

Court Reporter: All rise.

Judge Eric Kimball: Good morning. Thank you very much. Please have a seat. Let's see, we're here, Ms. Leonard is the record ready?

Ms. Leonard: Yes.

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

Bradley Shraiberg: Good morning, your honor. Um, Brad Shraiberg on behalf of, uh, uh, Joanna Sahm as personal representative of the Estate of Walter Sahm, and Patricia Sahm. Uh, they're the move-ins enjoined today, um, with my partner, Mr. Eric. Pendergraph.

Judge Eric Kimball: Good morning.

Bradley Shraiberg: And, um, Ms. Joanna Sahm, my client.

Judge Eric Kimball: And good morning.

Joanna Sahm: Morning.

Judge Eric Kimball: Now, we have nobody on the other side of the courtroom. Um, yeah. Why don't you stay at the podium for a moment? Uh, and then I'm going, oh, please. Yes.

Bradley Shraiberg: Do you want me to wear the mask, or?

Judge Eric Kimball: 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, uh--

Bradley Shraiberg: Follow the rules.

Judge Eric Kimball: But, but it's, it's yeah.

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

Judge Eric Kimball: Right. Thank you. You don't need to bend over for the microphones by the way. And good morning. All right. So, uh, yeah, this is sort of an interesting circumstance. Um, we don't have any of the respondents right now, so I have a motion for sanctions at ECF 69, which has been set for evidentiary hearing today. I initially said it for a non-evidentiary hearing, and then I decided that would frankly be a waste of time.

And so a month ago, or maybe 31 days ago, I set this evidentiary hearing, used a very brief scheduling, uh, provision providing for the exchange of exhibits four business days ago under the local rules. I think I only have exhibits from the

movement. There has been nothing filed by any of the respondents who are, um, Joshua Bernstein, Jacob Bernstein, Daniel Bernstein, um, and also their parents Eliot and Candice Bernstein.

Um, now I, I, I think it was yesterday or was it the day before, Mr. Eliot Bernstein filed a motion that I interpreted as partly a motion to deny the motion for sanctions without a hearing, and partly a motion to continue the hearing today, I did a written order on that, knowing that it would otherwise go out in the mail. Uh, the clerk sent it to several email addresses that they found for him in the docket. So I'm assuming that he got it, but I note for the record that that document was filed only on behalf of Eliot Bernstein. And there are four other respondents to this motion, so they didn't even file anything. Um, I have no reason not to go forward with the hearing today. And so what would you like to present?

Bradley Shraiberg: Um, your honor, it, uh, may make sense due to the litigious nature of the parties that we are, um, uh, seeking sanctions against to, um, make a formal record versus proffering. I do think that, um, this will not take long

Judge Eric Kimball: I have no, I have no objection to that.

Bradley Shraiberg: Um, uh, with that, um, we would like to introduce and move, um, uh, exhibits 1 through 27 into evidence. Um, we uploaded the exhibits and our amended exhibit register via CMECF at 2:00 PM on Friday, August 19th. Prior to 3:00 PM, we separately emailed a Microsoft OneDrive cloud-based file sharing service link containing the exhibits and the amended exhibit register to each of the Bernsteins and requested that receipt be confirmed. Prior to 3:00 PM, we sent via Federal Express priority, overnight delivery, a USB drive containing everything as well as a paper copy of the amended exhibit register to the Bernstein's physical address at 2753 Northwest 34th Street in Boca Raton, 33434.

And we filed a certificate of service at ECF number 91. The order setting today's hearing, which was at ECF number 76 states, "The parties must exchange exhibits per the procedures of local rule, 9070-1. And that failure to do so may result in denial of admission, into evidence. We received no written objections to our exhibits under local rule 9070-1A3, and no good cause exists for the court to allow objections by the Bernsteins that are not based on rule 402 or 403 for unfair prejudice or confusion, et cetera." Um--

Judge Eric Kimball: Let me comment for the record also that that particular local rule has an entire segment, which is tailored to those who are not represented by counsel in order to assist them in complying with, with the rule. And so it, this is not something designed just for lawyers and they have failed to comply with, apparently, the provisions that the court has fashions for, for pro se parties.

Bradley Shraiberg: Uh, even more so I believe the order setting today's hearing gave an actual link to those rules.

Judge Eric Kimball: Yes, I know.

Bradley Shraiberg: Uh, so, um, for those reasons we, uh, seek to admit exhibits 1 through 27 into evidence

Judge Eric Kimball: Exhibits 1 through 27 are admitted.

Bradley Shraiberg: Thank you. Uh, at this time we would like to call Ms. Joanna Sahm to the witness stand.

Judge Eric Kimball: Very good. Good morning. If you can make your way over to the box when you get there f- remain standing, I'll swear you in.

Joanna Sahm: Thank you.

Judge Eric Kimball: Do you swear under penalty of perjury that the testimony you're about to give before this court will be the truth, the whole truth, and nothing but the truth?

Joanna Sahm: I do.

Judge Eric Kimball: Thank you. Please have a seat. Now, you don't need to lean into the microphone and feel free to move it to someplace comfortable if you need to.

Joanna Sahm: Thank you.

Judge Eric Kimball: But don't be more than maybe two feet away from it.

Joanna Sahm: Okay.

Judge Eric Kimball: Okay.

Joanna Sahm: Thank you.

Bradley Shraiberg: Um, can we give her a physical exhibit **[inaudible 00:06:16]**

Judge Eric Kimball: Absolutely. And you don't need to ask to approach if you need to, but don't speak in the area between the podium and the witness box or else it won't be recorded.

Bradley Shraiberg: Perfect. Thank you. Uh, please introduce yourself.

Joanna Sahm: My name's Joanna Eileen Sahm.

Bradley Shraiberg: Uh, and where do you currently reside?

Joanna Sahm: In the Villages, Florida.

Bradley Shraiberg: And to the, do you know who Walter Sahm and Patricia Sahm are?

Joanna Sahm: Those are my parents.

Bradley Shraiberg: Uh, are you currently the personal representative, Mr.-- Your father has passed away? Correct?

Joanna Sahm: He passed away last year.

Bradley Shraiberg: Are you the, um, personal representative of his estate?

Joanna Sahm: I am.

Bradley Shraiberg: Uh--

Judge Eric Kimball: Hold on a moment, Ms. Leonard are the, is the witness' witness box? Yeah. Just, just move closer or move the microphone closer to you. It doesn't need to be right.

Joanna Sahm: I'm fine. I just don't wanna scream in it, but (laugh).

Judge Eric Kimball: No, we'll be fine.

Joanna Sahm: [inaudible 00:07:11] out of here.

Judge Eric Kimball: We'll, we'll be fine.

Bradley Shraiberg: And, uh, how old is, your mother's still alive? Correct?

Joanna Sahm: She is. She just turned 81.

Bradley Shraiberg: And, um, are you a representative on her behalf in any capacity?

Joanna Sahm: Yes, I am, I am her pre-guardian and power of attorney. She has, um, documented cognitive impairment. So I handle all of her affairs.

Bradley Shraiberg: Can you look in the exhibit binder in front of you at exhibit 27?

Judge Eric Kimball: If you just give me a moment.

Joanna Sahm: Okay.

Bradley Shraiberg: Do you recognize exhibit 27?

Joanna Sahm: Yes. This is the mortgage that was written up between my parents and the Bernstein Family Realty, LLC.

Bradley Shraiberg: And do you know if there was a foreclosure action with regard to this mortgage?

Joanna Sahm: There was in April of, April, um, well, it was the, the final judgment was issued in, uh, December of 2021 for a foreclosure sale in April of 2022.

Bradley Shraiberg: Out of curiosity, are you familiar with the real estate that, um, this mortgage encumbers?

Joanna Sahm: I am, I am.

Bradley Shraiberg: How are you familiar with it?

Joanna Sahm: Um, it's where I grew up. It's my childhood home.

Bradley Shraiberg: And you stated that there was a, um, final judgment of foreclosure. Was that foreclosure set for, um, a judicial sale?

Joanna Sahm: It was, it was set for April 20th, 2022.

Bradley Shraiberg: And that judicial sale did not go forward, correct?

Joanna Sahm: It did not.

Bradley Shraiberg: How come?

Joanna Sahm: Um, the Bernstein Family Realty filed, um, a bankruptcy, um, on the 19th, April 19th, 2022. And that cancelled the foreclosure sale with the clerk of court.

Bradley Shraiberg: To the best of your knowledge, um, exhibit 27, did, um, uh, the borrower, the debtor in this case, Bernstein Family Realty ever make a mortgage payment?

Joanna Sahm: No, they did not.

Bradley Shraiberg: Did your parents ever have to advance real estate taxes to prevent a real estate-- Uh, uh, uh, did your parents ever advance real estate taxes?

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

Bradley Shraiberg: Do you know who currently resides at the, um, real estate, uh, located at, um, uh, 2753 Northwest 34th Street?

Joanna Sahm: To the best of my know, I know that Eliot Bernstein and Candice Bernstein reside there to the best of my knowledge, the three sons also reside at the residence.

Bradley Shraiberg: Uh, can you turn to exhibit 35? Oops.

Judge Eric Kimball: Ms. Sahm, could you give the names of the three sons you just referred to?

Joanna Sahm: Jacob, Daniel. And I don't know the third name of the third child. I'm sorry.

Judge Eric Kimball: Do you know if it is Josh?

