

IN THE UNITED STATES BANKRUPTCY  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

IN RE: )  
BERNSTEIN FAMILY REALTY, LLC )  
Debtor, ) CASE NO. 22-13009-EPK  
 ) Chapter 13

BANKRUPTCY MOTION HEARING  
BEFORE THE HONORABLE ERIK P. KIMBALL  
AUGUST 25, 2022

REPORTED BY:

Dawn Leonard, CRD

TRANSCRIBED BY:

Kimberly Jones, CET

AAERT-1411

A P P E A R A N C E S

ON BEHALF OF JOANNA SAHM, AS PERSONAL REPRESENTATIVE OF THE  
ESTATE OF WALTER SAHM; PATRICIA SAHM; AND JOANNA SAHM:

BRADLEY SHRAIBERG, ESQ.

ERIC PENDERGRAFT, ESQ.

ON BEHALF OF TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF SIMON  
BERNSTEIN TRUST:

ALAN ROSE, ESQ.

ALSO PRESENT:

TED S. BERNSTEIN

I N D E X

MS. JOHANNA SAHM

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P R O C E E D I N G S

THE COURT: We're here in the matter of Bernstein Family Realty, LLC. Could I have appearances? Mr. Shraiberg, good morning.

MR. SHRAIBERG: Good morning, Your Honor. Brad Shraiberg on behalf of Joanna Sahm, as personal representative of the Estate of Walter Sahm and Patricia Sahm. They are the movants. I'm joined today with my partner, Mr. Eric Pendergraft, and Ms. Joanna Sahm, my client.

THE COURT: Good morning. Ma'am, good morning.

MS. SAHM: Good morning, Your Honor.

THE COURT: Now we have nobody on the other side of the courtroom. Yeah. Why don't you stay at the podium for a moment? And then I'm going -- oh, please, yes.

MR. ROSE: You want me to wear the mask or --

THE COURT: It's -- that's entirely up to you. I'm very far away from you, and I've had so many shots that I feel like --

MR. ROSE: I'll just follow the rules.

THE COURT: But it's -- yeah.

MR. ROSE: Alan Rose, R-O-S-E, on behalf of Ted S. Bernstein, as successor trustee of the Simon Bernstein Trust.

THE COURT: Right. Thank you. You don't need to

1 bend over for the microphones, by the way. And good  
2 morning.

3           Alright. So, yeah, this is sort of an interesting  
4 circumstance. We don't have any of the respondents right  
5 now, so I have a motion for sanctions at ECF 69, which has  
6 been set for evidentiary hearing today. I initially set it  
7 for a nonevidentiary hearing, and then I decided that would,  
8 frankly, be a waste of time.

9           And so a month ago, or maybe 31 days ago, I set  
10 this evidentiary hearing, used a very brief scheduling  
11 provision providing for the exchange of exhibits four  
12 business days ago under the local rules. I think I only  
13 have exhibits from the movant. There has been nothing filed  
14 by any of the respondents, who are Joshua Bernstein, Jacob  
15 Bernstein, Daniel Bernstein, and, also, their parents, Eliot  
16 and Candice Bernstein.

17           Now, I think it was yesterday, or was it the day  
18 before, Mr. Eliot Bernstein filed a motion that I  
19 interpreted as partly a motion to deny the motion for  
20 sanctions without a hearing and partly a motion to continue  
21 the hearing today. I did a written order on that knowing  
22 that it would otherwise go out in the mail.

23           The clerk sent it to several email addresses that  
24 they found for him in the docket, so I'm assuming that he  
25 got it. But I note for the record that that document was

1 filed only on behalf of Eliot Bernstein, and there are four  
2 other respondents to this motion, so they didn't even file  
3 anything. I have no reason not to go forward with the  
4 hearing today. And so what would you like to present?

5 MR. SHRAIBERG: Your Honor, it may make sense, due  
6 to the litigious nature of the parties that we are seeking  
7 sanctions against, to make a formal record versus  
8 proffering. I do think that this will not take long.

9 THE COURT: I have no -- I have no objection to  
10 that.

11 MR. SHRAIBERG: With that, we would like to  
12 introduce and move Exhibits 1 through 27 into evidence. We  
13 uploaded the exhibits and our amended exhibit register via  
14 CMECF at 2 p.m. on Friday, August 19th. Prior to 3 p.m., we  
15 separately emailed a Microsoft OneDrive cloud-based, file-  
16 sharing, service link containing the exhibits and the  
17 amended exhibit register to each of the Bernsteins and  
18 requested that receipt be confirmed.

19 Prior to 3:00 p.m., we sent, via Federal Express  
20 priority overnight delivery, a USB drive containing  
21 everything, as well as a paper copy of the amended exhibit  
22 register, to the Bernstein's physical address at 2753  
23 Northwest 34th Street in Boca Raton, 33434. And we filed a  
24 certificate of service at ECF No. 91.

25 The order setting today's hearing, which was at

1 ECF No. 76, states that parties must exchange exhibits per  
2 the procedures of Local Rule 9070-1 and that failure to do  
3 so may result in denial of admission into evidence.

4 We received no written objections to our exhibits  
5 under Local Rule 9070-1(a)(3), and no good cause exists for  
6 the Court to allow objections by the Bernsteins that are not  
7 based on Rule 402 or 403 for unfair prejudice or confusion,  
8 etc.

9 THE COURT: Let me comment for the record, also,  
10 that that particular local rule has an entire segment which  
11 is tailored to those who are not represented by counsel in  
12 order to assist them in complying with the rule. And so it  
13 -- this is not something designed just for lawyers, and they  
14 have failed to comply with, apparently, the provisions that  
15 the Court has fashions for pro se parties.

16 MR. SHRAIBERG: Even more so, I believe the order  
17 setting today's hearing gave an actual link to those rules.

18 THE COURT: Yes, I know.

19 MR. SHRAIBERG: So for those reasons, we seek to  
20 admit Exhibits 1 through 27 into evidence.

21 THE COURT: Exhibits 1 through 27 are admitted.

22 (Exhibit 1 through 27 are admitted into evidence)

23 MR. SHRAIBERG: Thank you. At this time, we would  
24 like to call Ms. Joanna Sahm to the witness stand.

25 THE COURT: Very good.

1           Good morning. If you can make your way over to  
2 the box and when you get there, remain standing. I'll swear  
3 you in.

4           Thank you. Do you swear under penalty or perjury  
5 that the testimony you're about to give before this Court  
6 will be the truth, the whole truth, and nothing but the  
7 truth?

8           THE WITNESS: I do.

9           THE COURT: Thank you. Please have a seat. Now,  
10 you don't need to lean into the microphone, and feel free to  
11 move it to someplace comfortable if you need to.

12          THE WITNESS: Thank you.

13          THE COURT: But don't be more than, maybe, two  
14 feet away from it. Okay?

15          THE WITNESS: Okay. Thank you.

16          MR. SHRAIBERG: Can we give her a physical exhibit  
17 binder?

18          THE COURT: Absolutely. And you don't need to ask  
19 to approach if you need to, but don't speak in the area  
20 between the podium and the witness box or else it won't be  
21 recorded.

22          MR. SHRAIBERG: Perfect. Thank you.

23                           DIRECT EXAMINATION

24 BY MR. SHRAIBERG:

25   Q   Please introduce yourself.



1 A My name is Joanna Eileen Sahm.

2 Q And where do you currently reside?

3 A In The Villages, Florida.

4 Q And to the -- do you know who Walter Sahm and Patricia  
5 Sahm are?

6 A Those are my parents.

7 Q Are you currently the personal -- Mr. -- your father has  
8 passed away, correct?

9 A He passed away last year.

10 Q Are you the personal representative of his estate?

11 A I am.

12 THE COURT: Hold on a moment. Ms. Leonard, are  
13 the -- is the witness's -- witness box -- Yeah, just --

14 THE WITNESS: Closer?

15 THE COURT: -- just move closer or move the  
16 microphone closer to you. It doesn't need to be right --

17 THE WITNESS: I'm fine. I just don't want to  
18 scream and --

19 THE COURT: No, we'll be fine.

20 THE WITNESS: -- blow you guys are out of here.

21 THE COURT: We'll be fine.

22 BY MR. SHRAIBERG:

23 Q And how old is -- your mother is still alive, correct?

24 A She is. She just turned 81.

25 Q And are you a representative on her behalf in any

1 capacity?

2 A Yes. I am her preneed guardian and power of attorney.  
3 She has documented cognitive impairment, so I handle all of  
4 her affairs.

5 Q Can you look in the exhibit binder in front of you at  
6 Exhibit 27?

7 THE COURT: If you just give me a moment.

8 THE WITNESS: Okay.

9 BY MR. SHRAIBERG

10 Q Do you recognize Exhibit 27?

11 A Yes. This is the mortgage that was written up between my  
12 parents and the Bernstein Family Realty, LLC.

13 Q And do you know if there was a foreclosure action with  
14 regard to this mortgage?

15 A There was, in April of -- April -- well, it was - the --  
16 the final judgment was issued in December of 2021 for a  
17 foreclosure sale in April of 2022.

18 Q Out of curiosity, are you familiar with the real estate  
19 that this mortgage encumbers?

20 A I am. I am.

21 Q How are you familiar with it?

22 A It's where I grew up. It's my childhood home.

23 Q And you stated that there was a final judgment of  
24 foreclosure. Was that foreclosure set for a judicial sale?

25 A It was. It was set for April 20th of 2022.

1 Q And that judicial sale did not go forward, correct?

2 A It did not.

3 Q How come?

4 A The Bernstein Family Realty filed a bankruptcy on the  
5 19th -- April 19th of 2022, and that canceled the foreclosure  
6 sale with the clerk of court.

7 Q To the best of your knowledge, Exhibit 27, did the  
8 borrower, the debtor in this case, Bernstein Family Realty,  
9 ever make a mortgage payment?

10 A No, they did not.

11 Q Did your parents ever have to advance real estate taxes  
12 to prevent a real estate -- did your parents ever advance  
13 real estate taxes?

14 A Yes, they did. There were several years between 2008 and  
15 2021 that my parents had to pay the taxes on this property.

16 Q Do you know who currently resides at the real estate  
17 located at 2753 Northwest 34th Street?

18 A To the best of my -- I know that Eliot Bernstein and  
19 Candice Bernstein reside there. To the best of my knowledge,  
20 the three sons also reside at the residence.

21 Q Alright. Can you turn to Exhibit 35?

22 THE COURT: Ms. Sahm, could you give the names of  
23 the three sons you just referred to?

24 THE WITNESS: Jacob, Daniel, and I don't know the  
25 third name of the third child. I'm sorry. I don't know all

1       their names.

