UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

IN RE:	)	CASE NO. 91-40183-PKE
	)	
COONES RANCH, INC.,	)	CHAPTER 11
a South Dakota corporation,	)	
	)	MEMORANDUM DECISION RE:
Debtor.	)	MOTIONS FOR SANCTIONS

The matters before the Court are the motions for sanctions against Coones Ranch, Inc., James A. Coones, and Cecelia A. Grunewaldt filed by the Federal Deposit Insurance Corporation and Mutual Life Insurance Company of New York and the responses thereto filed by James A. Coones and Cecelia A. Grunewaldt. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2). This ruling shall constitute Findings and Conclusions as required by F.R.Bankr.P. 7052.

I.

By Memorandum of Decision Re: Motions to Dismiss, Motions for Relief From the Automatic Stay, and Motion to Transfer Venue and Order entered June 24, 1991, this Court dismissed the Chapter 11 case filed by Coones Ranch, Inc. The findings and conclusions set forth in that Memorandum and Order are incorporated herein by reference.

On August 1, 1991, creditor Federal Deposit Insurance Corporation (FDIC) filed under Bankr. R. 9011 a Motion for Sanctions against Debtor Coones Ranch, Inc.; James A. Coones, Debtor's sole officer and stockholder; and Cecelia A. Grunewaldt, Debtor's bankruptcy attorney. FDIC sought as sanctions $9,764.78 in attorneys' fees and expenses that FDIC incurred in this case. FDIC alleges Debtor's Chapter 11 petition was filed in bad faith

and was not well grounded in fact or law. FDIC noticed the Motion for hearing on August 15, 1991. FDIC filed a brief in support of its sanctions motion on August 9, 1991.

On August 9, 1991, Grunewaldt filed a Limited Appearance of Cecelia A. Grunewaldt and Motion to Dismiss, a Limited Appearance of James A. Coones and Motion to Dismiss, and a Limited Appearance of Coones Ranch, Inc., and Motion to Dismiss. In each, she argued that the sanctions motion should be dismissed because this Court no longer had jurisdiction to hear the matter since the case was dismissed on July 5, 1991. She noticed these three "motions to dismiss the sanctions motion" for hearing on August 15, 1991.

A hearing on FDIC's sanctions motion and Debtor's, Coones', and Grunewaldt's responses to that motion was held August 15, 1991. The Court denied Debtor's, Coones', and Grunewaldt's "motions to dismiss the sanctions motion" based on a United States Supreme Court opinion that states a federal court retains jurisdiction to impose appropriate sanctions "after the principal suit has been terminated." Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2456 (1990). FDIC's sanctions motion was continued to October 4, 1991 so that Debtor and Coones could retain separate counsel other than Grunewaldt due to the inherent conflict of interest among these parties as discussed in Weiszhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017 (D.S.D. 1990).

On September 9, 1991, Mutual Life Insurance Company of New York (MONY) filed a Motion for Sanctions Against Coones Ranch, Inc., James A. Coones and Cecelia A. Grunewaldt. Therein, MONY

sought sanctions of $24,207.78 for fees and costs incurred in the case. MONY alleges Debtor's petition "was filed in bad faith, was not well grounded in fact or law, and was intended to hinder and delay MONY's foreclosure action and to increase the cost and expense to MONY."

The Court set both sanctions motions for a joint hearing on October 18, 1991. All parties were given an opportunity to submit memorandums of legal authority prior to the hearing. In the interim, Grunewaldt and Coones employed separate counsel to represent them. Debtor was not represented during the remainder of the proceedings.[1]

Before the scheduled hearing, the Court reviewed the affidavits of FDIC's and MONY's attorneys that set forth the services and expenses for which each movant wanted reimbursement as sanctions. The Court noted several problems with each and by letter asked counsel to file amended or supplemental affidavits.