Joanna Sahm: Josh. That's it. Thank you very much, Joshua.

Bradley Shraiberg: Uh, you said that you are familiar with, um, uh, the property, 'cause it is where you grew up, correct?

Joanna Sahm: Correct.

Bradley Shraiberg: And you also have a morg- the first mortgage on that property?

Joanna Sahm: Yes.

Bradley Shraiberg: Uh, if you were to rent the property, do you know what you would rent it for? An amount?

Joanna Sahm: 5,000.

Bradley Shraiberg: How do you come up with that number?

Joanna Sahm: There are listings out there for area code 33434, and 33431 and 33433, that are all the surrounding areas and that actual neighborhood. And that is the neighborhood is the humble and the house is very humble. And it's, that is the below average amount for what a three bedroom, two and a half bath pool home in that neighborhood and surrounding area would rent for.

Bradley Shraiberg: You said it's below average. What do you think the average is?

Joanna Sahm: About 5,500 I would say. Based on the comparisons.

Bradley Shraiberg: Because of the filing of this involuntary proceeding, you obviously hired counsel, correct?

Joanna Sahm: Correct.

Bradley Shraiberg: Uh, and that, that counsel was my law firm?

Joanna Sahm: Correct.

Bradley Shraiberg: And you've agreed to pay us a reasonable fee for our services?

Joanna Sahm: Yes.

Bradley Shraiberg: And to date, you have paid all of the invoices timely that you have received?

Joanna Sahm: Yes.

Bradley Shraiberg: Uh, but due to the actions and due to the state of the case, um, are you aware that there is significant work in progress that you have not been invoiced for today?

Joanna Sahm: Yes.

Bradley Shraiberg: I Oh, uh, as of August 16th, that amount that you, um, have e-combined paid and owe our firm is \$34,758 and 30 cents?

Joanna Sahm: Correct.

Bradley Shraiberg: Uh, and in between August 16th and through today, there have been 21.6 additional hours of service performed?

Joanna Sahm: Yes.

Bradley Shraiberg: Which was in an additional \$9,120.

Joanna Sahm: Yes.

Bradley Shraiberg: To the best of your knowledge, the Bernsteins have lived in the premises during this bankruptcy?

Joanna Sahm: Yes.

Bradley Shraiberg: And they still live there today?

Joanna Sahm: Yes.

Bradley Shraiberg: One moment, your honor. I have no further questions. Just a moment, please.

Judge Eric Kimball: All right.

Bradley Shraiberg: Oh.

Judge Eric Kimball: It's okay.

Bradley Shraiberg: I apologize. I do have one question.

Judge Eric Kimball: Go ahead question. Yep.

Bradley Shraiberg: Um, do you know if the, um, uh, judicial sale has been reset?

Joanna Sahm: It, the motion's been filed to reset it. It's going to be approximate from what I'm told approximately 60 days between now and 60 days from now.

Bradley Shraiberg: For the actual sale.

Joanna Sahm: Right.

Bradley Shraiberg: Thank you.

Joanna Sahm: To be set. Thank you.

Judge Eric Kimball: All righty. Thank you.

Bradley Shraiberg: Um, today we are seeking monetary sanctions against the three petitioning creditors, uh, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein, um, uh, for the legal fees incurred as well as six months' rent that they have been able to stay in the property improperly, um, due to this improper bankruptcy. Um, uh, it would've been sold the next day and they have now been in, they have now enjoyed free rent for what appears to be six additional months. Uh--

Judge Eric Kimball: But it's not necessarily about them. Those three petitioners. It's the fact that your clients were unable to obtain the property and therefore couldn't rent it, correct?

Bradley Shraiberg: Correct. Yes.

Judge Eric Kimball: I, for example, I don't have evidence that the three petitioners live there, Ms. Sahm just said she doesn't know.

Bradley Shraiberg: Right.

Judge Eric Kimball: I don't think that I don't, I don't think that matters.

Bradley Shraiberg: Sure.

Judge Eric Kimball: Uh, the que-- the-- you're saying that because the petition was inappropriate.

Bradley Shraiberg: Yes.

Judge Eric Kimball: And you have two different arguments under 9011.

Bradley Shraiberg: Yep.

Judge Eric Kimball: Um, that, uh, and, and you want me to make those findings and I would, I would like you to get to that also it would be nice if you talked about the evidence that I admitted.

Bradley Shraiberg: Sure. We will.

Judge Eric Kimball: Okay. I don't know if you're intending to do that, but I would like to be walked through it.

Bradley Shraiberg: Yes.

Judge Eric Kimball: Um, but let's assume there's a violation under, under B1 or B3. And then I go to C to determine sanctions.

Bradley Shraiberg: Correct.

Judge Eric Kimball: Uh, and one of the components that you have is that, but for the petition, assuming I find that it was wrongfully filed, um, that, uh, you would've got your client, clients would have obtained title.

Bradley Shraiberg: Yes.

Judge Eric Kimball: Long ago, and you want rent for that. That's what you just said. So it's not about the fact that the three petitioners have rent, are rent free. It's the denial of the damages to the clients? Not, not the petitioner's benefit. Right?

Bradley Shraiberg: Correct. Um, plus the legal fees that, um, my clients have incurred due to this wrongful ba-- the, the improper filing.

Judge Eric Kimball: Not just on the motion itself, but everything that follows from the petition.

Bradley Shraiberg: Correct.

Judge Eric Kimball: Right.

Bradley Shraiberg: Um, and second is, um, with regard to Eliot Bernstein and Candice Bernstein, along with the three petitioning creditors, we are asking that their pleadings in this file be stricken. Um, and that comes from, uh, just going full circle. We, we think that, uh, in it's ironic that in this case, they have completely taken the position of the, the best, the best defense is in offense. And every one of their pleadings is name calling with regard to every lawyer that has touched this file, as well as I believe every judge that has touched this file, both in the state court matters and the bankruptcy court, um, have all committed fraud. There was a fraud that occurred here and it was nothing to do with any of the petitioning creditors who didn't a, excuse me, any of the actual creditors that, um, are here today with Mr. Rose's clients and, um, myself.

We didn't ask to come to bankruptcy court. It was an, uh, an involuntary petition by the debtor against itself, which is as wrongful of a, uh, as improper as can be. Um, uh, uh, and then in support of this motion, Eliot Bernstein, Candice Bernstein, and the petitioning creditors have laced this, um, uh, file with allegations of fraud that are as improper as can be. Um, our client has a judgment. If they believe that the judgment that there was something wrong with the judgment, there were state court remedies to fix that. They, the borrower itself didn't even do that. There was a final non-applicable judgment against this debtor, um, uh--

Judge Eric Kimball: Which is the actual, the owner of the property in question.

Bradley Shraiberg: Correct. Um, parties that were named because they lived there. One part, two parties actually appealed. Eliot Bernstein appealed. And we put in our,

um, uh, exhibit binder, um, the dismissal of that appeal because the fourth DCA said he cannot file pro se pleadings anymore. Um, so that was the basis of the dismissal of his appeal. Um, I believe the children as they're not tenants they're entities, that just, that are there. And we, the, the plaintiff suspected that, um, uh, to, uh, uh, clear the title, um, uh, there is an appeal pending and today is their deadline to file a brief. We would be surprised if they filed a brief today.

Um, uh, uh, but either way the judicial sale will go forward. There was, as this court, um, may remember, um, a motion by them filed to stay the foreclosure sale, um, pending the appeal. Judge Kastrenakes has heard that hearing, um, uh, pre-petition and entered an order post-petition that this court granted, um, retroactive stay relief.

Judge Eric Kimball: So, okay. Hold on. You just said something I didn't know. So there was actually a hearing on that motion?

Bradley Shraiberg: I wasn't the pre-petition.

Judge Eric Kimball: Okay. Fine. No, it's fine.

Bradley Shraiberg: Yeah. Okay. Um, uh, so I—

Judge Eric Kimball: I remember at a recent hearing going through all of the briefs that were filed in connection with that, there were many filed in connection with that, um, those motions and they were ruled on. Anyway, go ahead.

Bradley Shraiberg: But regardless, just taking it to the simplest form, our client has a judgment. Under the bankruptcy code, we are a creditor. Um, we've never committed fraud. We have standing in this bankruptcy case, the case was filed because of us. Um, uh, there's never fraud and to lace a, um, uh, uh, I, I always think that, um, uh, plagiarism, excuse me, um, uh, uh, liable and slander are unique because in a courtroom there's an exemption. So that they can say whatever they want in a pleading. And I have no idea what my future is when, who would ever look at cases that I've filed that Mr. Pendergraph, Mr. Rose, um, Ms. Fineman, um, uh, any lawyer that touched this file, um, uh, who would ever look at, um, uh, anything, uh, uh, fraud is in there and it's improper.

And I think anyone that would look at the next 200 pages would realize, okay, this person isn't, uh, uh, uh, the, these claims are, are ridiculous, but we shouldn't have to defend ourselves and say the claims are ridiculous. And for that reason, um, we believe that they should all be stricken. So we are also seeking that remedy today.

Judge Eric Kimball: Yes. Let me point out to you. And, and I, I believe the argument there is that those documents were filed for the improper purpose of frustrating and a word actually used in the statute, in the rule. But, um, the, uh, the effect of striking a document does not remove it from the docket. It still stays there. It's just an order that says they're stricken. And let me also point out that each of the ECF numbers that you have referenced in the motion for sanctions that I'm hearing today, I've already considered all of those documents. They are filed in connection with prior matters. There's no pending matters that they relate to. So striking them

doesn't affect anybody. And it also doesn't remove them from the docket, but there would be the benefit of an order that says they're stricken. That's what you want.

