

JAN 29 2016

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No. CC-15-1125-DKiG
6	WILLIAM ROBERT NORRIE,)	Bk. No. 13-25751-BR
7	Debtor.)	Adv. Proc. No. 14-01755-BR
8	MARK BLISS,)	
9	Appellant,)	
10	v.)	MEMORANDUM ¹
11	JOHN NORRIE, Trustee of the)	
12	561 Brooks Avenue Trust Dated)	
13	March 14, 2007,)	
14	Appellee.)	

Argued and Submitted on January 21, 2016
at Pasadena, California

Filed - January 29, 2016

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

Honorable Barry Russell, Bankruptcy Judge, Presiding.

Appearances: Appellant Mark Bliss argued pro se.

Before: DUNN, KIRSCHER, and GAN,² Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

² Hon. Scott H. Gan, United States Bankruptcy Judge for the District of Arizona, sitting by designation.

1 The bankruptcy court denied Appellant's motion for sanctions
2 ("Sanctions Motion") against Appellee's counsel pursuant to
3 Rule 9011,³ and this appeal followed. We conclude that the
4 bankruptcy court's findings of fact and conclusions of law with
5 respect to the standards for evaluating a request for Rule 9011
6 sanctions were not sufficient to support its ruling on the
7 Sanctions Motion. Accordingly, we VACATE and REMAND this matter
8 for further proceedings.

9 I. FACTUAL BACKGROUND

10 In order to understand Appellant's issues in this appeal, it
11 is necessary to evaluate them in context with other litigation
12 and proceedings that have taken place in the chapter 7 bankruptcy
13 case of William Robert Norrie ("William"). We highlight in
14 somewhat summary form the disputes and proceedings in the
15 bankruptcy court that inform our review of the appeal before us.
16 At the heart of the disputes is William's interest in a Venice,
17 California apartment complex ("Venice Property").⁴

18 A. The Venice Property

19 William purchased the Venice Property in 2005. In
20 connection with the purchase, William borrowed \$1,496,250

21
22 ³ Unless otherwise indicated, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
24 all "Rule" references are to the Federal Rules of Bankruptcy
25 Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure
26 are referred to as "Civil Rules."

27 ⁴ Unless otherwise noted, the facts relating to the
28 Venice Property and the bankruptcy court litigation involving it
are taken from the bankruptcy court's findings of fact and
conclusions of law entered in one of the disputes and adopted by
the District Court on appeal.

1 ("Loan") from Luther Burbank Savings ("Luther"). As security for
2 the Loan, William granted Luther a first position deed of trust
3 on the Venice Property.

4 On or about January 9, 2008, William transferred all of his
5 interest in the Venice Property to his newly-formed, solely owned
6 limited liability company ("LLC") for no consideration. A grant
7 deed reflecting the transfer was recorded with the Los Angeles
8 County Recorder on the same date. William confirmed to Luther in
9 2010 that the LLC was "solely owned by myself."

10 William filed a chapter 7 petition on July 1, 2013. In his
11 schedules and statement of financial affairs, William did not
12 list either the Venice Property or his interest in the LLC as
13 assets, did not list the Loan debt he owed Luther with respect to
14 the Venice Property, and did not disclose his transfer of the
15 Venice Property to the LLC.⁵ As a result, the chapter 7 trustee
16 had no knowledge of the existence of the Venice Property.

17 Enter Mark Bliss, aka Mark O'Gorman ("Appellant"), William's
18 former friend and business associate. Appellant informed the
19 chapter 7 trustee of William's ownership interest in the Venice
20 Property and apparently assisted the chapter 7 trustee in the
21 prosecution of a fraudulent transfer adversary proceeding
22 ("Venice Property Litigation") filed against William and the LLC.
23 The Venice Property Litigation resulted in the entry of a default
24 judgment ("Default Judgment") against the LLC and recovery of the
25

26 ⁵ After filing his bankruptcy case, William continued to
27 collect the rents from the Venice Property, and, in November
28 2013, William attempted to obtain a refinance of debt on the
Venice Property.

1 Venice Property for the benefit of William's bankruptcy estate.⁶

2 Less than 24 hours before the July 1, 2014, scheduled
3 hearing on the chapter 7 trustee's motion for default judgment
4 ("Default Motion") against the LLC, John Norrie ("John"),
5 William's brother, filed both a motion to continue the hearing
6 ("Continuance Motion") and a motion to intervene ("Intervention
7 Motion")⁷ in the Venice Property Litigation. In filing the
8 motions, John asserted, as purported trustee, alleged rights of
9 The 561 Brooks Avenue Trust Dated March 14, 2007 ("Brooks
10 Trust"). According to John, the Brooks Trust was formed for the
11 purpose of holding title to the Venice Property for the benefit
12 of William's sons. Michael Kwasigroch was the attorney
13 representing the Brooks Trust with respect to both motions.