On October 3, 1991, MONY filed a supplement to its sanctions motion and requested as sanctions an additional $2,093.00 in legal services and expenses related to MONY's foreclosure sale in Wyoming that was aborted by Debtor's Chapter 11 filing in this District. FDIC filed an amended sanctions motion and amended affidavits of legal services and expenses on October 4, 1991 that increased its

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[1] At the hearing on October 18, 1991, counsel for James Coones told the Court that Debtor Coones Ranch, Inc., was now essentially "asset-less" because Debtor-corporation had reconveyed its assets to James Coones in compliance with a Wyoming state court's order entered after the dismissal of this bankruptcy case. Exhibits "A" and "B" offered by Coones support that statement.

sanctions' request by $594.05.

Grunewaldt filed responses to FDIC's and MONY's sanctions motions on October 11, 1991. She argues that under the objective reasonableness standard imposed by F.R.Bankr.P. 9011 her actions in filing Debtor's Chapter 11 petition did not violate that Rule.

Coones filed responses to FDIC's and MONY's sanctions motions on October 11, 1991. He argues he was acting only as Debtor's representative, not personally, when he signed the Chapter 11 petition and, therefore, no sanctions should be imposed on him personally. Further, Coones argues that the Court's dismissal of the case because it was a bad faith filing does not necessarily result in the conclusion that he violated Rule 9011 in making that filing.

All interested parties filed memorandums in support of their respective positions prior to the hearing.

The hearing on October 18, 1991 was limited to whether sanctions should be imposed. The question of the amount of sanctions that should be imposed, if the amount of the sanction imposed was based on the movants' attorneys' fees and costs, was reserved pending this decision.

Coones and Grunewaldt testified. Coones waived his attorney-client privilege regarding conversations with Grunewaldt through the date Debtor's petition was filed. Three exhibits offered by Coones were admitted: an Order on FDIC's Motion for Order of Contempt entered July 2, 1991 by the District Court for the Sixth Judicial District; a Bill of Sale/Assignment dated July 15, 1991,

plus several attachments, which states Debtor Coones Ranch, Inc., conveyed certain described property to James A. Coones; and an Affidavit of Thomas M. Hogan dated August 11, 1991, plus several attachments, filed in a related proceeding in Wyoming state court that sought certain fees and costs incurred by FDIC in its legal proceedings with Coones in Wyoming and with Coones and Debtor in South Dakota.

According to his testimony, Coones solicited Grunewaldt to do Debtor's bankruptcy work through a referral by Debtor's corporate counsel, David O. Carter. Coones and Grunewaldt first met for a few hours on the afternoon of Sunday, March 10, 1991 at Grunewaldt's office. He informed Grunewaldt about his property in Wyoming and his financial condition. He spoke to her generally about his Wyoming bankruptcy case, including the facts that: the case had been dismissed; several appeals were pending; the automatic stay had been lifted; and a foreclosure sale of the ranch in Wyoming was imminent. He was unable to answer all of Grunewaldt's specific questions about the status of his legal actions in Wyoming. Coones generally discussed the recent formation of the ranch corporation by Carter in the preceding couple of days and he showed Grunewaldt the quit claim deed that transferred his assets to the new ranch corporation. He also told Grunewaldt that the proceeds of the sale of his cattle in October, 1990 were held in escrow pursuant to an order entered by a state court in Wyoming and that he could use the money only with that court's approval. Grunewaldt discussed options available to Coones

and Coones Ranch, Inc., including the filing of a Chapter 11 petition. They did not discuss the specifics of a plan of reorganization. Coones acknowledged that Grunewaldt talked to Steven Winship, Coones' bankruptcy attorney in Wyoming, to get details about Coones' legal activities in Wyoming.

Coones said he and Grunewaldt discussed "all" risks associated with his new corporation filing a bankruptcy petition in South Dakota, including the fact that the case may be dismissed because the petition was filed in bad faith. Coones stated he was aware of some risks because of his experiences in his personal bankruptcy case in Wyoming. Grunewaldt and Coones discussed the need and procedure for getting Debtor some operating capital through a cash collateral motion.

Coones said he and Grunewaldt met again Monday morning and discussed the same matters. The decision to put the corporation into Chapter 11 was made late that day after Winship's legal efforts in Wyoming to stop the foreclosure sale failed. Grunewaldt and Coones did not meet again until after Debtor's petition was filed.

