20-1-bk (L)
In re: Gravel

United States Court of Appeals
for the Second Circuit

AUGUST TERM 2020
Nos. 20-1-bk(L), 20-2-bk, 20-3-bk

IN RE: NICHOLAS GRAVEL, AMANDA GRAVEL,
Debtors.

PHH MORTGAGE CORPORATION,
Creditor-Appellant,

v.

JAN M. SENSENICH,
Trustee-Appellee.

ARGUED: FEBRUARY 4, 2021
DECIDED: AUGUST 2, 2021

Before: JACOBS, BIANCO, PARK, Circuit Judges.

PHH Mortgage Corp. appeals from the order of the United States Bankruptcy Court for the District of Vermont (Brown, J.) imposing sanctions in three chapter 13 cases. PHH was sanctioned $75,000 for violation of Bankruptcy Rule of Procedure 3002.1 and $225,000 for violation of bankruptcy court orders.

PHH argues that Rule 3002.1 does not authorize punitive monetary sanctions, and that PHH did not violate the court orders as a matter of law. We agree.

We VACATE the sanctions order and REVERSE.

JUDGE BIANCO concurs in part and dissents in part in a separate opinion.

MATTHEW J. DELUDE, Primmer Piper Eggleston & Cramer PC, Manchester, NH (Alexandra E. Edelman, Douglas J. Wolinsky, on the brief) for Creditor-Appellant PHH Mortgage Corp.

MAHESHA P. SUBBARAMAN, Subbaraman PLLC, Minneapolis, MN, for Trustee-Appellee Jan M. Sensenich.

Henry E. Hildbrand, III, Nashville, TN, for Amicus Curiae National Association of Chapter 13 Trustees.

Tara Twomey, National Consumer Bankruptcy Rights Center, San Jose, CA, for Amici Curiae National Consumer Bankruptcy Rights Center, National Association of Consumer Bankruptcy Attorneys, National Consumer Law Center, Legal Services Vermont, Inc., and Housing Clinic of Jerome N. Frank Legal Services Organization at Yale Law School.

DENNIS JACOBS, Circuit Judge:

This appeal involves punitive sanctions imposed in three chapter 13 cases in Vermont. The debtor households are the Gravels, the Beaulieus, and the Knisleys. The sanctioned party is the creditor-appellant PHH Mortgage Corp., which holds or services the mortgage on the principal residence of each debtor household. The appellee, Jan Sensenich, is the chapter 13 standing Trustee for the District of Vermont. The Trustee shepherds the debtors through the chapter 13 process and oversees their payments to PHH under their respective chapter 13 plans.

PHH sent monthly mortgage statements listing fees totaling $716 that had not been properly disclosed in the three cases. The United States Bankruptcy Court for the District of Vermont (Brown, J.) sanctioned PHH $225,000 for violation of court orders issued in the Gravel and Beaulieu cases, which declared that the debtors were current on their mortgages and enjoined PHH from challenging that fact in any other proceeding.

The bankruptcy court also sanctioned PHH $75,000 for violation of Bankruptcy Rule of Procedure 3002.1 in all three cases. Rule 3002.1(c) requires

that a creditor give formal notice to the debtor and trustee of new post-petition fees and charges, and it gives the bankruptcy court power to impose sanctions for non-compliance.

The bankruptcy court's sanctions order was certified for direct appeal. We hold that Rule 3002.1 does not authorize punitive monetary sanctions, and that PHH did not, as a matter of law, violate the court orders.

The sanctions order is VACATED and REVERSED.

BACKGROUND

Frustration with PHH began early in the Gravel case, which was filed in February 2011. The Gravels' plan provided for them to remain in their home while making "conduit" monthly mortgage payments for 60 months. Under the District of Vermont's bankruptcy procedures, the Gravels paid the Trustee who then disbursed the payment to PHH.

Pursuant to a (since superseded) standing order, the Trustee accounted for the payments in March and April as an "administrative arrearage" rather than as a regular post-petition monthly mortgage payment. In effect, those payments

were treated as a pre-petition arrearage paid as a special claim, so that regular post-petition payments did not begin until the third month. Monthly payments were thus forwarded to PHH as regular mortgage payments beginning with May. Because of this accounting, PHH incorrectly termed the loan delinquent and began to add late penalties on mortgage payments for March and April. PHH sent monthly mortgage statements reflecting this delinquency, and the Trustee responded with three letters in 2012 and 2013 explaining PHH's error, to which PHH failed to respond.

