

UNITED STATES BANKRUPTCY COURT

**U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

DISTRICT OF ARIZONA

In re)	
)	Chapter 7
RICHARD C. BRUMGARD and KAY E.)	
BRUMGARD,)	No. 4-02-04327-EWH
)	
Debtors.)	
_____)	
)	
YOUNG BUILDERS, INC. PROFIT)	
SHARING & RETIREMENT TRUST,)	Adv. No. 4-02-00117
)	
Plaintiff,)	
v.)	MEMORANDUM DECISION
)	(SANCTIONS)
RICHARD C. BRUMGARD and KAY E.)	
BRUMGARD,)	(Opinion to Post)
)	
Defendants.)	
_____)	

At issue is whether sanctions should be imposed against John Young ("Young") and his counsel, Fred Gamble ("Gamble"), for misrepresenting the ownership of a judgment which Young seeks to enforce against the Debtors ("Brumgards"). Because the record indicates that Young and Gamble engaged in bad-faith litigation, sanctions will be imposed.

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I. INTRODUCTION

This case has had an extended history in this court.¹ There is currently on appeal, a 55-page memorandum decision (“Memorandum Decision”)² regarding, among other things, the rights of the Brumgards and the Young Entities³ to a mini-storage facility. What remains to be decided is whether misrepresentations or material omissions were made in this court about the ownership of a particular judgment (“Pearce Judgment”).

The Pearce Judgment is uniquely important to the Young Entities. Because it is secured by a deed of trust, it is the only judgment which cannot be avoided under state or federal law as impairing the Brumgards’ homestead exemption. If the Pearce Judgment is enforceable, any homestead right that the Brumgards might have to the mini-warehouse or the proceeds from its sale will be wiped out. The Pearce Judgment was the subject of a tentative oral ruling (“Tentative Ruling”) entered in July and

¹ This memorandum decision concerning sanctions contains specific references to docket entries in two cases before this court: (1) an administrative case: Richard C. Brumgard and Kay E. Brumgard, No. 4:02-bk-04327-EWH (“In re Brumgard”); and 2) an adversary proceeding: Young Builders Inc. Profit Sharing & Retirement Trust v. Richard C. Brumgard and Kay E. Brumgard, No. 4:02-ap-00117-EWH (“Young Builders v. Brumgard”).

² Memorandum Decision entered Sep. 1, 2005 at Docket No. 27, and Correction entered on Sep. 27, 2005 at Docket No. 36 in Young Builders v. Brumgard. The same documents are also entered at Docket No. 100 and 112 in In re Brumgard.

³ The Young Entities collectively refers to John and Ann Young (“Youngs”); the Young Builders, Inc. Pension and Profits Sharing Trust (“Trust”) and Young Builders, Inc. (“Young Builders”).

1 September 2004 on pending motions for summary judgment.⁴ That ruling was that the
2 Young Entities were barred, on judicial estoppel grounds, from enforcing the Pearce
3 Judgment unless the evidence demonstrated that the Youngs did not own it in 1995
4 when they filed a Chapter 13 case.⁵ For reasons explained in detail in the
5 Memorandum Decision, the Tentative Ruling was not adopted as the court's final
6 ruling. However, the Memorandum Decision was not issued until September 2005.
7 For over a year, Young and Gamble believed that, unless it could be proven that the
8 Pearce Judgment was not property of the Youngs in 1995, an order would be entered
9 holding the Pearce Judgment to be unenforceable.
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13 14 **II. JURISDICTIONAL STATEMENT**

15 Jurisdiction is proper under 28 U.S.C. § 1334(a), §§ 157(b)(2)(B) and (O) and
16 under § 105(a) and Rule 9011.
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22 ⁴ Minute Entry for hearing held July 8, 2004 at Docket No. 72 and Transcript at Docket
23 No. 74, In re Brumgard; and Minute Entry for hearing held Sept. 27, 2004 at Docket No. 80 and
24 Transcript at Docket No. 81, In re Brumgard. The Memorandum Decision incorrectly listed the date
for the first issuance of the Tentative Ruling as August 20, 2004. The correct date is July 8, 2004.

