UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	)	
STONECRAFTERS, LTD,	)	CASE NO. 96-30422 (ASD)
DEBTOR.	)	CHAPTER 7
MICHAEL J. DALY,	)	
CHAPTER 7 TRUSTEE for	)	
STONECRAFTERS, LTD.,	)	
PLAINTIFF,	)	
vs.	)	ADV. PRO. NO. 96-3202
	)	
AMERICAN STONECRAFTERS, INC.,	)	Re: Doc. I. D. No. 119, 124
DEFENDANT.	)	

MEMORANDUM OF DECISION
AND
ORDER DENYING MOTION FOR SANCTIONS

By the filing of a Motion for Sanctions Pursuant to Rules 7056(g) and 9011 (hereafter, the "Motion"), Doc. I. D. No. 119, Michael J. Daly, the duly appointed Chapter 7 trustee (hereafter, the "Trustee"), requests that sanctions be entered against Woodward F. Lewis, Esquire (hereafter, "Attorney Lewis"), counsel for the Defendant American Stonecrafters, Inc., for violations of Bankruptcy Rules 7056 and 9011 in connection with the filing and prosecution of American Stonecrafters Inc.'s Motion for Summary Judgment dated August 11, 1997. The Motion springs from an affidavit (hereafter, the "Affidavit") of Constance Kronberg (hereafter, "Kronberg"), attached to a Statement of Material Facts,[1] Doc. I. D. No. 48, submitted by the Defendant American Stonecrafters, Inc. (hereafter,

[1]American's *Statement of Material Facts*, Doc. I.D. No. 48, submitted pursuant to D. Conn.L.Civ.R. 9(c)1 (which provides, *inter alia*, "1. There shall be annexed to a motion for summary judgment a document entitled 'Local Rule 9(c)1 Statement', which sets forth in separately numbered paragraphs a concise statement of each material fact as to which the moving party contends there is no genuine issue to be tried.").

"American") in support of its Motion for Summary Judgment,[2] Doc. I. D. No. 46, as well as Kronberg's trial testimony related thereto.

In the Statement of Material Facts, ¶ 2, it is asserted that

> 2. On or about May 1, 1995 *in accord with the George Champion Company appraisal* of April 13, 1995, (hereafter the 'Champion Appraisal'), the fair market value of the inventory of stone owned by the 'Debtor/Ltd.' was $93,540.00 and the fair market value of the machinery and equipment owned by the 'Debtor/Ltd.' was $131,980.00 - 41,650.00 (the value of the machinery and equipment owned by others) or $90,330.00. (See **Exhibit A** Champion Appraisal with asterisks for non-owned property). Therefore, the **total** fair market value of the inventory, machinery and equipment of the 'Debtor/Ltd.' sold to the 'Defendant/American' was actually $183,870.00 *in accord with the 'Champion Appraisal*.'

(italicized emphasis added).

In the Affidavit, Kronberg states under oath, *inter alia*, "I have reviewed all the *facts* and figures included in the Statement of Material Facts, and believe them to be true and accurate to the best of my knowledge . . . ." Affidavit at ¶ 3 (emphasis added). However, at the trial of the instant adversary proceeding Kronberg testified, *inter alia*,

> The Court: [At the time you signed the Affidavit did you have] the ability to make an independent determination as to whether the facts contained within paragraph 2 of the statement of material facts were, in fact, true and accurate?
>
> The Witness: I would have no way of knowing. No, I wouldn't know how to –

Tr. 6/2/98 at 113. In summary, Kronberg testified that at the time she signed the Affidavit she had no knowledge on which to base an opinion as to whether the facts asserted in the

[2]The Motion for Summary Judgment was denied at the conclusion of a hearing held on November 14, 1997.

Statement of Material Facts were true and accurate,[3] see, e.g. Tr. 6/2/98 at 120, 124, and, with specific reference to ¶ 2, as summarized by the Court, "she did the math, and beyond that she didn't know anything." See Tr. 6/2/98 at 122. In essence, the Trustee asserts that Attorney Lewis' use of the Affidavit, coupled with his cognizance that Kronberg's "contribution" to the Motion as an affiant was "solely to add and subtract the numbers", see Tr. 6/2/98 at 117, represent conduct sanctionable pursuant to Fed. R. Bankr. P. 9011 and Fed. R. Civ. P. 56.

Bankruptcy Rule 9011.

A Bankruptcy Court has the authority, under Bankruptcy Rule 9011, to impose sanctions on any party or attorney who, *inter alia*, signs, or later advocates, a document that is interposed for an improper purpose. The pertinent section of Rule 9011 reads:

> (b) *Representations to the Court.* 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, –
>
> > (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;
> >
> > (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> >
> > (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to

[3]Kronberg *arguably* contradicted herself by later testifying that in 1995, when she first saw the Champion Appraisal, she had "quite a reaction to it", Tr. 6/11/98 at 54, as it listed inventory not owned by the Debtor (*i.e*. "A lot of stuff in there that didn't belong in the appraisal", Tr. at 55), at inflated values ("they were taking full value for something that wasn't", *id*.), causing her to go to John Kronberg and tell him "this is wrong. I said there are some things on here that do not belong to the company. . . it has to be clarified." Tr. at 58.

