WRITTEN DECISION - NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re: Peters & Freedman fka Peters & Freedman, LLP	Bk. No. 21-00646-LA7
	Chapter 7
Debtor.	
	Initial Hrg. Date: June 24, 2021 Cont. Hrg Date: Aug. 5, 2021 Time: 2:00 p.m. Ctrm. 2 Judge: Hon. Louise De Carl Adler

I.

INTRODUCTION

Movants, who claim to be the majority partners of Peters & Freedman LLP ("Movants"), seek sanctions under Federal Rule Bankruptcy Procedure ("FRBP") 9011 of no less than $97,247.36 to be imposed jointly and severally against David M. Peters ("Peters") and attorney Bill Parks ("Parks") for their improper filing of this Chapter 7 bankruptcy petition and bad faith conduct. The $97,247.36 amount is comprised of: (i) $5,520.00 fees incurred by the Ch. 7 Trustee; (ii) $7,896.50 in fees/costs incurred by the

Ch. 7 Trustee's counsel; and (iii) $83,830.86 in fees and $579.86 in costs incurred by Movants' insolvency counsel to dismiss the case.

The motion is opposed by both Peters and Parks. They primarily argue that (i) the debtor in this case ("Debtor") is a general partnership that is legally distinct from Peters & Freedman, LLP, the entity that is being dissolved in a state court dissolution proceeding/Arbitration, so the rulings and orders issued therein do not apply to the Debtor; and (ii) Peters could authorize the bankruptcy filing on behalf of the Debtor without the consent of the other partners as the super-majority partner of the general partnership. For the reasons more fully set forth below, the Court finds and concludes that these arguments are not objectively reasonable and legally frivolous. Additionally, it finds and concludes that the totality of circumstances, including the timing of the bankruptcy filing, evidence that this bankruptcy case was filed for the improper purpose to harass and cause delay or needless increase in the costs of litigation. Therefore, the motion for Rule 9011 sanctions is granted and sanctions shall be issued in the amounts set forth below.

II.

FACTUAL BACKGROUND

A. The Partnership Dispute and Dissolution Proceeding/Arbitration.

Debtor is a registered limited liability law partnership operating pursuant to a Limited Liability Partnership Agreement dated September 1, 2016 ("Agreement"). Movants claim that they comprise four of the five partners and collectively own 54% of the Debtor; and that Peters, the former managing partner, owns a 46% interest. Peters' behavior allegedly became erratic, and there are allegations that he had egregiously breached his fiduciary duties by mismanaging the law firm, mistreating employees, committing ethical breaches owed to clients, and stealing millions in partnership funds which he hid and/or gambled away. Thus, on October 23, 2018, Movants (as the majority partners) voted to dissolve the Debtor.

On October 29, 2018, Movants filed a petition against Peters in the state court for injunctive relief to protect and preserve the Debtor's assets pending arbitration (Smith *et al. v. Peters*, SDSC Case No: 37-2018-00054719-CU-PP-NC). [ECF No. 15, Ex. 2] The judge assigned to the case (Judge Stern) granted a TRO protecting the Debtor's assets, which Movants contend Peters promptly violated by attempting to convert a $3.4 million contingency fee settlement that belonged to the Debtor. The Movants prevailed on their contention, and the contingency fee was ordered to be paid over to the Debtor's account. [ECF No. 15, Ex. 3][1]

Thereafter, the partners – including Peters -- agreed to arbitrate their entire dispute and to appoint Judge William McCurine (Ret.) to serve as both the Arbitrator and Referee over their entire dispute. The stipulations and orders thereon are as follows:

(1) On December 3, 2018 the partners – including Peters --filed a stipulation in the dissolution proceeding agreeing to arbitrate their partnership dispute pursuant to the ADR provision in their partnership agreement, and appointing Judge McCurine to serve as the Arbitrator to adjudicate the "entire controversy" between the partners. Judge Stern signed their stipulated order. [ECF No. 15, Ex. 4]

(2) On April 26, 2019 the partners -- including Peters -- stipulated to an amended order expressly appointing Judge McCurine to serve as <u>both the Arbitrator and Referee over the partnership</u> with exclusive control over the partnership's assets/claims and reaffirming their shared intent to have Judge McCurine arbitrate the "entire controversy" between the partners; and authorizing Judge McCurine's employment of attorney Michael Breslauer to serve as his counsel. [ECF No. 15, Ex. 5 (emphasis added)] On May 1, 2019, Judge Stern signed the stipulated order (hereinafter the "May 1, 2019 Order").