2 BY MR. SHRAIBERG:

3       Q    Do you know if it is Josh?

4       A    Josh. That's it. Thank you very much. Joshua.

5       Q    You said that you are familiar with the property because  
6       it is where you grew up, correct?

7       A    Correct.

8       Q    And you also have a mortgage -- the first mortgage on  
9       that property?

10      A    Yes.

11      Q    If you were to rent the property, do you know what you  
12      would rent it for, an amount?

13      A    5,000.

14      Q    How do you come up with that number?

15      A    There are listings out there for area code 33434, and  
16      33431, and 33433 that are all the surrounding areas and that  
17      actual neighborhood, and that is -- the neighborhood is  
18      humble, and the house is very humble, and it -- that is the  
19      below average amount for what a three bedroom, two-and-a-half  
20      bath, pool home in that neighborhood and surrounding area  
21      would rent for.

22      Q    You said it's below average. What do you think the  
23      average is?

24      A    About fifty-five hundred, I would say, based on the  
25      comparisons.

1 Q Because of the filing of this involuntary proceeding,  
2 you, obviously, hired counsel, correct?

3 A Correct.

4 Q And that -- that counsel was my law firm?

5 A Correct.

6 Q And you've agreed to pay us a reasonable fee for our  
7 services?

8 A Yes.

9 Q And to date, you have paid all of the invoices timely  
10 that you have received?

11 A Yes.

12 Q But due to the actions in -- due to the state of the  
13 case, are you aware that there is significant work in  
14 progress that you have not been invoiced for to date?

15 A Yes.

16 Q As of August 16th, that amount that you have combined  
17 paid and owe our firm is \$34,758.30?

18 A Correct.

19 Q And in between August 16th and through today, there have  
20 been 21.6 additional hours of service performed?

21 A Yes.

22 Q Which was an additional \$9,120?

23 A Yes.

24 Q To the best of your knowledge, the Bernsteins have lived  
25 in the premises during this bankruptcy?

1 A Yes.

2 Q And they still live there today?

3 A Yes.

4 MR. SHRAIBERG: One moment, Your Honor. I have no  
5 further questions.

6 THE COURT: Just a moment, please. Alright. It's  
7 okay.

8 MR. SHRAIBERG: Oh, I apologize. I do have one  
9 question.

10 THE COURT: Go ahead. Yes.

11 BY MR. SHRAIBERG:

12 Q Do you know if the judicial sale has been reset?

13 A I -- the motion has been filed to reset it. It's going  
14 to be -- from what I'm told, approximately 60 days -- between  
15 now and 60 days from now.

16 Q For the actual sale.

17 A Right.

18 Q Thank you.

19 A To be set.

20 THE COURT: Thank you.

21 THE WITNESS: Thank you.

22 (The witness exits the stand)

23 MR. SHRAIBERG: Today we are seeking monetary  
24 sanctions against the three petitioning creditors: Joshua  
25 Bernstein, Jacob Bernstein, and Daniel Bernstein for the

1 legal fees incurred, as well as six months' rent that they  
2 have been able to stay in the property improperly. Due to  
3 this improper bankruptcy, it would've been sold the next  
4 day, and they have now been -- they have now enjoyed free  
5 rent for what appears to be six additional months.

6 THE COURT: But it's not necessarily about them,  
7 those three petitioners. It's the fact that your clients  
8 were unable to obtain the property and therefore couldn't  
9 rent it --

10 MR. SHRAIBERG: Correct.

11 THE COURT: -- correct?

12 MR. SHRAIBERG: Yes.

13 THE COURT: I -- for example, I don't have  
14 evidence that the three petitioners live there. Ms. Sahm  
15 just said she doesn't know.

16 MR. SHRAIBERG: Right.

17 THE COURT: I don't think that -- I don't -- I  
18 don't think that matters.

19 MR. SHRAIBERG: Sure.

20 THE COURT: The -- you're saying that because the  
21 petition was inappropriate --

22 MR. SHRAIBERG: Yes.

23 THE COURT: -- and you have two different  
24 arguments under 9011 --

25 MR. SHRAIBERG: Yes.

1 THE COURT: -- that -- and you want me to make  
2 those findings, and I would -

3 MR. SHRAIBERG: Right.

4 THE COURT: I would like you to get to that.  
5 Also, it would be nice if you talked about the evidence that  
6 I admitted.

7 MR. SHRAIBERG: Sure, I will.

8 THE COURT: Okay. I don't know if you're  
9 intending to do that --

10 MR. SHRAIBERG: Yes.

11 THE COURT: -- but I would like to be walked  
12 through it.

13 MR. SHRAIBERG: Yes.

14 THE COURT: But let's assume there's a violation  
15 under (b) (1) or (b) (3), and then I go to (c) to determine  
16 sanctions --

17 MR. SHRAIBERG: Correct.

18 THE COURT: -- and one of the components that you  
19 have is that -- but for the petition, assuming I find that  
20 it was wrongfully filed, that you would've got your client -  
21 - clients would have obtained title --

22 MR. SHRAIBERG: Yes.

23 THE COURT: -- long ago -

24 MR. SHRAIBERG: Correct.

25 THE COURT: -- and you want rent for that. That's



1       what you just said. So it's not about the fact that the  
2       three petitioners have rent -- are rent free; it's the  
3       denial of the damages to the clients, not the petitioner's  
4       benefit, right?

5               MR. SHRAIBERG: Correct. Plus the legal fees that  
6       my clients have incurred due to this wrongful -- the  
7       improper filing,

8               THE COURT: Not just on the motion itself, but  
9       everything that follows from the petition.

10              MR. SHRAIBERG: Correct.

11              THE COURT: Right.

12              MR. SHRAIBERG: And second is with regard to Eliot  
13       Bernstein and Candice Bernstein, along with the three  
14       petitioning creditors, we are asking that their pleadings in  
15       this file be stricken. And that comes from -- just going  
16       full circle.

17              We think that it's ironic that in this case they  
18       have completely taken the position of the best -- the best  
19       defense is an offense, and every one of their pleadings is  
20       name calling with regard to every lawyer that has touched  
21       this file, as well as, I believe, every judge that has  
22       touched this file, both in the state court matters and the  
23       bankruptcy court, have all committed fraud.

24              There was a fraud that occurred here, and it was  
25       nothing to do with any of the petitioning creditors who

1 didn't -- excuse me, any of the actual creditors that are  
2 here today with Mr. Rose's clients and myself. We didn't  
3 ask to come to bankruptcy court. It was an involuntary  
4 petition by the debtor against itself, which is as wrongful  
5 of -- as improper as can be.

6 And then in support of this motion, Eliot  
7 Bernstein, Candice Bernstein, and the petitioning creditors  
8 have laced this file with allegations of fraud that are as  
9 improper as can be. Our client has a judgment. If they  
10 believed that the judgment -- that there was something wrong  
11 with the judgment, there were state court remedies to fix  
12 that. They -- the borrower itself didn't even do that.  
13 There was a final non-appealable judgment against this  
14 debtor.

15 THE COURT: Which is the actual fee owner of the  
16 property in question.

17 MR. SHRAIBERG: Correct. Parties that were named  
18 because they lived there -- one -- two parties actually  
19 appealed. Eliot Bernstein appealed, and we put in our  
20 exhibit binder the dismissal of that appeal because the  
21 fourth DCA said he cannot file pro se pleadings anymore. So  
22 that was the basis of the dismissal of his appeal. I  
23 believe the children, as -- they're not tenants, they're  
24 entities that just -- that are there. And we -- the  
25 plaintiff suspected that to clear the title. There is an

1 appeal pending, and today is their deadline to file a brief.  
2 We would be surprised if they filed a brief today.

3 But either way, the judicial sale will go forward.  
4 There was, as this Court may remember, a motion by them  
5 filed to stay the foreclosure sale pending the appeal.  
6 Judge Kastrenakes has heard that hearing pre-petition and  
7 entered an order post-petition that this Court granted  
8 retroactive stay relief.

9 THE COURT: So -- okay. Hold on.

10 MR. SHRAIBERG: Sure.

11 THE COURT: You just said something I didn't know.  
12 So there was actually a hearing on that motion.

13 MR. SHRAIBERG: I wasn't the pre-petition.

14 THE COURT: Okay. Fine. No. It's fine.

15 MR. SHRAIBERG: Yeah. Okay. So --

16 THE COURT: I remember at a recent hearing going  
17 through all of the briefs that were filed in connection with  
18 that. There were many --

19 MR. SHRAIBERG: Okay.

20 THE COURT: -- filed in connection with that --  
21 those motions, and they were ruled on. Anyway, go ahead.

22 MR. SHRAIBERG: Sure. But, regardless, just  
23 taking it to the simplest form, our client has a judgment.  
24 Under the bankruptcy code, we are a creditor. We've never  
25 committed fraud; we have standing in this bankruptcy case;

1 the case was filed because of us. There's never fraud. And  
2 to lace a -- I always think that plagiarism -- excuse me --  
3 liable and slander are unique, because in courtroom, there's  
4 an exemption so that they can say whatever they want in a  
5 pleading.

6 And I have no idea what my future is when -- who  
7 would ever look at cases that I've filed, that Mr.  
8 Pendergraff, Mr. Rose, Ms. Fineman, any lawyer that touched  
9 this file, who would ever look at anything -- fraud is in  
10 there, and it's improper. And I think anyone that would  
11 look at the next 200 pages would realize, okay, this person  
12 isn't -- these claims are ridiculous. But we shouldn't have  
13 to defend ourselves and say the claims are ridiculous.

14 And for that reason, we believe that they should  
15 all be stricken. So we are also seeking that remedy today.

16 THE COURT: Yes. Let me point out to you -- and I  
17 believe the argument there is that those documents were  
18 filed for the improper purpose of frustrating and -- a word  
19 actually used in the statute -- in the rule. But the effect  
20 of striking a document does not remove it from the docket.  
21 It still stays there.

22 MR. SHRAIBERG: Understood.

23 THE COURT: It's just an order that says they're  
24 stricken. And let me also point out that each of the ECF  
25 numbers that you have referenced in the motion for sanctions

1 that I'm hearing today, I've already considered all of those  
2 documents. They are filed in connection with prior matters.  
3 There's no pending matter that they relate to.

4 MR. SHRAIBERG: Correct.

5 THE COURT: So striking them doesn't affect  
6 anybody, and it also doesn't remove them from the docket.  
7 But there would be the benefit of an order that says they  
8 are stricken.

9 MR. SHRAIBERG: Right.

10 THE COURT: That's what you want.

11 MR. SHRAIBERG: Correct, Your Honor.

12 THE COURT: Okay. It is -- a couple things --

13 MR. SHRAIBERG: Sure.

14 THE COURT: -- that will be helpful to me. First,  
15 I've admitted all the documents. I would like to know why  
16 you want me to consider them.

17 MR. SHRAIBERG: Sure.

18 THE COURT: And we have plenty of time to do that.  
19 And, next, you have alleged against each of the respondents  
20 -- well, that's not true -- against three of the  
21 respondents, violations under 9011(b)(1) and (b)(3) --

22 MR. SHRAIBERG: Yes.

23 THE COURT: -- and against all of the respondents,  
24 also under (b)(3), I believe. It might be (b)(1). Which  
25 one is it? Whichever one is the improper purpose standard.