Bradley Shraiberg: Correct. Yeah.

Judge Eric Kimball: Okay. Uh, it, it is a couple of things--

Bradley Shraiberg: Sure.

Judge Eric Kimball: -- that will be helpful to me. First, I've admitted all the documents. I would like to know why you want me to consider them.

Bradley Shraiberg: Sure.

Judge Eric Kimball: And we have plenty of time to do that.

Bradley Shraiberg: Mm-hmm.

Judge Eric Kimball: And next, um, you have alleged against each of the respondents. Well, that's not true, against three of the respondents, um, violations under 9011B (1) and B(3).

Bradley Shraiberg: Yep.

Judge Eric Kimball: And against all of the respondents also under, uh, under B(3), I believe. Might be B(1), which one is it? Whichever one is the improper per- purpose standard. So that's the first step, violations. And then the next step is appropriate sanction. And there are some, there's some guidance in, in 9011C, and I'd like you to address why you think the sanctions you've requested are appropriate there. So I'd like all of that addressed in the presentation.

Bradley Shraiberg: Okay. Um, beyond speculative litigation claims the sole asset of Bernstein Family Realty, LLC is the non-income producing real estate at, uh, in Boca Raton. Uh, move-ins exhibit eight, uh, is the bankruptcy schedules filed by Eliot Bernstein, signed by Eliot Be- or filed by Eliot Bernstein on July 13th, 2022 at ECF number 53, which show the real property valued at \$800,000. Other assets listed at unknown values, uh, in part 11 at paragraph 74 and 75, it lists claims for wrongful foreclosure and conversion against various persons. There are no leases, um, on schedule G and no income on statement of financial affairs.

Judge Eric Kimball: Who signed this?

Bradley Shraiberg: I believe Eliot Bernstein.

Judge Eric Kimball: Um, the, uh, the debtor members are three trusts.

Bradley Shraiberg: Correct.

Judge Eric Kimball: Um, does any, do I have any evidence as to who the trustees, I'm using plural, of those trusts are, is there any evidence here of that?

Bradley Shraiberg: No.

Judge Eric Kimball: I, I don't think anybody's ever told me who the trustees are. I can't figure out how Mr. Bernstein was allegedly selected as the manager. He always says acting manager. I don't know what that means. There's no such thing as an acting manager, under Florida Law, you're either the manager or you're not. Mr. Ted Bernstein, you can weigh in, but only if it's evidentiary. I mean, you can consult with him, please. Go ahead.

Bradley Shraiberg: [inaudible 00:26:34] Um, there is, there is no evidence in the record of, um, who the trustees are. Um, I believe there was a well, in the transcript at the last hearing, Eliot Bernstein did say for what it's worth, that the, he believed the three trusts had been dissolved and the three owners are his children. I remember that testimony.

Judge Eric Kimball: How old, well, this is probably not in the evidence either. How old are each of the petitioners now?

Bradley Shraiberg: They're all over 20 years old. They're all--

Judge Eric Kimball: Okay. Are they all 25 or older? I've read the trust agreements.

Bradley Shraiberg: Right. Um--

Judge Eric Kimball: The trusts aren't released to them unless they're 25, so, okay. Um, so he thinks that, that the assets of the trusts have been transferred to their sole beneficiaries in each case.

Bradley Shraiberg: He made a comment about that. I have found that his comments, both in writing and in, um, court, he uses phrases. He uses words improperly and legal terms improperly, and it's tough to decipher what is and what is not correct.

Judge Eric Kimball: All right. Let me, I apologize for that sidetrack. Let's go back to, you were pointing me to exhibit eight, the schedules, which show, uh, the real property, uh, other assets, a number of assets shown of unknown value, although this is often nothing listed at all.

Bradley Shraiberg: Correct.

Judge Eric Kimball: In those categories. And, um, and then some claims, uh, primarily against lawyers.

Bradley Shraiberg: That's right. Uh, and nothing was brought during the short period that this was in bankruptcy. Um, uh, and we've never seen any tangible, um, uh, uh, there's been no evidence of these claims. There's a final judgment of foreclosure that has not been appealed by the borrower.

Judge Eric Kimball: And is not stayed.

Bradley Shraiberg: Correct. Um, exhibit three is the order dismissing the bankruptcy, um, which had numerous, um, uh, statements of, uh, findings of fact, um, specifically, uh, first the debtor owns one real estate asset. Uh, this is on page two of, of ECF 79, which is exhibit three in our binder. The debtor owns one real estate asset, the single-family home located in Boca Raton. Since prior to the initiation of this case, the debtor has had no employees, no operations, or employees. The debtor has at most, a few minor unsecured creditors.

Uh, the petitioning Bernstein's as well as their parents, Eliot Bernstein and Candice Bernstein all either reside at the real property or utilize the real property as their mailing address. Um, move exhibit two, the bankruptcy petition lists the address for the debtor and each of the petitioning Bernsteins at 2753, Northwest 34th street in Boca Raton. Move into exhibits 9, 10, and 11. Those are joiners by petitioning Bernstein's at ECFs numbers, 36, 37, and 38 list the address for each of the petitioning Bernstein's as 2753, Northwest 34th Street, Boca Raton, and which state that Eliot Bernstein is their father.

Judge Eric Kimball: All right. So that means I actually do have evidence that they live there.

Bradley Shraiberg: Correct.

Judge Eric Kimball: Let me point out that when you file a petition, including an involuntary petition, you need to show your driver's license. And each of the three petitioner's licenses is available to me, they're not publicly accessible. At the time of the filing of the petition Jacob was 23, Joshua was 25, and Daniel was 19,

Bradley Shraiberg: Um, exhibit 12--

Judge Eric Kimball: Which by the way, means that based on the attachments to exhibit, which one is the petitioner?

Bradley Shraiberg: Um, the two.

Judge Eric Kimball: Two. Two?

Bradley Shraiberg: Yeah.

Judge Eric Kimball: Oh, yeah. Um, which I think include the trust agreements, don't they?

Bradley Shraiberg: I think so.

Judge Eric Kimball: Um, only one of them would have access to the trust rights. They're not. Who turns 25 on Saturday? Joshua turns 25 on Saturday, which means that as of today, none of them are 25 and under their own, uh, trust, they would not have access to the race.

Bradley Shraiberg: Um, move-ins exhibit 12 is a joiner by Candice Bernstein at ECF number 39, which lists her address as 2753 Northwest 34th Street. Uh, and

which states that the pet- the petitioning creditors are her sons and that Eliot Bernstein is her husband.

Move-ins exhibit 13, motion for reconsideration filed by Eliot Bernstein at ECF number 44 lists his address as 2753 Northwest 34th Street. The secured creditors hold a claim against the debtor that is secured by the real property. Specifically, the secured creditors are the holder of that certain final judgment of foreclosure in the amount of \$353,574 and 68 cents against the debtor, which are foreclosed on the real property entered on December 23rd, 2021, uh, by the circuit court for the 15th judicial circuit. Um, move-ins exhibit one is the final judgment of the, of foreclosure.

Move into exhibit 27 is a mortgage in favor of Walter Sahn, and his wife, Patricia Sahn. Uh, this, we put in, um, well, pursuant to the final judgment of foreclosure, a foreclosure sale of real property was scheduled for April 20th, 2022. Um, and also part of the, the intent of putting the mortgage in is that, uh, Mr. Eliot Bernstein has repeatedly said that this is a fraud, a dead person is moving in this, uh, court. Um, it's not true. Uh, first there is a judgment that has Walter Sahn as a creditor, but secondly, the review of the mortgage is, it's owned tendency by the entireties. It says Walter Sahn and his wife, Patricia Sahn when he passed by law, Patricia Sahn was the owner of that, um, uh, uh, of that mortgage. This is a red herring. It's just going toward why we want these, um, uh, pleadings stricken.

Um, move-ins exhibit one, which, uh, was the final judgment of foreclosure. Uh, the petitioning Bernsteins filed this case as an involuntary case against the debtor yet the petitioning Bernstein's are not creditors of the debtor. Rather the petitioning Bernsteins are the beneficial owners of the debtor. That's found in move-ins exhibit two, which is the petition at ECF number 87-2, page six of 15 at paragraph three, "We are... the sole owners and members of this company." That's their quote.

Judge Eric Kimball: Right. Although when you read the entire document, um, what you learn is that they are in fact, the beneficiaries of three trusts, which are in fact the members. And so they're not the direct members of the debtor.

Bradley Shraiberg: Right?

Judge Eric Kimball: I don't know how you would reach another conclusion reading the document.

Bradley Shraiberg: Right?

Judge Eric Kimball: Debtor has three members. The debtor's three members are three trusts. The petitioners are each the so beneficiary of one of those trusts. And apparently since one of them is not yet, none of them are yet 25 even today. Um, and by the way, if anybody orders the transcript, the statement that someone is turning 25 on Saturday needs to be stricken, need to be blacked out. Um, the, uh, uh, since none of them are 25 as of today, I've already looked at the trust bec- for another purpose earlier in the case. And I know that, uh, the trust still exists at least by, unless they've been amended. And, and you would think they would've included the amendment in their petition.