Coones testified that he first seriously thought about incorporating his ranch six months prior to March, 1991 because he was looking for a way to winter his cattle off the ranch.[2] He said his trip to South Dakota to incorporate the ranch was delayed until

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[2] At the hearing on the motions to dismiss, Coones testified that he first thought about incorporating his ranch when going through a divorce proceeding several years ago.

March, 1991 because a friend with whom he lived in Wyoming was ill in February, 1991. Although he had no cattle of his own, Coones thought he or the ranch corporation could take outside cattle on shares, maximize grazing on the ranch's pastures in Wyoming during the summer, winter the cattle in South Dakota, put some of his Wyoming land into the federal Conservation Reserve Program, and use his farm equipment (after some modifications) for custom work in South Dakota. Coones thought the appeal of the dismissal of his Chapter 11 case in Wyoming would take at least two years and that by then his new business ventures of custom farming, receiving CRP payments, and pasturing other people's cattle would allow him to resolve his financial problems. His plans to winter cattle in South Dakota and do custom farm work here, however, were contingent on whether Coones had to put his ranch corporation into bankruptcy in South Dakota. Coones stated he ultimately put his corporation into bankruptcy in South Dakota to save the land for the benefit of his creditors by staying the foreclosure sale scheduled for Wednesday, March 13, 1991.

Before Debtor's Chapter 11 petition was filed in South Dakota, Coones or Winship provided Grunewaldt with a copy of Coones' Chapter 11 petition in Wyoming and the order dismissing that case.

Grunewaldt's testimony generally corroborated Coones' testimony. She said Coones was frustrated with his personal bankruptcy case in Wyoming because "nothing ever got resolved." She said he told her his Wyoming case had been dismissed "without prejudice" but she doubted he knew what that meant. Grunewaldt

said she and Coones had a comprehensive discussion about the ranch's income and expenses before Debtor's petition was filed. She learned from Coones that he had opened a corporate bank account in December, 1989. They also discussed: Coones' earlier, abandoned efforts to establish a ranch corporation in Wyoming; the South Dakota corporation's efforts to lease office space in Sioux Falls that week; that the South Dakota corporation did not have any employees except Coones and a receptionist that Debtor would share with other tenants in the office building; and that Coones would borrow some office equipment from Grunewaldt for the new corporate office in Sioux Falls. Grunewaldt assumed -- correctly -- that the South Dakota corporation had not transacted any business to date. Grunewaldt accepted the land value as stated by Coones based on his own assessment and recent sales relayed by Coones. Before she filed Debtor's petition, Grunewaldt was not aware that the Wyoming Court had valued the property significantly higher than Coones had.

Grunewaldt found Coones to be credible and honest. Grunewaldt felt Coones' reasons for incorporating his Wyoming ranch in South Dakota were legitimate based on her degree of familiarity with South Dakota's farm and ranch business. Grunewaldt knew Coones had no cattle of his own nor any contracts for keeping outside cattle and that he had no contracts for custom farm work in South Dakota. She referred Coones to several area business persons with whom she was acquainted that she thought might help Coones implement his cattle shipping and custom farming plans in the state.

Grunewaldt and Coones generally discussed the requirement that

Debtor's petition must be filed in good faith. Grunewaldt believed Coones would not have any personal exposure if the Court held Debtor's petition was filed in bad faith. She did not discuss with Coones this potential personal liability arising from a bad faith filing by Debtor.

Coones and Grunewaldt had a difference of opinion on one point. While Coones stated the corporation's plans in South Dakota were contingent on whether it had to file bankruptcy in the state, Grunewaldt understood Coones Ranch, Inc., would proceed with its business plans even if the foreclose sale in Wyoming was stayed and the corporation did not file bankruptcy.

