

***In re Blue Pine Group, Inc.: Sanctions Imposed on Attorney Who Succumbed to
“Butler-Style” Client Representation***

Written by:

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It is axiomatic that attorneys are officers of the courts in which they practice in addition to being advocates for their clients’ interests. As an officer of the court, an attorney cannot robotically advocate a client’s litigation position without making an effort to independently verify facts provided by that client. This is especially true when there are clear indications that a client’s version of the facts is inaccurate. Failure to conduct an appropriate inquiry can result in the attorney advocating a meritless and frivolous position, which, in turn, can potentially leave the attorney with no defense to sanctions by the court. A Nevada attorney recently learned this lesson the hard way when Judge Bruce Markell of the United States Bankruptcy Court for the District of Nevada imposed a \$109,528 sanction on him for filing and prosecuting a bankruptcy case that was not properly authorized by the debtor corporation. *See Memorandum Imposing Sanctions, In re Blue Pine Group, Inc.*, Case No. 09-13274 (Bankr. D. Nev. Oct. 7, 2010). The *Blue Pine* case, which is summarized below, offers a valuable lesson to attorneys: “Lawyers are not given the privilege of assuming that their clients or other lawyers are unfailingly truthful.” *Id.* at 10, n.8.

I. Facts of *Blue Pine*:

This case involves Blue Pine Group, Inc. (“Blue Pine”), a joint venture between Humitech of Northern California, LLC (“Humitech”) and M&G Group Enterprises, Inc. (“M&G”). After disputes arose among the owners of Humitech and M&G over corporate governance, operation, and finances, Humitech filed a California state court lawsuit against Blue Pine, M&G, and the individual owners of M&G, alleging conversion and fraud. In retaliation, one of the owners of M&G hired an experienced bankruptcy attorney (the “Attorney”) to commence a chapter 7 bankruptcy petition on behalf of Blue Pine. The Attorney hastily initiated a chapter 7 petition for Blue Pine, blindly relying on assertions from his client and another attorney representing his client that (i) Humitech did not own 50% of Blue Point, (ii) the owners of Humitech were misappropriating Blue Pine’s assets, and (iii) Blue Pine had passed a corporate resolution authorizing a bankruptcy filing. Local bankruptcy court rule mandate that a corporate bankruptcy petition be accompanied by a copy of a board resolution authorizing the filing. Prior to initiating the case, the Attorney did not see a copy of the purported resolution authorizing a bankruptcy filing but only relied upon the client’s assertion that such authorization exists.

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Upon learning of the chapter 7 filing, Humitech's counsel sent a letter to the Attorney objecting to the filing, also alerting him that the bankruptcy petition was unauthorized because (i) Humitech owned 50% of Blue Pine, (ii) the owners of Humitech were directors whose authorization was required in order for Blue Pine to be put into bankruptcy, and (iii) the Humitech directors never voted in favor of a bankruptcy filing. Enclosed with the letter was a copy of Blue Pine's articles of incorporation, which provided that the approval of all of the members of the board of directors (*i.e.*, the owners of *both* Humitech and M&G) was required for Blue Pine to file for bankruptcy.

After receiving this letter, the Attorney received from his client a copy of what purports to be the resolution authorizing the bankruptcy filing. The resolution was not signed by any of the Humitech directors. In explaining the absence of the Humitech directors' signatures, the client told the Attorney that the Humitech owners had been previously removed as directors. The Attorney, however, never independently verified the client's assertion about the removal of these directors. Such removal action would have required a properly noticed meeting of the board of directors attended by enough directors to constitute a quorum (neither of which requirements were met).

Despite the objections from Humitech's counsel and the fact that his client's story contradicted Blue Pine's articles of incorporation, the Attorney proceeded to file papers with the court in support of the chapter 7 case without further investigation into whether the bankruptcy petition was authorized. In addition, without consulting the trustee appointed in the chapter 7 case, the Attorney commenced an adversary proceeding in the bankruptcy court against Humitech and its owners making many of the same allegations made against M&G and its owners in the California state court lawsuit.

Humitech promptly filed a motion to dismiss the chapter 7 case based on the fact that Blue Pine's board of directors never authorized the bankruptcy filing. In granting that motion, the court found that the Humitech directors were never given notice of the shareholders' meeting at which they were purported to have been removed as directors. The lack of proper notice made their removal invalid. Accordingly, the court found that the Humitech directors were never removed and that the bankruptcy resolution without their signatures was ineffective to authorize Blue Pine's filing.

II. Ruling on Sanctions:

In addition to dismissing the case, Judge Markell invited Humitech to move for sanctions against the Attorney for his improper conduct in both filing and refusing to dismiss Blue Point's chapter 7 petition. The court subsequently granted Humitech's motion and imposed a substantial sanction on the Attorney in the amount of \$109,528.

In awarding sanctions, the court found that the Attorney had not performed a reasonable inquiry into whether the allegations of the bankruptcy petition had evidentiary support, which is required under Federal Rule of Bankruptcy Procedure 9011(b). Bankruptcy Rule 9011 (which is based on Federal Rule of Civil Procedure 11) "provides for the imposition of sanctions when a filing is frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." *Id.* at 6 (citation omitted).

Indeed, the court found the Attorney's behavior to be frivolous within the meaning of Rule 9011. In addition to the Attorney's failure to verifying the evidentiary foundation of the petition's allegations prior to commencing the bankruptcy case, the court was especially displeased by the fact that the Attorney continued to advocate his client's position even after he had an opportunity to conduct further investigation into the allegations. The court found that the Attorney's "'later advocating' of an untenable position (and the corresponding failure to take corrective action, such as removing his inaccurate filings from the docket) was [the Attorney's] primary failing in this matter and forms the basis for the restitutionary award to Humitech." *Id.*[emphasis added] at 10.

The court also rejected the Attorney's defense that his actions were premised on his reliance on the client's and the client's other attorney's advice. Specifically, the court stated that the Attorney "cannot rely on another lawyer's advice with impunity," and "[l]awyers are not given the privilege of assuming that their clients or other lawyers are unfailingly truthful." *Id.* at 10 n.8. The Court further admonished the Attorney by stating that:

"To act on such frivolous claims, then, without independent investigation, was to succumb to the so-called 'butler-style' of representation, under which the sequaciously servile lawyer does whatever the client wants and then cites that client's command as a shield to the improper actions. This style of lawyering, however, has no place in bankruptcy court or, for that matter, in any court." *Id.* at 10.

The amount of sanction awarded, \$109,528, equals the cost Humitech incurred to defend against the improper bankruptcy filing and adversary proceeding. *Id.* at 14.

III. Conclusion:

The *Blue Pine* case is a somewhat extreme example of an attorney's pursuit of a meritless position without proper investigation. It is obvious that before filing a bankruptcy petition (on behalf of a corporation, a partnership, an individual, or any other potential debtor) an attorney *must* ensure that the debtor-to-be has indeed authorized the filing. Nevertheless, this case provides an eye-opening lesson to attorneys about the potential pitfalls of relying on a client's assertions without carefully investigating the facts underlying those assertions. Bankruptcy lawyers and litigators alike must temper their zealous advocacy when necessary to satisfy their ethical duty and refrain from advocating claims that are not supported by law or facts. As shown in *Blue Pine*, attorneys cannot blindly trust their clients without an independent factual investigation or hide behind their clients when it turns out that a proper investigation would have revealed that the client's story was false.