Um, they claimed, um, well, by signing the schedule, excuse me, the petition, the involuntary petition, they're claiming to be creditors, but then un-- included in their petition at ECF pages seven to eight of 15 at paragraphs 12 through 14, they describe their payments as capital contributions.

Bradley Shraiberg: Yeah. Hold on a moment.

Judge Eric Kimball: And then they divide the total in thirds, and that's what they included in, um, uh, for amounts in, um, on the petition.

Bradley Shraiberg: Correct. Um--

Judge Eric Kimball: Go ahead.

Bradley Shraiberg: Move-in exhibit three, is the order dismissing bankruptcy case, uh, which states that, "This case was initiated when the petitioning Bernsteins filed an involuntary chapter 11 petition against the debtor. However, the petitioning Bernsteins are not creditors of the debtor." Despite this fact in the petition, each of the petitioning Bernstein's falsely stated under penalty of perjury, that they were creditors of the debtor. Uh, that's in move-ins exhibit two, the petition and that's found at, um, uh, uh, paragraph 13 of the petition for describing each petitioner's claim.

This case was filed as an involuntary case because the petitioning Bernstein's could not file a voluntary bankruptcy petition for the debtor, as the debtor was dissolved and had no manager, this could be found at move-ins exhibit 15, a resignation of manager filed in 2016 with the Florida Department of State Divisions of Corporation and move-ins exhibit three, an order dismissing the bankruptcy case, uh, which states on page two, "This case was filed as an involuntary case because the debtor had been dissolved and had no manager and thus nobody to sign a voluntary bankruptcy petition on behalf of the debtor."

That is the petitioning creditors effectively caused the debtor of which they are the beneficial owners to file an involuntary case against itself. The petitioning Bernsteins did not act alone in initiating this involuntary bankruptcy case. Rather they acted in concert with their parents, Eliot Bernstein and Candice Bernstein. Move-ins exhibit four, Candice Bernstein's certificate of service showing that Candice Bernstein served the summons and involuntary petition of the debtor.

Move-ins exhibit 9, 10, 11, and 12, which are joiners at ECFS numbers, 36 37, 38, and 39 showing petitioning Bernstein's and Candice Bernstein joining in Eliot Bernstein's motion for reconsideration before the motion for reconsideration was ever filed. The joiners were filed on June 24th. The motion for reconsideration, which is move-ins exhibit 13, was filed on June 30th. These are ECFS number 43 and 44.

Move-ins exhibit three, note with the order dismissing case, again, which states on page two, that the petitioning Bernstein's filed the case with the support of Eliot Bernstein and Candice Bernstein. Um, and once again, we note that they all share the same address. This bankruptcy case was filed as a litigation tactic for the

sole purpose of getting the effect of the section 362 automatic stay in order to stymie the foreclosure sale of the real property. The case was filed on April 19th. The foreclosure sale was scheduled for the next day. Move-ins exhibit three as the order dismissing the bankruptcy, um, uh, has the quote that I just stated on page two.

Um, move-ins exhibit two, the petition at ECF pages six through 12 of 14, in which the petitioning Bernstein's described their dispute with the movements. Once the case was filed and the automatic stay went into effect, the debtor did nothing during the case. And the case was converted to chapter seven. Move-ins exhibit six, which is the order converting the case. Move-ins exhibit seven is on July 4- the July 14th order at ECF number 57, recounting the debtor's failures on pages three to, to four, and stating on page four that the debtor's failure, uh, failures caused, "A secret bankruptcy, putting creditors in the position of potentially taking actions in violation of the automatic stay."

In move-ins exhibit three, the order dismissing bankruptcy case at ECF number 79, uh, at page two, "Once such stay was achieved, the debtor did nothing in this bankruptcy case." The case was eventually dismissed with two years prejudice and the court determined that the Bernstein's had filed it in bad faith. That's move-ins exhibit three at page three. This bad faith bankruptcy scheme by the Bernstein's did not come without cost to the move-ins. As the move-ins were required to engage, um, my law firm and me and litigate this bankruptcy case. And the April 20th foreclosure sale was delayed by more than three months, which is time that the movements could have been renting, um, out the real property. Um, and, uh, the movement believes that, um, she could rent it at \$5,000 per month.

Move-ins exhibit 26 is my retainer agreement. Um, uh, setting forth the, um, uh, terms of the engagement. Move-ins 6--

Judge Eric Kimball: Yes. Hold, hold on a minute.

Bradley Shraiberg: Yes.

Judge Eric Kimball: 26?

Bradley Shraiberg: Yes.

Judge Eric Kimball: From April, 2022, which has the client properly represented? Why was the initial, this caused a lot of trouble in the case.

Bradley Shraiberg: I know.

Judge Eric Kimball: Why is the initial notice of appearance? Okay, let, let me, let me comment briefly, um, looking at the judgment and how the mortgage is worded, you are right that Patricia Sahn would've automatically become the sole owner of the rights under the mortgage. Um, and, and so it does, it just doesn't matter, and there's no fraud involved in that, but now I see your engagement letter and it is the client is Joann, Sahn, personal representative of the Estate of Walter Sahn, thereby acknowledging that Mr. Sahn had, had deceased and Patricia Sahn. If that's the case, why, why the notice of appearance in the form that it was filed?

Bradley Shraiberg: It was a mistake. And, uh, what I think happened was left hand, not speaking with right, when I first spoke with Ms. Sahm, as you can appreciate the-

Judge Eric Kimball: The one who's here. Yes.

Bradley Shraiberg: Yes, correct. Joanna.

Judge Eric Kimball: Right.

Bradley Shraiberg: The daughter.

Judge Eric Kimball: Right.

Bradley Shraiberg: As you can appreciate because of the status of her parents. And that she's the one that initially called me. We had to make sure that this was done properly, and that's why the retainer letter was done properly. I have a feeling then shame on me, I sent it to the autopilot that would happen in my office. And I believe autopilot looked at the judgment. And that was the notice of hearing and shame on me. I signed the notice of appearance. Um, that was a mistake, but I, we literally put the retainer letter. There is no evidentiary reason for that retainer letter to be in the exhibit binder other than to show if they were here and wanted to talk about the great fraud. It never existed. It clearly was a mistake from day one.

Judge Eric Kimball: All right, go ahead.

Bradley Shraiberg: Um, the move-ins exhibit 21, um, sets forth the, um, the line items with regard to the expenses. And I have to step back and say, when looking at what happened here, um, I believe that, uh, \$40,000 on his face is a lot of money. Um, uh, especially when you consider the amount of actual contested matters in this case, there were very few.

Judge Eric Kimball: You mean contested matters at which substantive issues were presented?

Bradley Shraiberg: Correct.

Judge Eric Kimball: Because, uh, because, um, I'm confident that if I've been spending nights working until ten o'clock on this case, that everybody else has as well, and they don't have nothing to do with the substantive request for relief.

Bradley Shraiberg: Absolutely right. Every document they file includes a 200 page diatribe of irrelevant information. We don't know, it's irrelevant until we have read all 200 pages. And then when it's time to, um, seek sanctions or actually seek a dismissal, you have to go through everything to, um, uh, prepare for these hearings. And we didn't know what to expect today, and that's why these fees keep adding up. So, um, uh, and I repeat, we didn't ask to come here. This was the filing of an involuntary petition. That was as improper as the day is long. Um, uh, and that's why it hit at 40,000. And I'm jumping ahead because one of the reason when we, um, uh, uh, I, I will hit this in more detail in a moment, but, um, one of the purposes of

sanctions through 9011 is to prevent this behavior and to punish. When I was thinking, wow, what could we be entitled to? It's almost--

Judge Eric Kimball: Does 9011 say punish? It says, deter.

Bradley Shraiberg: Deter, sorry.

Judge Eric Kimball: Twice.

Bradley Shraiberg: Yes.

Judge Eric Kimball: Two different times.

Bradley Shraiberg: Apologies. It does. It says deter.

Judge Eric Kimball: It would be unlikely that a bankruptcy rule provided that I could punish somebody. There is one instance, but unlikely.

Bradley Shraiberg: Right.

Judge Eric Kimball: So it's intended to be a deterrent. And that's because this court's, in general, unless a contempt happens in front of me.

Bradley Shraiberg: Right.

Judge Eric Kimball: Um, in general, my, the limit of my contempt power is civil contempt. And that's what 9011 is designed for.

Bradley Shraiberg: Um, ab- absolutely. But to deter someone, they would know that if they, that the filing of an involuntary bankruptcy is a very serious matter, and it has very serious consequences.

Judge Eric Kimball: If you read section 303, that is obvious.

Bradley Shraiberg: Right. Um, to deter one would, uh, need to know-- well, if the filing of an improper bankruptcy, um, uh, the petitioners, and even if there was a lawyer there isn't one here that, um, signed the petition, um, uh, is going to be subject to serious sanctions, that would be a deterrent. Um, uh, there is no question that Southern Florida or the district that we're in would need to know, you cannot file an involuntary petition against yourself to try to stop a foreclosure sale when there is no hint of rehabilitation. I take that back. You can't file a bankruptcy against yourself, period. Petitioning creditors, you, you can't organize you can't, um, uh, collude to have an involuntary filed against you by say, three legitimate creditors for an improper purpose. We don't even have that here. We have actual beneficiaries of equity that filed this case.

Judge Eric Kimball: We have the indirect beneficial owners of the debtor.

