptcy court ruled that ECV 2 had been filed for an improper purpose and was frivolous, and the court took the question of amount of sanctions under advisement.

One month after the hearing on the sanctions motion, the Panel affirmed the bankruptcy court's order dismissing ECV 1 as a bad faith filing. In August 2007, ECV 2 was converted to a chapter 7 case, and the bankruptcy court issued its memorandum awarding sanctions to Emerald Bay and other Investors in the amount of $12,016 against the Law Firm and Holbrook, jointly, and an additional $1,000 solely against the Law Firm. The Law Firm and Holbrook timely appealed the sanctions order.

JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334. We have jurisdiction under 28 U.S.C. § 158(a)(1).

ISSUES PRESENTED

I

Whether the bankruptcy court abused its discretion by imposing sanctions against Appellants under Rule 9011 for the filing of ECV's second bankruptcy petition?

II

Whether the imposition of restitutionary sanctions in the amount of fees and costs incurred as a result of ECV's second bankruptcy petition violated California's "One Action Rule"?

STANDARD OF REVIEW

The Panel applies an "abuse of discretion" standard in reviewing a bankruptcy court's imposition of sanctions. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990); Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.), 922 F.2d 1438,

1441 (9th Cir. 1991); Caldwell v. Farris (In re Rainbow Magazine, Inc.), 136 B.R. 545, 550 (9th Cir. BAP 1992), aff'd, 77 F.3d 278 (9th Cir. 1996). A bankruptcy court abuses its discretion if its ruling is based on an "erroneous view of the law" or on a "clearly erroneous assessment of the evidence". Cooter & Gell, 496 U.S. at 405.

DISCUSSION

Appellants contend that the bankruptcy court abused its discretion in determining that the filing of ECV 2 was sanctionable conduct. They urge that the bankruptcy court erroneously interpreted the evidence in determining that the second petition was filed without any legal basis.

They also urge that the bankruptcy court erred in its conclusion that the filing of ECV 2 was improper as having been filed "to cause unnecessary delay."

I

In determining whether the bankruptcy court's imposition of sanctions under Rule 9011(b) was proper, the Panel must determine whether the bankruptcy court was justified in finding that the ECV 2 bankruptcy petition was frivolous and was not warranted but was filed for an improper purpose. Consistent with the realities of bankruptcy practice, "bankruptcy courts must consider both frivolousness and improper purpose on a sliding scale, where the more compelling the showing as to one element, the less decisive need be the showing as to the other." Marsch v. Marsch (In re Marsch), 36 F.3d 825, 830 (9th Cir. 1994). "Both the frivolousness and improper purpose components are measured by an

objective standard that looks to reasonableness of the conduct under the circumstances." Rainbow Magazine, 136 B.R. at 550.

The "central purpose" of Rule 9011 "is to deter baseless filings" in the bankruptcy court and, thus, "streamline the administration and procedure of the federal courts." Cooter & Gell, 496 U.S. at 393. See Rule 9011(c)(2). An attorney or party who signs a paper that violates Rule 9011 may be penalized by an appropriate sanction, "[including] payment of the other parties' expenses." See Cooter & Gell, 496 U.S. at 393.

In this case, the bankruptcy court cited both Rules 9011 and 11[10] when it imposed sanctions. At the same time the bankruptcy court noted a relevant and significant difference between the two rules. Although both rules contain a "safe harbor" provision[11], an exception to the "safe harbor" exists in Rule 9011 "if the conduct alleged is the filing of a petition in violation of subdivision (b)." Rule 9011(c)(1)(A). This exception bars the application of the otherwise mandatory safe harbor rule to a motion for sanctions based on the filing of ECV 2. See Dressler

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[10] As the language of the two rules is nearly identical, it has been recognized that the authorities analyzing Rule 11 are applicable to proceedings under Rule 9011. Rainbow Magazine, 136 B.R. at 550. As a result, references to the two rules, Rule 9011 and Rule 11, are sometimes used interchangeably in this memorandum.