1 So that's the first step, violations. And then the next  
2 step is appropriate sanction. And there are some -- there's  
3 some guidance in 9011(c). And I'd like you to address why  
4 you think the sanctions you've requested are appropriate  
5 there. So I'd like all of that addressed in presentation.

6 MR. SHRAIBERG: Okay. Beyond speculative  
7 litigation claims, the sole asset of Bernstein Family  
8 Realty, LLC, is the non-income producing real estate at --  
9 in Boca Raton. Movant's Exhibit 8 is the bankruptcy  
10 schedules filed by Eliot -- signed by Eliot - or filed by  
11 Eliot Bernstein on July 13, 2022, at ECF No. 53, which show  
12 the real property valued at \$800,000, other assets listed at  
13 unknown values.

14 In part 11, at paragraph 74 and 75, it lists  
15 claims for wrongful foreclosure and conversion against  
16 various persons. There are no leases on Schedule G and no  
17 income on Statement of Financial Affairs.

18 THE COURT: Who signed this?

19 MR. SHRAIBERG: I believe Eliot Bernstein.

20 THE COURT: The debtors, members, are three  
21 trusts.

22 MR. SHRAIBERG: Correct.

23 THE COURT: Does -- do I have any evidence as to  
24 who the trustees -- I'm using plural of those trusts -- are?  
25 Is there any evidence here of that?

1 MR. SHRAIBERG: No.

2 THE COURT: I don't think anybody has ever told me  
3 who the trustees are. I'm -- I can't figure out how Mr.  
4 Bernstein was allegedly selected as the manager. He always  
5 says acting manager. I don't know what that means. There's  
6 no such thing as an acting manager under Florida law.  
7 You're either the manager or you're not.

8 Mr. Ted Bernstein, you can weigh in, but only if  
9 it's evidentiary. I mean --

10 MR. BERNSTEIN: I was -- I just want to confirm --

11 THE COURT: You can consult with him. Please go  
12 ahead.

13 MR. SHRAIBERG: There is -- there is no evidence  
14 in the record of who the trustees are. I believe there was  
15 a -- well, in the transcript at the last hearing, Eliot  
16 Bernstein did say, for what it's worth, that the -- he  
17 believed the three trusts had been dissolved, and the three  
18 owners are his children. I remember that testimony.

19 THE COURT: How old -- this is probably not in the  
20 evidence either. How old are each of the petitioners now?

21 MR. SHRAIBERG: They're all over 20 years old.  
22 They're all --

23 THE COURT: Okay. Are they all 25 or older? I've  
24 read the trust agreements.

25 MR. SHRAIBERG: Right.

1           THE COURT: The trusts aren't released to them  
2 unless they're 25. So -- okay. So he thinks that the  
3 assets of the trusts have been transferred to their sole  
4 beneficiaries in each case.

5           MR. SHRAIBERG: He made a comment about that. I  
6 have found that his comments, both in writing and in court,  
7 he uses phrases -- he uses words improperly and -- legal  
8 terms improperly, and it's tough to decipher what is and  
9 what is not correct.

10          THE COURT: Alright. Let me -- I apologize for  
11 that sidetrack. Let's go back to -- you were pointing me to  
12 Exhibit 8, the schedules, which show the real property,  
13 other assets -- a number of assets shown of unknown value,  
14 although this -- there's often nothing listed at all --

15          MR. SHRAIBERG: Correct.

16          THE COURT: -- in those categories, and then some  
17 claims, primarily, against lawyers.

18          MR. SHRAIBERG: That's right. And nothing was  
19 brought during the short period that this was in bankruptcy.  
20 And we've never seen any tangible -- there's been no  
21 evidence of these claims. There's a final judgment of  
22 foreclosure that has not been appealed by the borrower.

23          THE COURT: And is not stayed.

24          MR. SHRAIBERG: Correct. Exhibit 3 is the order  
25 dismissing the bankruptcy which had numerous statements of



1 findings of fact. Specifically -- first, the debtor owns  
2 one real estate asset. This is on page 2 of ECF 79, which  
3 is Exhibit 3 in our binder.

4 The debtor owns one real estate asset, the single-  
5 family home located in Boca Raton. Since prior to the  
6 initiation of this case, the debtor has had no employees --  
7 no operations or employees. The debtor has, at most, a few  
8 minor unsecured creditors.

9 The petitioning Bernstein's, as well as their  
10 parents, Eliot Bernstein and Candice Bernstein, all either  
11 reside at the real property or utilize the real property as  
12 their mailing address.

13 Movant's Exhibit 2, the bankruptcy petition, lists  
14 the address for the debtor and each of the petitioning  
15 Bernstein's at 2753 Northwest 34th Street in Boca Raton.

16 Movant's Exhibits 9, 10, and 11 -- those are  
17 jointers by petitioning Bernsteins at ECFs Nos. 36, 37 and  
18 38 -- lists the address for each of the petitioning  
19 Bernsteins as 2753 Northwest 34th Street, Boca Raton, and  
20 which state that Eliot Bernstein is their father.

21 THE COURT: Alright. So that means I actually do  
22 have evidence that they live there.

23 MR. SHRAIBERG: Correct.

24 THE COURT: Let me point out that when you file a  
25 petition, including an involuntary petition, you need to

1 show your driver's license, and each of the three  
2 petitioner's licenses is available to me. They're not  
3 publicly accessible. At the time of the filing of the  
4 petition, Jacob was 23, Joshua was 25, and Daniel was 19.

5 MR. SHRAIBERG: Exhibit 12 --

6 THE COURT: Which, by the way, means that based on  
7 the attachments to Exhibit -- which one is the petition?

8 MR. SHRAIBERG: 2.

9 THE COURT: 2? 2 -- oh, yeah.

10 MR. SHRAIBERG: Yes.

11 THE COURT: -- which I think include the trust  
12 agreements, don't they?

13 MR. SHRAIBERG: I think so.

14 THE COURT: -- only one of them would have access  
15 to the trust race -- they're not?

16 MR. SHRAIBERG: XXXXXX.

17 THE COURT: XXXXXXXX, which means that as of  
18 today, none of them are 25, and under their own trust, they  
19 would not have access to the race.

20 MR. SHRAIBERG: Moving to Exhibit 12 is a joinder  
21 by Candice Bernstein at ECF No. 39, which lists her address  
22 as 2753 Northwest 34th Street, and which states that the  
23 petitioning creditors are her son's and that Eliot Bernstein  
24 is her husband.

25 Movant's Exhibit 13, motion for reconsideration

1 filed by Eliot Bernstein at ECF No. 44, lists his address as  
2 2753 Northwest 34th Street. The secured creditors hold a  
3 claim against the debtor that is secured by the real  
4 property.

5 Specifically, the secured creditors are the holder  
6 of that certain final judgment of foreclosure in the amount  
7 of \$353,574.68 against the debtor, which are foreclosed on  
8 the real property, entered on December 23, 2021, by the  
9 Circuit Court for the 15th Judicial Circuit.

10 Movant's Exhibit 1 is the final judgment of the --  
11 of foreclosure.

12 Movant's Exhibit 27 is a mortgage in favor of  
13 Walter Sahm and his wife, Patricia Sahm. This we put in --  
14 well, pursuant to the final judgment of foreclosure, a  
15 foreclosure sale of real property was scheduled for April  
16 20, 2022. And also part of the -- the intent of putting the  
17 mortgage in is that Mr. Eliot Bernstein has repeatedly said  
18 that this is a fraud, a dead person is moving in this court.  
19 It's not true.

20 First, there is a judgment that has Walter Sahm as  
21 a creditor, but, secondly, the review of the mortgage is  
22 it's owned tendency by the entirety. It says Walter Sahm  
23 and his wife, Patricia Sahm, when he passed by law, Patricia  
24 Sahm was the owner of that -- of that mortgage. This is a  
25 red herring. It's just going toward why we want these

1 pleadings stricken.

2           Movant's Exhibit 1, which was the final judgment  
3 of foreclosure, the petitioning Bernsteins filed this case  
4 as an involuntary case against the debtor, yet the  
5 petitioning Bernsteins are not creditors of the debtor;  
6 rather, the petitioning Bernsteins are the beneficial owners  
7 of the debtor. That's found in Movant's Exhibit 2, which is  
8 the petition, at ECF No. 87-2, page 6 of 15 at paragraph 3.  
9 "We are ... the sole owners and members of this company."  
10 That's their quote.

11           THE COURT: Right. Although, when you read the  
12 entire document, what you learn is that they are, in fact,  
13 the beneficiaries of three trusts, which are, in fact, the  
14 members, and so they're not the direct members of the  
15 debtor.

16           MR. SHRAIBERG: Right.

17           THE COURT: I don't know how you would reach  
18 another conclusion, reading the document.

19           MR. SHRAIBERG: Right.

20           THE COURT: Debtor has three members, the debtor's  
21 three members are three trusts, the petitioners are each the  
22 sole beneficiary of one of those trusts. And, apparently,  
23 since one of them is not yet -- none of them are yet 25,  
24 even today -- and by the way, if anybody orders the  
25 transcript, the statement that someone is turning 25 on

1 Saturday needs to be stricken -- needs to be blacked out.

2 The -- since none of them are 25 as of today, I've  
3 already looked at the trust for another purpose earlier in  
4 the case, and I know that the trust still exists, at least  
5 by -- unless they've been amended, and you would think they  
6 would've included the amendment in their petition.

7 MR. SHRAIBERG: They claimed -- well, by signing  
8 the schedule -- excuse me, the petition, the involuntary  
9 petition, they're claiming to be creditors, but then on --  
10 included in their petition, at ECF pages 7 to 8 of 15, at  
11 paragraphs 12 through 14, they describe their payments as  
12 capital contributions.

13 THE COURT: Yeah. Hold on a moment. And then  
14 they divide the total in thirds, and that's what they  
15 included in -- for amounts in -- on the petition.

16 MR. SHRAIBERG: Correct.

17 THE COURT: Go ahead.

18 MR. SHRAIBERG: Movant's Exhibit 3 is the order  
19 dismissing bankruptcy case which states that, quote, this  
20 case was initiated when the petitioning Bernsteins filed an  
21 involuntary Chapter 11 petition against the debtor.  
22 However, the petitioning Bernsteins are not creditors of the  
23 debtor.

24 Despite this fact, in the petition, each of the  
25 petitioning Bernsteins falsely stated under penalty of

1 perjury that they were creditors of the debtor. That's in  
2 Movant's Exhibit 2, the petition, and that's found at  
3 paragraph 13 of the petition describing each petitioner's  
4 claim.