Bradley Shraiberg: Correct. Um, so I was thinking that we actually could ask for more than our legal fees and the, um, uh, uh, legal fees and the, um, uh, uh, rent in

this instance from the, I'll use air quotes saying settlement negotiations from a lawyer that has appeared in this case, but never entered an appearance, Ms. Anger Garcia. Um, uh, I believe that the amount of legal fees and rent is enough of a deterrent in this specific instance. So we're not asking for more than that. Um, uh, but, um, from my conversations, uh, with her, I have said we would have a right to ask for it.

Judge Eric Kimball: Now I'm confused.

Bradley Shraiberg: Sure.

Judge Eric Kimball: So Ms. Garcia has in fact appeared early in the case, on behalf of the petitioners.

Bradley Shraiberg: Correct.

Judge Eric Kimball: Later she listened in on a hearing and specifically said she was not appearing on their behalf.

Bradley Shraiberg: Correct.

Judge Eric Kimball: Okay. Since then, has she been negotiating on behalf of any of the respondents in today's motion, I don't wanna know the terms of what was discussed, but--

Bradley Shraiberg: Correct.

Judge Eric Kimball: -- has she represented herself as count-- to you as, or one of your colleagues, as counsel to any of the petitioners?

Bradley Shraiberg: To me, I would say she uses the phrase trying to help them, which is counseling. You can't be kind of--

Judge Eric Kimball: Okay, well, well, under, well, seems to me that if Florida, the lawyer is helping somebody, they have just undertaken representation.

Bradley Shraiberg: Correct. And I'll add--

Judge Eric Kimball: Yeah. Make sure if you speak in the courtroom that you do it way far away from the microphones or else it'll be in the record, if that is your intention to be in the record. That's great. But know that that's the case. Yes.

Bradley Shraiberg: Uh, um, what I believe Mr. Rose was going to tell me is, and this is something that Ms. Garcia did tell me.

Judge Eric Kimball: Yes. I know that you are Mr. Rose and not Mr. Bernstein. I apologize. Go ahead.

Bradley Shraiberg: Um, uh, she filed an emergency motion in state court on behalf of the three children, because they accused me of fraud left and right. I don't know if her client was the three children or their trusts, um, uh, for an emergency hearing

that is taking place tomorrow with regard to a separate matter that Mr. Rose is involved in, not the foreclosure. Um, in that case, I believe there is \$300,000 put into the court registry due to Simon Bernstein. That is Eliot's father's, um, uh, estate, uh, I think it's a remnant, but Mr. Rose would know what that's about to **[inaudible 00:49:15]**.

Judge Eric Kimball: Okay. But that isn't, that's something else entirely.

Bradley Shraiberg: Correct.

Judge Eric Kimball: But you said that there were pe- you mentioned sure that there may have been settlement negotiations with some of the respondents and that Ms. Garcia was involved. I'm just curious whether she represented herself, if she made an offer on behalf or in, or negotiated on behalf of one of these parties. I, I'm trying to figure out why she's not here making an appearance.

Bradley Shraiberg: She, um, there certainly was an offer ma- made on that phone call.

Judge Eric Kimball: Okay. So there's a lawyer, who's not a lawyer who is appeared, but has now no longer appearing, but hasn't withdrawn. Okay.

Bradley Shraiberg: Um, yeah. And one other thing that, um, uh, we were always wondering are the Bernstein's gonna show, and it especially came from the last pleading that Eliot filed two days ago that I believe there's a sentence in there that says in lieu of my appearance, I am making this objection. Um, uh, of course, that doesn't mean the children. Uh, Ms. Garcia, this is not a settlement negotiation, um, uh, was concerned, was today she wanted clarification from me, was today a criminal proceeding or a civil proceeding? I assured her that it is a civil proceeding. Um, uh, and that too was, uh, um, for that. Yeah.

Judge Eric Kimball: Okay. Whatever that means.

Bradley Shraiberg: Um, so that's--

Judge Eric Kimball: Uh, let me just point out also, I think Mr. Eliot Bernstein's document was ECF 94. And when I ruled on it, I did say that I would treat it as an objection. I assumed that he would also be here. I did see that language, but I, I took that in the context of his argument that because he wrongfully thought that transcripts would not be available to discuss, um, that he didn't think the hearing was gonna happen. Let me also point out that anything that I said during the bankruptcy case would have nothing to do with the analysis of whether the petition was filed appropriately, which obviously happened before I had any hearings. But anyway, go ahead.

Bradley Shraiberg: Uh, excuse me. Um, the, uh, EC, uh, sorry, exhibit 26 was the retainer agreement. Exhibit 21 are my firm's time records through August 16th. Um, and I will proffer to the court, uh, that we have billed an additional 21.6 hours through yesterday, uh, totaling \$9,120 in fees. Um--

Judge Eric Kimball: Okay. So that is in the record or not in the record?

Bradley Shraiberg: Uh, it sh- um, Ms. Sahm testified--

Judge Eric Kimball: Testified to that.

Bradley Shraiberg: -- that, um, uh, that she has incurred that additional fee. We have not, um, uh, sought our fees for today. And I don't think it's necessary. Um, if, if the, um, we won't seek additional fees over and above the 9,120. Uh, moreover the Bernstein's utilize this bad faith bankruptcy case as a platform to publish false and defamatory statements about the move-ins, myself, and other persons who have had the misfortunes to cross paths with the Bernstein's. Um, and we've set forth those ECF numbers in the motion. Uh, I can do it again. I don't know if it's necessary.

Judge Eric Kimball: No, that's not necessary.

Bradley Shraiberg: And, um, uh, as demonstrated by the, uh, orders of other courts cited in the motion and tendered as move-ins exhibits 16, 17, 18, 19, and 20 prior admonitions and sanctions by other courts against Eliot Bernstein have not served as sufficient deterrent to his abhorrent litigation tactics. Exhibit 16 is the fourth DCA sanctioning Eliot Bernstein in 2017 by directing the clerk not to accept any more of his pro se filings.

Exhibit 17 on page 45 of the Southern District of New York order from 2008 dismissing complaint and stating Eliot Bernstein has, "Burdened, this court in hundreds of defendants, many of whom are not alleged to have engaged in wrongdoing with more than 1000 paragraphs of allegations, but have not been able to state a legally cognizable federal claim against a single defendant." Exhibit 18 is on page eight of the Southern District of New York order.

And the same case from 2013 states, "The pros hour defendants seek to enjoin Eliot Bernstein from filing any action in this court or any other court related to the subject matter of this action without first obtaining leave of the court in the August 14th order, I cautioned Eliot Bernstein that any additional frivolous pleadings, in this case, could subject him to sanctions under federal rule of civil procedure 11."

Move-ins exhibit 19, page seven of the Southern district of New York order in the same case from 2013, imposing monetary sanctions against Eliot Bernstein, and enjoining him from filing papers in any court relating to the subject matter of particular action without leave of issuing of, uh, issuing court. In move-ins exhibit 20 is the fourth DCAs order from earlier this month, dismissing Eliot Bernstein's appeal of foreclosure judgment due to the prior prohibition against pro se filings.

Uh, rule 9011(b1) and (3) sanctions. Uh, federal rule of bankruptcy procedure 9011(b) states in pertinent part that by presenting to the court, whether by signing, filing, submitting, or later advocating a petition, pleading, written motion or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances that one, it is not being presented for any improper purpose, such as

to harass or to cause unnecessary delay or needless increase in the cost of litigation.

And three, that the allegations and other factual contentions have evidentiary support, or if specifically, so identified are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Rule 9011(c) goes on to state in pertinent part that if after notice and a reasonable opportunity to respond, the court determines that subdivision B has been violated. The court may subject the conditions, uh, uh, stated below impose an appropriate sanction upon the attorneys' law firm, uh, or parties that have violated subdivision B or are responsible for the violation.

It was initiated by a motion. Um, as I, uh, believe this court knows the, um, filing of a bankruptcy petition is an exception to the 21-day safe harbor period. Um, and then the nature of the sanctions and the limitations, a sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Um, the facts of this case while unique are very similar to a case of *In re Letourneau*, L-E-T-O-U-R-N-E-A-U there like, uh, the debtor caused the filing of an involuntary chapter seven petition against himself and falsely listed three petitioning creditors on the petition who were not in fact, his creditors in order to delay a foreclosure action and "save his home".

That's at 422 BR 132 at page 140. It's a Northern district of Illinois bankruptcy case from 2010. The Letourneau determined that, "There is no circumstance under which a debtor's filing of an involuntary case against himself can be proper. An involuntary bankruptcy is or remedy for creditors, not debtors." Moreover, "The filing of an involuntary case for the purpose of holding off a single creditor of the alleged debtor is improper and violates rule 9011," that's at pages 138 and 139 the Letourneau case.

Furthermore, while the debtor in Letourneau, "Probably prob- probably did file the case to save his home, the improper purpose portion of 9011 is evaluated objectively and does not require a showing of subjective bad faith. That is the file document does in fact lead to needless delay or cost, or is in some way improper, it violates 9011, regardless of the subjective belief in the need to file the document. There is nothing improper in wanting to save one's home, but it is highly improper to go about it by filing an involuntary case against oneself using a fraudulent petition." That's at page 141 of the opinion.