[11] The "safe harbor" in both rules provides, generally, that a party moving for sanctions may not file or present to a court a motion for sanctions until 21 days (or such other period as the court may prescribe) have passed since service of the motion and the challenged paper, claim, defense, contention, allegation, or denial has not been withdrawn or appropriately corrected. See Rules 11(c)(2) and 9011(c)(1)(A).

v. The Seeley Co. (In re Silberkraus), 336 F.3d 864, 868 (9th Cir. 2003).

In its sanction ruling, the bankruptcy court cited Appellants' record of conduct which included the bad faith dismissal of ECV 1 and the fact that Appellants had appealed the recent dismissal of ECV 1 at the time ECV 2 was filed. The court ruled that the filing of ECV 2 was not warranted. The bankruptcy court also ruled that the filing of ECV 2 was frivolous. The court distinguished ECV 2 from a proper filing of a successive bankruptcy petition because ECV 2 lacked a key ingredient to support the finding of a proper successive bankruptcy petition, that is, a valid or plausible change in circumstances.

Appellants challenge the bankruptcy court's finding that the ECV 2 bankruptcy petition was not proper. In their briefs and at oral argument Appellants cited § 349(b)(3) as authority for their decision to file ECV 2. As Appellants note, under § 349(b)(3) dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case . . . ." Appellants argue that as a result of § 349(b)(3) and supporting case law, the dismissal of ECV 1 (without regard to the appeal) revested the property of the estate in ECV and allowed ECV to re-file without violating the so-called "single estate rule."[12] Appellants also cite two Ninth Circuit appellate decisions to support their claim that ECV 2 was

[12] In support of their assertion, Appellants cite generally to In re Studio Five Clothing Stores, Inc., 192 B.R. 998 (Bankr. C.D. Cal. 1996)(no violation of the "single estate rule" because the debtor's chapter 11 estate ceased to exist upon confirmation of debtor's chapter 11 plan and prior to the filing of debtor's second bankruptcy in chapter 7, initially filed as an involuntary petition while the earlier chapter 11 case was still open).

filed in good faith. See Downey Sav. and Loan Assoc. v. Metz (In re Metz), 820 F.2d 1495 (9th Cir. 1987); Grimes v. United States Farmers Home Admin. (In re Grimes), 117 B.R. 531 (9th Cir. BAP 1990).

The bankruptcy court did not abuse its discretion in determining that ECV 2 was frivolous and was not warranted by existing law. The term "frivolous," has been used by the Ninth Circuit to denote a filing that is "both baseless and made without a reasonable and competent inquiry." Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990).

A petitioner's actions are baseless, under Rule 9011, if they are not "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or establishment of new law." Rule 9011(b)(2). See Mortgage Mart, Inc. v. Rechnitzer (In re Chisum), 847 F.2d 597, 599 (9th Cir. 1988). The filing of successive bankruptcy petitions "does not constitute bad faith per se." Metz, 820 F.2d at 1497. A successive filing will be deemed to be baseless if an examination of the surrounding circumstances leads the bankruptcy court to determine that the later petition was not filed in good faith. See Chisum, 847 F.2d at 599. If good faith is not found the court may impose sanctions under Rule 9011. Id.; see current version of Rule 9011.

From the surrounding circumstances, it is apparent that ECV desired not only to keep its first bankruptcy estate afloat through the appeal process, but also to receive the protection and benefit of a second bankruptcy petition. If either ECV's request for a stay pending appeal was granted or the appeal from

the dismissal of ECV 1 was decided in ECV's favor, ECV would have had two estates pending.