5 This case was filed as an involuntary case because  
6 the petitioning Bernstein's could not file a voluntary  
7 bankruptcy petition for the debtor as the debtor was  
8 dissolved and had no manager. This could be found at  
9 Movant's Exhibit 15, a resignation of manager filed in 2016  
10 with the Florida Department of State Divisions of  
11 Corporation and Movant's Exhibit 3, an order dismissing the  
12 bankruptcy case, which states on page 2, this case was filed  
13 as an involuntary case because the debtor had been dissolved  
14 and had no manager, and, thus, nobody to sign a voluntary  
15 bankruptcy petition on behalf of the debtor; that is, the  
16 petitioning creditors effectively caused the debtor, of  
17 which they are the beneficial owners, to file an involuntary  
18 case against itself.

19 The petitioning Bernstein's did not act alone in  
20 initiating this involuntary bankruptcy case. Rather, they  
21 acted in concert with their parents, Eliot Bernstein and  
22 Candice Bernstein.

23 Movant's Exhibit 4, Candice Bernstein's  
24 Certificate of Service, showing that Candice Bernstein  
25 served the summons and involuntary petition of the debtor.

1           Movant's Exhibits 9, 10, 11, and 12, which are  
2           joinders at ECFs Nos. 36, 37, 38, and 39, showing  
3           petitioning Bernsteins and Candice Bernstein joining in  
4           Eliot Bernstein's motion for reconsideration before the  
5           motion for reconsideration was ever filed.

6           The joinders were filed on June 24th, the motion  
7           for reconsideration, which is Movant's Exhibit 13, was filed  
8           on June 30th. These are ECFs No. 43 and 44.

9           Movant's Exhibit 3, a note with the order  
10          dismissing case again, which states on page 2 that the  
11          petitioning Bernstein's filed the case with the support of  
12          Eliot Bernstein and Candice Bernstein. And once again, we  
13          note that they all say -- share the same address.

14          This bankruptcy case was filed as a litigation  
15          tactic for the sole purpose of getting the effect of the  
16          Section 362 automatic stay in order to stymie the  
17          foreclosure sale of the real property. The case was filed  
18          on April 19th; the foreclosure sale was scheduled for the  
19          next day.

20          Movant's Exhibit 3 is the order dismissing the  
21          bankruptcy, has the quote that I just stated on page 2.

22          Movant's Exhibit 2, the petition, at ECF, pages 6  
23          through 12 of 14, in which the petitioning Bernsteins  
24          described their dispute with the movants.

25          Once the case was filed and the automatic stay

1       went into effect, the debtor did nothing during the case and  
2       the case was converted to Chapter 7.  Movant's Exhibit 6,  
3       which is the order converting the case, Movant's Exhibit 7  
4       is July -- on July 4 -- the July 14th order at ECF No. 57,  
5       recounting the debtor's failures on pages 3 to 4, and  
6       stating on page 4 that the debtor's failure -- failures  
7       caused, quote, a secret bankruptcy putting creditors in the  
8       position of potentially taking actions in violation of the  
9       automatic stay.

10               And Movant's Exhibit 3, the order dismissing  
11       bankruptcy case at ECF No. 79, at page 2:  "Once such stay  
12       was achieved, the debtor did nothing in this bankruptcy  
13       case."

14               The case was eventually dismissed with two years  
15       prejudice, and the court determined that the Bernstein's had  
16       filed it in bad faith.  That's Movant's Exhibit 3 at page 3.

17               This bad faith bankruptcy scheme by the Bernsteins  
18       did not come without cost to the movants, as the movants  
19       were required to engage my law firm and me and litigate this  
20       bankruptcy case.  And the April 20th foreclosure sale was  
21       delayed by more than three months, which is time that the  
22       movants could have been renting out the real property and  
23       the movant believes that she could rent it at \$5,000 per  
24       month.

25               Movant's Exhibit 26 is my retainer agreement



1       setting forth the terms of the engagement.

2               Movant's --

3               THE COURT:   Just hold on minute.

4               MR. SHRAIBERG:   Sorry.   Yes.

5               THE COURT:   26?

6               MR. SHRAIBERG:   Yes.

7               THE COURT:   From April, 2022? -- which has the  
8       client properly represented.   Why was the initial -- this  
9       caused a lot of trouble in the case.

10              MR. SHRAIBERG:   Yeah, I know.

11              THE COURT:   Why is the initial notice of  
12       appearance -- okay.   Let me -- let me comment briefly.

13              MR. SHRAIBERG:   Sure.

14              THE COURT:   Looking at the judgment and how the  
15       mortgage is worded, you are right that Patricia Sahm would  
16       have automatically become the sole owner of the rights under  
17       the mortgage.   And so it does -- it just doesn't matter, and  
18       there's no fraud involved in that.   But now I see your  
19       engagement letter, and it is -- the client is Joanna Sahm,  
20       personal representative of the Estate of Walter Sahm,  
21       thereby acknowledging that Mr. Sahm had deceased and  
22       Patricia Sahm.   If that's the case, why the notice of  
23       appearance in the form that it was filed?

24              MR. SHRAIBERG:   It was a mistake.   And what I  
25       think happened was left hand not speaking with right.   When

1 I first spoke with Ms. Sahm, as you can appreciate --

2 THE COURT: The one who's here. Yes, the --

3 MR. SHRAIBERG: Yes, correct. Joanna --

4 THE COURT: Right.

5 MR. SHRAIBERG: -- the daughter.

6 THE COURT: Right.

7 MR. SHRAIBERG: As you can appreciate, because of  
8 the status of her parents and that she's the one that  
9 initially called me, we had to make sure that this was done  
10 properly, and that's why the retainer letter was done  
11 properly. I have a feeling, then, shame on me, I sent it to  
12 the autopilot that would happen in my office, and I believe  
13 autopilot looked at the judgment, and that was the notice of  
14 hearing. And, shame on me, I signed the notice of  
15 appearance. That was a mistake.

16 But I literally put the retainer letter -- there  
17 is no evidentiary reason for that retainer letter to be in  
18 the exhibit binder, other than to show if they were here and  
19 wanted to talk about the great fraud. It never existed. It  
20 clearly was a mistake from day one.

21 THE COURT: Alright. Go ahead.

22 MR. SHRAIBERG: Movant's Exhibit 21 sets forth the  
23 line items with regard to the expenses. And I have to step  
24 back and say, when looking at what happened here, I believe  
25 that \$40,000, on its face, is a lot of money, especially

1 when you consider the amount of actual contested matters in  
2 this case. There were very few. But --

3 THE COURT: You mean contested matters at which  
4 substantive issues were presented --

5 MR. SHRAIBERG: Correct.

6 THE COURT: -- because I'm confident that if I've  
7 been spending nights working until 10:00 on this case, that  
8 everybody else has, as well, and they don't have nothing to  
9 do with the substantive request for relief.

10 MR. SHRAIBERG: Absolutely right. Every document  
11 they file includes a 200-page diatribe of irrelevant  
12 information. We don't know it's irrelevant until we have  
13 read all 200 pages. And then when it's time to seek  
14 sanctions or actually seek a dismissal, you have to go  
15 through everything to prepare for these hearings. And we  
16 didn't know what to expect today. And that's why these fees  
17 keep adding up.

18 So -- and, I repeat, we didn't ask to come here.  
19 This was the filing of an involuntary petition that was as  
20 improper as the day is long. And that's why it hit at  
21 40,000. And I'm jumping ahead because one of the reason --  
22 when we -- I will hit this in more detail in a moment, but  
23 one of the purposes of sanctions through 9011 is to prevent  
24 this behavior and to punish. When I was thinking, wow, what  
25 could we be entitled to, it's this --

1 THE COURT: Well, does 9011 say "punish"? It says  
2 "deter" --

3 MR. SHRAIBERG: Deter. Sorry.

4 THE COURT: -- twice.

5 MR. SHRAIBERG: Yes.

6 THE COURT: Two different times.

7 MR. SHRAIBERG: I apologize. It does. It says  
8 "deter."

9 THE COURT: It would be unlikely that a bankruptcy  
10 rule provided that I could punish somebody. There is one  
11 instance, but unlikely.

12 MR. SHRAIBERG: Right.

13 THE COURT: So it's intended to be deterrence, and  
14 that's because this Court's -- in general, unless a contempt  
15 happens in front of me -- in general, my -- the limit of my  
16 contempt power is civil contempt. And that's what 9011 is  
17 designed for.

18 MR. SHRAIBERG: Absolutely. But to deter someone,  
19 they would know that if they -- that the filing of an  
20 involuntary bankruptcy is a very serious matter and it has  
21 very serious consequences.

22 THE COURT: If you read Section 303, that is  
23 obvious.

24 MR. SHRAIBERG: Right. To deter, one would need  
25 to know -- well, if the filing of an improper bankruptcy,

1 the petitioners, and even if there was a lawyer -- there  
2 isn't one here -- that signed the petition is going to be  
3 subject to serious sanctions that would be a deterrent.

4 There is no question that Southern Florida, or the  
5 district that we're in, would need to know, you cannot file  
6 an involuntary petition against yourself to try to stop a  
7 foreclosure sale when there is no hint of rehabilitation.  
8 Let me take that back. You can't file a bankruptcy against  
9 yourself, period. Petitioning creditors -- you can't  
10 organize -- you can't collude to have an involuntary filed  
11 against you by, say, three legitimate creditors for an  
12 improper purpose. We don't even have that here. We have  
13 actual beneficiaries of equity that filed this case.

14 THE COURT: We have the indirect beneficial owners  
15 of the debtor.

16 MR. SHRAIBERG: Correct. So I was thinking that  
17 we actually could ask for more than our legal fees and the -  
18 - legal fees and the rent in this instance from the -- I'll  
19 use air quotes saying settlement negotiations, from a lawyer  
20 that has appeared in this case but never entered an  
21 appearance, Ms. Angela Garcia (ph.). I believe that the  
22 amount of legal fees and rent is enough of a deterrent in  
23 this specific instance, so we're not asking for more than  
24 that. But from my conversations with her, I have said, we  
25 would have a right to ask for it. We could --

1 THE COURT: Okay. Now I'm confused.

2 MR. SHRAIBERG: Sure.

3 THE COURT: So Ms. Garcia has, in fact, appeared  
4 early in the case on behalf of the petitioners.

5 MR. SHRAIBERG: Correct.

6 THE COURT: Later, she listened in on a hearing  
7 and specifically said she was not appearing on their behalf.

8 MR. SHRAIBERG: Correct.

9 THE COURT: Okay. Since then, has she been  
10 negotiating on behalf of any of the respondents in today's  
11 motion? I don't want to know the terms of what was  
12 discussed, but --

13 MR. SHRAIBERG: Alright. We -- correct.

14 THE COURT: -- does -- she represented herself as  
15 -- to you as -- or one of your colleagues, as counsel to any  
16 of the petitioners?

17 MR. SHRAIBERG: To me, I would say she uses the  
18 phrase "trying to help them," which is counseling. You  
19 can't be kind of --

20 THE COURT: Okay. Well --

21 MR. SHRAIBERG: -- pregnant.

22 THE COURT: Well, seems to me that in Florida, if  
23 a lawyer is helping somebody, they have just undertaken  
24 representation.

25 MR. SHRAIBERG: Correct. And I'll add, I know

1       that, sir.

