

In re Marquam Investment Corp., Civil No. 95-1506-FR
Case No. 383-01488-hlh7

11/02/95

J. Frye, reversing HLH

Unpublished

Erwin & Erwin, P.C. ("Erwin") requested \$120,000 in attorneys fees which the bankruptcy court granted. In 1991 the 9th Circuit upheld the district court's reversal of the fee award. In a separate order entered in 1992 awarding fees to Brewer for the appeal, the 9th Circuit stated with respect to the Erwin claim: "With this factual and legal background, any appeal from the district court's reversal of the bankruptcy court was beyond doubt frivolous to the extreme." In 1993, Brewer and the Trustee moved for sanctions against Erwin under Rule 9011 for filing a claim of \$120,000 against the estate without a reasonable basis. The Bankruptcy Court denied the motion. Brewer appealed to the district court. Judge Frye stated that the record in the case supports Brewer's position that Erwin's \$120,000 claim was not well grounded in fact or warranted by existing law or any good faith argument for the extension, modification or reversal of existing law. Judge Frye explicitly found that Erwin's \$120,000 claim was interposed for the improper purpose of avoiding payment of Brewer's state court judgment through the filing of a frivolous claim. Judge Frye remanded the case to the bankruptcy court for entry of an order granting Rule 9011 sanctions to Brewer.

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DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:

MARQUAM INVESTMENT CORP.,

Debtor.

SUZAN BREWER,

Appellant,

v.

ERWIN & ERWIN, P.C.,

Respondent.

Civil No. 95-1506-FR

Bankruptcy No. 383-01488-HLH7

O P I N I O N

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1 FRYE, Judge:

2 The matter before the court is the appeal of the appel-
3 lant-plaintiff, Suzan Brewer, from the order of the United
4 States Bankruptcy Court filed on January 12, 1995 denying her
5 motion for sanctions pursuant to Bankruptcy Rule 9011 against
6 the Respondent-Defendant, Erwin & Erwin, P.C.

7 BACKGROUND

8 On May 4, 1983, Marquam Investment Company (Marquam)
9 filed a petition in bankruptcy, claiming assets of approxi-
10 mately \$107,000 and debts of approximately \$255,000.

11 Erwin & Erwin, P.C. filed an unsecured claim for \$120,000
12 in attorney fees. Suzan Brewer, the appellant-plaintiff here,
13 filed an unsecured claim for \$75,000, the amount of punitive
14 damages that were awarded to her in a state court judgment.

15 On March 24, 1988, the bankruptcy court approved the
16 Chapter 11 plan submitted by Marquam and allowed the unsecured
17 claim of Erwin & Erwin, P.C. for \$120,000 in attorney fees.
18 Brewer's \$75,000 claim for punitive damages was discharged
19 pursuant to 11 U.S.C. § 726(a)(4) because there were insuffi-
20 cient funds in the bankrupt's estate to reach it.

21 Brewer appealed the allowance of the claim of Erwin
22 & Erwin, P.C. to the United States District Court for the
23 District of Oregon.

24 On March 8, 1990, the Honorable James A. Redden, United
25 States District Court Judge, reversed the order of the bank-
26 ruptcy court which had allowed the claims of Erwin & Erwin,

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1 P.C. for attorney fees, finding that Erwin & Erwin, P.C. had
2 not adequately documented its claim for attorney fees, and
3 further finding that even if Erwin & Erwin, P.C. had docu-
4 mented its claim for attorney fees, Erwin & Erwin, P.C. had
5 not shown by a preponderance of the evidence that its claim
6 was a valid claim. Opinion, p. 12, ER-19. Judge Redden
7 remanded the case to the bankruptcy court for the entry of
8 an order denying in its entirety the claim of Erwin & Erwin,
9 P.C. for attorney fees.

10 Erwin & Erwin, P.C. appealed the decision of Judge Redden
11 to the United States Court of Appeals for the Ninth Circuit.
12 On August 26, 1991, the United States Court of Appeals for
13 the Ninth Circuit affirmed the decision of Judge Redden. In
14 In re Marquam Inv. Corp., 942 F.2d 1462 (9th Cir. 1991), the
15 appellate court stated, in part:

16 The facts before the bankruptcy court demon-
17 strate that a corporation controlled by members of
18 the Erwin law firm has successfully avoided payment
19 of a state court judgment entered more than 11 years
20 ago in favor of Brewer and against Marquam.

21 Eight days after the Oregon Supreme Court
22 denied final review of the 1980 judgment, Marquam
23 filed a petition in bankruptcy listing its assets
24 at 107,152, and the claim of the Erwin law firm
25 for \$120,000 in unbilled legal services. As set
26 forth above, this claim is not supported by cor-
porate minutes, an account payable, or any record
of any billing for legal services. Under all the
circumstances presented in the record before the
bankruptcy court, we have concluded the testimony of
the corporate insiders in support of the Erwin law
firm's claim for legal services is so "implausible
on its face that a reasonable fact finder would not
credit it."