25 ⁵ Unless otherwise indicated, all chapter, section and rule references are to the
26 Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure,
27 Rules 1001-9036, as enacted and promulgated prior to the effective date (October 17, 2005) of
The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
28 Apr. 20, 2005, 119 Stat. 23.

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III. PROCEDURAL HISTORY

On September 1, 2005, this court entered the Memorandum Decision and Orders regarding a number of pending matters, including the enforceability of the Young Entities' claims. The Memorandum Decision was entered after a full day evidentiary hearing held on May 2, 2005 and after consideration of the post-hearing briefs filed by the Brumgards and the Young Entities. The Memorandum Decision determined that due to the inconsistency of the testimony by Young about the ownership of the Pearce Judgment, including assertions made in previous bankruptcy cases filed by the Young Entities, in judgment renewal affidavits and in pleadings filed in this case, a hearing would have to be held to determine if sanctions should be entered against Young and his attorney, Gamble. The Memorandum Decision listed the possible sanctions as including:

1. Disallowance of some or all of the Young Entities claims, other than the Trust's co-tenancy claims;
2. Imposition of a judgment awarding the Brumgards' attorneys fees for all time spent objecting to the Young Entities' claims other than the Trust co-tenancy claim;
3. Entry of an order barring Gamble from further practice in the Federal Bankruptcy Courts in the District of Arizona;

1 Young testified that the information he gave to the lawyers in the various
2 bankruptcy cases filed by the Trust and the Youngs; his testimony before Judge Baum
3 at a sanctions hearing in 1997; and the judgment renewal affidavits he filed for the
4 Pearce Judgment were all based on his mistaken belief that the liquidation of Young
5 Builders had resulted in a transfer of the Pearce Judgment to the Youngs.
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7 (Transcript p. 67). Young also testified that he never affirmatively intended to
8 mislead anyone about the ownership of the Pearce Judgment in any of the earlier
9 proceedings. (Transcript p. 67, lines 23-24).
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11 Gamble and Young concede that there have been repeated representations in
12 this court, in the Young Entities' bankruptcy cases and in the judgment renewal
13 affidavits for the Pearce Judgment, in which the Youngs and their lawyers, including
14 Gamble, represented that the Youngs individually owned the Pearce Judgment. In
15 their testimony, both Young and Gamble asserted that a primary source for this
16 mistake was the Youngs' Chapter 13 lawyer who, they allege was provided with
17 complete documentation regarding all of the Young Entities judgments, but failed to
18 ascertain that there was never an assignment from Young Builders to the Youngs of
19 the Pearce Judgment (Transcript p. 18, lines 2-10, Transcript pp. 102-103).⁷
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25 ⁷ The lawyer was not called as a witness at the Order to Show Cause hearing. When
26 he testified at the sanctions hearing held in 1997, he denied ever receiving copies of the
27 judgments. That testimony went unchallenged by Gamble who participated in the hearing.
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1 Gamble admits that he was aware in the early 1990's that the Pearce Judgment
2 had been acquired by Young Builders (Transcript p. 9, lines 12-15). He alleged that in
3 1994, at about the time that the Brumgards filed a case against Young Builders in state
4 court, Young told him the Youngs individually owned the Pearce Judgment.
5 Thereafter, he relied on that representation when he prepared judgment renewal
6 affidavits for Young's signature as the owner of the Pearce Judgment and when he
7 filed pleadings in this case asserting that the Youngs owned it. According to both the
8 testimony of Gamble and Young, neither one of them discovered Young's mistake
9 until 2003, when Gamble reviewed all of the paperwork regarding the Pearce
10 Judgment in preparation for a settlement conference.
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13 At the Order to Show Cause hearing, Gamble conceded that it may have been a
14 mistake not to inform this court, after it issued the Tentative Ruling in July 2004, that
15 there had never been a formal assignment from Young Builders to the Youngs of the
16 Pearce Judgment or that Young had been mistaken about what assets of Young
17 Builders were distributed to the Youngs in 1989.⁸ Gamble and Young's position can
18 be summarized as follows: Young was confused from 1989 until 2003 about what
19 Young Builders owned when it was liquidated and, therefore, incorrectly believed,
20 and informed his lawyers, that the Youngs individually owned the Pearce Judgment.
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26 ⁸ At the Order to Show Cause hearing, Gamble referred to a hearing before this court in
27 2003 where he asserted that the Pearce Judgment was owned by Young Builders. The hearing
28 actually occurred on July 8, 2004, when the Tentative Ruling was issued.