2               THE COURT:  Yeah.  Make sure if you speak in the  
3       courtroom, that you do it way far away from the microphones  
4       or else it'll be in the record.  If that is your intention  
5       to be in the record, that's great.  But know that that's the  
6       case.  Yes.

7               MR. SHRAIBERG:  What I believe Mr. Rose was going  
8       to tell me is, and this is something that Ms. Garcia did  
9       tell me --

10              THE COURT:  Yes, I know that you are Mr. Rose and  
11       not Mr. Bernstein.  I apologize.  Go ahead.

12              MR. SHRAIBERG:  -- she filed an emergency motion  
13       in state court on behalf of the three children, because they  
14       accused me of fraud left and right -- I don't know if her  
15       client was the three children or their trusts -- for an  
16       emergency hearing that is taking place tomorrow with regard  
17       to a separate matter that Mr. Rose is involved in, not the  
18       foreclosure.  In that case, I believe there is \$300,000 put  
19       into the court registry due to Simon Bernstein.  That is  
20       Eliot's father's estate.  I think it's a remnant, but Mr.  
21       Rose would know what that's about, the hearings.

22              THE COURT:  Okay.  But that isn't -- that's  
23       something else entirely.

24              MR. SHRAIBERG:  Correct.

25              THE COURT:  But you said that they were -- you

1 mentioned --

2 MR. SHRAIBERG: Sure.

3 THE COURT: -- that there may have been settlement  
4 negotiations with some of the respondents and that Ms.  
5 Garcia was involved. I'm just curious whether she  
6 represented herself. If she made an offer on behalf or in -  
7 - or negotiated on behalf of one of these parties, I -- I'm  
8 trying to figure out why she's not here making an  
9 appearance.

10 MR. SHRAIBERG: She -- there certainly was an  
11 offer made on that phone call.

12 THE COURT: Okay. So there's a lawyer who's not a  
13 lawyer who has appeared but has now -- no longer appearing,  
14 but hasn't withdrawn. Okay.

15 MR. SHRAIBERG: Yeah. And one other thing that --  
16 we were always wondering are the Bernsteins going to show,  
17 and it especially came from the last pleading that Eliot  
18 filed two days ago, that I believe there's a sentence in  
19 there that says, In lieu of my appearance, I am making this  
20 objection. Of course that doesn't mean the children. Ms.  
21 Garcia -- this is not a settlement negotiation -- was  
22 concerned -- was today -- she wanted clarification from me -  
23 - was today a criminal proceeding or a civil proceeding? I  
24 assured her that it is a civil proceeding. And that, too,  
25 was -- for that, yeah --



1 THE COURT: Okay. Whatever that means.

2 MR. SHRAIBERG: So that --

3 THE COURT: Let me just point out, also, I think  
4 Mr. Eliot Bernstein's document was ECF 94, and when I ruled  
5 on it, I did say that I would treat it as an objection. I  
6 assumed that he would also be here. I did see that  
7 language, but I took that in the context of his argument  
8 that because he wrongfully thought that transcripts would  
9 not be available to discuss, that he didn't think the  
10 hearing was going to happen.

11 Let me also point out that anything that I said  
12 during the bankruptcy case would have nothing to do with the  
13 analysis of whether the petition was filed appropriately,  
14 which obviously happened before I had any hearings. But,  
15 anyway, go ahead.

16 MR. SHRAIBERG: Excuse me. The EC -- sorry.  
17 Exhibit 26 was the retainer agreement. Exhibit 21 are my  
18 firm's time records through August 16th. And I will proffer  
19 to the Court that we have billed an additional 21.6 hours  
20 through yesterday totaling \$9,120 in fees.

21 THE COURT: Okay. So that is in the record or not  
22 in the record?

23 MR. SHRAIBERG: It -- Ms. Sahm testified --

24 THE COURT: Testified to that.

25 MR. SHRAIBERG: -- that she has incurred that

1 additional fee. We have not sought our fees for today, and  
2 I don't think it's necessary. If the -- we won't seek  
3 additional fees over and above than 9,120.

4 Moreover, the Bernsteins utilize this bad faith  
5 bankruptcy case as a platform to publish false and  
6 defamatory statements about the movants, myself and other  
7 persons who have had the misfortunes to cross paths with the  
8 Bernsteins. And we've set forth those ECF numbers in the  
9 motion. I can do it again. I don't know if it's necessary.

10 THE COURT: No, that's not necessary.

11 MR. SHRAIBERG: And as demonstrated by the orders  
12 of other courts cited in the motion and tendered as Movant's  
13 Exhibits 16, 17, 18, 19, and 20, prior admonitions and  
14 sanctions by other courts against Eliot Bernstein have not  
15 served as sufficient deterrent to his abhorrent litigation  
16 tactics.

17 Exhibit 16 is the fourth DCA sanctioning Eliot  
18 Bernstein in 2017 by directing the clerk not to accept any  
19 more of his pro se filings.

20 Exhibit 17, on page 45 of the Southern District of  
21 New York Order from 2008 dismissing complaint and stating  
22 Eliot Bernstein has, quote, burdened this Court and hundreds  
23 of defendants, many of whom are not alleged to have engaged  
24 in wrongdoing with more than 1000 paragraphs of allegations,  
25 but have not been able to state a legally cognizable federal

1 claim against a single defendant.

2 Exhibit 18 is on page 8 of the Southern District  
3 of New York order. And the same case from 2013 states,  
4 quote, the Proskauer (ph) defendants seek to enjoin Eliot  
5 Bernstein from filing any action in this court or any other  
6 court related to the subject matter of this action without  
7 first obtaining leave of the court. In the August 14th  
8 order, I cautioned Eliot Bernstein that any additional  
9 frivolous pleadings in this case could subject him to  
10 sanctions under Federal Rule of Civil Procedure 11.

11 Movant's Exhibit 19, page 7 of the Southern  
12 District of New York order, in the same case from 2013,  
13 imposing monetary sanctions against Eliot Bernstein and  
14 enjoining him from filing papers in any court relating to  
15 the subject matter of particular action without leave of  
16 issuing of -- issuing court.

17 And Movant's Exhibit 20 is the fourth DCA's order  
18 from earlier this month dismissing Eliot Bernstein's appeal  
19 of foreclosure judgment due to the prior prohibition against  
20 pro se filings.

21 Rule 9011(b) (1) and three sanctions. Federal Rule  
22 of Bankruptcy Procedure 9011(b) states, in pertinent part,  
23 that by presenting to the Court, whether by signing, filing,  
24 submitting, or later advocating a petition, pleading,  
25 written motion, or other paper, an attorney or unrepresented

1 party is certifying that to the best of the person's  
2 knowledge, information, and belief formed after an in  
3 inquiry reasonable under the circumstances, that, one, it is  
4 not being presented for any improper purpose, such as to  
5 harass or to cause unnecessary delay or needless increase in  
6 the cost of litigation. And, three, that the allegations  
7 and other factual contentions have evidentiary support or,  
8 if specifically so identified, are likely to have  
9 evidentiary support after a reasonable opportunity for  
10 further investigation or discovery.

11 Rule 9011(c) goes on to state, in pertinent part,  
12 that if, after notice and a reasonable opportunity to  
13 respond, the Court determines that subdivision (sic) b has  
14 been violated, the Court may subject the conditions stated  
15 below, impose an appropriate sanction upon the attorney's  
16 law firm or parties that have violated subdivision b or are  
17 responsible for the violation. It's -- was initiated by a  
18 motion. As I believe this court knows, the filing of a  
19 bankruptcy petition is an exception to the 21-day safe  
20 harbor period and in the nature of the sanctions and the  
21 limitations, a sanction imposed for violation of this rule  
22 should be limited to what is sufficient to deter repetition  
23 of such conduct or comparable conduct by others similarly  
24 situated.

25 The facts of this case, while unique, are very

1 similar to a case of *In re Letourneau*, L-E-T-O-U-R-N-E-A-U.  
2 There, like -- the debtor caused the filing of an  
3 involuntary Chapter 7 petition against himself and falsely  
4 listed three petitioning creditors on the petition who were  
5 not, in fact, his creditors in order to delay a foreclosure  
6 action and, quote, save his home. That's at 422 B.R. 132 at  
7 page 140. It's a Northern District of Illinois bankruptcy  
8 case from 2010.

9 The Letourneau Court determined that, quote, there  
10 is no circumstance under which a debtor's filing of an  
11 involuntary case against himself can be proper, and  
12 involuntary bankruptcy is a remedy for creditors not  
13 debtors. Moreover, quote, the filing of an involuntary case  
14 for the purpose of holding off a single creditor of the  
15 alleged debtor is improper and violates Rule 9011. That's  
16 at pages 138 and 139 of the Letourneau case.

17 Furthermore, while the debtor in Letourneau,  
18 quote, probably did file the case to save his home, the  
19 improper purpose portion of 9011 is evaluated objectively  
20 and does not require a showing of subjective bad faith; that  
21 is, the file document does, in fact, lead to needless delay  
22 or cost or is in some way improper. It violates 9011  
23 regardless of the subjective belief in the need to file the  
24 document. There is nothing improper in wanting to save  
25 one's home, but it is highly improper to go about it by

1 filing an involuntary case against oneself using a  
2 fraudulent petition. That's at page 141 of the opinion.

3 After determining that the offending petition was  
4 objectively improper and thus violated Rule 9011(b)(1), the  
5 Letourneau Court turned to the appropriate sanction under  
6 Rule 9011(c)(2), found that the monetary equivalent of a  
7 slap on the wrist would be enough to prevent the debtor's  
8 recidivism but concluded that a heavier sanction must be  
9 imposed, however, to deter comparable conduct by others  
10 similarly situated, because the maneuver of the debtor  
11 employed here is a serious abuse of the bankruptcy system.

12 Therefore, by effectively causing the debtor to  
13 file its own involuntary petition for the sole purpose of  
14 thwarting our April 20th foreclosure sale of the real  
15 property, the petitioning Bernsteins, acting in concert with  
16 Eliot and Candice Bernstein, clearly filed the petition with  
17 an improper purpose and in violation of Rule 9011(b)(1), the  
18 improper purpose section.

19 Moreover, the petitioning Bernsteins, acting in  
20 concert with Eliot Bernstein and Candice Bernstein, clearly  
21 violated 9011(b)(3) when they falsely stated in the petition  
22 that petitioning Bernstein's were creditors of the debtor.

23 Based on, one, the gravity of the Bernsteins'  
24 improper conduct, the fact -- two, the fact that the past  
25 admonitions and sanctions from multiple courts have thus far

1 failed to deter such improper conduct, and, three, the  
2 importance of nipping similar involuntary bankruptcy schemes  
3 by others in the bud, like, the Letourneau case states, the  
4 Court should impose substantial monetary sanctions on the  
5 petitioning Bernsteins as they, while acting in concert with  
6 their parents, actually signed and filed this petition.