> have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> (c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to conditions stated below, impose an appropriate sanction on the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

The preliminary requirement of Rule 9011 is the existence of a signed pleading, motion, or other document. E.g., Adduono v. World Hockey Assoc., 824 F.2d 617 (8th Cir.1987). This requirement is met in this proceeding by the signed Motion, Statement of Material Facts, and Affidavit.

Violations of Rule 9011 are determined by applying an objective standard of reasonableness under the circumstances. E.g., In re KTMA Acquisition Corp., 153 B.R. 238, 248 (Bankr. D. Minn. 1993), and upon the finding of a violation sanctions against those responsible are mandatory.[4] When analyzing whether a document has been filed for improper purposes under Rule 9011, "the signer's conduct is judged objectively looking at the facts of the case, the reasonableness of the pleading and the circumstances of the filing." Id. at 265. Even if a party submits a pleading that is well grounded in the law, "the plain language of Rule 9011 provides that a party can be sanctioned for filing a factually and legally well-grounded paper for improper purposes." Id. at 266.

Bankruptcy Rule 7056

[4] Rule 9011 intentionally tracks certain language in Fed. R. Civ. P. 11. *In re Ciancioso*, 187 B.R. 438, 442 (E.D.N.Y.1995). In 1993, Rule 11 was amended to give the court discretion to impose sanctions in the event of a violation. Those amendments were not made in Bankruptcy Rule 9011, therefore sanctions are mandatory upon a violation in the Bankruptcy Court. *Id.*

Bankruptcy Rule 7056 provides that "Rule 56 F.R.Civ. P. applies in adversary proceedings." Rule 56(g), Federal Rules of Civil Procedure, provides:

> (g) *Affidavits Made in Bad Faith*. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purposes of delay, the court shall forthwith order the party employing them to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and the offending party may be adjudged guilty of contempt.

By its clear language Fed. R. Civ. P. 56(g) mandates the imposition of sanctions upon a finding that an affidavit submitted in connection with a summary judgment motion was presented (i) "in bad faith", or (ii) "*solely* for the purpose of delay" (emphasis added).

Bankruptcy Rules 9011 & 7056 Applied.

The disorganized and ill-prepared[5] testimony of Kronberg[6] was replete with inconsistencies, was resplendent with conjecture[7], and appears to be reflective of the overall careless preparatory effort Attorney Lewis in connection with the preparation of the Motion and the trial of the adversary proceeding.[8] Nevertheless, the Trustee has not

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[5]*See* this Court's "state of evidence" remarks. Tr. 6/11/98 at 219.

[6]The difficulty presented by Kronberg's ill-prepared trial testimony was compounded by an understandable failure to recollect facts which may have been due to an intervening stroke.

[7]Causing the Court to observe on the second day of her testimony:

> You said, 'Well, I think we did, I suppose we did . . . .' But I want to know what you did and why you believe you did it, not what you suppose, not what you think, not what may have happened, not what could have happened. I want to know to the best of your recollection exactly what happened and why you believe that is the case.
> Supposing is of no value to me. . . .

Tr. 6/11/98 at 7.

[8]Causing the Court to observe at the conclusion of the second day of Kronberg's testimony:

> "I am frank to say I could have taken and presented your case within an hour or two, at least insofar as what you've accomplished.
> * * *
> The state of these exhibits is not what one would ordinarily expect

established, indeed does not argue, and the Court cannot independently identify, any firm basis to conclude that the Motion, supporting papers and Affidavit (i) were submitted to harass, cause unnecessary delay or needless increase in the cost of litigation, or for any other improper purpose, (ii) were presented in bad faith or solely for the purpose of delay, or (iii) otherwise warrant sanctions pursuant to Fed. R. Bankr. P. 9011 and/or Rule 56 F.R.Civ. P.[9] The Court also observes that notwithstanding whether Kronberg believed the Champion Appraisal to be flawed, or, alternatively, had no basis to form any belief as to its substance, paragraph 2 of the Statement of Material Facts is literally true and was pursued, as qualified, by Attorney Lewis in the defense at trial.

Accordingly, because there is no basis in the record for imposition of sanctions as requested,

IT IS HEREBY ORDERED that the Motion is **DENIED.**

BY THE COURT

DATED: January 21, 2003

_____
Albert S. Dabrowski
United States Bankruptcy Judge

> in federal court. I'm assuming that they will be what one would expect when we return here and complete this case . . . . "

Tr. 6/11/98 at 219.

[9]This is not to suggest that the Court was not troubled by counsel's conduct in connection with the preparation of the Motion. Indeed it was. *See* Tr. 6/2/98 at 120-124. In fact, were the Court to conclude that counsel for American *purposely* presented his case (or the Motion) in a befuddled manner it could conclude an improper purpose relating back to the Motion and forming a basis for the sanctions requested. The Court, however, on the existing record is not able to translate disorganization into the specific sanctionable conduct embodied in Fed. R. Bankr. P. 9011 and/or Fed. R. Civ. P. 56.