After determining that the offending petition, uh, was objectively improper and thus violated rule 9011(b1), the Letourneau court turned to the appropriate sanction under rule 9011(c2) found that the monetary equivalent of a slap on the wrist would be enough to prevent the debtor's recidivism, but concluded that a heavier sanction must be imposed, however, to deter comparable conduct by others similarly situated. Because the maneuver, the debtor employed here is a serious abuse of the bankruptcy system.

Therefore by effectively causing the debtor to file its own involuntary petition for the sole purpose of thwarting our April 20th foreclosure sale of the real property, the petitioning Bernstein's acting in concert with Eliot and Candice Bernstein clearly filed

the petition with an improper purpose and in violation of rule 9011(b1), the improper purpose section.

Moreover, the petitioning Bernstein's acting in concert with Eliot Bernstein and Candice Bernstein clearly violated 9011(b3) when they falsely stated in the petition, the petitioning Bernstein's were creditors of the debtor. Based on one, the gravity of the Bernstein's improper conduct, the fact, two, the fact that the past admonitions and sanctions from multiple courts have thus far failed to deter such improper conduct, and three I, the, uh, importance of nipping similar involuntary bankruptcy schemes by others, uh, in the bud, like the Letourneau case states, the court should impose substantial monetary sanctions on the petitioning Bernsteins as they, while acting in concert with their parents actually signed and filed this petition.

Seeking a sanctions judgment, um, uh, for the \$34,758 and 30 cents, plus 9,120, which total, uh, plus \$5,000 for the six months that we were not able to rent the, um, uh, uh, the, the, um, uh, the real estate, uh, totals \$73,878 and 30 cents. Um--

Judge Eric Kimball: Could I focus for a moment on the rent request?

Bradley Shraiberg: Yes.

Judge Eric Kimball: Now, when you look at subsection C there's one provision that talks about fees and costs to the successful party on the motion for sanctions. That's included in your request.

Bradley Shraiberg: Yep.

Judge Eric Kimball: Um, then there are the two components that you've referred to, deterrence, both of acts by the party in question and similarly situated parties. And, and you've addressed that. And then a little bit further down in the same subsection, it says that the sanction can include fees and costs resulting from the filing of the thing that's complained of in this case, the petition, which would be everything in the case, if necessary for purposes of deterrents. And so we have a specific mention of fees and costs.

Now, the measure of that is not a damages measure. It's a measure of whether the sanction is appropriate to deter both the party in question and other similarly situated, but the rent request sounds more like damages, and I'm not sure that, that is the purpose of the sanction in 9011(c). I'm confident it's not.

Bradley Shraiberg: Sure.

Judge Eric Kimball: Could you, is there any case law in which you found that taking that kind of request into account was appropriate for purposes of a sanction under 9011(c)?

Bradley Shraiberg: No. Other than the cases that, and, and we haven't specifically looked for, um, uh, the rent provision, um, uh, that the cases do say that it can be something to deter. And we did cite the language from the Letourneau case that, um, says a slap on the wrist would not be sufficient. Um, uh, the, um, uh, that's I guess,

where we're, um, uh, uh, coming from, that the, uh, purpose of-- they've accomplished their goal. They have improperly filed a bankruptcy and/or have been allowed to live for free for six more months. The deterrent for, to prevent people from doing that is you're not going to get that remedy. We're not going to reward your bad behavior, and that's the deterrent.

Um, if the court would like we can look for additional cases that, um, uh, have a sanction of that kind and, um, supplement, uh, uh, but we think that we have enough just from the statute, um, and the language of the case that we, that we have cited. Um--

Judge Eric Kimball: May I ask you?

Bradley Shraiberg: Yeah.

Judge Eric Kimball: Do, do you, do you believe that the standard that I apply under B one and B3 is the same, and I ask that--

Bradley Shraiberg: Sure.

Judge Eric Kimball: Um, there is some case law that suggests that the improper purpose, uh, analysis is the subject of one. I need to consider. Obviously, we don't have the petitioners testifying today because they have failed to show. Um, we don't have their testimony. So I can't, I can't look to that and make any credibility determinations in the like, and, and they've chosen not to show up and defend themselves. I can consider all the circumstances of the case in order to reach, make inferences of, of, of their intent. Um, they, of course, you've, uh, asked me to admit, and I've admitted the petition, which includes a lengthy statement, which is very unusual, um, attached to the petition in which they may contrary, uh, they, they say contrary things about what their intention was in filing the case.

Um, but based on what I've seen, the standard and for that particular subsection is a subject of one, but the factual statement that you're pointing to, the fact that they are, they hold claims, um, that are, that are not contingent, et cetera. And they state particular amounts. That's false. It's false based on their own, um, statements. It seems to me based on the case law, I, that I've seen that my analysis under that provision is actually an objective one. All right. So I, and I realize I'm laying a lot of things on you.

Bradley Shraiberg: (laughs).

Judge Eric Kimball: Before you get to weigh in on this, but in either case, including in the objective one, because the, the rules says after reasonable inquiry, under the circumstances, do I take into account who the petitioners are? Um, they are young people, none of them older than 24 at this 0.1 is 19. Do I take that and not, not lawyers, um, and not represented, obviously, do I take that into kind of either of those B1 or B3 standards?

Bradley Shraiberg: The Letourneau case for 9011(b) used--

Judge Eric Kimball: That was B1, I think.

Bradley Shraiberg: Yes. Well, it just, it just says B, but I think you're correct. I think it's B1.

Judge Eric Kimball: Just the whole thing is about improper purpose. It's--

Bradley Shraiberg: Right. Um, uh, uses the objective standard.

Judge Eric Kimball: Okay. So for improper purpose, they have an objective standard, huh?

Bradley Shraiberg: Right. Uh, but I think that we don't have to go there. I think that they would-- that the fact that they're not here when this is a damage that we are, have been seeking from day one, coupled with the pleadings that have been filed their conduct throughout the case and the, uh, pleadings that have been filed, um, uh, their own pleadings that have been filed, we would meet both the subjective and objective standards regardless. So I, I don't--

Judge Eric Kimball: Because the documents filed later are indicative of the intent at the time the petition was filed.

Bradley Shraiberg: Correct.

Judge Eric Kimball: I see.

Bradley Shraiberg: Coupled with, when they knew they were going to lose today, today was going to be a, at best, a mitigating day. There, there's already been a dismissal for bad faith. Um, uh, so some sanction was realistically is going to be rewarded, um, uh, or awarded. Uh, today, if they were here, it would've been about mitigation and they would have I'm sure if I was representing them, testified, all I wanted to do was save my house. Uh, the case law, we were prepared for that, the case law says, that's, that's a noble cause, but that you still can't file an improper bankruptcy to stop that you can't abuse the court system.

Judge Eric Kimball: But if it's a quick solving cause you are not permitted to ignore that fact.

Bradley Shraiberg: That's right. Um, uh, so they, they'll fail both tests, subjective or objective with the evidence that's been provided. I don't know that it is a subjective test though. Uh, I, I would argue that it's, it's objective, um, that for B you're, you're asking it for C as well?

Judge Eric Kimball: Well, no, no, no. Uh, right now I'm focusing on the violation. For example, there, and you know, there's really no good case law on, on this. I, it, it's kind of all over the place. There is 111 circuit case, 610 F3, 628. This is the rule 11, not 9011, but it doesn't matter. It's the same provision where the court suggests that the improper purpose test requires a subjective analysis that likely would require testimony. Meaning the opportunity for testimony, which I have provided and they are not here. Um, and so that leaves me without any evidence offered by the

respondents and that is their problem. Um, but, uh, I, I reference that case only because it does suggest a subjective analysis for that particular provision. And then also the lead into the rule says, uh, re- you know, a reasonable inquiry under the circumstances.

Um, and so that suggests an objective standard. What's the reasonable inquiry? On the other hand, do I need to take into account the identity of the party that you're seeking sanctions from? Uh, if it's a very sophisticated person who happens to also be a lawyer, well, then a reasonable inquiry in this instance, any. Definitely for a lawyer, a reasonable inquiry would lead you to conclude, for example, um, on the B3 request that there is no claim. Uh, I mean, they should, first of all, it's amazing they filed that document along with the petition. Um, but there is no claim. They are not creditors. They, it, whatever, right they have, isn't even against the debtor, it's against the trust. So trusts, the three trusts, um, which they conveniently attached to their, to their petition.

So I'm just struggling a little bit with, I'm not struggling now. I've struggled over the last couple of weeks, looking at this with figuring out exactly what the standard would be as I was getting ready to hopefully hear evidence presented by all the five respondents, which they have chosen not to, uh, not to do. By the way, the clerk advises me that at 10:23, this morning, Mr. Eliot Bernstein ordered the audio CDs of this hearing. So he's elected not to be here, but he would like to know what happened. All right. Um, back to your presentation.

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

Bradley Shraiberg: Um, with, in support of our, um, uh, request to strike their pleadings, uh, with a case from the Northern District of Illinois, uh, in Ray American Telecom Corp founded 319, BR857 at page 873, the court states among the arsenal of sanctions are fines payable to the court clerk, an award of attorney's fees and costs to the sanction party's opponent in order to discourage fees paid to the sanctioned attorney and injunction prohibiting specific types of future filings, mandatory legal education, stricken pleadings, referrals to disciplinary bodies and reprimands that, uh, are on or off the record."