Other relevant orders are as follows:

(3) On September 1, 2020, due to Peters' ongoing obstructive conduct, including his "void" action to expel partners from the partnership, Judge McCurine expressly ordered

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[1] This is an example of the disputes that led to the Debtor's dissolution and why Peters could not be trusted to continue to manage the partnership.

that: "No party can take any action on behalf of, or in the name of, the dissolved Partnership without written authority from the Referee," and that "[n]o party may do anything that would undermine, thwart or interfere with the winding up of the now dissolved Partnership." [ECF No. 15, Ex. 21, Pg. 14 (emphasis added) (the "Bar Order")]

(4) On October 9, 2020, Judge Stern issued a Minute Order granting Judge McCurine's motion to expand his authority to act as Arbitrator/Referee in which she amended and restated her prior May 1, 2019 Order to confirm/clarify Judge McCurine's "exclusive authority" over the Debtor's assets, *i.e.*, "The Referee shall preside over and shall have exclusive authority to liquidate, reduce to money, and create funds of all assets, real or personal, of P&F." [ECF No. 15, Ex. 22 (the "Expanded Power Order")]

Since his appointment, Judge McCurine, with the assistance of his counsel, Mr. Breslauer, has spent the last 2.5 years winding up the Debtor's affairs and resolving creditor's claims. [ECF No. 16, Breslauer Decl.] As of the date of the bankruptcy filing, there were only four outstanding third party creditor claims remaining to be paid. [Breslauer Decl., ¶ 8 (two legal malpractice actions against Debtor, a case alleging violation of the Fair Debt Collections Act, and an action by a former employee claiming entitlement to a finder's fee)]

Despite the stipulated orders and the Expanded Power and Bar Orders, Peters has repeatedly sought to undermine, reverse and obstruct Judge McCurine and the dissolution proceeding. [See ECF No. 15, Smith Decl. ¶¶ 14-53] This misconduct has resulted in many orders and ruling against Peters, including orders imposing monetary sanctions. [*See* ECF No. 15, Ex. 23 (imposing monetary sanctions against Peters for filing a frivolous motion seeking to terminate and invalidate/void the dissolution proceeding); *see also* ECF No. 15, Ex. 26 (imposing monetary sanctions against Peters for conduct including harassment, improper *ex parte* communications and for filing another frivolous arbitrability challenge)]. Additionally, in a related state court action against the partnership for malpractice (wherein Peters filed a cross-complaint against Movants for, *inter alia*, an injunction vacating the Arbitration/Orders), another state court judge (Judge Styn) has twice

declared Peters to be a "vexatious litigant." [ECF No. 15, Smith Decl. ¶¶ 27-29, Ex. 18 (orders dated November 30, 2020 and January 11, 2021 examining Peters' conduct and declaring him to be a "vexatious litigant," and barring him "from filing any new litigation in the [CA state courts] in propria persona without first obtaining leave of the presiding justice or presiding judge [of said court].")]

