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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *PR* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

JAMES W. KEENAN and JUDY M.
KEENAN

Debtors.

CASE NO: 07-CV-1074 W

ORDER AFFIRMING
BANKRUPTCY COURT'S
AWARD OF SANCTIONS
AGAINST SAMY HENEIN
AND SUPPA, TRUCCHI &
HENEIN, LLP

Bank. No. SD 96-00871-B11

1
2 JAMES W. KEENAN and JUDY M.
3 KEENAN

4 and SUPPA, TRUCCHI & HENEIN
5 and SAMMY S. HENEIN,

6
7 Appellants

8 v.

9 PYLE, et. al.,

10
11 Appellees,
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13

14 On May 14, 2007 Appellants Samy Henein and Suppa, Trucchi, & Henein, LLP
15 (collectively, "Appellants") properly appealed the Bankruptcy Court's award of
16 sanctions against them. On June 15, 2007 Appellees Pyle, et. al. chose to have the
17 appeal heard by this District Court pursuant to 28 U.S.C. § 158. The Court decides the
18 matter on the papers submitted and without oral argument pursuant to S.D. Cal. Civ.
19 R. 7.1(d.1). For the following reasons, the Court **AFFIRMS** the Bankruptcy Court's
20 decision.

21
22 **I. BACKGROUND**

23 In January 1996, James W. Keenan and Judy M. Keenan, husband and wife,
24 commenced a Chapter 11 bankruptcy action in the United States Bankruptcy Court for
25 the Southern District of California. In August 1996, Appellees Ross M. Pyle and
26 Procopio, Cory, Hargreaves & Savich LLP and Jeffrey Issaacs (collectively, "Appellees")
27 were appointed Trustee and Trustee's counsel, respectively, of the Keenans' bankruptcy
28 estate ("estate"). Over the next ten years, the Keenans filed more than sixty separate

1 appellate proceedings against Appellees and others arguing misconduct in the handling
2 and distribution of the estate. (*Record On Appeal*, 79–81 [hereinafter “ROA”].) None
3 of the actions have, so far, resulted in judgment against Appellees. (*Id.*) A full
4 recitation of the Keenans’ truly astonishing number of filings and defeats is not relevant
5 for the purposes of this motion, and the Court will simply relate the facts necessary to
6 render review in this particular appeal.

7 On June 30, 2006 the Keenans filed a complaint against Appellees in bankruptcy
8 court over the handling of their estate alleging RICO violations, breach of fiduciary duty,
9 violation of civil rights, breach of contract, negligence and seeking injunctive and
10 declaratory relief. (ROA 2–16.) The case was assigned to Judge Peter Bowie, who was
11 also presiding over the underlying Chapter 11 estate. (*Id.*) In this action, the Keenans
12 were represented by Appellant Samy S. Henein (“Henein”) of the law firm Suppa,
13 Trucchi & Henein, LLP (the “ST&H firm”). (ROA 2.) The ST&H firm is also an
14 Appellant in this action.

15 On September 11, 2006 Appellees moved to dismiss the claims, and in the
16 alternative sought summary judgment. (ROA 177:18–21.) The motion was initially set
17 for hearing on October 10, 2006, but was rescheduled to October 23, 2006 on the
18 Court’s own motion. (ROA 94:10–12.)

19 On September 25, 2006, the date the Keenans’ opposition was due, the Keenans
20 filed a separate action in district court against Judge Bowie alleging RICO and civil rights
21 violations and seeking declaratory and injunctive relief. (Compl., Keenan v. Bowie, No.
22 06-CV-2086 (S.D. Cal. Sep. 25, 2006).) The Keenans generally alleged that a “criminal
23 conspiracy” existed between Judge Bowie and others, which was designed to enrich the
24 Trustee at the expense of the bankruptcy estate. (*Id.*) In this action, the Keenans
25 represent themselves.

26 On September 28, 2006, three days after the Keenans’ bankruptcy opposition was
27 due, the Keenans filed an *ex parte* application in bankruptcy court to continue the
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1 motion to dismiss hearing date. (ROA 94:12–19.) The motion was signed on behalf of
2 the Keenans by Appellant Samy S. Henein of the ST&H firm. The bankruptcy court
3 denied Appellants' motion. Keenan v. Pyle (In re Keenan), 372 B.R. 496, 500 (Bankr.
4 S.D. Cal. 2006).