Grunewaldt conferred with David Carter, Steven Winship, and Winship's partner (Winship's father) to get more detailed information that Coones could not provide and to confirm Coones' credibility. She said Steven Winship was not involved in formulating Debtor's bankruptcy strategy in South Dakota although both Winship and Grunewaldt agreed the corporation should file bankruptcy in South Dakota if Winship's efforts to obtain a stay of the foreclosure sale in Wyoming failed. Grunewaldt had input on the corporate resolution that Carter drafted that memorialized the corporation's decision to file bankruptcy. She specifically advised Carter and Coones to have Coones transfer only the secured value of his personal property to the corporation so that Coones could offer any equity in that property to the debtor-corporation as an infusion of new capital to overcome the absolute priority rule and to allow Coones to retain equity ownership of the debtor-

corporation upon confirmation of Debtor's plan.

Grunewaldt thought her inquiry into the facts and law was reasonable under the circumstances. She said she reviewed several venue, successive filing, and "new debtor syndrome" cases before filing the petition. Grunewaldt concluded Debtor's petition would not be a bad faith filing because Coones had a sincere intent to reorganize and Debtor had a reasonable chance of reorganization based on the projected income and expenses she reviewed with Coones. She distinguished the "new debtor syndrome" cases on the facts and noted that the Court of Appeals for the Eighth Circuit had not issued an opinion of that issue.

Grunewaldt testified that she learned additional information about Coones' legal proceedings in Wyoming after the petition was filed in South Dakota but that she did not advise Coones to alter Debtor's reorganization course in South Dakota in response to that new information. She said that as counsel for a bankruptcy debtor she generally would not alter the course of a case upon discovery of material information without her client's consent.

II.

The imposition of sanctions on Debtor, James A. Coones, or Attorney Grunewaldt is a serious matter that this Court must approach with circumspection. Lupo v. Rowland & Co., 857 F.2d 482, 485 (8th. Cir. 1988); O'Connell v. Champion International Corp., 812 F.2d 393, 395 (8th Cir. 1987). Since Federal Rule of Bankruptcy Procedure 9011 closely tracks F.R.Civ.P. 11, Mid-Tech Consulting, Inc., v. Swendra, 938 F.2d 885, 888 (8th Cir. 1991);

Weiszhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017, 1019 (D.S.D.), there is ample precedent: In addition to several pertinent opinions by the Supreme Court, the Court of Appeals for the Eighth Circuit has rendered numerous opinions on Rule 11 sanctions.

Rule 9011 is designed to prevent abuses of the bankruptcy process by parties and their attorneys. Weiszhaar Farms, Inc., 113 B.R. at 1019-20. It provides, in pertinent part[3]:

> Every petition ... filed in a case under the Code on behalf of a party represented by an attorney ... shall be signed by at least one attorney of record in the attorney's individual name.... The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation.... If a document is signed in violation of this rule, the court on motion ... 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 document, including a reasonable attorney's fee.

The Rule addresses itself to two types of sanctionable conduct: first, where the papers filed are frivolous, legally unreasonable, or without factual foundation; and second, where the pleading is filed for an improper purpose. Cooter & Gell v. Hartmarx Corp., 110 S.Ct. 2447, 2457 (1990); Hartman v. Hallmark Cards, Inc., 833

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[3] Rule 9011 was amended in August, 1991 after Debtor's petition was filed. The Rule as set forth above is that version which was in effect when Debtor filed its petition.

F.2d 117, 124 (8th Cir. 1987); In re Cedar Falls Hotel Properties Limited Partnership, 102 B.R. 1009, 1014 (Bankr. N.D. Iowa 1989) (citations therein).

Sanctions are mandatory when a violation has occurred. Happy Chef Systems, Inc. v. John Hancock Mutual Life Insurance Co., 933 F.2d 1433, 1438 (8th Cir. 1991). Whether a violation has occurred is determined within the court's discretion. Id.; O'Connell, 812 F.2d at 395. The standard to be applied is **objective** reasonableness under the circumstances. Business Guides, Inc. v. Chromatic Communications Enterprises, Inc., 111 S.Ct. 922, 932-33 (1991).[4] Subjective "good faith" cannot excuse the signer's action. Kurkowski v. Volcker, 819 F.2d 201, 204 (8th Cir. 1987). Signing denotes merit. Business Guides, 111 S.Ct. at 930.

> [T]he imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process[.]