1 His confusion was not deliberate or willful and, therefore, no sanction should be
2 imposed against him. Gamble reasonably relied upon his client's statements that the
3 Youngs individually owned the Pearce Judgment from 1994 to 2003. He was entitled
4 to rely on his client for information and, even if such reliance was negligent, it was not
5 done in bad faith, was not objectively unreasonable and, therefore, no sanction should
6 be imposed.
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9 B. Inconsistencies with Gamble and Young's Explanations

10 1. Factual Inconsistencies

11 Young and Gamble's assertions about when Young became confused about the
12 ownership of the Pearce Judgment and why Gamble relied on his client's mistaken
13 assertions about the ownership of the Pearce Judgment have forced this court, yet
14 again, to review the record in the earlier Young Entities bankruptcy cases. That
15 review indicates that Gamble and Young's explanations do not adequately explain
16 what happened in the earlier cases.
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19 If Young believed that the Youngs personally owned the Pearce Judgment,
20 Note and Deed of Trust after 1989, then the Youngs, not Young Builders, would have
21 filed the ex parte receivership complaint in state court in 1990 (Chronology at 10).⁹
22 Young, as a Debtor in Possession in his individual Chapter 11 case filed in 1990, had
23 an independent duty to review the schedules filed by his lawyers. If he believed that
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26 ⁹ All references to the Chronology are to the Chronology attached as Appendix 1 to the
27 Memorandum Decision.

1 he and his wife individually owned the Pearce Judgment, he should have made sure it
2 was listed in the Chapter 11 Schedules. It wasn't. (Chronology at 12). If Young
3 believed that he had obtained the Pearce Judgment because of the dissolution of
4 Young Builders, it wouldn't have been necessary for the Trust's Chapter 11 lawyer to
5 file pleadings in the removed receivership case, which affirmatively stated that Young
6 Builders assigned the Pearce Judgment to the Youngs on a specific date. (Chronology
7 at 14(d)). They would have simply asserted that the Pearce Judgment was distributed
8 to the Youngs as part of the liquidation of Young Builders.
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11 In response to questions about why pleadings were filed in the Young Entities
12 bankruptcy cases, which repeatedly asserted that the Youngs individually owned the
13 Pearce Judgment, Young replied that he did not know, did not understand what was
14 really happening in the bankruptcy cases or that he just did what his lawyers advised
15 him. (Transcript p. 88). That testimony is neither credible or justified. In re Downey,
16 242 B.R. 5, 15 (Bankr. D. Idaho 1999) (“[A]ttorney error does not absolve a debtor,
17 who signs the petition and schedules under penalty of perjury, from the duty to ensure
18 the information is accurate and complete to the best of his knowledge”).
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22 Young was a successful businessman. At the time the Youngs filed their
23 Chapter 11 case, they owned multiple assets, including real estate, oil well
24 investments and partnership interests. The reason given for the Youngs' 1995
25 Chapter 13 filing was that there had been an adverse tax determination regarding some
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1 of their investments. During both their Chapter 11 and Chapter 13 cases, the Youngs
2 maintained two corporations – Young Builders and Advanced Coatings and Insulation
3 of Arizona, Inc. Until his retirement, Young was earning close to \$200,000 a year
4 working for those corporations as a roofing consultant. (Transcript p. 104, lines 2-5).