5 On October 13, 2006 the Keenans filed a motion for reconsideration of the denial
6 of the *ex parte* motion to continue and also moved, for the first time, to disqualify Judge
7 Bowie from the bankruptcy court action. (ROA 29–54.) Appellant Henein, the
8 Keenans' attorney, signed and submitted the disqualification motion on their behalf.
9 (ROA 38.) Judge Bowie, aware of the Keenans' suit against him in district court, heard
10 the motion and directed out of "an abundance of caution" that the bankruptcy clerk
11 reassign the disqualification motion to a different judge. (ROA 93–97.) The bankruptcy
12 clerk reassigned the disqualification motion to Judge Meyers.

13 On December 21, 2006 Judge Meyers denied the disqualification motion in a
14 published opinion. See In re Keenan, 372 B.R. at 496. In particular, the court found
15 that the timing of the dismissal motion and the district court action against Judge Bowie
16 supported an inference that the Keenans were engaging in forum shopping and trying
17 to circumvent doctrines of res judicata and collateral estoppel. (*Id.* at 501.) The court
18 also noted that while the Keenans had for several years alleged an improper relationship
19 between Judge Bowie and the trustee, they had yet to provide any factual basis for
20 disqualification. (*Id.*)

21 On January 8, 2007 Appellees filed a Bankruptcy Rule 9011 motion for sanctions
22 against the Keenans, Appellant Henein, and Appellant ST&H based on their
23 prosecution of the disqualification motion. (ROA 102–120.) Appellees argued that the
24 Keenans and their counsel had violated each and every manner of conduct proscribed
25 by Rule 9011(b). (*Id.*) On January 22, 2007 Appellant Henein submitted an opposition
26 to Appellees' motion on behalf of the Keenans, the ST&H firm, and Henein personally.
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1 (ROA 121–131.)¹

2 On April 12, 2007 Judge Meyers heard oral argument on Appellees' sanctions
3 motion. On May 4, 2007 Judge Meyers granted the motion and awarded sanctions
4 against the Keenans, the ST&H firm, and Henein in the amount of \$10,000.00. (ROA
5 141–143.) Specifically, the court found that the disqualification motion "was filed in bad
6 faith and for an improper purpose in violation of Rule 9011." (ROA 142.) On May 14,
7 2007 the Keenans, appearing *pro se*, appealed the sanctions award individually. (ROA
8 216–222.) On January 9, 2008 this Court affirmed the award of sanction as to the
9 Keenans. Order Aff. Bankr. Sanctions, Keenan et. al. v. Pyle et. al., 07-CV-1090 W
10 (S.D. Cal. Jan. 9, 2008).

11 The present action involves Appellant Henein's and Appellant ST&H's appeal
12 of the award of sanctions against them. On December 7, 2007, after some confusion
13 regarding the docketing of the record, Appellants filed their opening brief. (Doc. No.
14 7.) On January 11, 2008 Appellees filed their brief and appendix. (Doc. Nos. 11, 12.)
15 On January 24, 2008 Appellants moved for additional time to file their reply brief, a
16 request the Court denied on January 25, 2008. (Doc. Nos. 14, 16.)

19 II. STANDARD OF REVIEW

20 Appellate review of sanctions orders entered by a bankruptcy court pursuant to
21 Bankruptcy Rule 9011 are conducted under the same standards applicable to sanctions
22 orders under Federal Rule of Civil Procedure 11. Tsafaroff v. Taylor (In re Taylor), 884
23 F.2d 478, 480 (9th Cir. 1989). All aspects of the review of an award of sanctions is
24 conducted under an abuse of discretion standard. Cooter & Gell v. Hartmarx Corp.,
25 496 U.S. 384, 405 (1990); Caldwell v. Unified Capifal Corp. (In re Rainbow Magazine,
26 Inc.), 77 F.3d 278, 283 (9th Cir. 1996).