B. The Chapter 7 Bankruptcy Filing, its Timing and Dismissal.

On February 23, 2021, Peters with the assistance of his attorney, Parks, caused the Debtor to file this bankruptcy petition at 10:29 a.m. The petition automatically stayed the following three critical matters which were then-imminent: (1) a hearing on Movants' motion for terminating sanctions against Peters due to his intentional destruction of critical evidence scheduled to be heard by Judge McCurine that same morning at 10:30 a.m.; (2) the deposition of Peters that Judge McCurine had ordered to occur the very next day on February 24, 2021; and (3) a multi-day evidentiary hearing in the Arbitration scheduled to begin March 8, 2021. [ECF No. 15, Smith Decl. ¶¶ 50-53]

The bankruptcy petition identifies the Debtor as "Peters & Freedman fka Peters & Freedman, LLP" and is signed by Peters as the "authorized representative" of the Debtor and "Managing Partner, Majority Owner." [ECF No. 1 (Petition, Pg. 4)] With a few exceptions, the petition and schedules list the exact same assets, liabilities, partners, name, address, and EIN number as Peters & Freedman, LLP. [ECF No. 1] The only additional scheduled "assets" are contingent litigation claims against Movants, others connected to Movants, and Judge McCurine's attorney Mr. Breslauer. [*See* ECF No. 1, Schedule A/B] Likewise, the "creditors" are the same as those being paid in the dissolution proceeding/Arbitration, except for Peters' $7.358 million claim for services/goods and a few nominal creditors (Joseph Adelizzi, PGA West Master Assoc., and The Mark Condo. Owners Assoc.) who apparently have not asserted a claim in the dissolution proceeding/Arbitration. [Schedule E/F]

The bankruptcy petition was not authorized by Judge McCurine; nor was it authorized by the other partners. No inquiry was made of these persons before the

petition was filed. Parks and Peters contend the petition was authorized because the Debtor had terminated its LLP status, so the partnership reverted to a general partnership legally distinct from the LLP and it is this distinct entity that is the Debtor. However, an objective person who reviewed the record would know that termination of the partnership's LLP status was an accident and the state court had directed the California Secretary of State ("Cal. SOS") to reinstate the partnership's LLP status. [*See* ECF No. 15, Ex. 28 (Reinstatement Order dated Jan. 5, 2021, ¶ 2)] A simple email to the Cal. SOS would have confirmed that Peters & Freedman was reinstated to an active LLP in good standing before the petition date. [*See* ECF No. 15, Smith Decl. ¶ 46, Ex. 29 (Cal. SOS email dated Feb. 11, 2021 confirming the partnership's LLP status is reinstated)]

Further, Parks and Peters claim that Peters could authorize the Debtor's bankruptcy filing because he became the super-majority partner when other partners were expelled. This argument is not supported by an objective view of the facts or the law because Peters made the same unsuccessful argument in the dissolution proceeding/Arbitration that other partners had been expelled from the partnership and lost. [ECF No. 15, Ex. 21:10-14 (concluding that neither Peters nor any other partner had the authority to expel other partners from the partnership absent a directive from the Referee (Judge McCurine), and declaring Peters' vote to expel other partners contrary to California law and void)]

Shortly after filing the petition, Peters informed Judge McCurine of the bankruptcy in a zoom call (the motion for terminating sanctions was scheduled that morning). Judge McCurine requested that Parks be added to the zoom call, and he questioned Parks about the basis for his authority to file a bankruptcy petition on behalf of the Debtor. [ECF No. 63, Waldman Decl., ¶ 3] Further, on February 25, 2021, Movants' counsel sent a letter to Parks informing him and Peters that the petition was improper and demanding immediate dismissal of the case, and warning that Movants would seek sanctions if they failed to dismiss it. [ECF No. 63, Waldman Decl. ¶ 5, Ex. 1]

Neither Parks nor Peters responded to Movants' demand for dismissal. Therefore, on March 5, 2021, Movants filed a motion to dismiss the Chapter 7 case and obtained an

OST setting the matter for hearing on March 25, 2021. Parks and Peters filed lengthy opposition to the motion to dismiss, forcing Movants to incur more attorney's fees to respond to the opposition which asserted mostly irrelevant arguments and evidence. [See ECF No. 42 (tentative ruling sustaining Movants' evidence objections on grounds of relevance, lack of foundation and because two of the three opposition declarations were not submitted under penalty of perjury)] By order entered April 16, 2021, the Court granted the motion to dismiss and retained jurisdiction to consider the fee applications of the Ch. 7 Trustee and his attorney and to hear this sanctions motion provided it was filed within 30 days of entry of the order ("Dismissal Order"). [ECF No. 54]