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6 Young's testimony at the Order to Show Cause hearing does not explain the
7 representations made in the Trust and Young bankruptcies about the ownership of the
8 Pearce Judgment. Instead, his testimony provides a different representation about the
9 ownership of the judgment. Both representations cannot be true. Because the
10 pleadings filed in the Youngs Chapter 11 case are closer in time to when Young
11 Builders distributed its assets, the representations in those pleadings are more likely
12 to be accurate than Young's testimony at the Order to Show Cause hearing. Those
13 pleadings indicate that shortly after the Youngs and the Trust filed for Chapter 11
14 protection, the Pearce Judgment was assigned to the Youngs so that the bankruptcy
15 court would maintain jurisdiction over the state court receivership action. An order
16 was entered in the Young Entities' Chapter 11 cases which stated that the receivership
17 action would not remain in bankruptcy court unless Young Builders filed its own
18 petition or the Pearce Judgment was assigned to the Youngs. Shortly thereafter,
19 pleadings were filed by the Trust's lawyers asserting that the Pearce Judgment was
20 transferred to the Youngs on June 3, 1991 to satisfy Young Builder's obligation to the
21 Youngs. (Chronology at 14(d)(i), (ii)). Notwithstanding the reference to a specific
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1 date, Young testified at the Order to Show Cause hearing that there is no assignment
2 paperwork in Young's possession evidencing the transfer of the Pearce Judgment to
3 the Youngs. For reasons discussed in greater detail later, the lack of documentation
4 for the transfer does not nullify its occurrence.
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6 2. Legal inconsistencies
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8 Gamble and Young argue that because there is no documentary evidence of a
9 transfer of the Pearce Judgment from Young Builders to the Youngs, the assertions
10 that Young Builders owned the judgment until 2002 are not inaccurate and cannot,
11 therefore, be the basis for the imposition of sanctions for engaging in bad-faith
12 litigation tactics. However, there is no merit to the argument that Young Builders
13 owned the Pearce Judgment until 2002.
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15 Under principles of claims preclusion and the doctrine of judicial estoppel, the
16 Pearce Judgment belongs to the Youngs. They affirmatively alleged that it had been
17 assigned to them in order to assure that the state court receivership action would
18 remain in the bankruptcy court. (Chronology at 14(d)). The bankruptcy court, the
19 creditors, and a later appointed examiner, all relied on the representation that the
20 Pearce Judgment was an asset of the Youngs. The apparent failure of the Youngs or
21 their lawyers to prepare the assignment paperwork, which is something only they
22 could do and which they affirmatively represented was done, cannot be used, over a
23 decade later to support an inconsistent claim of ownership of the Pearce Judgment.
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1 Such an inconsistent claim is barred under principles of claims preclusion because the
2 assumption that the Youngs owned the Pearce Judgment was integral to numerous
3 orders entered in the earlier bankruptcy cases, including orders appointing an
4 examiner (Chronology at 14(f)) and the 1997 sanctions order (Chronology at 29). See
5 In re Goldstein, 297 B.R. 766, 769-70 (Bankr. D. Ariz. 2003) (“Merger prevents a
6 plaintiff from asserting a new action on a ‘claim or any part thereof’ when a ‘final
7 personal judgment’ had previously been rendered in plaintiff’s favor on that claim.”)
8 (citing Restatement (Second) of Judgments § 18(1) (1982)). It is also barred under the