1 After reviewing the evidence in the record
2 before the bankruptcy court, we are left with a
3 definite and firm conviction that the bankruptcy
4 court was mistaken in finding that the Marquam
5 Investment Corporation entered into a contract
6 to pay the Erwin law firm for its legal services.
7 Accordingly, we hold that the bankruptcy court's
8 finding that Charles Erwin did not intend to donate
9 his legal services is clearly erroneous.

10 Id. at 1466 (quoting Anderson v. City of Bessemer City, North
11 Carolina, 470 U.S. 564, 575 (1985)) (citation omitted).

12 On March 24, 1992, the United States Court of Appeals for
13 the Ninth Circuit filed a separate order awarding attorney
14 fees to Brewer in the amount of \$5,058.75 pursuant to Fed. R.
15 App. P. 38. The appellate court stated, in part:

16 First, we agreed with the district court that
17 it was clear beyond dispute that the Erwins were
18 insiders in the Marquam corporation as a matter of
19 law. The Supreme Court in Pepper v. Litton, 308
20 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939) declared
21 that an insider must prove the good faith of the
22 transaction and its inherent fairness. There were
23 no billing or corporate documents evidencing a debt
24 for attorney fees, nor were there any accounts
25 receivable or billings for legal services. In re
26 Marquam, 942 F.2d at 1466. The bankruptcy court
acknowledged that "all we have is the testimony of
Charles Erwin that such (legal services for pay) was
the intent." Id. at 1464. Nevertheless, despite
the lack of documentary evidence in a situation
where the burden was on appellant to show the good
faith of the transaction, the bankruptcy court
allowed the claim for attorney fees. The district
court overturned this ruling, and we easily affir-
med. We also pointed out that the reasoning of the
bankruptcy court was a flawed syllogism that not
only defied elementary precepts of logic but also
fundamental purposes of contract law. Id. at 1466.
With this factual and legal background, any appeal
from the district court's reversal of the bankruptcy
court was beyond doubt frivolous to the extreme.

In re Marquam Inv. Corp., 959 F.2d 800, 801 (9th Cir.), cert.
denied, ___ U.S. ___, 113 S.Ct. 676 (1992).

1 On April 28, 1993, Brewer and the trustee in bankruptcy
2 moved the bankruptcy court for sanctions against Erwin &
3 Erwin, P.C. pursuant to 11 U.S.C. Rule 9011 for filing a
4 claim for \$120,000 against the estate without having a rea-
5 sonable basis for so doing. The motion filed by Brewer and
6 the trustee in bankruptcy was entitled "MOTION FOR SANCTIONS
7 PURSUANT TO RULE 9011 AGAINST ERWIN & ERWIN, P.C., CHARLES
8 ERWIN AND WARDE H. ERWIN." Despite its title, the motion for
9 "an Order of sanctions against Erwin & Erwin, P.C. [was] pur-
10 suant to 11 U.S.C. Rule 9011 for filing a claim of \$120,000
11 against the estate without a reasonable basis." Motion, p. 1,
12 ER-48.

13 On December 16, 1994, in a published opinion, the bank-
14 ruptcy court denied the motion of Brewer and the trustee in
15 bankruptcy for sanctions. The bankruptcy court stated that
16 "the 9th Circuit panel misunderstood the syllogism relied upon
17 by this author in making the ruling in question and the legal
18 basis therefore." Opinion, p. 20, ER-70. The bankruptcy
19 court wrote:

20 The authors of the 9th Circuit's opinion were
21 also apparently unaware of the fundamental legal
22 concept of "quasi-contract" . . . so as to correctly
23 interpret and reiterate this court's orally stated
24 syllogism. Had the authors been familiar with the
25 concept, they might not have misinterpreted the
26 basis for this court's ruling.

24

25 [T]his court cannot conclude that the claim was
26 fraudulent as asserted by Mr. Robinowitz. It is
possible that an appellate court could find this

1 court's prior findings of fact on this issue to be
2 clearly erroneous and reverse the court again with
3 respect to this motion for sanctions. Given the
4 misinterpretations and misunderstandings by the
5 9th Circuit panel of this court's reasoning and
6 actions in this matter, however, it seems entirely
7 inappropriate to again impose sanctions. This time,
8 if this issue is appealed and the basis for this
9 court's earlier ruling is understood, an appellate
10 court may recognize that there was evidence to
11 support the claimant's position and find that the
12 position was not frivolous. Obviously, this court
13 did not and does not find it to have been a frivo-
14 lously or fraudulently filed claim.

15 Id. at 22, ER-72.

16 On January 12, 1995, the bankruptcy court entered an
17 order based upon the court's opinion dated December 16, 1994,
18 in which it denied "all motions for the imposition of sanc-
19 tions." Order, p. 2, ER-75.

20 CONTENTIONS OF THE PARTIES

21 Brewer contends that the bankruptcy court erred in
22 denying the motion of Brewer and the trustee for sanctions.
23 Brewer asserts that the United States Court of Appeals for
24 the Ninth Circuit has ruled that the claim filed by Erwin
25 & Erwin, P.C. for \$120,000 in legal services was "frivolous
26 to the extreme;" that this is the law of the case; and that
sanctions under Rule 9011 should have been allowed.