Cooter & Gell, 110 S.Ct. at 2456; Lupo, 857 F.2d at 485; O'Connell, 812 F.2d at 395 ("The issue is whether the person who signed the pleading conducted a reasonable inquiry into the facts

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[4] Some court's have concluded that Rule 11 contains both objective and subjective components: whether the signer conducted a reasonable inquiry of fact and law is viewed objectively while the question of whether the signer filed the pleading in bad faith, regardless of his prefiling investigation, is reviewed subjectively. See Weiszhaar Farms, Inc. v. Livestock State Bank, 113 B.R. 1017, 1022 (D.S.D. 1990)(cases cited therein). The Court of Appeals for the Eighth Circuit has not clearly made that distinction. See Pulaski County Republican Committee v. Pulaski County Board of Election Commissioners, ___ F.2d ___, case no. 91-1750, slip op. at 3 (8th Cir. Feb. 4, 1992).

and law supporting the pleading."). What the signator actually believed is not "particularly relevant" because the test is objective, not subjective. Cedar Falls Hotel, 102 B.R. at 1015. Ignorance of the law or legal procedures does not excuse the conduct. Kurkowski, 819 F.2d at 204. However, "Bankruptcy Rule 9011 sanctions should not be imposed on a party who makes a good faith argument based on existing precedent." Mid-Tech Consulting, Inc., 938 F.2d at 888.

When faced with a motion for sanctions, a court must address three issues. First, fact questions regarding the attorney's prefiling inquiry and the factual basis of the pleading must be answered. Cooter & Gell, 110 S.Ct. at 2457. Factors a court may consider when it reviews the reasonableness of the signer's pre-filing inquiry into the facts of the case and applicable law include: the amount of time available for investigation; how much reliance the attorney had to place on the clients for facts; and the complexity of the factual and legal issues. Cedar Falls Hotel, 102 B.R. at 1015. These questions of fact also include an assessment of the signer's credibility. Id. at 2459; O'Connell, 812 F.2d at 395. Second, the court must answer the legal questions of whether a pleading is warranted by existing law or a good faith argument for changing the law and whether the attorney's signature violated the Rule. Cooter & Gell, 110 S.Ct. at 2457. The trial court can use its familiarity with the litigants and issues to determine whether sanctions are warranted to serve Rule 11's goal of specific and general deterrence. Id. at 2459; Happy Chef, 933

F.2d at 1439. Third, a court must in its discretion fashion an appropriate sanction. Cooter & Gell, 110 S.Ct. at 2457.

The phrase "person who signed," as found in F.R.Civ.P. 11 and F.R.Bankr.P. 9011, means the individual signer, not an entity that he may represent such as a law firm or partnership. Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 124 (1989). "Just as the requirement of signature is imposed upon the individual, ... the recited import and consequences of signature run **as to him**." Id. at 124 (emphasis in original). A signature in a representative or agency capacity may not comply with the Rule. Id. at 124-25.[5]

A represented party who signs a pleading bears the same personal, nondelegable responsibility to certify the truth and reasonableness of the document. Business Guides, 111 S.Ct. at 931-32. The same reasonable inquiry standard applies. Id. The court should consider the sophistication of the client because what is objectively reasonable for a party may differ from what is objectively reasonable for an attorney. Id. at 932-33. If a party misleads or deceives his attorney, however, that party may bear the burden of sanctions alone. Id. at 932; In re Alderson, 114 B.R. 672, 677 (Bankr. D.S.D. 1990).

III.

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[5] The Court's conclusion in Pavelic & LeFlore that "person who signed" denotes only an individual has not been clearly extended to officers and agents who sign of behalf of corporate parties. See Business Guides, 111 S.Ct. at 931 and 939.

After consideration of all the circumstances of this case and upon application of Rule 9011 and relevant case law, this Court concludes that sanctions should be imposed jointly and severally on Debtor Coones Ranch, Inc., James A. Coones, and Attorney Grunewaldt because they have breached the prefiling admonitions set forth in that Rule.