14 The bankruptcy court denied the Continuance Motion on the
15 basis that John should have brought the Continuance Motion
16 sooner,⁸ and set the Intervention Motion for hearing
17

18 ⁶ Both William and the LLC filed motions to dismiss the
19 Venice Property Litigation, which the bankruptcy court denied.
20 It then set March 25, 2014, as the deadline for William and the
21 LLC to file their answers in the Venice Property Litigation. The
22 LLC did not answer, but instead attempted to appeal the denial of
23 its motion to dismiss to this Panel. That appeal was dismissed
24 May 9, 2014, when our motions panel denied the LLC's motion for
25 leave to appeal.

26 ⁷ The Intervention Motion was filed at 8:45 p.m. the
27 evening before the hearing on the Default Motion.

28 ⁸ The bankruptcy court noted in the context of its ruling
on the Intervention Motion that John, as the purported managing
member of the LLC, had hired counsel for the LLC to file the
motion to dismiss the Venice Property Litigation and to prosecute
(continued...)

1 approximately ten weeks out. After the hearing on the Default
2 Motion, the bankruptcy court made written findings of facts and
3 conclusions of law, which it forwarded to the District Court with
4 its recommendation for entry of the Default Judgment.⁹ The
5 bankruptcy court subsequently conducted proceedings on the
6 Intervention Motion.

7 The chapter 7 trustee opposed the Intervention Motion on the
8 basis that Appellant, not John, was the trustee of the Brooks
9 Trust. John countered that Appellant had been automatically
10 terminated as trustee of the Brooks Trust as a result of an
11 involuntary bankruptcy petition having been filed against him,
12 but in any event was removed as trustee by William not later than
13 November 15, 2010, under the procedures set forth in the trust
14 formation documents.

15 The bankruptcy court denied the Intervention Motion on
16 October 27, 2014. In its findings of fact and conclusions of
17 law, the bankruptcy court charged the Brooks Trust with notice of
18 the Venice Property Litigation as early as February 18, 2014,
19 based on John's participation in the Venice Property Litigation

20
21 ⁸(...continued)
22 the interlocutory appeal when that motion was denied by the
23 bankruptcy court. The bankruptcy court charged the Brooks Trust
24 with John's knowledge as the purported trustee.

25 ⁹ John, as Trustee of the Brooks Trust, appealed entry of
26 the bankruptcy court's order after hearing on the Default Motion,
27 which stated only that the bankruptcy court would review the
28 chapter 7 trustee's proposed findings of fact and conclusions of
law and submit them with its recommendation to the District Court
for review and entry of a final judgment against the LLC. Our
motions panel, noting that the BAP had no jurisdiction over the
order, dismissed the appeal.

1 as the purported managing member of the LLC. The bankruptcy
2 court found, inter alia, that the Intervention Motion was
3 untimely filed, that John had presented no evidence in support of
4 the Intervention Motion or that he was the trustee of the Brooks
5 Trust, that the chapter 7 trustee had presented evidence both
6 that Appellant was the trustee of the Brooks Trust and that the
7 Brooks Trust had no interest in the Venice Property, and that the
8 Intervention Motion was moot where the District Court had entered
9 the Default Judgment on September 11, 2014.

10 B. The Brooks Trust Litigation

11 On November 18, 2014, John, as trustee of the Brooks Trust,
12 filed an adversary proceeding ("Brooks Trust Litigation"), the
13 complaint in which appeared to seek (1) a declaration that John,
14 not Appellant, was the trustee of the Brooks Trust, and (2) that
15 a trust should be imposed on the Venice Property for the benefit
16 of the Brooks Trust. Mr. Kwasigroch was the attorney
17 representing the Brooks Trust in the Brooks Trust Litigation.
18 The chapter 7 trustee and Appellant were the named defendants in
19 the Brooks Trust Litigation. After motions to dismiss had been
20 filed by the chapter 7 trustee and Appellant, John filed an
21 amended complaint ("Amended Complaint") on December 15, 2014.
22 Appellant withdrew his original motion to dismiss the initial
23 complaint after the Amended Complaint was filed but thereafter
24 filed a further motion to dismiss the Amended Complaint.