9 doctrine of judicial estoppel.
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13 The doctrine of judicial estoppel keeps a party from gaining an advantage by
14 taking one position in litigation and then seeking a second advantage by taking a
15 second inconsistent position. At the Order to Show Cause hearing, Gamble argued that
16 the removal of the receivership action was not beneficial to the Young Entities and,
17 therefore, they did not gain any advantage from claiming the Pearce Judgment had
18 been transferred to the Youngs. However, the seeking of a benefit analysis must be
19 made as of the time the representation was made. In the early stages of the Youngs
20 and Trust Chapter 11 cases, it was the Brumgards who sought remand of the
21 receivership action, and the Youngs who successfully argued, that the case should
22 remain in the bankruptcy court. (Chronology at 14 (d)).
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1 order to avoid the adverse result of the Tentative Ruling. There was no reason for
2 Gamble and Young to assert that Young Builders, rather than the Youngs, owned the
3 Pearce Judgment until after the Tentative Ruling was issued. The record indicates that
4 they, in fact, did not do so until after the Tentative Ruling was issued. Prior to July
5 2004, but after Gamble's discovery in 2003 that there were no assignment documents,
6 pleadings were filed which asserted that the Youngs owned the Pearce Judgment. See
7 Docket No. 62 at pg. 3, line 23, In re Brumgard (“[T]he security claimed by the
8 Youngs with regard to the Pearce Deed of Trust is based on a consensual lien and
9 cannot be affected by a homestead exemption, if one even exists in this case.”); see
10 also Docket No. 50 at para. 8, attached Pleading Affidavit of John Young, In re
11 Brumgard (“Young Builders, Inc. assigned its interest in the Pearce’s Note and Deed
12 of Trust to John R. and Margaret A. Young”).
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17 When in May 2005, an evidentiary hearing was finally held on all of the
18 outstanding matters between the parties, including the validity of the various Young
19 Entities judgments, no effort was made to explain the discrepancy between all of the
20 earlier assertions by the Youngs regarding the ownership of the Pearce Judgment and
21 the discovery in 2003 that there was no formal assignment of the Pearce Judgment
22 from Young Builders to the Youngs. From the limited way the evidence was
23 presented, Young and Gamble apparently hoped they would succeed in removing the
24 Pearce Judgment from the Tentative Ruling without having to address all the prior
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1 representations made, and relied upon in earlier proceedings, that the Youngs owned
2 it. It was only because the decision of so many of the remaining issues in this case
3 required the court to spend hours of time with the record in the earlier cases, that the
4 inconsistencies regarding ownership of the Pearce Judgment came to light.
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6 The mid-case change of position regarding the ownership of the Pearce
7 Judgment; the lack of disclosure regarding the inconsistency of that claim from the
8 claims made in the Young Entities bankruptcy cases; and the meritless argument that
9 the earlier representations about the ownership of the Pearce Judgment were mistakes,
10 were objectively unreasonable assertions made to achieve the improper purpose of
11 avoiding an adverse ruling. The attempts to assure that the Pearce Judgment would be
12 held to be enforceable by misrepresenting its ownership constitute the type of bad-
13 faith conduct which warrant the imposition of sanctions. Accordingly, sanctions will
14 be imposed against both Young and Gamble.
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19 **V. BANKRUPTCY COURT'S POWER TO SANCTION**