The Dismissal Order adopted the Court's tentative ruling that: (1) Peters (a partner) was subject to Judge McCurine's Bar Order, which divested him of authority to file bankruptcy on behalf of the Debtor without Judge McCurine's written consent; and (2) There was no valid purpose for the Chapter 7 petition because the Debtor is not eligible for a discharge and its dissolution is already being handled by and governed by the Arbitration, which Peters agreed to. [ECF No. 42] The Dismissal Order necessarily found that Peters & Freedman and Peters & Freedman, LLP are one-and-the-same based on the identity of Debtor in the petition; that the assets/creditors listed in the schedules and the stipulations/orders entered in the dissolution proceeding/Arbitration; and that these findings are supported by the applicable partnership law. The Court found no valid reason to move the dispute between the partners to the bankruptcy court on the eve of a trial in the Arbitration, which had been pending for more than two years, where all partners (including Peters) had agreed to the Arbitration. [ECF No. 42]

C. <u>The Motion for Rule 9011 Sanctions.</u>

Following dismissal, the Movants timely filed and served their motion for Rule 9011 sanctions to be heard on regular notice on June 24, 2021. The motion was opposed by both Parks and Peters, who made many arguments but did not contest their inability to pay the requested sanctions. [ECF No. 77, 82] In response to the Court's tentative ruling granting the motion and awarding joint and several sanctions, Parks (but not Peters) filed

a supplemental declaration for the first time asserting his inability to pay the sanctions award. [ECF No. 93] As a result of this supplemental declaration and his arguments made at the hearing,[2] the Court scheduled a continued evidentiary hearing solely on the issue of the sanctions to be imposed against Parks and adopted its tentative ruling in all other respects. [ECF No. 95]

Thereafter, Parks provided the Movants with additional evidence to support his inability to pay the sanctions imposed against him. Based on this additional evidence, the Movants and Parks reached a settlement to accept $10,000 to fully resolve and settle the Movants' claims against Parks for his role in the Rule 9011 violations. Thus, the evidentiary hearing was converted to a telephonic hearing and continued to August 5, 2021, for the Court to consider and approve the settlement. At the continued hearing, the Court approved the monetary settlement but indicated that it would be imposing its own additional non-monetary sanctions targeted to the bad faith conduct of Parks. This Memorandum Decision addresses the basis for its ruling on the Rule 9011 motion.

III.

LEGAL ANALYSIS

FRBP 9011(b) provides that by presenting a petition or paper to the court, an attorney is certifying, *inter alia*, that:

> (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) It is warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law;
>
> (3) The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support.

[2] Parks argued in both the initial hearing on the Rule 9011 motion and during the hearing to approve the monetary settlement that he has never been sanctioned before; that he never would have filed this bankruptcy case had he known the LLP's status was reinstated; and that business bankruptcies are outside his expertise and he will never again file a business bankruptcy case.

FRBP 9011(c)(1)(A) provides that a motion for Rule 9011 sanctions must be filed separately from other motions. Further, it requires the motion to be served on the offending party and gives the party a 21-day safe harbor to withdraw or correct the offending document before the motion for sanctions can be filed with the court. However, by its express terms, the 21-day safe harbor in Rule 9011(c)(1)(A) does not apply where (as here) the conduct alleged is the filing of a bankruptcy petition. *See* FRBP 9011(c)(1)(A) (expressly stated); *In re Silberkraus*, 336 F.3d 864, 868 (9th Cir. 2003); *see also* March, Ahart & Shapiro, Cal. Prac. Guide Bankruptcy, Ch. 5(II)-C, ¶ 5:2499.1 (The Rutter Group Dec. 2020 Update) (it is textbook law that "the 21-day 'safe harbor' provision does not apply to bankruptcy filings filed in violation of FRBP 9011") (emphasis in original).[3]

FRBP 9011(c)(2) provides that the sanction imposed for a Rule 9011 violation "shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." The sanction may "consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into the court, or, if imposed on motion and warranted for effective deterrence," it may consist of "an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." *See In re Bayport Equities Corp.*, 36 B.R. 575, 577-78 (Bankr. C.D. Cal. 1983) (attorney sanctioned); *see also In re Villa Madrid*, 110 B.R. 919, 924 (9th Cir. BAP 1990) (attorney and client sanctioned for bad faith filing).