7 Seeking a sanctions judgment for the \$34,758.30,  
8 plus 9,120, which -- plus \$5,000 for the 6 months that we  
9 were not able to rent the -- the real estate, totals  
10 \$73,878.30.

11 THE COURT: Could I focus for a moment --

12 MR. SHRAIBERG: Sure.

13 THE COURT: -- on the rent request?

14 MR. SHRAIBERG: Yes.

15 THE COURT: Now, when you look at subsection (c),  
16 there's one provision that talks about fees and costs to the  
17 successful party on the motion for sanctions. That's  
18 included in your request.

19 MR. SHRAIBERG: Yes.

20 THE COURT: Then there are the two components that  
21 you've referred to deterrence, both of acts by the party in  
22 question and similarly situated parties, and you've  
23 addressed that.

24 MR. SHRAIBERG: And then a little bit further down  
25 in the same subsection, it says that the sanction can

1 include fees and costs resulting from the filing of the  
2 thing that's complained of -- in this case, the petition,  
3 which would be everything in the case -- if necessary, for  
4 purposes of deterrence. And so we have a specific mention  
5 of fees and costs.

6 Now, the measure of that is not a damages measure;  
7 it's a measure of whether the sanction is appropriate to  
8 deter both the party in question and others similarly  
9 situated. But the rent requests sounds more like damages,  
10 and I'm not sure that that is the purpose of the sanction in  
11 9011(c). I'm confident it's not.

12 MR. SHRAIBERG: Sure.

13 THE COURT: Could you -- is there any case law in  
14 which you found that taking that kind of request into  
15 account was appropriate for purposes of a sanction under  
16 9011(c)?

17 MR. SHRAIBERG: No. Other than the cases that --  
18 and we haven't specifically looked for the rent provision  
19 that the cases do say that it can be something to deter, and  
20 we did cite the language from the Letourneau case that says  
21 a slap on the wrist would not be sufficient.

22 The -- that's, I guess, where we're coming from,  
23 that the purpose of -- they've accomplished their goal.  
24 They have improperly filed a bankruptcy and -- or have been  
25 allowed to live for free for six more months. The deterrent



1       for -- to prevent people from doing that is you're not going  
2       to get that remedy. We're not going to reward your bad  
3       behavior, and that's the deterrent. If the court would  
4       like, we can look for additional cases that have a sanction  
5       of that kind and supplement, but we think that we have  
6       enough just from the statute and the language of the case  
7       that we -- that we have cited.

8               THE COURT: May I ask you --

9               MR. SHRAIBERG: Yes.

10              THE COURT: -- do you -- do you believe that the  
11       standard that I apply under (b)(1) and (b)(3) is the same,  
12       and I ask that --

13              MR. SHRAIBERG: Sure.

14              THE COURT: There is some case law that suggests  
15       that the improper purpose analysis is a subjective of one I  
16       need to consider. Obviously, we don't have the petitioners  
17       testifying today because they have failed to show. We don't  
18       have their testimony, so I can't -- I can't look to that and  
19       make any credibility determinations and the like, and  
20       they've chosen not to show up and defend themselves. I can  
21       consider all the circumstances of the case in order to reach  
22       -- make inferences of their intent.

23              They -- of course, you've asked me to admit, and  
24       I've admitted, the petition, which includes a lengthy  
25       statement, which is very unusual, attached to the petition

1 in which they make contrary --they say contrary things about  
2 what their intention was in filing the case. But based on  
3 what I've seen, the standard in -- for that particular  
4 subsection is a subject of one.

5 But the factual statement that you're pointing to,  
6 the fact that they are -- they hold claims that are -- that  
7 are not contingent, et cetera, and they state particular  
8 amounts, that's false. It's false based on their own  
9 statements. It seems to me, based on the case law of that  
10 I've seen that my analysis under that provision is actually  
11 an objective one. Alright. So I -- and I realize I'm  
12 laying a lot of things on before you get to weigh in on  
13 this.

14 But in either case, including in the objective  
15 one, because the rule says, after reasonable inquiry under  
16 the circumstances, do I take into account who the  
17 petitioners are? They are young people, none of them older  
18 than 24 at this point. One is 19. Do I take that -- and  
19 not lawyers and not represented, obviously. Do I take that  
20 into, kind of -- either of those, (b)(1) or (b)(3)  
21 standards?

22 MR. SHRAIBERG: The Letourneau case for 9011(b)  
23 used --

24 THE COURT: That was (b)(1), I think.

25 MR. SHRAIBERG: Yes. Well, it just -- it just

1       says (b), but I think you're correct. I think it's (b)(1).

2               THE COURT: Because the whole thing is about  
3       improper purpose. It's not -- right.

4               MR. SHRAIBERG: Right. Uses the objective  
5       standard.

6               THE COURT: Okay. So for improper purpose, they  
7       have an objective standard.

8               MR. SHRAIBERG: Right. But I think that we don't  
9       have to go there. I think that they would -- that -- the  
10      fact that they're not here when this is a damage that we are  
11      -- have been seeking from day one, coupled with the  
12      pleadings that have been filed, their conduct throughout the  
13      case, and the pleadings that have been filed -- their own  
14      pleadings that have been filed, we would meet both the  
15      subjective and objective standards, regardless. So I don't  
16      --

17              THE COURT: Because the documents filed later are  
18      indicative of the intent at the time the petition was filed.

19              MR. SHRAIBERG: Correct.

20              THE COURT: I see.

21              MR. SHRAIBERG: Coupled with when -- they knew  
22      they were going to lose today. Today was going to be -- at  
23      best, a mitigating day. They -- there's already been a  
24      dismissal for bad faith. So some sanction, realistically,  
25      is going to be rewarded -- awarded. Today, if they were

1 here, it would've been about mitigation, and they would  
2 have, I'm sure ,if I was representing them, testified, "All  
3 I wanted to do was save my house." The case law -- we were  
4 prepared for that. The case law says that's a noble cause,  
5 but that you still can't file an improper bankruptcy to stop  
6 that. You can't abuse the court systems.

7 THE COURT: If it's a quixotic cause, you are not  
8 permitted to ignore that fact.

9 MR. SHRAIBERG: That's right. So they'll fail  
10 both tests, subjective or objective, with the evidence  
11 that's been provided. I don't know that it is a subjective  
12 test, though. I would argue that it's objective. That was  
13 for (b). You're asking it for (c), as well?

14 THE COURT: Well, no, no, no. Right now, I'm  
15 focusing on the violation. For example, there -- and, you  
16 know, there's really no good case law on this. It's kind of  
17 all over the place. There is one Eleventh Circuit case, 610  
18 F.3d 628 -- this is a Rule 11, not 9011, but it doesn't  
19 matter. It's the same provision -- where the Court suggests  
20 that the improper purpose test requires a subjective  
21 analysis that likely would require testimony, meaning the  
22 opportunity for testimony, which I have provided and they  
23 are not here. And so, that leaves me without any evidence  
24 offered by the respondents and that is their problem.

25 But I reference that case only because it does

1 suggest a subjective analysis for that particular provision.  
2 And then also the lead-in to the rule says, a reasonable  
3 inquiry under the circumstances. And so that suggests an  
4 objective standard. What's the reasonable inquiry?

5 On the other hand, do I need to take into account  
6 the identity of the party that you're seeking sanctions  
7 from? If it's a very sophisticated person who happens to  
8 also be a lawyer, well, then a reasonable inquiry in this  
9 instance, any -- definitely for a lawyer, a reasonable  
10 inquiry would lead you to conclude, for example, on the  
11 (b) (3) request, that there is no claim.

12 I mean, they should -- first of all, it's amazing  
13 they filed that document along with the petition. But there  
14 is no claim. They are not creditors. They -- it --  
15 whatever right they have isn't even against the debtor; it's  
16 against the trust. So -- trusts, the three trusts, which  
17 they conveniently attached to their -- to their petition.

18 So I'm just struggling a little bit with -- I'm  
19 not struggling now. I've struggled over the last couple  
20 weeks looking at this -- with figuring out exactly what the  
21 standard would be as I was getting ready to, hopefully, hear  
22 evidence presented by all the five respondents, which they  
23 have chosen not to -- not to do.

24 By the way, the clerk advises me that at 10:23  
25 this morning, Mr. Eliot Bernstein ordered the audio CDs of

1 this hearing. So he's elected not to be here, but he would  
2 like to know what happened. Alright. Back to your  
3 presentation.

4 I should also point out, that means that Eliot  
5 Bernstein knows that the hearing is going forward, which  
6 means he has received at least one of the multiple email  
7 addresses the clerk sent my most recent order to, that he  
8 received it.

9 MR. SHRAIBERG: With -- in support of our request  
10 to strike their pleadings, we have a case from the Northern  
11 District of Illinois, *In re American Telecom Corp*, found at  
12 319 B.R. 857, at page 873.

13 The Court states: "Among the arsenal of sanctions  
14 are fines payable to the court clerk, an award of attorney's  
15 fees, and costs to the sanctioned party's opponent. In  
16 order to discourage fees paid to the sanctioned attorney, an  
17 injunction prohibiting specific types of future filings,  
18 mandatory legal education, stricken pleadings, referrals to  
19 disciplinary bodies and reprimands that are on or off the  
20 record."

21 We believe that the Court clearly has the  
22 authority to strike those pleadings. And we've presented  
23 our evidence, and I've gone through it, that there's been no  
24 fraud by any of the creditors or the United States Trustee  
25 or this Court or the lower courts.

1           The fraud occurred. It was by the petitioning  
2           creditors. And to try to say that a great defense is a good  
3           offense, that doesn't work, and it's an improper purpose to  
4           -- those pleadings were filed for an improper purpose just  
5           to smear any lawyer that files something adverse to the  
6           Bernsteins. For that reason, we ask that the motion be  
7           granted.

8           THE COURT: Alright. I am going to -- I intend to  
9           rule from the bench on the motion. I'm going to take a  
10          substantial break before I do that. It is now quarter to  
11          11. Noon?

12          MR. SHRAIBERG: Perfect.

13          THE COURT: I hate to keep you around, but I think  
14          it'd be wise for me to be able to rule on it directly.

15          MR. SHRAIBERG: Perfect.

16          THE COURT: And you can all go have early lunch,  
17          which I will not be doing, and I'll reconvene at noon. Any  
18          questions?

19          MR. SHRAIBERG: No questions.

20          THE COURT: Very good. Alright. Thank you.

21          MR. SHRAIBERG: Thank you.

22          THE COURT: Court is in recess until noon.

23          MR. SHRAIBERG: Oh, one last -- I do.

24          THE COURT: Yes. Go ahead.

25          MR. SHRAIBERG: If the Court is inclined to grant

1 sanctions, we would ask that the vehicle be -- in  
2 anticipation that it will not be paid in a certain time  
3 period, that give the -- give them X amount of days to pay  
4 whatever monetary sanction, and then we could petition the  
5 Court for a judgment in the event that it's not paid.