When PHH threatened foreclosure, the Trustee in February 2014 moved to compel PHH to apply the mortgage payments as provided by the chapter 13 plan. The Trustee also requested an award of sanctions to the debtors. PHH corrected the mortgage statements to reflect that the Gravels were current on post-petition payment obligations. PHH promised to prevent future errors. The parties stipulated to a $9,000 sanction, which the bankruptcy court so-ordered in March 2014. (The $9,000 sanction is not the subject of this appeal.)

* * *

Two years later, the Gravels reached the end of their chapter 13 plan. An order on May 20, 2016, confirmed that the Gravels were "current." J. App'x 705. That is, the Gravels had cured all pre-petition arrearages or defaults existing when the case was filed, and made all post-petition payments. (An identical order was issued in the Beaulieu case; they are referenced as "Current Orders.")

When PHH sent another monthly mortgage statement five days later, the Trustee noticed that an old charge for "property inspection fees" was listed under the "loan information" section. Id. at 654. The statement specified that the recorded fee and other account information was provided to comply with local bankruptcy rules and was "not an attempt to collect a debt." Id. Further, the fee--which had grown to $258.75 over at least 25 monthly statements--was not reflected in the "total payment due." Id. The only payment due was the principal/interest and escrow.

Nevertheless, the Trustee moved for a finding of contempt and sanctions on the ground that the charge violated the Current Order, and that each of the 25 charges violated Bankruptcy Rule 3002.1. Rule 3002.1 governs installment

payments on a home mortgage in a plan under chapter 13. Fed. R. Bankr. P. 3002.1(a). Under the rule, a mortgage creditor "shall file and serve on . . . the trustee a notice itemizing all fees, expenses, or charges" that the creditor "asserts are recoverable against the debtor" and serve this notice "within 180 days after the date on which the fees, expenses, or charges are incurred." Fed. R. Bankr. P. 3002.1(c). If a creditor fails to comply, a bankruptcy court may preclude the creditor from presenting the claim as evidence in the case, or award the debtor other relief including expenses and attorney's fees. Fed. R. Bankr. P. 3002.1(i).

In response to the Trustee's motion, PHH admitted that the fee had not been properly noticed within 180 days under Rule 3002.1, removed the fee from the Gravels' mortgage statement, and opposed the motion for sanctions.

* * *

Late-noticed fees also appeared on the Beaulieus' monthly mortgage statements. They filed their chapter 13 case in March 2011. The statements began reflecting a fee for insufficient funds 18 months later and a charge for property inspection two years later; and those fees were still being listed when the bankruptcy court issued the Current Order on May 5, 2016. Twenty days

later, PHH sent the Beaulieus a monthly statement, on which the fees were still listed. The insufficient funds fee was $30, and the property inspection fee was $56.25.

Around the time the Trustee filed its motion in the Gravel case, the Trustee moved for a finding of contempt and sanctions in the Beaulieu case on the same basis. PHH removed the charges from the Beaulieus' mortgage statement and opposed the motion.

* * *

Post-filing of the Knisley case, 25 monthly mortgage statements showed a late charge and property inspection fee that had not been properly disclosed within 180 days. The late charge was $124.50, and the property inspection was $246.50. The Trustee moved for sanctions under Rule 3002.1(i), and PHH removed the charge and fee and opposed the motion. PHH was not alleged to be in contempt of a current order because no current order had issued; the Knisleys had not reached the end of their plan.

* * *

After a consolidated hearing, the bankruptcy court granted the Trustee's motions in September 2016. It found that PHH had violated Rule 3002.1(c) 25 times in each case, as well as the two Current Orders. It sanctioned PHH $75,000 pursuant to Rule 3002.1(i). And it sanctioned PHH for the Current Orders violation pursuant to its inherent power and § 105 of the Bankruptcy Code: $200,000 in the Gravel case and $100,000 in the Beaulieu case.

The bankruptcy court noted that it "levies this substantial penalty on PHH to convey a clear message to PHH, and other mortgage creditors, that they may not violate court orders with impunity and will suffer significant monetary sanctions if they conduct their mortgage accounting operations in a manner that fails to fully comply with Rule 3002.1, violates court orders, or threatens the fresh start of Chapter 13 debtors." In re Gravel ("Gravel I"), 556 B.R. 561, 580 (Bankr. D. Vt. 2016), vacated and remanded sub nom. PHH Mortg. Corp. v. Sensenich, No. 5:16-CV-00256, 2017 WL 6999820 (D. Vt. Dec. 18, 2017). PHH was ordered to pay the $375,000 to "Legal Services Law Line of Vermont." Id.