Um, um, we believe that the court clearly has the, um, authority to strike those pleadings and, um, we've presented, uh, uh, our evidence and I've, I've gone through it that, uh, there's been no fraud by any of the creditors or the United States Trustee or this court or the lower courts the fraud occurred. It was by the petitioning creditors, um, uh, and to, uh, try to say that a great defense is a good offense that doesn't work, and it's an improper purpose to, uh, those pleadings were filed for an improper purpose just to smear, um, uh, any lawyer that, um, uh, filed something, uh, adverse to the Bernstein's. Uh, for that reason, we ask that the motion be granted.

Judge Eric Kimball: All right. Um, I am going to, I intend to rule from the bench on the motion. Uh, I'm going to take a substantial break before I do that. It is now quarter to 11:00, um, noon. Perfect. Uh, I hate to keep you around, but I think it'll be wise for me to be able to rule on it directly.

Bradley Shraiberg: Perfect.

Judge Eric Kimball: And you can all go have a early lunch, which I will not be doing, and I'll reconvene at noon. Any questions?

Bradley Shraiberg: No questions.

Judge Eric Kimball: Very good. All right. Thank you.

Bradley Shraiberg: Thank you.

Judge Eric Kimball: Courts in recess until noon.

Bradley Shraiberg: Oh, um, oh, one last I do.

Bailiff: Go ahead.

Bradley Shraiberg: If the court is inclined to, uh, grant sanctions, we would ask that the vehicle be in anticipation that it will not be paid in a certain time period that, uh, give the, give them X amount of days to pay whatever monetary sanction, and then we could petition the court for a judgment, uh, uh, in the event that it's not paid.

Judge Eric Kimball: Yes, I'll consider that.

Bradley Shraiberg: Thank you, your honor.

Judge Eric Kimball: All right. Thank you all. Court's dismissed.

Bailiff: All rise.

Judge Eric Kimball: Of here I lay are needless increase in the cost of litigation and three, the allegations and other factual contentions have--

Bradley Shraiberg: [inaudible 01:14:06]

Judge Eric Kimball: Very good. All right. Thank you.

Bradley Shraiberg: Thank you.

Judge Eric Kimball: Courts in recess until noon.

Bradley Shraiberg: Oh, um, oh, one last I do.

Bailiff: Go ahead.

Bradley Shraiberg: If the court is inclined to, uh, grant sanctions, we would ask that the vehicle be in anticipation that it will not be paid in a certain time period that, uh, give the, give them X amount of days to pay whatever monetary sanction, and then we could petition the court for a judgment, uh, uh, in the event that it's not paid.

Judge Eric Kimball: Yes, I'll consider that.

Bradley Shraiberg: Thank you, your honor.

Judge Eric Kimball: All right. Thank you all. Court's dismissed.

Bailiff: All rise.

Judge Eric Kimball: Good afternoon, everyone. All right, thank you. Please have a seat. Ms. Leonard, let me know when we're all set. Okay. Uh, we are back on the record in Bernstein Family Realty, LLC. Um, and all the same parties are in the courtroom. Any questions before I rule? No.

Bradley Shraiberg: No, your honor.

Judge Eric Kimball: All right. Thank you. Um, this is the court's ruling on the motion for sanctions filed by Joanna Sahn as personal representative of the Estate of Walter Sahn and Patricia Sahn. The motion is in the docket at DCF number 69. Today, I held an evidentiary hearing on the motion for sanctions. None of the five respondents appeared at today's evidentiary hearing. I initially set the motion for sanctions for non-evidentiary hearing on August 16th, 2022, but then determined to set it directly for an evidentiary hearing on this date. A month ago on July 25th, 2022, I entered an order to that effect at ECF number 76. And that order was duly served on each of the five respondents.

Two days ago, Eliot Bernstein filed a document in the record at ECF number 94. In that document, Eliot, Eliot Bernstein sought among other things, a continuance of today's evidentiary hearing. I denied that request by order entered the same day at ECF number 95. The clerk served that order on Eliot Bernstein by mail, and also by emailing it to several email addresses Eliot Bernstein has included in filings in this case.

It appears Eliot Bernstein is aware that I denied his request for continuance as he ordered an audio CD of today's evidentiary hearing by contacting the clerk during this morning session. I note that the document filed at ECF number 94 was filed only by and on behalf of Eliot Bernstein. And so there was not a request for a continuance from the other respondents. There was ample notice of today's evidentiary hearing and due process was served. The respondents failed to appear today at their own peril.

I have considered the evidence admitted and the arguments of the movements. In the motion. The movements seek monetary sanctions under bankruptcy rule 9011(c) against Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein for alleged violations of bankruptcy, rule 9011 (b1) and B3 in connection with the filing of the involuntary petition in this case. In particular, the movements seek their reasonable attorney's fees and costs for the entire bankruptcy case, including the preparation and prosecution of the motion for sanctions. Plus five months' rent for the real property owned by the debtor at a market rental rate.

The movements also seek non-monetary sanctions against the same petitioners and also against Eliot Bernstein and Candice Bernstein in the form of an order striking certain specified documents filed by them that the movements alleged contain faults and defamatory statements and striking any future documents filed by them that contain similar statements.

I typically make a point of referring to each party as Mr or Ms. so and so in this case, because all the respondents have the same surname, I may refer to them by first names. I apologize about the informality, but otherwise, it will be difficult or cumbersome to present a concise and clear ruling. I mean, no disrespect in doing this. In addition, when I say petitioners, this refers only to Joshua, Jacob, and Daniel Bernstein. Bankruptcy rule 9011 mirrors fed- federal rule of civil procedure 11. Much of the case law applying the federal rule applies to the bankruptcy rule. It is useful to quote, only those components of bankruptcy rule 9011 that are applicable here.

If you remove the language not applicable in the context of a petition, this is the relevant language from subsection B, "By presenting to the court a petition, an unrepresented party is certifying that the, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, one, it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and three, the allegations and other factual contentions have evidentiary support, or is specifically so identified are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

I have quoted only from subsections B1 and B3, because those are the ones relied on in the motion for sanctions. Subsection C of bankruptcy rule 9011 addresses how sanctions are requested and provides that the court may award sanctions against a party if it finds a violation of subsection B. There must be notice and a reasonable opportunity to respond. The motion must describe the specific conduct alleged to violate subsection B. In this case, there is a formal motion providing specific allegations and arguments, and the court provided more a month to prepare for an evidentiary hearing.

The motion must be served under bankruptcy rule 7,004. The motion for sanctions and the notice of hearing were so served. There is a safe harbor provision requiring 21 days notice of a motion for sanctions under bankruptcy rule 9011, but the rule explicitly accepts motions in connection with petitions. And so the safe harbor does not apply here. Subsection C1A provides that the court may award reasonable expenses and attorney's fees to the prevailing party for presenting or opposing a motion for sanctions.

Subsection C2 further provides that if the court finds a violation of subsection B, the court may award sanctions limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include if imposed on motion and warranted for effective deterrence, an order directing payment of the movement to the movement of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

In this case, I note that if there is a violation of subsection B by the filing of the involuntary petition itself, the subject legal fees and expenses could be for the entire bankruptcy case. The debtor in this case, Bernstein Family Realty, LLC is a Florida limited liability company. At the time this case was commenced, the debtor was dissolved by the State of Florida for failure to file annual reports. The debtor is a manager-managed limited liability company. When this case was filed, it had no manager.

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

In the involuntary petition, the petitioners lists the address of the home owned by the debtor as both the debtor's mailing address and their own mailing address. It appears that the petitioners and their parents, Eliot and Candice, use the home as their residents. In the involuntary petition as required by section 303(b1) of the bankruptcy code, each of the petitioners represent that he holds a claim against the debtor, but by their own admission, in a document attached to the involuntary petition, the petitioners are not creditors of the debtor.

They state that they are each a beneficiary of a trust, which trusts are in turn the equity owners of the debtor. Thus, the petitioners are the indirect beneficial owners of the debtor. In that same attachment to the petition, the petitioners state that they have a right against the debtor for "capital contributions". And they reference both the initial contributions in connection with, with acquiring the home and later contributions such as to pay taxes. By their own description, the debtor would not have any direct obligation to the petitioners. If there was any right to a distribution of capital, it would be payable to the trusts who are the members of the debtor.

For purposes of section 303(b1) this is not an empty distinction, but more importantly, the right of equity to return of capital is not a claim at all. Because the petitioners controlled the debtor there was no response to the involuntary petition and the clerk entered an order for relief on May 23rd, 2022. The debtor repeatedly failed to comply with deadlines provided by the court. And the case was converted to chapter seven. After conversion, the debtor continued in its abject failure to do anything required by the court or the chapter seven trustee.

Recently, I dismissed the case with two years prejudice, but retain jurisdiction to determine the motion for sanctions Eliot Bernstein claims to be the acting manager of the debtor appointed after the filing of the involuntary petition. Under Florida Law, there is no such thing as an acting manager. If a limited liability company is a manager-managed entity as is the debtor, then the manager is the manager, period. Under existing Florida statute. It does not matter that the debtor remains dissolved. The trust, as the members of the debtor could select a manager, it is unclear whether the trust as members have formally appointed Eliot Bernstein as manager. And if they did, when that took place.

Candice Bernstein is not a representative of the debtor. She claims to be a creditor, but the source of her claim is unclear. Eliot Bernstein, Candice Bernstein, and the petitioners have filed numerous documents in this case that contain unsupported and often defamatory statements regarding counsel for the movements, Alan Rose, Robert Sweetapple, Patricia Sahm, Ted Bernstein, Tesha and Spelin PA, Judge Diana Lewis, who is deceased, Steven Lesnie, Brian O'Connell, Judge John Kastrenakes, Heidi Feinman, and me.