The Ninth Circuit has established a two-part analysis for determining whether a debtor and/or debtor's attorney should be sanctioned under Rule 9011 for filing a bankruptcy petition:

(1) Was the petition frivolous pursuant to applicable law?

(2) Was the petition filed for an improper purpose, such as to harass or to cause delay or needlessly increase in the costs of litigation?

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[3] Parks' safe harbor defenses are rejected. His belief that he had to be served with a formal Rule 9011 motion and given 21-days thereafter to dismiss the case is wrong. This contention is frivolous.

In re Marsch, 36 F.3d 825, 829-830 (9th Cir. 1994). "[F]rivolousness and improper purpose are not wholly independent considerations but 'will often overlap.'" *Marsch*, 36 F.3d at 830. "[B]ankruptcy 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." *Id.* (emphasis in original).

Here, the Court finds and concludes that the bankruptcy filing was objectively both frivolous and filed for an improper purpose.

A. The bankruptcy filing was frivolous because it was not authorized.

The bankruptcy filing was frivolous because it was not properly authorized, and no reasonable attorney/party would conclude otherwise given the prior state court orders. A "frivolous" paper is one that is both baseless and made without a reasonable and competent inquiry; that is, it is neither well-grounded in fact and warranted by existing law nor a good faith argument for the extension, modification, or reversal of existing law. *In re Flashcom, Inc.*, 503 B.R. 99, 127 (C.D. Cal. 2013, *aff'd* 647 Fed. Appx. 689 (9th Cir. 2016) (citing *In re Brooks-Hamilton*, 400 B.R. 238, 252 (9th Cir. 2009)). In *Flashcom*, the bankruptcy court issued Rule 9011 sanctions against the trustee for filing a motion *in limine* that lacked a reasonable basis in fact and law because it contravened the rulings made in the court's prior orders. *Flashcom*, 503 B.R. at 127-131. On appeal, the district court affirmed and rejected the appellant's contention that legal rulings in "interlocutory" orders are non-binding because they are subject to reconsideration or modification at any time. *Id.* at 128-31.

Likewise, this Court rejects Parks and Peters' argument that they were not bound by the prior orders of the state court/Arbitrator since they were merely "interlocutory." An objective person who reviewed the state court record would know that the partners (including) Peters had stipulated to appoint Judge McCurine as Arbitrator/Referee to wind up the partnership and resolve the partners' entire dispute; and they had stipulated to vest Judge McCurine with exclusive control over the partnership's assets. [*See* ECF No. 15, Ex. 4-5 (Stipulated Orders)]. Further, they would recognize that the Bar Order and

Expanded Power Order erased all doubt that Peters' prior management authority was displaced. These orders expressly: (i) limited the authority of Peters, or any other partner, to take any action on behalf, or in the name of, the dissolved partnership without Judge McCurine's written consent; (ii) directed that no party may do anything to undermine, thwart or interfere with Judge McCurine's winding up of the dissolved partnership; and (ii) directed that Judge McCurine, as Arbitration/Referee, has "exclusive authority" to liquidate, reduce to money, and create funds of all of the partnership's assets. [ECF No. 15, Exs. 21-22 (Bar Order and Expanded Power Order)][4]