25 The Amended Complaint asserted seven claims for relief:
26 (1) a declaration that John is the trustee of the Brooks Trust;
27 (2) specific performance of alleged agreements between Joe Davis,
28 William's former father-in-law, and William that the Venice

1 Property was to be held by the Brooks Trust for the benefit of
2 William's sons;
3 (3) imposition of a constructive trust;
4 (4) imposition of a resulting trust;
5 (5) imposition of an equitable lien;
6 (6) imposition of an express lien;
7 (7) judicial foreclosure of the Venice Property.

8 Notably, like the original complaint, the Amended Complaint
9 sought no damages against Appellant. In fact, the Amended
10 Complaint stated expressly that no claim was being asserted
11 personally against Appellant.¹⁰ Ultimately, the Brooks Trust
12 filed a Rule 7041 notice of dismissal as to Appellant on
13 January 14, 2015.¹¹

14
15 ¹⁰ The Amended Complaint provided:

16 For clarity, Plaintiff hereby alleges and acknowledges
17 that Plaintiff IS NOT seeking damages for any action of
18 [Appellant], or the chapter 7 trustee, in preparing,
19 filing, submitting, testifying in, petitioning, or in
20 any other way participating in any legal proceeding.
21 These allegations are made as the assertions made by
22 the chapter 7 trustee and [Appellant] were made in
23 legal proceedings, BUT THEREBY CREATE A DISPUTE AS TO
24 THE RIGHTS AND DUTIES OF THE PARTIES, SPECIFICALLY, WHO
25 THE PROPER AND TRUE TRUSTEE OF THE [BROOKS TRUST] IS.
26 However, no damages or monetary recovery is requested
27 based on any action of any party in participating in
28 any legal proceeding.

25 ¹¹ On February 24, 2015, the bankruptcy court dismissed
26 the Amended Complaint without leave to amend on the chapter 7
27 trustee's motion. In doing so, the bankruptcy court rejected the
28 arguments of the Brooks Trust that the chapter 7 trustee was on
constructive or inquiry notice of the Brooks Trust's alleged
(continued...)

1 Approximately three weeks later, Appellant filed the
2 Sanctions Motion, the denial of which forms the basis for this
3 appeal. The Sanctions Motion sought monetary sanctions against
4 Mr. Kwasigroch, because the claims alleged in the Amended
5 Complaint

6 . . . are barred under law and . . . are not warranted
7 under existing law and . . . contain factual allegations
8 that do not have evidentiary support. This conduct
9 constitutes a continuing pattern of bad faith and
10 improper litigation tactics. As such, [Mr.] Kwasigroch
11 is subject to sanctions under [Rule] 9011(b)(2) and (3).
The court should award [Appellant] his reasonable
attorney fees he has and will incur to bring the
[Sanctions Motion] in the amount of \$7,535.00 against
[Mr.] Kwasigroch.

12 Although the Sanctions Motion was filed February 3, 2015, it (and
13 the declaration of Appellant's counsel, John C. Feely, in support
14 of it) was dated December 18, 2014, the date it purportedly was
15 served on Mr. Kwasigroch. Appellant was dismissed from the
16 adversary proceeding on January 14, 2015, more than 21 days after
17 Mr. Kwasigroch was **served** with the Sanctions Motion, but before
18 the Sanctions Motion was **filed**. Supported by Mr. Feely's
19 declaration regarding compliance with the safe harbor provisions
20 of Rule 9011, Appellant sought an additional \$12,187.50 in
21

22 ¹¹(...continued)
23 interest in the Venice Property, and ruled in effect that the
24 chapter 7 trustee's strong arm powers provided in § 544 entitled
25 the chapter 7 trustee to status as a bona fide purchaser with
26 respect to the Venice Property. The Brooks Trust appealed the
27 dismissal to the District Court as well as a subsequent order
28 authorizing the chapter 7 trustee to sell the Venice Property,
which appeal was dismissed as moot, where no stay had been
obtained, and the Venice Property had been sold. The District
Court's dismissal order is now on appeal at the Ninth Circuit.

1 sanctions representing the attorney fees incurred in researching
2 and drafting a motion to dismiss the adversary proceeding,
3 allegedly made necessary because the adversary proceeding
4 remained pending. Appellant sought a total of \$19,722.50 in
5 sanctions against Mr. Kwasigroch through the Sanctions Motion.
6 The Sanctions Motion was opposed.

7 The hearing on the Sanctions Motion was held March 11, 2015
8 ("Sanctions Hearing"), along with other matters. The transcript
9 of the Sanctions Hearing is sixteen pages long, but only twenty-
10 three lines relate to the Sanctions Motion:

11 And the next one is - let's see which order I should
12 take these. Well, I'll take it, I guess, in reverse
13 order. Number 11. That's the, [Appellant's] motion
14 for sanctions against the attorney. That's going to be
15 denied. The fact that you lose something doesn't -
16 everything in this case is not frivolous, that is, not
warranted for sanctions. I think I have, of course,
awarded sanctions before, but just because I have
before doesn't mean that just because I've done it that
everybody's entitled to sanctions because they prevail.