6 THE COURT: Yes, I'll consider that.

7 MR. SHRAIBERG: Thank you, Your Honor.

8 THE COURT: Alright. Thank you, all. Court is  
9 recess now.

10 (Recess at 10:45 a.m. until 12 p.m.)

11 THE COURT: Good afternoon, everyone. Alright.  
12 Thank you. Please have a seat. Ms. Leonard, let me know  
13 when we're all set.

14 Okay. We are back on the record in Bernstein  
15 Family Realty, LLC, and all the same parties are in the  
16 courtroom. Any questions before I rule? No?

17 MR. ROSE: No, Your Honor.

18 THE COURT: Alright. Thank you. This is the  
19 Court's ruling on the motion for sanctions filed by Joanna  
20 Sahm, as personal representative of the Estate of Walter  
21 Sahm, and Patricia Sahm. The motion is in the docket at ECF  
22 No. 69.

23 Today I held an evidentiary hearing on the motion  
24 for sanctions. None of the five respondents appeared at  
25 today's evidentiary hearing. I initially set the motion for



1 sanctions for non-evidentiary hearing on August 16, 2022,  
2 but then determined to set it directly for an evidentiary  
3 hearing on this date.

4 A month ago, on July 25, 2022, I entered an order  
5 to that effect at ECF No. 76, and that order was duly served  
6 on each of the five respondents. Two days ago, Eliot  
7 Bernstein filed a document in the record at ECF No. 94. In  
8 that document, Eliot Bernstein sought, among other things, a  
9 continuance of today's evidentiary hearing. I denied that  
10 request by order entered the same day at ECF No. 95.

11 The clerk served that order on Eliot Bernstein by  
12 mail and also by emailing it to several email addresses  
13 Eliot Bernstein has included in filings in this case. It  
14 appears Eliot Bernstein is aware that I denied his request  
15 for continuance as he ordered an audio CD of today's  
16 evidentiary hearing by contacting the clerk during this  
17 morning session.

18 I note that the document filed at ECF No. 94 was  
19 filed only by and on behalf of Eliot Bernstein, and so there  
20 was not a request for a continuance from the other  
21 respondents. There was ample notice of today's evidentiary  
22 hearing and due process was served. The respondents failed  
23 to appear today at their own peril.

24 I have considered the evidence admitted and the  
25 arguments of the movants. In the motion, the movants seek

1 monetary sanctions under Bankruptcy Rule 9011(c) against  
2 Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein for  
3 alleged violations of Bankruptcy Rule 9011 (b)(1) and (b)(3)  
4 in connection with the filing of the involuntary petition in  
5 this case.

6 In particular, the movants seek their reasonable  
7 attorney's fees and costs for the entire bankruptcy case,  
8 including the preparation and prosecution of the motion for  
9 sanctions, plus five months' rent for the real property  
10 owned by the debtor at a market rental rate. The movants  
11 also seek nonmonetary sanctions against the same petitioners  
12 and also against Eliot Bernstein and Candice Bernstein in  
13 the form of an order striking certain specified documents  
14 filed by them that the movants alleged contain false and  
15 defamatory statements and striking any future documents  
16 filed by them that contain similar statements.

17 I typically make a point of referring to each  
18 party as Mr. or Ms. So-and-so. In this case, because all  
19 the respondents have the same surname, I may refer to them  
20 by first names. I apologize about the informality, but,  
21 otherwise, it will be difficult or cumbersome to present a  
22 concise and clear ruling. I mean no disrespect in doing  
23 this.

24 In addition, when I say "petitioners," this refers  
25 only to Joshua Jacob and Daniel Bernstein.

1           Bankruptcy Rule 9011 mirrors Federal Rule of Civil  
2 Procedure 11. Much of the case law applying the federal  
3 rule applies to the bankruptcy rule.

4           It is useful to quote only those components of  
5 Bankruptcy Rule 9011 that are applicable here. If you  
6 remove the language not applicable in the context of a  
7 petition, this is the relevant language from Subsection (b).

8           Quote, "by presenting to the Court a petition, an  
9 unrepresented party is certifying that the -- to the best of  
10 the person's knowledge, information, and belief formed after  
11 an inquiry reasonable under the circumstances: One, it is  
12 not being presented for any improper purpose, such as to  
13 harass or to cause unnecessary delay or needless increase in  
14 the cost of litigation. And, three, the allegations and  
15 other factual contentions have evidentiary support or, if  
16 specifically so identified, are likely to have evidentiary  
17 support after a reasonable opportunity for further  
18 investigation or discovery," end quote.

19           I have quoted only from Subsections (b)(1) and  
20 (b)(3) because those are the ones relied on in the motion  
21 for sanctions. Subsection (c) of Bankruptcy Rule 9011  
22 addresses how sanctions are requested and provides that the  
23 Court may award sanctions against a party if it finds a  
24 violation of subsection (b). There must be notice and a  
25 reasonable opportunity to respond. The motion must describe

1 the specific conduct alleged to violate subsection (b).

2 In this case, there is a formal motion providing  
3 specific allegations and arguments and the Court provided  
4 more than a month to prepare for an evidentiary hearing.  
5 The motion must be served under Bankruptcy Rule 7004. The  
6 motion for sanctions and the notice of hearing were so  
7 served.

8 There is a safe harbor provision requiring 21  
9 days' notice of a motion for sanctions under Bankruptcy Rule  
10 9011, but the rule explicitly excepts motions in connection  
11 with petitions and so the safe harbor does not apply here.

12 Subsection (c)(1)(a) provides that the Court may  
13 award reasonable expenses and attorney's fees to the  
14 prevailing party for presenting or opposing a motion for  
15 sanctions. Subsection (c)(2), further provides that if the  
16 Court finds a violation of subsection (b), the Court may  
17 award sanctions limited to what is sufficient to deter  
18 repetition of such conduct or comparable conduct by others  
19 similarly situated.

20 The sanction may include, if imposed on motion and  
21 warranted for effective deterrence, an order directing  
22 payment of the movant -- to the movement of some or all of  
23 the reasonable attorney's fees and other expenses incurred  
24 as a direct result of the violation.

25 In this case, I note that if there is a violation

1 of Subsection (b) by the filing of the involuntary petition  
2 itself, the subject legal fees and expenses could be for the  
3 entire bankruptcy case.

4 The debtor in this case, Bernstein Family Realty,  
5 LLC, is a Florida limited liability company. At the time  
6 this case was commenced, the debtor was dissolved by the  
7 state of Florida for failure to file annual reports. The  
8 debtor is a manager managed limited liability company. When  
9 this case was filed, it had no manager.

10 It appears that the debtor's only real asset is a  
11 home in Boca Raton. The movants hold a claim against the  
12 debtor secured by that home. They hold a final judgment of  
13 foreclosure entered by a Florida State Court in an amount of  
14 about \$353,000. A foreclosure sale was set for April 20,  
15 2022. On April 19, 2022, the petitioners filed an  
16 involuntary petition commencing this case. This resulted in  
17 cancellation of the foreclosure sale scheduled for the  
18 following day.

19 In the involuntary petition, the petitioners list  
20 the address of the home owned by the debtor as both the  
21 debtor's mailing address and their own mailing address. It  
22 appears that the petitioners and their parents, Eliot and  
23 Candice, use the home as their residence.

24 In the involuntary petition, as required by  
25 section 303(b)(1) of the bankruptcy code, each of the

1 petitioners represent that he holds a claim against the  
2 debtor, but by their own admission in a document attached to  
3 the involuntary petition, the petitioners are not creditors  
4 of the debtor. They state that they are each a beneficiary  
5 of a trust, which trusts are, in turn, the equity owners of  
6 the debtor. Thus, the petitioners are the indirect  
7 beneficial owners of the debtor.

8 In that same attachment to the petition, the  
9 petitioners state that they have a right against the debtor  
10 for, quote, capital contributions, end quote, and they  
11 reference both the initial contributions in connection with  
12 acquiring the home and later contributions such as to pay  
13 taxes. By their own description, the debtor would not have  
14 any direct obligation to the petitioners. If there was any  
15 right to a distribution of capital, it would be payable to  
16 the trusts who are the members of the debtor.

17 For purposes of Section 303(b)(1), this is not an  
18 empty distinction, but, more importantly, the right of  
19 equity to return of capital is not a claim at all.

20 Because the petitioners control the debtor, there  
21 was no response to the involuntary petition, and the clerk  
22 entered an order for relief on May 23, 2022. The debtor  
23 repeatedly failed to comply with deadlines provided by the  
24 Court and the case was converted to Chapter 7.

25 After conversion, the debtor continued in its

1     abject failure to do anything required by the Court or the  
2     Chapter 7 trustee. Recently, I dismissed the case with two  
3     years' prejudice but retained jurisdiction to determine the  
4     motion for sanctions.

5             Eliot Bernstein claims to be the acting manager of  
6     the debtor, appointed after the filing of the involuntary  
7     petition. Under Florida Law, there is no such thing as an  
8     acting manager. If a limited liability company is a manager  
9     managed entity, as is the debtor, then the manager is the  
10    manager, period.

11            Under existing Florida statute, it does not matter  
12    that the debtor remains dissolved. The trusts, as the  
13    members of the debtor, could select a manager. It is  
14    unclear whether the trust, as members, have formally  
15    appointed Eliot Bernstein as manager and if they did, when  
16    that took place.

17            Candice Bernstein is not a representative of the  
18    debtor. She claims to be a creditor, but the source of her  
19    claim is unclear. Eliot Bernstein, Candice Bernstein, and  
20    the petitioners have filed numerous documents in this case  
21    that contain unsupported and often defamatory statements  
22    regarding counsel for the movants, Alan Rose, Robert  
23    Sweetapple, Patricia Sahm, Ted Bernstein, Tescher and  
24    Spallina P.A., Judge Diana Lewis, who is deceased, Steven  
25    Lesney, Brian O'Connell, Judge John Kastrenakes, Heidi

1       Feinman, and me.

2               Without any factual support, they allege that  
3       these persons committed acts of fraud, breaches of fiduciary  
4       duty and extortion, among other shocking statements. Eliot  
5       Bernstein has previously been sanctioned by other courts  
6       preventing him from filing similar documents. It is  
7       apparent that past sanctions against him had no impact on  
8       his behavior in this case.

9               The first question is whether any of this amounts  
10       to a violation of Subsections (b) (1) or (b) (3) of Bankruptcy  
11       Rule 9011. If so, then I must determine appropriate  
12       sanctions. I should comment at this point that there is no  
13       basis for sanctions under Bankruptcy Rule 9011 against Eliot  
14       Bernstein or Candice Bernstein in connection with the filing  
15       of the involuntary petition itself. They did not sign that  
16       document.

17              While the movants several times in the motion for  
18       sanctions say that the petitioners acted in concert with  
19       Eliot and Candice and it does appear that Eliot Bernstein  
20       orchestrated the filing of the petition, that does not  
21       expand the reach of the rule with regard to the filing of  
22       the petition. Eliot and Candice Bernstein are subject to  
23       Rule 9011 sanctions only with regard to those documents they  
24       signed and filed themselves.