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28 ¹On February 9, 2007 a notice of entry of judgment against the Keenans was docketed
in the underlying bankruptcy court adversary proceeding, a final judgment for purposes of
appeal.

1 An abuse of discretion occurs only when “no reasonable person could take the
 2 view adopted by the trial court. If reasonable persons could differ, no abuse of discretion
 3 can be found.” Stone v. City & Couty of San Francisco, 968 F.2d 850, 861 n.19 (9th
 4 Cir. 1992) (internal quotations and citations omitted). An appellate court may reverse
 5 the trial court for an abuse of discretion only if firmly convinced that the reviewed
 6 decision lies beyond the pale of reasonable justification under the circumstances.
 7 Harman v. Apfel, 211 F.3d 1172, 1175 (9th Cir. 2000).

8 9 **III. DISCUSSION**

10 Appellants raise a single issue on appeal: whether the sanctions order should be
 11 reversed because the disqualification motion was not frivolous.² (*Appellants’ Br.* 3.)
 12 Because Bankruptcy Rule 9011 is central to the disposition of this appeal, the Court
 13 reprints the Rule in relevant part below.
 14

15 16 **A. Rule 9011. Signing of Papers; Representations to the Court;** 17 **Sanctions; Verification and Copies of Papers**

18 (a) **Signature.** Every petition, pleading, written motion, and other paper,
 19 except a list, schedule, or statement, or amendments thereto, shall be
 20 signed by at least one attorney of record in the attorney's individual name.
 21 A party who is not represented by an attorney shall sign all papers. ...

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

27 ²It should be noted that Appellant Henein’s and Appellant ST&H’s argument is, in all
 28 material respects, identical to the Keenans’ third question presented in Keenan et. al. v. Pyle
et. al., 07-CV-1090 W (S.D. Cal. June 13, 2007). As such, the Court finds its prior Order
 helpful in resolving Appellants’ arguments in this case.

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

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

6 (3) the allegations and other factual contentions have evidentiary support
7 or, if specifically so identified, are likely to have evidentiary support after
8 a reasonable opportunity for further investigation or discovery; and

9 (4) the denials of factual contentions are warranted on the evidence or,
10 if specifically so identified, are reasonably based on a lack of information or
11 belief.

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

16 (1) **How initiated.**

17 (A) **By motion.** A motion for sanctions under this rule shall be made
18 separately from other motions or requests and shall describe the specific
19 conduct alleged to violate subdivision (b). ...

20 (B) **On court's initiative. ...**

21 (2) **Nature of sanction; limitations.** A sanction imposed for violation of
22 this rule shall be limited to what is sufficient to deter repetition of such
23 conduct or comparable conduct by others similarly situated. Subject to the
24 limitations in subparagraphs (A) and (B), the sanction may consist of, or
25 include... an order to pay a penalty into court, ...

26 (A) **Monetary sanctions** may not be awarded against a represented
27 party for a violation of subdivision (b)(2).
28

1 (B) ...

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3 (3) **Order.** When imposing sanctions, the court shall describe the conduct
4 determined to constitute a violation of this rule and explain the basis for
5 the sanction imposed.

6 (d) **Inapplicability to discovery.** ...

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8 (e) **Verification.** ...

9 (f) **Copies of signed or verified papers.** ...

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12 **B. Regardless of Whether the Motion Was Frivolous, The Bankruptcy**
13 **Court Did Not Abuse Its Discretion By Awarding Sanctions**

14 Appellants take a very narrow view of the sanctions award, and argue that the
15 bankruptcy court abused their discretion in awarding sanctions because the motion to
16 disqualify was not frivolous.³ (*Appellants' Br.* 6–11.) Appellees point out that
17 Appellants' entire argument assumes that the bankruptcy court awarded sanctions
18 exclusively on a Rule 9011(b)(2) violation. (*Appellees' Br.* 13.) In any event, Appellees
19 argue, the bankruptcy court properly used its discretion in awarding sanctions under
20 Rule 9011(b)(1) and (b)(3). (*Id.* 13–17.) Finally, Appellees argue, Appellants'
21 disqualification motion was indeed frivolous under Rule 9011(b)(2). (*Id.* 18–19.)