State court orders which limit or restrict who can file a bankruptcy petition on behalf of a partnership are enforceable. *See e.g. In re Sino Clean Energy Inc., by and through Baowen Ren v. Seiden*, 565 B.R. 677, 680-82 (D. Nev. 2017), *aff'd* 901 F.3d 1139 (9th Cir. 2018) (enforcing the state court's order vesting the receiver with authority over the debtor and the receiver's prepetition removal of the debtor's board of directors due to their mismanagement and, therefore, dismissing the debtor's bankruptcy petition filed by the removed board members as unauthorized); *In re Licores*, 2013 WL 6834609, *1 (Bankr. C.D. Cal. Dec. 20, 2013) (enforcing the state court's order vesting the receiver with sole authority to file bankruptcy and ordering that certain partners (the Bonilla brothers) shall not attempt to file bankruptcy on behalf of the debtor; and therefore, concluding the Bonilla brothers lacked authority to filed the petition on behalf of the debtor). Here, although the prior orders of the state court/Arbitrator do not specifically bar a "bankruptcy filing" by Peters, no objective person who reviewed these orders could conclude that Peters had the authority to unilaterally, and surreptitiously, file a bankruptcy petition on the partnership's behalf (or include the partnerships' assets/debts in a bankruptcy filing) without consulting Judge McCurine and obtaining his consent.

[4] Importantly, these orders were issued in response to Peters' obstructive partnership actions raising a red flag that Peters, a twice-declared "vexatious litigant," could not unilaterally hire Parks to represent the partnership and authorize its surreptitious bankruptcy filing.

Additionally, irrespective of these orders, California law requires unanimous consent of the partners for any acts outside the ordinary course of business. *See* Cal. Corp. Code § 16301(2) ("An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried out by the partnership binds the partnership only if the act was authorized by the other partners.") Similar statutes have been interpreted as requiring unanimous consent of the partners or members to file a voluntary bankruptcy petition on behalf of the partnership, LLC or similar entity. *See In re Squire Court Partners, L.P.*, 574 B.R. 701, 708 n. 6 (E.D. Ark. 2017) (citing to cases that applied similar statutes to conclude that partnership and LLC petitions require unanimous consent). Here, Debtor was a dissolved partnership and its law practice had officially closed. [ECF No. 15, Ex. 7] Given this fact, no person could objectively conclude that Peters – even if he remained the managing partner or became the super-majority partner – had the authority to file this bankruptcy petition on behalf of the partnership without the consent of all partners.

An unauthorized bankruptcy filing without an objectively reasonable investigation violates Rule 9011. *In re Blue Pine Group, Inc.* 448 B.R. 267, 275 (Bankr. D. Nev. 2010), *aff'd* 457 B.R. 64 (9th Cir. BAP 2011), *aff'd in part, vacated in part on unrelated grounds*, 526 Fed. Appx. 788 (9th Cir. 2013) (unpublished). Here, Parks claims he conducted a reasonable investigation before filing the petition because he sought an independent opinion from an attorney whom he deemed experienced in corporate/business law (Thanasi Preovolos, Esq.) to advise if the partnership was a general partnership, and if Peters had the authority to hire Parks and authorize the bankruptcy filing on behalf of the Debtor. The Court rejects this argument. Irrespective of Mr. Preovolos' legal conclusion that the Debtor had reverted to a general partnership because its LLP status had terminated, an objectively reasonable person who reviewed the record would know that the termination of the partnership's LLP status was an accident. The state court had ordered the LLP's status to be reinstated and the Cal. SOS had in fact reinstated the

partnership's LLP status before the petition date.[5] [ECF No. 15, Smith Decl. ¶¶ 45-46, Ex. 28-29] Thus, the Debtor was a registered LLP on the petition date, a fact that Mr. Preovolos did not consider in rendering his legal opinion. [*See* ECF No. 77-1, Preovolos Decl. ¶¶ 11-15, 25]