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

The first question is whether any of this amounts to a violation of subsections B1 or B3 of bankruptcy rule 9011. If so, then I must determine appropriate sanctions. I should comment at this point that there is no basis for sanctions under bankruptcy rule 9011 against Eliot Bernstein or Candice Bernstein in connection with the filing of the involuntary petition itself. They did not sign that document.

While the move-ins several times in the motion for sanctions say that the petitioners acted in concert with Eliot and Candice, and it does appear that Eliot Bernstein orchestrated the filing of the petition, that does not expand the reach of the rule with regard to the filing of the petition. Eliot and Candice Bernstein are subject to rule 9011 sanctions only with regard to those documents they signed and filed themselves.

My analysis will start with the petition. The move-ins argue that the petitioners violated subsection B1 by filing an unfounded involuntary petition against their own entity solely for the improper purpose of forestalling and foreclosure sale. As the 11th Circuit is commented, the court's analysis under subsection B1 involves application of a subject of standard. Did the petitioners file the involuntary petition with an actual improper purpose?

The move-ins say the petitioner's motive was solely to delay the foreclosure to retain use of the home without paying for a few more months at least. The petitioners chose not to attend today's evidentiary hearing so I do not have the benefit of their testimony. For purposes of the motion for sanctions, I have only their statements and the attachment they included with the involuntary petition. They said, "We filed this petition in good faith for a proper purpose to seek the equal distribution of the assets of BFR to proper creditors."

They also state, "So we think there is a good chance of a plan to save BFR and restore its status, but at least pay all proper creditors." In light of the overwhelming evidence admitted today, I do not believe these were the true reasons for the filing of the involuntary petition. If the petitioners actually intended this bankruptcy case to achieve an equal distribution of the debtor's assets to proper creditors, they would've caused the debtor to act accordingly. Rather than timely retain counsel, timely file schedules, and the statement of financial affairs, respond to the reasonable requests

of the United States Trustee, and appear at the meeting of creditors among other things, the petitioners did nothing.

I converted this case because the debtor repeatedly failed to comply with deadlines. The only thing the petitioners obtained was delay. In the end, I dismissed this case with prejudice for two years, because it was filed in bad faith. The evidence admitted today only reinforces this conclusion. In light of their actions or more appropriate failures to act, their statements to the contrary are not credible. I find that the petitioners have filed an improper petition against their own entity, primarily to stymie the efforts of the trustee to foreclose on the debtor's principal asset. The petitioners met their burden of showing that the petitioners violated subsection B1 of bankruptcy rule 9011.

The next question is whether the petitioner's statements in the involuntary petition, that they are creditors of the debtor constitute violations of subsection B3. Under the case law, the appropriate analysis is an objective one. The petitioners are not creditors, creditors of the debtor. Indeed, they have no direct ability to obtain anything from the debtor. At most, trusts of which they are beneficiaries could have the ability to receive return of capital from the debtor.

The question is whether a reasonable inquiry under the circumstances would reveal that fact. Normally when a person is not represented, the court gives some leeway to the unrepresented party, but even a brief reading of section 303 would reveal that the filing of an involuntary petition is a serious act that deserves careful attention. In light of the admissions, in their own attachment to the involuntary petition, any reasonable inquiry would've revealed that the petitioners were not proper petitioning creditors under section 303.

In Eliot Bernstein's filing an ECF number 94, which I treat as an objection here, in spite of his lack of standing. Eliot Bernstein argues that there is uncertainty in the case law regarding who is a proper petitioning creditor. From this, I believe he means to suggest that a reasonable inquiry would've led to multiple conclusions, perhaps including that the petitioners are within the ambit of proper creditors under section 303.

Even if Mr. Bernstein was permitted to represent the petitioners and he is not, this argument is not persuasive. It is true that there is substantial case law on certain aspects of who may be a petitioning creditor, but I am not aware of any case that suggests even remotely that an indirect equity owner of the alleged debtor whose only potential right, is that an intermediate entity in which he has a beneficial interest may have a right to return of capital from the alleged debtor is a proper petitioning creditor under section 303. The facts, in this case, do not even present a close call.

I conclude that the petitioner's statements in the involuntary petition that they hold claims against the debtor were false. That a reasonable inquiry under the circumstances would have revealed this fact. And so those statements are in violation of subsection B3 of bankruptcy rule 9011. Having found two independent violations of subsection B by each of the petitioners, I must now determine an appropriate sanction.

Under subsection C1A, I may award reasonable fees and expenses for filing and presenting the motion for sanctions itself. I find it as appropriate to do so. In addition, under subsection C2, I may award sanctions "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated" and may include legal fees and expenses resulting from the filing of the offending document, to the extent necessary for effective deterrence. In this context, the move-ins seek payment of the entirety of their legal fees and expenses in this bankruptcy case. Plus five months' rent of the home at a rate of \$5,000 per month.

The standard in subsection C2 directs me to consider both deterrence of repetition of such conduct by the petitioners, as well as deterrence of comparable conduct by others similarly situated. I do not have the benefit of testimony if any of the petitioners, as they chose not to attend today's evidentiary hearing. I have only the evidence admitted during the hearing. In light of that evidence, I have concluded that the petitioners who are not proper creditors filed an involuntary petition against an entity in which they are the indirect equitable owners solely to prevent a foreclosure sale of the entity's principle asset, their home.

This desperate act followed extensive litigation in a Florida State Court, where the unstayed foreclosure judgment was entered. Under the circumstances of this case, the petitioners filing of the involuntary petition was highly improper. While it seems unlikely that the petitioners themselves will do this again, under the explicit text of bankruptcy rule 9011, it is appropriate to consider deterrence of similarly situated parties.

No one should ever file an involuntary petition against their own entity solely to prevent a foreclosure sale. In light of the severity of the infraction here, I find it appropriate deterrent for future violations by similarly situated parties, towards sanctions against the petitioners on a joint and several basis in the form of legal fees and expenses incurred by the movements for the entirety of this bankruptcy case.

Based on the evidence admitted today, that sum is \$43,878.30 cents. I note that this sum taken from Ms. Sahm's testimony is slightly less than the sum of the invoices and evidence plus the additional fees and expenses incurred after those invoices. I think the difference is \$240. Taking into account the skill and experience of counsel to the movements and the demands of this case, I find that their hourly rates are reasonable and appropriate. I also find that the time spent by them in this case and the tasks undertaken are reasonable under the circumstances of the case.

As part of the requested sanction for the filing of the petition, the movements asked the court to order the petitioners to pay a sum equal to the rent that the movements would've obtained during the delay represented by this bankruptcy case. This request sounds like a request for damages. Bankruptcy rule 9011(c) authorizes the court to award sanctions for the purpose of deterrence and not in the way of damages. While the rule does specifically permit the court to award sanctions in compensation for legal fees and expenses, again, that is only to the extent necessary for deterrence. I find that the legal fees and expenses awarded today are appropriate for purposes of deterrence.

I find that those sanctions are alone sufficient to the purpose. I will not award additional sanctions tied to the lost rent the move-ins claim to have suffered as a result of the delay. Finally, I must consider whether the petitioners Eliot Bernstein and Candice Bernstein violated bankruptcy rule 9011(b3) by filing numerous documents with unsupported and scandalous allegations. Eliot Bernstein filed most of these shocking documents, but the petitioners and Candice Bernstein often joined in them.

These filings listed in the motion for sanctions are not supported by anything other than their apparent belief that anyone who opposes them is corrupt and has committed, or is in the process of committing crimes. Almost without exception, the documents listed in the motion for sanctions failed to present any arguments, actually relevant to the matters that were then under consideration. I find that those documents were filed solely to harass parties in interest and me, and to cause delay and frustration. The documents were filed in violation of subsection B3 of rule 9011.

Under subsection C, I can order sanctions of a non-monetary nature. I note that each of the previously filed documents listed in the motion for sanctions have already been considered by the court. So the requested relief that the documents be stricken will have no impact on the court's rulings. In light of the scandalous and sometimes defamatory nature of the unsupported allegations in those documents, they will be stricken. The move-ins also ask that if any of the petitioners, Eliot Bernstein or Candice Bernstein file documents with similar allegations in the future that the court strike those documents.

In light of repeated filings stating essentially the same unsupported allegations, which I have ruled on multiple times, all of which appear intended only to frustrate the parties in the court, I find that the requested relief is appropriate. I will include in the order on the motion for sanctions that if any of the petitioners Eliot Bernstein or Candice Bernstein file, any document other than under article eight of the bankruptcy rules that contains similar scandalous or defamatory allegations against the parties listed in the motion for sanctions or others, the court will strike such documents without further notice or hearing. Are there any questions?

Bradley Shraiberg: No questions, your honor.

Judge Eric Kimball: Yes. Very good. Thank you for your presentation. I'll enter a brief order incorporating today's oral ruling and providing the relief.

Bradley Shraiberg: I may have spoken too fast, uh, with regard to the sanctions will it have a mechanism?

Judge Eric Kimball: Yes, I will include a provision that says, if the sanction amount is not paid within 30 days, that the move-ins may seek a separate judgment and I will enter separate judgment.

Bradley Shraiberg: Thank you, your honor.

Judge Eric Kimball: Yes. Good morning or afternoon. Good afternoon, everyone.