First, Debtor's petition was not "well-grounded in fact." Either Coones did not relay all material facts to Grunewaldt or Grunewaldt did not conduct a reasonable inquiry of the facts surrounding Debtor's reorganization effort in South Dakota. The dismissal order entered by the Wyoming bankruptcy court, which Grunewaldt had before she filed the petition, specifically stated that Coones' bankruptcy estate in Wyoming had suffered continuing loss and diminution and that "there is a **complete absence** of a reasonable likelihood of rehabilitation"(emphasis added). Coones did not relay to Grunewaldt nor did Grunewaldt uncover any facts that could lead anyone to reasonably conclude that the same bankruptcy estate -- shaped as a new corporation in South Dakota -- had a reasonable chance of successfully reorganizing. Coones' financial position had not appreciably changed in the interim between the dismissal of his bankruptcy case in Wyoming and the contemplated filing in South Dakota. Coones and Grunewaldt both realized that the two bankruptcy estates were virtually identical; Coones' petition and schedules were the only documents on which Grunewaldt relied to complete Debtor's petition and schedules.

Most important, both Coones and Grunewaldt understood that Coones' legal position against FDIC and MONY in Wyoming had completely deteriorated and he faced imminent foreclosure. Finally, at the time Debtor's petition was filed neither Coones nor Grunewaldt possessed any reality-based data from which they could reasonably conclude that the debtor-corporation's plans to winter cattle and custom farm in South Dakota could be successfully implemented to rescue the ranch from its financial plight. Coones and Grunewaldt knew the corporation did not have any contracts for pasturing cattle or custom farming. Further, Coones' and Grunewaldt's income and expense projections for the corporation were not soundly based on the ranch's past performance and realistic expectations nor grounded on accurate land values. There clearly existed no more than a hopeless and unrealistic prospect that Coones could reorganize through the debtor-corporation.

Second, Debtor's petition was not "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." As set forth in the Memorandum of Decision Re: Motions to Dismiss, Motions for Relief From the Automatic Stay, and Motion to Transfer Venue and Order entered June 24, 1991, Debtor's petition exhibited bad faith on several grounds. Under the circumstances that existed, no one could reasonably conclude that Debtor would avoid dismissal of its case. While this Court may give some deference to Grunewaldt's testimony at the sanctions hearing that the "new debtor syndrome" cases were distinguishable from Debtor's circumstances, it was not reasonable

for her to conclude under the totality of the circumstances that this Court, the District Court for the District of South Dakota, and the Court of Appeals for the Eighth Circuit would find merit in Debtor's petition. After a reasonable inquiry into these courts' decisions and opinions, counsel should have concluded there was no merit to Coones' second bankruptcy effort in South Dakota. Moreover, any prefiling investigation of "new debtor syndrome" and other bad faith filing cases by Grunewaldt was, at best, cursory. The responses to FDIC's and MONY's motions for relief from stay, dismissal, and change of venue that Grunewaldt filed for Debtor exhibited she had little familiarity with applicable cases published in this District and Circuit. See, e.g., Debtor's Resistance to Motion of Mutual Life Insurance Company of New York to Dismiss Chapter 11 Case filed May 31, 1991. Further, a review of the transcript for the hearing on FDIC's and MONY's motions to dismiss reveals Grunewaldt's familiarity with "new debtor syndrome" cases had not expanded. Debtor's proposed findings of fact and conclusions of law filed after the dismissal hearing again failed to show adequate legal foundation. Finally, Debtor failed to make any arguments or file any memorandum of law in support of its petition that advocated a good faith change or modification of existing case law.

Third, Debtor's petition was filed for an improper purpose -- to cause delay. Coones and Grunewaldt both conceded Debtor's petition was filed to stop the foreclosure sale in Wyoming. Clearly staving off a foreclosure sale alone is not tantamount to

a bad faith filing, see, e.g., Weiszhaar Farms, Inc., 113 B.R. at 122; In re Lange, 75 B.R. 154, 157 (Bankr. N.D.Ohio 1987), but that fact in this case, coupled with the facts that (1) this was a successive filing by Coones, (2) in a dubious venue, (3) through a newly created corporation (4) with no demonstrable evidence of an ability to reorganize, destroys any illusion that this petition was filed with the intent or reasonable prospect of a successful reorganization. Grunewaldt was fully aware of these circumstances when the petition was filed. Coones' frustration with the legal system and Grunewaldt's sympathy for Coones' predicament do not change the true nature and predisposed failure of Debtor's petition. As Coones stated, he thought his appeals in Wyoming would give him another two years to work things out in Wyoming. When that attempted stall failed, his bankruptcy filing in South Dakota through the debtor-corporation became, at best, an interim solution while he continued his legal efforts in Wyoming federal and state courts. The petition in South Dakota was filed only when the final bell began to ring in Wyoming.