Contrary to Appellants' viewpoint, in each case cited by Appellants permitting successive bankruptcy filings, the second bankruptcy petition was permitted only if it was determined to be a good faith filing. Metz, 820 F.2d at 1498; Grimes, 117 B.R. at 535; Studio Five, 192 B.R. at 1003. Here, however, ECV 2 was the third bankruptcy case affecting the Property filed within a relatively short period that also was found to be a "bad faith" filing. If the Appellants' interpretation of § 349(b)(3) is accepted, then it would be an exception to the Ninth Circuit's "good faith" requirement for successive bankruptcy petitions. Metz, 820 F.2d at 1498; Marsch, 36 F.3d at 828; Chisum, 847 F.2d at 599; Grimes, 117 B.R. at 535. We find no basis in the record to consider making such an exception here. The bankruptcy court concluded that ECV 2 did not represent a legitimate bankruptcy effort and was not filed in good faith.

A "reasonable inquiry," under Rule 11, means an inquiry reasonable under all the circumstances of a case. Cooter & Gell, 496 U.S. at 401. The standard for assessing reasonableness becomes more stringent when an attorney has months to prepare a complaint compared to when he has only a few days before the statute of limitations is set to expire. See id. When an attorney has only a few days to investigate, a more cursory investigation will be tolerated. Townsend, 929 F.2d at 1364.

Appellants have offered inadequate evidence to support a claim that the filing of ECV 2 was either reasonably investigated under the circumstances or was warranted under existing law or a

nonfrivolous argument for an extension of existing law. ECV 1 was dismissed without a 180-day bar to refiling after a hearing on November 9, 2006. After an order was entered, ECV appealed. ECV 2 was filed by ECV on January 8, 2007, the same day ECV filed a motion for stay pending appeal of the dismissal of ECV 1.

At the hearing on sanctions, the Law Firm stated that the lack of a bar to refiling in the November dismissal of ECV 1 left open the possibility of filing a second bankruptcy. When asked at the sanctions hearing whether the Law Firm had researched the issue before filing ECV 2, the Law Firm answered "No." Appellants had ample time to consider their options. One month passed between the time Law Firm filed an appeal from the order dismissing ECV 1 and the filing of ECV 2. During this time, Appellants concede that they conducted no research to determine whether a second ECV petition was warranted before they filed ECV 2. Under the circumstances, the bankruptcy court's determination that Appellant's pre-filing inquiry was inadequate was apt, though not in itself determinative.

The bankruptcy court also commented that the filing of ECV 2 just moments after a motion for stay pending appeal in ECV 1 was filed was a clear case of a bankruptcy petition being filed for the improper purpose of causing unnecessary delay. As the court noted in its ruling, Appellants filed ECV 2 just a day or two before a scheduled foreclosure sale and just moments after ECV filed its motion for stay pending appeal in ECV 1. The court concluded that Appellants filed ECV 2 both as an alternative to its motion for stay pending appeal and also to cause unnecessary delay and to prevent foreclosure of the Property.

Appellants urge here that the filing of ECV 2 was a proper attempt to preserve their opportunity to resolve ongoing state court litigation. Appellants also assert that ECV 2 was a proper attempt to preserve equity in the Property that was justified by a change of circumstance. Appellants' rest their claim of a change in circumstance on what they state was Holbrook's unanswered request for a payoff demand under California Civil Code § 2943(c)[13] and an unexplained increase in the amounts claimed to be due on the Loans.

The circumstances surrounding the filing of ECV 2, however, amply demonstrate that the bankruptcy court did not err in finding that ECV 2 was not intended to serve a valid bankruptcy purpose but was filed simply as the latest in a series of desperate acts to forestall foreclosure. In this regard, "improper purpose" is "measured by an objective standard that looks to the reasonableness of the conduct under the circumstances." Rainbow Magazine, 136 B.R. at 550.

Rather than a legitimate, reasonable attempt to resolve Appellees' grievances, the multitude of Appellants' court filings here, following similar conduct by their affiliated predecessors, evidences only repetitious and ultimately futile attempts to forestall foreclosure without notable or adequate substantive progress toward an effective reorganization. ECV 2 was filed at the same time Appellants filed a motion for stay pending appeal

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[13] Cal. Civ. Code § 2943(c) states, in part, that "[a] beneficiary, or his or her authorized agent, shall, on the written demand of an entitled person, or his or her authorized agent, prepare and deliver a payoff demand statement to the person demanding it within 21 days of the receipt of the demand."

from the ECV 1 dismissal order. We find no basis in the record to fault the conclusion of the bankruptcy court that Appellants were seeking in ECV 2 another layer of bankruptcy protection simply to delay foreclosure. As the record reflects, the filing of ECV 2 was at least the fourth time since Appellants gained control of the Property of efforts by Appellants, in either the bankruptcy or state court, to delay foreclosure.