25              My analysis will start with the petition. The



1 movants argue that the petitioners violated Subsection  
2 (b) (1) by filing an unfounded involuntary petition against  
3 their own entity solely for the improper purpose of -- for  
4 stalling a foreclosure sale.

5 As the Eleventh Circuit has commented, the Court's  
6 analysis under Subsection (b) (1) involves application of a  
7 subjective standard. Did the petitioners file the  
8 involuntary petition with an actual improper purpose? The  
9 movants say the petitioner's motive was solely to delay the  
10 foreclosure, to retain use of the home without paying for a  
11 few more months, at least.

12 The petitioners chose not to attend today's  
13 evidentiary hearing, so I do not have the benefit of their  
14 testimony. For purposes of the motion for sanctions, I have  
15 only their statements in the attachment they included with  
16 the involuntary petition. They said, quote, we file this  
17 petition in good faith for a proper purpose to seek the  
18 equal distribution of the assets of BFR to proper creditors,  
19 end quote.

20 They also state: Quote, "so we think there is a  
21 good chance of a plan to save BFR and restore its status but  
22 at least pay all proper creditors," end quote.

23 In light of the overwhelming evidence submitted  
24 today, I do not believe these were the true reasons for the  
25 filing of the involuntary petition. If the petitioners

1 actually intended this bankruptcy case to achieve an equal  
2 distribution of the debtors' assets to proper creditors,  
3 they would've caused the debtor to act accordingly. Rather  
4 than timely retain counsel, timely file schedules and a  
5 statement of financial affairs, respond to the reasonable  
6 requests of the United States Trustee, and appear at the  
7 meeting of creditors, among other things, the petitioners  
8 did nothing.

9 I converted this case because the debtor  
10 repeatedly failed to comply with deadlines. The only thing  
11 the petitioners obtained was delay. In the end. I  
12 dismissed this case with prejudice for two years because it  
13 was filed in bad faith. The evidence admitted today only  
14 reinforces this conclusion. In light of their actions or  
15 more appropriate failures to act, their statements to the  
16 contrary are not credible.

17 I find that the petitioners filed an improper  
18 petition against their own entity primarily to stymie the  
19 efforts of the movants to foreclose on the debtor's  
20 principle asset. The movants met their burden of showing  
21 that the petitioners violated subsection (b)(1) of  
22 Bankruptcy Rule 9011.

23 The next question is whether the petitioners'  
24 statements in the involuntary petition that they are  
25 creditors of the debtor constitute violations of Subsection

1 (b) (3) .

2 Under the case law, the appropriate analysis is an  
3 objective one. The petitioners are not creditors of the  
4 debtor. Indeed, they have no direct ability to obtain  
5 anything from the debtor. At most, trusts of which they are  
6 beneficiaries could have the ability to receive return of  
7 capital from the debtor.

8 The question is whether a reasonable inquiry under  
9 the circumstances would reveal that fact. Normally, when a  
10 person is not represented, the Court gives some leeway to  
11 the unrepresented party. But even a brief reading of  
12 Section 303 would reveal that the filing of an involuntary  
13 petition is a serious act that deserves careful attention.

14 In light of the admissions in their own attachment  
15 to the involuntary petition, any reasonable inquiry would  
16 have revealed that the petitioners were not proper  
17 petitioning creditors under Section 303.

18 In Eliot Bernstein's filing in ECF No. 94, which I  
19 treat as an objection here in spite of his lack of standing,  
20 Eliot Bernstein argues that there is uncertainty in the case  
21 law regarding who is a proper petitioning creditor. From  
22 this, I believe he means to suggest that a reasonable  
23 inquiry would have led to multiple conclusions perhaps  
24 including that the petitioners are within the ambit of  
25 proper creditors under Section 303.

1           Even if Mr. Bernstein was permitted to represent  
2           the petitioners, and he is not, this argument is not  
3           persuasive. It is true that there is substantial case law  
4           on certain aspects of who may be a petitioning creditor, but  
5           I am not aware of any case that suggests, even remotely,  
6           that an indirect equity owner of the alleged debtor whose  
7           only potential right is that an intermediate entity in which  
8           he has a beneficial interest may have a right to return of  
9           capital from the alleged debtor is a proper petitioning  
10          creditor under Section 303.

11           The facts in this case do not even present a close  
12          call. I conclude that the petitioner's statements in the  
13          involuntary petition that they hold claims against the  
14          debtor were false, that a reasonable inquiry under the  
15          circumstances would have revealed this fact, and so those  
16          statements are in violation of subsection (b)(3) of  
17          Bankruptcy Rule 9011.

18           Having found two independent violations of  
19          Subsection (b) by each of the petitioners, I must now  
20          determine an appropriate sanction. Under Subsection  
21          (c)(1)(a), I may award reasonable fees and expenses for  
22          filing and presenting the motion for sanctions itself. I  
23          find it is appropriate to do so.

24           In addition, under Subsection (c)(2), I may award  
25          sanctions, quote, sufficient to deter repetition of such

1     conduct or comparable conduct by others similarly situated,  
2     end quote, and may include legal fees and expenses resulting  
3     from the filing of the offending document to the extent  
4     necessary for effective deterrence. In this context, the  
5     movants seek payment of the entirety of their legal fees and  
6     expenses in this bankruptcy case, plus five months' rent of  
7     the home at a rate of \$5,000 per month.

8             The standard in Subsection (c)(2) directs me to  
9     consider both deterrence of repetition of such conduct by  
10    the petitioners, as well as deterrence of comparable conduct  
11    by others similarly situated. I do not have the benefit of  
12    testimony of any of the petitioners as they chose not to  
13    attend today's evidentiary hearing. I have only the  
14    evidence admitted during the hearing.

15            In light of that evidence, I have concluded that  
16    the petitioners, who are not proper creditors, filed an  
17    involuntary petition against an entity in which they are the  
18    indirect equitable owners solely to prevent a foreclosure  
19    sale of the entity's principle asset, their home. This  
20    desperate act followed extensive litigation in a Florida  
21    state court where the unstayed foreclosure judgment was  
22    entered.

23            Under the circumstances of this case, the  
24    petitioners' filing of the involuntary petition was highly  
25    improper. While it seems unlikely that the petitioners

1 themselves will do this again, under the explicit text of  
2 Bankruptcy Rule 9011, it is appropriate to consider  
3 deterrence of similarly situated parties. No one should  
4 ever file an involuntary petition against their own entity  
5 solely to prevent a foreclosure sale.

6 In light of the severity of the infraction here, I  
7 find it appropriate deterrent for future violations by  
8 similarly situated parties towards sanctions against the  
9 petitioners on a joint and several basis in the form of  
10 legal fees and expenses incurred by the movants for the  
11 entirety of this bankruptcy case.

12 Based on the evidence admitted today, that sum is  
13 \$43,878.30. I note that this sum, taken from Ms. Sahm's  
14 testimony, is slightly less than the sum of the invoices in  
15 evidence, plus the additional fees and expenses incurred  
16 after those invoices. I think the difference is \$240.

17 Taking into account the skill and experience of  
18 counsel to the movants and the demands of this case, I find  
19 that their hourly rates are reasonable and appropriate. I  
20 also find that the time spent by them in this case and the  
21 tasks undertaken are reasonable under the circumstances of  
22 the case.

23 As part of the requested sanction for the filing  
24 of the petition, the movants asked the Court to order the  
25 petitioners to pay a sum equal to the rent that the movants

1 would've obtained during the delay represented by this  
2 bankruptcy case. This request sounds like a request for  
3 damages.

4 Bankruptcy Rule 9011(c) authorizes the Court to  
5 award sanctions for the purpose of deterrence and not in the  
6 way of damages. While the rule does specifically permit the  
7 Court to award sanctions in compensation for legal fees and  
8 expenses, again, that is only to the extent necessary for  
9 deterrence. I find that the legal fees and expenses awarded  
10 today are appropriate for purposes of deterrence. I find  
11 that those sanctions are alone sufficient to the purpose. I  
12 will not award additional sanctions tied to the lost rent  
13 the movants claim to have suffered as a result of the delay.

14 Finally, I must consider whether the petitioners,  
15 Eliot Bernstein and Candice Bernstein, violated bankruptcy  
16 rule 9011(b) (3) by filing numerous documents with  
17 unsupported and scandalous allegations. Eliot Bernstein  
18 filed most of these shocking documents, but the petitioners  
19 and Candice Bernstein often joined in them. These filings  
20 listed in the motion for sanctions are not supported by  
21 anything other than their apparent belief that anyone who  
22 opposes them is corrupt and has committed or is in the  
23 process of committing crimes.

24 Almost without exception, the documents listed in  
25 the motion for sanctions failed to present any arguments

1 actually relevant to the matters that were then under  
2 consideration. I find that those documents were filed  
3 solely to harass parties and interest and me and to cause  
4 delay and frustration. The documents were filed in  
5 violation of Subsection (b) (3) of Rule 9011.

6 Under Subsection (c), I can order sanctions of a  
7 nonmonetary nature. I note that each of the previously  
8 filed documents listed in the motion for sanctions have  
9 already been considered by the Court. So the requested  
10 relief that the documents be stricken will have no impact on  
11 the Court's rulings. In light of the scandalous and  
12 sometimes defamatory nature of the unsupported allegations  
13 in those documents, they will be stricken.

14 The movants also ask that if any of the  
15 petitioners, Eliot Bernstein or Candice Bernstein, filed  
16 documents with similar allegations in the future, that the  
17 Court strike those documents. In light of repeated filings  
18 stating essentially the same unsupported allegations, which  
19 I have ruled on multiple times, all of which appear intended  
20 only to frustrate the parties and the Court, I find that the  
21 requested relief is appropriate. I will include in the  
22 order on the motion for sanctions that if any of the  
23 petitioners, Eliot Bernstein or Candice Bernstein, file any  
24 document other than under Article 8 of the bankruptcy rules  
25 that contains similar scandalous or defamatory allegations



1       against the parties listed in the motion for sanctions or  
2       others, the Court will strike such documents without further  
3       notice or hearing. Are there any questions?

4               MR. SHRAIBERG: No questions, Your Honor.

5               THE COURT: Yes. Very good. Thank you for your  
6       presentation. I'll enter a brief order incorporating  
7       today's oral ruling and providing the relief.

8               MR. SHRAIBERG: I may have spoken too fast. With  
9       regard to the sanctions, will it have a mechanism of --

10              THE COURT: Yes. I will include a provision that  
11       says if the sanction amount is not paid within 30 days, that  
12       the movants may seek a separate judgment, and I will enter  
13       separate judgment.

14              MR. SHRAIBERG: Thank you, Your Honor.

15              THE COURT: Yes. Good morning -- or afternoon --  
16       good afternoon, everyone.

17              (End of proceedings)

C E R T I F I C A T E

I, KIMBERLY JONES, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

KIMBERLY JONES

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