This case is factually similar to *In re TAGT, L.P.*, 393 B.R. 143, 150-151 (Bankr. S.D. Tex. 2006), which imposed Rule 9011 sanctions against the purported sole manager of the LLC (Knight) and the attorney (Leonard) who filed an unauthorized bankruptcy on behalf of the LLC and a related LP. The petitions were filed on the eve of the owner's meetings to vote to remove Knight from management, and just prior to a motion to transfer venue of litigation commenced by Knight which he was almost certain to lose. *TAGT, L.P.*, 393 B.R. at 147-48. The court reviewed the facts and was "extraordinarily troubled" that neither Knight (who as the purported manager owed a fiduciary duty to the other owners), nor Leonard who owed his fiduciary duty to the LLC/LP, had bothered to consult the other owners about filing the bankruptcy petitions before surreptitiously filing them. *Id.* at 150. The court found that "[f]iduciaries do not act in stealth"; yet that is what happened. *Id.* Further, it found that Leonard was in fact representing Knight individually, and his purported investigation into the question of Knight's authority to file the bankruptcy cases was an analysis done with "bias toward the outcome." *Id.* at 151. This analysis applies here to Parks and Peters.[6] Parks took his instructions from Peters, and the fact that they obtained a so-called "independent opinion" from another attorney will not insulate them from surreptitiously filing a bankruptcy petition for the Debtor without consulting the other partners (and obtaining Judge McCurine's consent). Therefore, both Parks and Peters have violated Rule 9011 by filing a frivolous petition and sanctions are warranted.

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[5] The additional requirement of registering the LLP with the California State Bar is a "red herring" because the partnership was no longer performing legal services on the petition date.

[6] Parks distinguished *TAGT, L.P.* because it was a Chapter 11 case. However, the rationale applies because Parks, an attorney, owed a fiduciary duty to his client, the debtor, and its owners whom he did not collectively consult.

B. The Bankruptcy Filing was for an Improper Purpose.

Here, as in *In re Marsch*, 36 F.3d 825, 830-31 (9th Cir. 1994), the facts of this case clearly reveal that the Debtor's bankruptcy petition was filed for an improper purpose. In dismissing this case, the Court has already ruled that this case serves no valid purpose, and there was no valid reason to move this liquidation/dispute between partners, which had been pending for more than two years, to the bankruptcy court. [ECF No. 42] The Court finds and concludes the filing of this petition was clearly timed to stay and disrupt three critical matters which were then-imminent: (1) a hearing on Movants' motion for terminating sanctions against Peters due to his intentional destruction of critical evidence scheduled to be heard by Judge McCurine that same morning at 10:30 a.m.; (2) the deposition of Peters that Judge McCurine had ordered to occur the very next day on February 24, 2021; and (3) the multi-day evidentiary hearing in the Arbitration scheduled to begin on March 8, 2021. [*See* ECF No. 15, Smith Decl. ¶¶ 50-53] The transparent attempt by Parks and Peters to use this bankruptcy filing to impede the state court dissolution/Arbitration is abusive and, given that the bankruptcy filing is also frivolous, Rule 9011 sanctions are warranted on both grounds.

C. The Appropriate Sanctions to Impose.

The final matter is the appropriate sanctions to impose against Peters and Parks. The Court is cognizant of FRBP 9011(c)(2)'s directive that the sanctions imposed for a Rule 11 violation "shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." It also recognizes that it may award sanctions of a non-monetary nature, and an automatic lodestar approach is not always appropriate to calculate the monetary sanctions. However, the Court finds this case to be an egregious abuse of the bankruptcy system based on its careful review of the record in this case. Peters is a twice-declared "vexatious litigant" by the state court in litigation related to the partnership dispute. [ECF No. 15, Ex. 18] Less severe monetary sanctions have not deterred Peters, and his bad faith motive in filing this case is obvious. Therefore, as to Peters, severe sanctions are justified. *See Annamalai v. Moon Credit Corp.*, 2017 WL

5646925, *3-4 (S.D. Tex. 2017) (given that previous less severe sanctions did not deter Annamalai and given his history as a vexatious litigant, court imposed severe sanctions in the form of an injunction from further filings and awarded the defendants all of their attorney's fees and expenses incurred in defense of the suit).

The Court imposes the following sanctions against Peters:

(1) Peters shall be enjoined from causing the Debtor, or Peters & Freedman in any other alleged form, to file a bankruptcy petition without Judge McCurine's consent.

(2) Peters shall be responsible to pay monetary sanctions in the amount requested by Movants ($97,247.36) to compensate the partnership and Movants for the litigation expenses incurred as result of this bad faith bankruptcy filing and the refusal of Peters to voluntarily dismiss the petition thereafter.