17 The last motion had to do with just prevailing party.
18 That's different than, you know, sanctions for filing
19 frivolous motions. That's totally different. That's a
20 much easier - but this one, I've looked at it. Yes, I
21 disagreed with the pleadings and I've ruled
accordingly. But that doesn't make it frivolous. If
that were the case, that's all I would do, and any
other judge would be doing, is ruling sanctions up and
back if people lose. That's just - I think you've
gotten a little carried away on what's happened.

22 So that's going to be denied. By the way, I will
23 prepare an order on - well, no. I think on that one,
24 why don't you, counsel, why don't you just prepare that
order.

25 March 11, 2015 Hr'g Tr. at 5:6-6:3.

26 Appellant appealed the order denying the Sanctions Motion.
27 He asserts on appeal, inter alia, that the bankruptcy court's
28 dismissal of the Amended Complaint without leave to amend

1 established that it was meritless when it was filed.¹² Appellant
2 contends the bankruptcy court abused its discretion because it
3 did not find that the claims in the Amended Complaint, as filed
4 by Mr. Kwasigroch, seeking a determination that the Brooks Trust
5 held an interest in the Venice Property, violated the provisions
6 of Rule 9011(b) (2) and (3).¹³

8 ¹² Appellant also filed a motion seeking a declaration
9 that he was the prevailing party in the Brooks Trust Litigation.
10 Despite vigorous opposition from the Brooks Trust, the bankruptcy
11 court determined under LBR 7054-1 that Appellant was the
12 prevailing party. No appeal was taken from that determination,
and it does not appear from the docket that Appellant has sought
fees or costs as a result of his prevailing party status.

13 ¹³ As relevant to the Sanctions Motion, Rule 9011
14 provides:

15 Rule 9011. Signing of Papers; Representations to the Court;
16 Sanctions; Verification And Copies of Papers

17 (a) Signature. Every petition, pleading, written motion, and
18 other paper, except a list, schedule, or statement, or amendments
19 thereto, shall be signed by at least one attorney of record in
20 the attorney's individual name. A party who is not represented
21 by an attorney shall sign all papers. Each paper shall state the
22 signer's address and telephone number, if any. An unsigned paper
shall be stricken unless omission of the signature is corrected
promptly after being called to the attention of the attorney or
party.

23 (b) Representations to the Court. By presenting to the court
24 (whether by signing, filing, submitting, or later advocating) a
25 petition, pleading, written motion, or other paper, an attorney
26 or unrepresented party is certifying that to the best of the
person's knowledge, information, and belief, formed after an
inquiry reasonable under the circumstances,-

27
28 (2) the claims, defenses, and other legal contentions therein are
(continued...)

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.
3 §§ 1334 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C.
4 § 158.

5 **III. ISSUES**

6 Whether the bankruptcy court abused its discretion when it
7 denied the Sanctions Motion.

8 **IV. STANDARDS OF REVIEW**

9 A bankruptcy court's decision declining to impose sanctions
10 pursuant to Rule 9011 is reviewed for abuse of discretion.
11 Trulis v. Barton, 107 F.3d 685, 691 (9th Cir. 1995); Classic Auto
12 Refinishing, Inc. v. Marino (In re Marino), 37 F.3d 1354, 1358
13 (9th Cir. 1994) ("We review the denial of sanctions under
14 [Rule 9011] for an abuse of discretion.").

15 The Panel must apply a two-part test to determine whether
16 the bankruptcy court abused its discretion. United States v.
17 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

18
19 _____
20 ¹³(...continued)
21 warranted by existing law or by a nonfrivolous argument for the
22 extension, modification, or reversal of existing law or the
23 establishment of new law;
24 (3) the allegations and other factual contentions have
evidentiary support or, if specifically so identified, are likely
to have evidentiary support after a reasonable opportunity for
further investigation or discovery;

25
26 (c) Sanctions. If, after notice and a reasonable opportunity to
27 respond, the court determines that subdivision (b) has been
28 violated, the court may, subject to the conditions stated below,
impose an appropriate sanction upon the attorneys, law firms, or
parties that have violated subdivision (b) or are responsible for
the violation.