22 Bankruptcy Rule 9011(c) allows a court to award sanctions for violations of
23 9011(b). Bankr. Rule 9011(c). A court may sanction a party, an attorney or a law firm
24 if they file a motion for an improper purpose, such as to harass, delay, or needlessly
25

26 ³The arguments in Appellants' brief assume that this Court should make an
27 independent evaluation into whether their motion to disqualify was "frivolous" or not.
28 (*Appellants' Br.* 6–11.) This is improper. Rather, this Court is called upon in a limited role to
determine whether Judge Meyer abused his discretion in finding that the motion violated
certain Rule 9011(b) mandates. In doing so, we accord Judge Meyer wide latitude on his
findings. United States v. McMullen, 98 F.3d 1155, 1159 (9th Cir. 1996).

1 increase the cost of litigation. Bankr. Rule 9011(b)(1). A court may also sanction a
2 party, an attorney or law firm if they file a motion containing allegations and factual
3 contentions that do not have evidentiary support or are unlikely to have factual support
4 after a reasonable opportunity for discovery. Bankr. Rule 9011(b)(3).

5 Judge Meyer did not abuse his discretion in sanctioning Appellants because it was
6 shown that the Keenans have a long history of harassing their adversaries with
7 unsupported accusations, burdening both the court and their opponents with needless
8 costs. Further, the Keenans clearly had enough time to file their complaint against Judge
9 Bowie, while putting off and trying to extend the time to oppose the bankruptcy action's
10 pending motion to dismiss. Given the similarity between the Keenans' and Appellants'
11 filings in this court, one can only assume that Appellants were aware of the Keenans'
12 actions, and could have counseled them differently.⁴ A reasonable person could
13 certainly conclude that the Keenans were, once again, merely seeking to delay the
14 proceedings. Sanctioning the Keenans, their attorney, and the law firm is a reasonable
15 method for protecting the Court and the litigants from future harassment and needless
16 cost.

17 Appellants themselves also concede that no formal evidence, such as declarations
18 or depositions, was presented in support of their motion to disqualify. (*Appellants' Br.*
19 *9.*) Indeed, Judge Meyer concluded that, while the Keenans have trotted out the same
20 accusations of judicial cronyism since 1999, they have supplied no facts in support of
21 their accusations. In re Keenan, 372 B.R. at 501. Nor have any of Judge Bowie's rulings
22 been overturned. Id. In light of the Keenans' litigation history, it was certainly
23 reasonable for Judge Meyer to find that Henein, on behalf of the ST&H law firm, filed
24 the disqualification motion knowing that it had no evidentiary support, and would still
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28 ⁴Regardless, Appellants do not contend that the Keenans' history and litigation tactics
were unknown to them. Rather, the facts and arguments in Appellants' opening brief assume
that the Keenans and Appellants were working in concert.

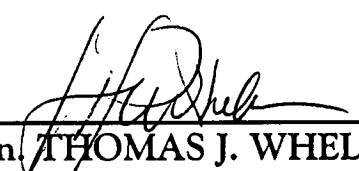
1 likely be unsupportable even after reasonable investigation.⁵

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3 **IV. CONCLUSION**

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5 This Court, in reviewing the bankruptcy decision, is not called upon to second-
6 guess Judge Meyer's determination that Appellants violated the specifics of Bankruptcy
7 Rule 9011(b). Rather, we review whether Judge Meyer abused his discretion in
8 sanctioning Appellants. Given the circumstances, Judge Meyer's determination does not
9 lie beyond the pale of reasonable justification. See Harman, 211 F.3d at 1175.
10 Accordingly, the Court **AFFIRMS** the Bankruptcy Court's sanctions award in its
11 entirety against Appellants Samy S. Henein and the Suppa, Trucchi, and Henein law
12 firm.

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14 **IT IS SO ORDERED.**

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16 Dated: January 29, 2008



Hon. THOMAS J. WHELAN
United States District Court
Southern District of California

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⁵Because the Court finds that Judge Meyer did not abuse his discretion by awarding sanctions under Rule 9011(b)(1) and (b)(3), the Court need not reach the question of whether the disqualification motion was frivolous. (See *Appellees' Br.* 18–19.)