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21 Bankruptcy courts may sanction parties and their lawyers for improper conduct
22 under Rule 9011 and under the court's inherent power to police itself. In re Upland
23 Partners, No. 97-03746, 2006 WL 980583 at *7 (Bankr. D. Hawaii, Mar. 15, 2006). If
24 sanctions are warranted, the determination of appropriate sanctions to be imposed
25 against an attorney must be based on consideration of the American Bar Association's
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1 standards for imposing lawyers' sanctions. In re Lachtinen, 332 B.R. 404, 408 (9th
2 Cir. BAP 2005); In re Crayton, 192 B.R. 970, 980 (9th Cir. BAP 1996).

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4 A. Federal Bankruptcy Rule 9011

5 Rule 9011 requires that all submissions to a bankruptcy court be truthful and
6 submitted for a proper litigation purpose.¹⁰ A bankruptcy court may, on its own
7 motion, impose appropriate sanctions on lawyers and parties who violate the rule.¹¹ In
8 order for a sanction to be entered under Rule 9011, the evidence must demonstrate
9 that there has been objectively unreasonable conduct. In re Deville, 361 F.3d 539, 548
10 (9th Cir. 2004). If sanctions are warranted, the scope of the sanctions should be
11 limited to what is sufficient to deter repetition of the sanctioned conduct.¹² Sanctions
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15 ¹⁰ Rule 9011(b) provides as follows: Representations to the Court. By presenting to the
16 court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion,
17 or other paper, an attorney or unrepresented party is certifying that to the best of the person's
18 knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

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

21 (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by
22 a non-frivolous argument for the 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
25 identified, are likely to have evidentiary support after a reasonable opportunity for further
26 investigation or discovery; and

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

¹¹ Rule 9011(c)(1)(B) provides in pertinent part: On its own initiative, the court may
enter an order describing the specific conduct that appears to violate subdivision (b) and directing
an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect
thereto.

¹² Rule 9011(c)(2) provides as follows: Nature of Sanction; Limitations. A sanction
imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such
conduct or comparable conduct by others similarly situated. Subject to the limitations in

1 may consist of non-monetary directives or an order to pay a penalty to the court. An
2 award of attorneys fees to an adverse party may only be made if the adverse party
3 brought the motion seeking sanctions. In re Loyd, 304 B.R. 372, 374 (9th Cir. BAP
4 2003).

6 B. Inherent Authority

8 Bankruptcy courts, like Article III courts, have the inherent authority to
9 sanction bad faith or willful misconduct even in the absence of express statutory
10 authority to do so. Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.),
11 77 F.3d 278, 283-84 (9th Cir. 1996). Before sanctions may be imposed under a
12 bankruptcy court's inherent authority, there must be an explicit finding of bad faith or
13 willful misconduct which "consists of something more egregious than mere
14 negligence or recklessness." In re Dyer, 322 F.3d 1178, 1196 (9th Cir. 2003) (citing
15 Fink v. Gomez, 239 F.3d 989, 993-94 (9th Cir. 2001)). However, sanctions may be
16 imposed for recklessness when it is combined with an additional factor such as
17 frivolousness, harassment or improper purpose. 239 F.3d at 994; see also Lachtinen,
18 332 B.R. at 415 ("In the Ninth Circuit, a court may also sanction upon a finding of
19 willfulness, recklessness, or other fault by the offending party, and if a bad faith
20 finding is required, an implicit finding will suffice.").

25 subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary
26 nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective
27 deterrence, an order directing payment to the movant of some or all of the reasonable attorneys
28 fees and other expenses incurred as a direct result of the violation.

1 If a bankruptcy court determines that sanctions are appropriate under its
2 inherent authority, the sanctions imposed must either be compensatory or designed to
3 coerce compliance. Because bankruptcy courts lack authority to impose criminal
4 penalties or sanctions, the sanction may not be punitive in nature. Dyer, 322 F. 3d at
5 1197.
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8 C. Due Process Requirements

9 The notice regarding sanctions must specify the authority for sanctions and the
10 alleged misconduct. Deville, 361 F.3d at 548. Those requirements have been met in
11 this case.
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13 The Memorandum Decision determined that due to the inconsistency of the
14 testimony of Young about the ownership of the Pearce Judgment, including assertions
15 made in previous bankruptcy cases filed by the Young Entities, in judgment renewal
16 affidavits and in pleadings filed in this case, a hearing would have to be held to
17 determine if sanctions should be entered against Young and Gamble. The
18 Memorandum Decision included a list of possible sanctions.
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21 On September 1, 2005, a separate Order to Show Cause was entered, which
22 again listed the possible sanctions set forth in the Memorandum Decision. On
23 September 27, 2005, an Amended Order to Show Cause was entered to clarify that
24 sanctions, if any, would be imposed under Rule 9011 and the court's inherent
25 authority to control its own proceedings. Because of the inherent problems created by
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1 having a court act as both arbiter and prosecutor in a proceeding where sanctions may
2 be imposed, the court requested the participation of a “friend of the court” at the Order
3 to Show Cause hearing. Robert Ferrier of the law firm of Quarles & Brady Streich
4 Lang appeared at the January 31, 2006 hearing in that capacity.
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7 8 **VI. SANCTIONS**