The United States District Court for the District of Vermont (Crawford, J.) vacated both sanctions. It held that the $75,000 and $300,000 sanctions exceeded the bankruptcy court's "statutory and inherent powers" because it lacks power to impose "serious punitive sanctions." PHH Mortg. Corp., 2017 WL 6999820, at *7–8. The district court reasoned that bankruptcy courts are ill-equipped to provide the procedural protections that due process requires, and that bankruptcy judges lack the tenure and compensation protections that ensure the judicial independence of Article III judges. The district court observed that the sanctions here were far greater than a punitive sanction of $50,000 that the Ninth Circuit vacated for the same reasons in In re Dyer, 322 F.3d 1178, 1194 (9th Cir. 2003). Remanding the matter, the district court noted that the bankruptcy court may refer a matter for criminal contempt proceedings and sanctions, or may "take steps to enforce its orders short of punitive sanctions of the scope and type imposed in these cases." PHH Mortg. Corp., 2017 WL 6999820, at *9.

The bankruptcy court issued a second sanctions order (the one now before us). See In re Gravel ("Gravel II"), 601 B.R. 873, 903 (Bankr. D. Vt. 2019). It adopted the factual findings of the first order and imposed the same sanctions

for the Rule 3002.1 violation. However, the sanctions for violation of the Current Orders were reduced 25%: from $200,000 to $150,000 in the Gravel case and from $100,000 to $75,000 in the Beaulieu case. The reduced Current Orders sanctions were still to be paid to Legal Services; but the Trustee was made the recipient of the Rule 3002.1 sanction.

PHH appealed the second sanctions order to the district court, but the Trustee requested the bankruptcy court to certify the order for direct review by this Court, which the bankruptcy court granted. The Trustee petitioned this Court for direct review, which we granted.

DISCUSSION

A. Jurisdiction

This case is before us on direct appeal from the bankruptcy court's second sanctions order. Under 28 U.S.C. § 158(d)(2), a court of appeals has jurisdiction when the bankruptcy court has certified that an order involves an unresolved question of law and the court of appeals authorizes a direct appeal of that order.

There is no doubt that we have jurisdiction to review the second sanctions order; but we must first clarify the scope of our jurisdiction over this appeal.

The bankruptcy court certified three questions of law. The questions, which the Trustee formulated, concern the power of bankruptcy courts to impose "punitive non-contempt sanctions" under Rule 3002.1, to impose such sanctions under § 105(a), and to impose them "commensurate (in amount) to the violation at hand." In re Gravel, No. 11-10112, 2019 WL 3783317, at *2 (Bankr. D. Vt. Aug. 12, 2019). We authorized direct review.

The Trustee contends that we can (or should) answer all three questions because they were certified. The statute, however, authorizes appeals of "orders," not "questions," and the second sanctions order is the only order on review. See 28 U.S.C. § 158(d)(2)(A). Unless that order poses a question of law, we lack jurisdiction to answer it notwithstanding what questions are certified. See N.Y.C. Health & Hosps. Corp. v. Blum, 678 F.2d 392, 396–97 (2d Cir. 1982) (observing the same with respect to 28 U.S.C. § 1292). Otherwise, we would be rendering an advisory opinion. See Preiser v. Newkirk, 422 U.S. 395, 401 (1975).

We may answer the certified questions only insofar as they help resolve the questions of law raised in the issues on appeal: whether the bankruptcy court properly sanctioned PHH for violating the Current Orders, and whether the bankruptcy court properly sanctioned PHH for violating Rule 3002.1.

B. Standard of Review

A bankruptcy court's award of sanctions, including findings of contempt, are reviewed for abuse of discretion. In re Kalikow, 602 F.3d 82, 91 (2d Cir. 2010). A bankruptcy court "necessarily abuses its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Id. (quoting In re Highgate Equities, Ltd., 279 F.3d 148, 152 (2d Cir. 2002)) (brackets omitted).

The bankruptcy court's factual determinations are reviewed for clear error. U.S. Polo Ass'n, Inc. v. PRL USA Holdings, Inc., 789 F.3d 29, 33 (2d Cir. 2015). Questions of law and interpretation of an order underlying a contempt finding are reviewed de novo. Id.