(3) Peters shall also pay to Movants their additional attorney's fees and expenses incurred to bring and prosecute this Rule 11 sanctions motion and to respond to Peters' improperly noticed motion for reconsideration which was denied. *See* FRBP 9011(c)(1)(A).[7]

Additionally, the Court imposes Rule 9011 sanctions against Parks. The Court finds Parks culpable for conducting a "biased toward the outcome" investigation into Peters' motive/authority to file this bankruptcy case and for taking his marching orders solely from Peters, a twice declared "vexatious litigant," who had an axe to grind against Movants and Judge McCurine/Breslauer. Parks lost sight of his true client – the partnership. Even after receiving Movants' dismissal demand and sanctions warning, Parks still did not dismiss the case. Parks "assumed" the Ch. 7 Trustee would refuse to consent to a voluntary dismissal and did not ask. Further, Parks claims he believed the 21-day safe-harbor was not complied with, which is frivolous.

Drawing from *In re TAGT, L.P.*, 393 B.R. 143 (Bankr. S.D. Tex. 2006), the Court tentatively ruled that severe sanctions should also be imposed against Parks. It reasoned

[7] The Court directed the Movants to file and serve on Peters their supplemental prove up declarations regarding the amount of their fees and costs incurred to bring and prosecute the Rule 9011 motion, and to respond to Peters' improperly-noticed motion for reconsideration.

that a severe sanction is necessary to send a message to other lawyers to remember that their ethical duties and loyalties lie with the debtor/partnership and not a single partner with a clear axe to grind. *See TAGT, L.P.* at 155-56. Accordingly, the Court had tentatively ruled that Parks would be jointly and severally liable for 50% of the $97,247.36 awarded to Movants, plus he would be jointly and severally liable for 100% of the additional fees and expenses awarded to Movants to prosecute this sanctions motion. [ECF No. 94]

However, that portion of the Court's tentative ruling is hereby vacated and the sanctions to be imposed against Parks are modified as follows:

(1) Parks, by agreement, shall not file any future bankruptcy cases on behalf of a corporation, LLC, LLP or partnership debtor unless, prior to the filing, he formally associates in co-counsel experienced in business bankruptcies to assist in his representation of the debtor.

(2) Parks shall be required to complete a total of six units of continuing education in courses in ethics and/or business bankruptcy, and file a declaration in this case providing proof of same within six months of entry of the sanctions order.

(3) The monetary sanctions imposed against Parks for his Rule 9011 violations will be limited to $10,000 consistent with the settlement reached between the Movants and Parks, and Parks' total liability for sanctions and attorney's fees and costs shall be capped at this amount.

Upon further review of the record in this case, and based upon the additional arguments and evidence submitted by Parks, the Court is persuaded that the reduced sanctions are appropriate and fair because: (i) Parks lacks the ability to pay a higher sanction amount; (ii) the bulk of the culpability for this frivolous bankruptcy filing should be assigned to Peters, a twice-declared "vexatious litigant," who had an axe to grind and a clear motive of bad faith; (iii) Parks' decision to file this bankruptcy case was not motived by ill-will or malice, and he was merely negligent; and (iv) imposing a sanction of $10,000 against Parks is sufficient to deter other attorneys from losing track of their true client.

See In re Blue Pine Group, Inc., 526 Fed. Appx. 768, 769 (Ninth Cir. 2013) (unpublished) (reducing the Rule 9011 sanctions awarded against the debtor's attorney from $109,528 to $11,000 because the client was primarily culpable, and the $11,000 sanction was sufficient to deter similar conduct by others).

V.

CONCLUSION

The motion for Rule 9011 sanctions is granted as modified by this Memorandum Decision. Movants shall prepare and lodge an order granting the motion that incorporates the Court's prior rulings from the June 24 and August 5 hearings, as well as the Court's findings and conclusions more fully set forth in this Memorandum Decision.

DATED: August 12, 2021

Louise De Carl Adler, JUDGE
United States Bankruptcy Court