1 First, we consider de novo whether the bankruptcy court applied
2 the correct legal standard. Id. A bankruptcy court abuses its
3 discretion if it applies an incorrect legal standard or
4 misapplies the correct legal standard. TrafficSchool.com v.
5 Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

6 V. DISCUSSION

7 Rule 9011

8 "Pursuant to Rule 9011, bankruptcy courts have the authority
9 to sanction parties, attorneys, and law firms who present (sign,
10 file, submit, or later advocate) a petition, pleading, or paper
11 to a bankruptcy court that is either frivolous or presented for
12 an improper purpose." Winterton v. Humitech of N. Cal., LLC
13 (In re Blue Pine Grp., Inc.), 457 B.R. 64, 75 (9th Cir. BAP
14 2011), rev'd in part, 526 F. App'x. 768 (9th Cir. 2013) (affirmed
15 as to standards; reversed as to amount of sanctions). Both the
16 Ninth Circuit and this Panel previously have articulated in
17 detail the process and standards for evaluating a motion for
18 sanctions filed pursuant to Rule 9011.

19 "In determining if sanctions are warranted under Rule 9011,
20 the bankruptcy court must consider both frivolousness and
21 improper purpose on a sliding scale, where the more compelling
22 the showing as to one element, the less decisive need be the
23 showing as to the other." Dressler v. The Seeley Co.
24 (In re Silberkraus), 336 F.3d 864, 870 (9th Cir. 2003) (internal
25 citation omitted).

26 The word "frivolous," when used in connection with
27 sanctions denotes a filing that is both baseless—lacks
28 factual foundation—and made without reasonable competent
inquiry. Townsend v. Holman Consulting Corp., 929 F.2d
1358, 1362 (9th Cir. 1990). An attorney has a duty to

1 conduct a reasonable factual investigation as well as to
2 perform adequate legal research that confirms that his
3 position is warranted by existing law (or by a good
4 faith argument for a modification or extension of
5 existing law). Christian v. Mattel, Inc., 286 F.3d
6 1118, 1127 (9th Cir. 2002). Thus, a finding that there
7 was no reasonable inquiry into either the facts or the
8 law is tantamount to a finding of frivolousness.
9 Townsend, 929 F.2d at 1362.

6 The Ninth Circuit has held that the standard to
7 determine the reasonableness of an attorney's inquiry as
8 to facts contained in signed documents submitted to a
9 court is an objective one. In considering sanctions
10 under Rule 9011, the bankruptcy court must measure the
11 attorney's conduct "objectively against a reasonableness
12 standard, which consists of a competent attorney
13 admitted to practice before the involved court." Valley
14 Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.),
15 922 F.2d 1438, 1441 (9th Cir. 1991); G.C. & K.B. Inv.,
16 Inc. v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003).
17 Additionally, an improper purpose is analyzed under an
18 objective standard. In re Grantham Bros., at 1443.

13 In re Blue Pine Grp., Inc., 457 B.R. at 75.

14 The Bankruptcy Court's Findings

15 As stated above, we review the order denying the Sanctions
16 Motion for abuse of discretion. "If the bankruptcy court fails
17 to identify or misapplies the correct legal rule of law, [our]
18 inquiry ends there, and we 'must conclude that the bankruptcy
19 court abused its discretion.'" Fear v. U.S. Trustee
20 (In re Ruiz), 541 B.R. 892, 896 (9th Cir. BAP 2015), quoting
21 Hinkson, 585 F.3d at 1262.

22 Under Ninth Circuit standards, a bankruptcy court "must
23 consider both frivolousness and improper purpose" when ruling on
24 a motion for sanctions under Rule 9011. Here, the bankruptcy
25 court made no findings as to whether the Amended Complaint was
26 filed for an improper purpose. As to whether the Amended
27 Complaint was frivolous, the bankruptcy court stated only
28 "everything in this case is not frivolous," and "Yes, I disagreed

1 with the pleadings and I've ruled accordingly. But that doesn't
2 make it frivolous."

3 From this limited record, we are unable to determine, de
4 novo, whether the bankruptcy court applied the correct legal
5 rule, set forth in the Ninth Circuit's decision in
6 In re Silberkraus and this Panel's decision in In re Blue Pine
7 Grp., Inc., when it denied the Sanctions Motion. Without
8 complete findings, we may vacate a judgment and remand the case
9 to the bankruptcy court to make the requisite findings. See,
10 e.g., First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC
11 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (9th
12 Cir. BAP 2012). We do so reluctantly in this case because we
13 fear contributing to a record of litigation that already is both
14 extended and contentious, but we see no appropriate alternative.
15 The litigants in any dispute are entitled to a court's rationale
16 for its decisions.

17 **VI. CONCLUSION**

18 For the foregoing reasons, we VACATE the bankruptcy court's
19 order denying the Sanctions Motion and REMAND for further
20 proceedings consistent with this Memorandum Decision.