This Court, not being privy to all communications among Coones, Grunewaldt, Winship, and Carter, does not have sufficient information to conclude whether Coones failed to give Grunewaldt complete, truthful information to the best of his ability or whether Grunewaldt failed to conduct a reasonable investigation of the facts after her conversations with Coones and others. The parties must apportion that responsibility among themselves. Further, only Grunewaldt, Winship, Carter, and Coones know the

extent of legal research that was conducted pre-filing and how and why the decision was made to file Debtor's petition despite the existing mandates in the Code and applicable case law against such a filing. Again, Coones, Debtor, and Grunewaldt must apportion that responsibility among themselves.

The Court concludes that it is not necessary to ascertain whether Coones signed Debtor's petition only in an agency capacity and whether any liability under F.R.Bankr.P. 9011 may extend to him as Debtor's agent. Coones and Debtor are virtually the same entity. Moreover, it appears that Coones has altered Debtor's estate post-dismissal at the insistence or urging of another court. Any attempt now to distinguish between the two now is unnecessary and likely unsuccessful.

IV.

Since deterrence is the principal policy behind Rule 9011, the Court concludes that monetary sanctions of $20,000.00 imposed jointly and severally on Debtor Coones Ranch, Inc., James A. Coones, and Attorney Grunewaldt are appropriate. This sum shall be paid in equal portions to movants FDIC and MONY.

Many courts, including the Supreme Court, see Cooter & Gell, 110 S.Ct. at 2461, have acknowledged that sanctions of attorneys' fees and costs may be appropriate. That sum here, however, would be too burdensome. MONY and FDIC engaged in some unnecessary duplication of effort when both brought independent motions for dismissal and sanctions. Moreover, MONY and FDIC could have better divided legal services between their respective in- and out-of-

state counsel to minimize costs and fees.

The Court is not concerned that the Bankruptcy Court for the District of Wyoming or a Wyoming state court may or has already awarded FDIC or MONY attorneys' fees and costs as sanctions for some of Debtor, Coones, and Grunewaldt activities in South Dakota. Debtor, Coones, and Grunewaldt engaged in conduct before this Court for which Rule 9011 mandates sanctions regardless of whether these parties' related infractions before other courts have been addressed. Rule 9011 is not a fee shifting statute and will not be applied like one in this case.

Less severe, non monetary sanctions are not appropriate. This Court's past private and public reprimands of Attorney Grunewaldt for lack of professional attention in several other cases have went unheeded. Likewise, James A. Coones' pervasive abuse of state and federal judicial systems by violating orders and attempting to circumvent statutory constraints can only be deterred through monetary sanctions.

Finally, Attorney Grunewaldt must return to the payor any compensation she has received for services and costs in this case. Since her services rendered no benefit to the estate, no fees were earned. In re Reed, 890 F.2d 104 (8th Cir. 1989).

Dated this ____ day of March, 1992.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

IN RE:	)	CASE NO. 91-40183-PKE
	)	
COONES RANCH, INC.,	)	CHAPTER 11
a South Dakota corporation,	)	
	)	ORDER IMPOSING SANCTIONS
Debtor.	)	

In recognition of and compliance with the Memorandum of Decision Re: Motions for Sanctions entered this day,

IT IS HEREBY ORDERED that Debtor Coones Ranch, Inc., James A. Coones, and Cecelia A. Grunewaldt jointly and severally shall pay on or before June 8, 1992 $10,000.00 to the Federal Deposit Insurance Corporation and $10,000.00 to Mutual Life Insurance Company of New York.

So ordered this 6th day of March, 1992.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk
(SEAL)