Appellants contend they had secured $1,500,000 in funding to satisfy the total amount they believed to be owing under the Loans but when they received the Notices of Default in December 2006, the total amount claimed to be in default was $700,000 more than expected. Appellants failed to cite to evidence from the record to explain how they reached either of these conclusions. There is, however, evidence in the record that the total owed on the Loans as of March 27, 2007, was $2,603,072.19. Unified Mortgage Services, Inc., one of the Appellees, provided Appellants' attorney with a series of payoff demands that detailed the payoff amount for each of the Loans and that when totaled added up to $2,603,072.19. The evidence in the record does not support Appellants' contention that the payoff amount "doubled without explanation" or that Appellants asked for or were denied any further explanation.

As a final attempt to demonstrate a proper purpose in the filing of ECV 2, Appellants, in one sentence, assert that ECV remedied issues concerning the omission of a $100,000 bond from ECV's schedules and that ECV filed its schedules with the petition and a plan and disclosure statement well ahead of the expiration date of ECV's applicable 120-day exclusivity period.

While Appellants do not here explain the substantive content and meaning of their actions, the bankruptcy court was unpersuaded.

This is the fourth bankruptcy case involving the Property and the third time that a bankruptcy case involving the Property was found to have been filed in bad faith. At the same time, Appellants failed to demonstrate to the bankruptcy court that Appellants had a genuine interest in achieving a reasonable possibility of a successful reorganization within a reasonable time when they filed ECV 2 (United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd., 484 U.S. 365, 375-76 (1988)), resolving any state court litigation issues, or working purposefully and in a timely manner to avoid the loss of the Property. There being no persuasive evidence of changed circumstances to warrant the filing of ECV 2 and no evidence of new, reasonable, or feasible attempts at plan confirmation, we cannot conclude that the bankruptcy court abused its discretion or that its sanction order was clearly erroneous. The circumstances surrounding ECV's second bankruptcy petition, as the bankruptcy court found, are sufficient to support the bankruptcy court's determination that ECV 2 was filed for an improper purpose and was frivolous.

II

In a last ditch effort to avoid sanctions, the Appellants raise the argument in their papers that the Rule 9011 sanctions in this case violated California's One Action Rule. The One Action Rule provides that a creditor has "but one form of action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real property." Cal. Code. of Civ.

Proc. § 726(a). The California legislature created the "One Action Rule" to prevent multiple actions against a debtor when a creditor elects to sue after a debtor's property has been sold at a private foreclosure sale. See Robert O. Barton, Foreclosures: California's One Action Rule, California Lawyer, December 2006, at 37.

The bankruptcy court properly ruled that sanctions would not result in a "double recovery." The bankruptcy court properly imposed sanctions to penalize Appellants for their frivolous and improper second ECV bankruptcy petition and in metering the sanctions awarded to reimburse Appellees for their attorneys' fees and costs incurred in opposing the second petition.[14] The bankruptcy court's ruling did not violate California's "One Action Rule."

CONCLUSION

The reasons thoughtfully outlined by the bankruptcy court are well-supported by the record and demonstrate that there was no abuse of discretion in the bankruptcy court's order awarding attorneys' fees to Appellees for ECV's second bankruptcy case filing. For the reasons outlined above, we AFFIRM the decision of the bankruptcy court.

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[14] The Appellants did not appeal or challenge the amount or nature of the sanctions. The bankruptcy court took the amount of sanctions under submission and permitted supplemental briefing on the subject. After consideration, the court more than adequately justified its decision to grant Appellees' motion and award sanctions in the amount of fees incurred in response to ECV 2.