Erwin & Erwin, P.C. contends that the bankruptcy court
correctly found that there was a substantial factual and legal
basis supporting its claim for fees for providing necessary
legal services, and that the decision of the United States
///

1 Court of Appeals under Fed. R. App. P. 38 does not require
2 the imposition of sanctions.

3 STANDARD OF REVIEW

4 A district court acts as an appellate court when it
5 reviews a judgment of the bankruptcy court. In re Daniels-
6 Head & Assocs., 819 F.2d 914, 918 (9th Cir. 1987). The dis-
7 trict court reviews findings of fact for clear error and
8 reviews conclusions of law de novo. Id.

9 APPLICABLE LAW

10 Rule 9011(a) states, in relevant part:

11 Every petition, pleading, motion and other
12 paper served or filed in a case under the Code on
13 behalf of a party represented by an attorney . . .
14 shall be signed by at least one attorney of record
15 in the attorney's individual name, whose office
16 address and telephone number shall be stated. . . .
17 The signature of an attorney or a party constitutes
18 a certificate that the attorney or party has read
19 the document; that to the best of the attorney's or
20 party's knowledge, information, and belief formed
21 after reasonable inquiry it is well grounded in
22 fact and is warranted by existing law or a good
23 faith argument for the extension, modification, or
24 reversal of existing law; and that it is not inter-
25 posed for any improper purpose, such as to harass
26 or to cause unnecessary delay or needless increase
in the cost of litigation or administration of the
case. . . . If a document is signed in violation
of this rule, the court on motion or on its own
initiative, shall impose on the person who signed
it, the represented party, or both, an appropriate
sanction, which may include an order to pay to the
other party or parties the amount of the reasonable
expenses incurred because of the filing of the docu-
ment, including a reasonable attorney's fee.

24 ANALYSIS AND RULING

25 Three judges of the United States Court of Appeals
26 for the Ninth Circuit concluded that Charles Erwin was "an

insider" and that "[t]he facts before the bankruptcy court demonstrate that a corporation controlled by members of the Erwin law firm has successfully avoided payment of a state court judgment entered more than 11 years ago in favor of Brewer and against Marquam." 942 F.2d at 1466. Two of the three judges of the United States Court of Appeals for the Ninth Circuit have concluded that "any appeal from the district court's reversal of the bankruptcy court was beyond doubt frivolous to the extreme." 959 F.2d at 801. These findings as the law of the case support a further finding that monetary sanctions under Rule 9011 in the form of fees and costs incurred because of the filing by Erwin & Erwin, P.C. of its claim for legal services are appropriate.

While the bankruptcy court surmised that the Court of Appeals had misinterpreted and misunderstood the basis for its initial ruling that the claim by Erwin & Erwin, P.C. for legal services was a valid claim, the record in this case reflects that the district court and the Court of Appeals discounted and/or disagreed with the basis for the ruling of the bankruptcy court rather than misunderstood the reasoning of the bankruptcy court.

The dilemma here was noted by the Honorable Arthur L. Alarcon, United States Circuit Court Judge, in his dissent to the award on appeal of fees to Brewer pursuant to Fed. R. App. P. 38. Judge Alarcon recognized that the bankruptcy court had found in favor of the claim of Erwin & Erwin, P.C., and

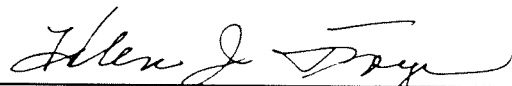
1 that a party relying on the ruling of the bankruptcy court
2 could hardly be thought to be pursuing a frivolous claim.
3 However, the majority awarded fees finding that "any appeal
4 from the district court's reversal of the bankruptcy court
5 was beyond doubt frivolous to the extreme." 959 F.2d at 801.

6 The record in this case supports the position of Brewer
7 that the \$120,000 claim of Erwin & Erwin, P.C. filed and
8 pursued by documents signed by Charles Erwin and Warde Erwin
9 was not well grounded in fact or warranted by existing law
10 or any good faith argument for the extension, modification or
11 reversal of existing law. The record in this court supports
12 a finding and this court finds that the \$120,000 claim of
13 Erwin & Erwin, P.C. was interposed for the improper purpose
14 of avoiding payment of a state court judgment through the
15 filing of a frivolous claim.

16 CONCLUSION

17 Based upon the record before the court, the order of the
18 bankruptcy court denying the "MOTION FOR SANCTIONS PURSUANT
19 TO RULE 9011 AGAINST ERWIN & ERWIN, P.C., CHARLES ERWIN AND
20 WARDE H. ERWIN" is reversed. This case is remanded to the
21 bankruptcy court for the entry of an order granting sanctions
22 to Suzan Brewer pursuant to Rule 9011.

23 DATED this 2 day of November, 1995.

24 

25 HELEN J. FRYE
26 United States District Judge