9 **A. Sanctions against John Young**

10 As noted earlier, if imposition of sanctions under the court’s inherent authority
11 are appropriate, the authority to impose sanctions is limited to non-punitive sanctions.
12 Dyer, 322 F.3d at 1196-97. However, under its inherent authority, a court has the
13 power to fashion an appropriate sanction for conduct which abuses the judicial
14 process, including awarding attorneys fees and related expenses for bad-faith conduct.
15 Chambers v. NASCO, Inc., 501 U.S. 32 (1991).
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18 The inherent sanction authority also allows a bankruptcy court to deter
19 improper litigation tactics. In this case, Young and his lawyer engaged in improper
20 litigation tactics by taking an inconsistent position about the ownership of the Pearce
21 Judgment from the position taken during the Youngs’ and the Trust’s bankruptcy
22 cases and from claims made in this case and in judgment renewal affidavits. Their
23 purpose was to avoid the impact of the Tentative Ruling. Based on the entire record
24 in this case, the record in the Young Entities’ prior bankruptcy cases as documented in
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1 this decision, the Memorandum Decision, and Young's testimony at the Order to
2 Show Cause hearing in which he indicated an unwillingness to accept responsibility
3 for his conduct regarding inaccurate and inconsistent disclosures, the following
4 sanctions are imposed:
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- 6 1. The Youngs are barred and enjoined from enforcing against the
7 Brumgards, their property, or property of their bankruptcy estate, the
8 following judgments entered in Pinal County superior court:¹³
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10 Pearce Judgment (CIV 37525)

11 Brumgard Judgment (CIV 36326)

12 Attorneys fees #1 (CIV 36224)

13 Attorneys fees #2 (CV 36224)

14 Attorneys fees (CV 94-042091)

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17 2. The Youngs shall be liable to pay one-third of the Brumgards'
18 reasonable attorneys fees and costs incurred after July 8, 2004 in
19 litigating issues before this court.
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21 **B. Sanctions against Fred Gamble**

22 Like Young, Gamble acted in bad faith in an effort to avoid the result of the
23 Tentative Ruling. Like Young, he is subject, under this Court's inherent authority, to
24 the imposition of sanctions to deter and provide compensation for the use of improper
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26 ¹³ Judgments and case numbers as listed in Response to Debtors' Motion to Reconsider
27 Claims, Docket No. 153 in In re Brumgard.

1 litigation tactics. The court may, under its inherent authority, assess attorneys fees
2 against Gamble.

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4 Once a determination is made that sanctions are appropriate, the court must
5 apply the American Bar Association's Standards for Imposing Sanctions. Crayton,
6 192 B. R. at 980. The factors the court must consider are: (1) duty violated;
7
8 (2) lawyer's mental state; (3) actual or potential injury caused by the lawyer's conduct;
9 and (4) existence of aggravating or mitigating factors. Id. (citing American Bar
10 Association, Standards for Imposing Lawyer Sanctions (as amended February 1992)).
11

12 1. Duty Violated

13 In this case, Gamble violated his duty to the legal system by asserting an
14 unjustified legal argument about the ownership of the Pearce Judgment. He failed to
15 timely and completely disclose the facts which allegedly supported that argument, and
16 he failed to address the inconsistency of that argument with representations made in
17 earlier cases.
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19 2. Mental State

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21 Gamble made the claim that Young Builders owned the Pearce Judgment until
22 2002, knowing that the claim was inconsistent with earlier claims and determinations
23 of ownership in the Young Entities bankruptcy cases.¹⁴ Furthermore, Gamble is an
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25 ¹⁴ Gamble argued in his post-trial brief that from the mid 1990's until 2003 he was entitled
26 to reasonably rely on what Young told him about the ownership of the Pearce Judgment. This
27 claim is irrelevant because Young's claim that he personally owned the judgment after 1991 was
28 not a mistake. Furthermore, Gamble's reliance on his client for information was not reasonable.

1 experienced lawyer who has, in this case, argued that principles of equitable estoppel
2 and res judicata bar re-litigation of issues decided in earlier proceedings, including
3 the Young Entities' bankruptcy case. He knew, or should have known, that the
4 affirmative representations by the Youngs that they owned the Pearce Judgment in the
5 Young Entities bankruptcy cases, would be a bar for a contrary claim in this case.
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8 3. Actual and Potential Injury

9 Gamble's conduct resulted in actual injury. The failure to promptly disclose
10 that the Young Entities were going to claim that Young Builders owned the Pearce
11 Judgment, needlessly extended the litigation regarding the validity of the Young
12 Entities' claims. After the Tentative Ruling was issued, a pleading should have been
13 filed seeking a determination of who owned the Pearce Judgment. Nothing was ever
14 filed. Instead, at the May 5, 2005 evidentiary hearing, a "bare bones" presentation
15 was made which failed to address the prior representations that the Youngs owned the
16 Pearce Judgment made in the Young Entities bankruptcy cases or the legal
17 consequences of those representations. There was also potential injury to the
18 Brumgards. If the court had adopted the Tentative Ruling and accepted the evidence
19 proffered at the May 5th hearing that Young Builders, rather than the Youngs, owned
20
21
22
23

24
25 _____
26 Gamble was intimately involved in state court litigation with the Brumgards from the early 1990's.
27 He was well aware that the Youngs, the Trust and Young Builders all held a variety
28 of judgments and claims against the Brumgards. He should have, at a minimum, been checking
with counsel in the bankruptcy cases to determine what had been claimed as property of the
various Young bankruptcy estates.

1 the Pearce Judgment in 1995, then the Brumgards' homestead claim in the mini-
2 warehouse would have been wiped out.

3
4 4. Aggravating or Mitigating Circumstances

5 Aggravating circumstances in this case include the fact that Gamble was
6 sanctioned in 1997 by Judge Baum and the fact that he is an experienced attorney.
7 Because he is an experienced attorney who understands doctrines of issue and claims
8 preclusion and estoppel, he should bear more responsibility than Young for
9 improperly asserting that the Youngs did not own the Pearce Judgment until 2002.
10 Gamble was cooperative and responsive to the Order to Show Cause hearing, but
11 cooperation with court proceedings is to be expected and cannot, therefore, be
12 considered a mitigating factor. No other mitigating factors are present.

13
14 One of the potential sanctions listed in the Memorandum Decision was
15 disbarment of Gamble from the Federal Bankruptcy Court in the District of Arizona.
16 While the court may, under its inherent authority, suspend or bar Gamble from further
17 litigation before this court, it will not do so. As noted by the court in Crayton,
18 192 B.R. at 977-978:
19
20
21

22 While the court has both the express and inherent authority to suspend
23 attorneys, discipline and disciplinary proceedings are best reserved to
24 independent bodies which have been specifically created to investigate
25 charges of unprofessional conduct and to prosecute disciplinary
26 proceedings.

27 Accordingly, sanctions against Gamble will be imposed as follows:
28

1 Copy of the foregoing mailed
2 this 2nd day of June, 2006, to:

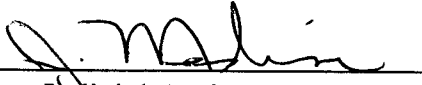
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