C. The $225,000 Sanction

PHH argues that the $225,000 sanction was an abuse of discretion because PHH did not, as a matter of law, violate the Current Orders. We agree. Though the orders declared that the debtors were current, they did not enjoin the recording of expired fees on the statements. Without an express injunction, there is fair ground of doubt as to whether the listed fees can form the basis for contempt.

A bankruptcy court's contempt power, like that of a district court, is "narrowly circumscribed." Perez v. Danbury Hosp., 347 F.3d 419, 423 (2d Cir. 2003); see Taggart v. Lorenzen, 139 S. Ct. 1795, 1801 (2019) ("[T]he bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction."). Accordingly, "our review of a contempt order is more exacting than under the ordinary abuse-of-discretion standard." Perez, 347 F.3d at 423; see United States v. Local 1804-1, Int'l Longshoremen's Ass'n, 44 F.3d 1091, 1095 (2d Cir. 1995) ("The contempt power is different.").

Given the restricted scope of the contempt power, a prior question is whether the sanction here was actually based on contempt. The bankruptcy court invoked its "authority . . . to impose punitive sanctions on parties who violate court orders," observing that it "may hold a creditor in contempt for that party's violation of an injunction order." Gravel II, 601 B.R. at 903. Then, applying the Supreme Court's recently-articulated standard for contempt in Taggart, the bankruptcy court "impos[ed] punitive sanctions on PHH for its violation of the Debtor Current Orders." Id. at 903; see also id. at 888–89. Moreover, the Trustee's motion was one "for contempt and sanctions." J. App'x 651. The bankruptcy court plainly based its sanction on contempt.

The Trustee argues that we should affirm because a bankruptcy court, in any event, has power to issue "non-contempt-based sanctions." Appellee's Br. at 41. This argument is misplaced. A bankruptcy court's "discretion to award sanctions may be exercised only on the basis of the specific authority invoked by that court." Kalikow, 602 F.3d at 96. We therefore "confine our review to the question of whether the court properly exercised that power" and "do not consider potential alternative sources of authority." In re Sanchez, 941 F.3d 625,

626–27 (2d Cir. 2019). Because the bankruptcy court here relied on its contempt power, our review is limited to whether it abused its discretion in exercising that power.

* * *

A bankruptcy court's contempt power derives from a court injunction and 11 U.S.C. § 105(a). An injunction is an equitable remedy, and § 105(a) authorizes issuance of any "order" that is "necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." Together, they "bring with them the 'old soil' that has long governed how courts enforce injunctions." Taggart, 139 S. Ct. at 1801. That includes the "'potent weapon' of civil contempt." Id. (quoting Int'l Longshoremen's Ass'n, Local 1291 v. Phila. Marine Trade Ass'n, 389 U.S. 64, 76 (1967)).

Under Taggart, a bankruptcy court may hold a creditor in contempt for violating the court's injunction only "if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct." Id. at 1799. The "fair ground of doubt" standard has long been used in this Circuit to determine when a party may be held in contempt in the district court. See King v. Allied Vision, Ltd., 65

F.3d 1051, 1058 (2d Cir. 1995) (quoting Cal. Artificial Stone Paving Co. v. Molitor, 113 U.S. 609, 618 (1885)). The standard derives from two principles that are reemphasized in Taggart: "civil contempt is a severe remedy" and "basic fairness requires that those enjoined receive explicit notice of what conduct is outlawed." 139 S. Ct. at 1802 (cleaned up). In particular, a contempt order is warranted only where the party has notice of the order, the order is clear and unambiguous, and the proof of noncompliance is clear and convincing. King, 65 F.3d at 1058; see U.S. Polo, 789 F.3d at 33.

The Current Orders had two components relevant to the contempt finding. The orders declared that the Gravels and Beaulieus are current on their mortgage payments to PHH, including all charges:

> the debtors, by their payments through the Office of the Chapter 13 Trustee, have made all payments due during the pendency of this case . . . including all monthly payments and any other charges or amounts due under their mortgage with PHH Mortgage Corporation.

The orders also prohibited PHH from contesting that fact in any other proceeding:

> the mortgagee [PHH] shall be precluded from disputing that the debtors are current (as set forth herein) in any other proceeding.

J. App'x 705–06, 709. These paragraphs, the bankruptcy court held, gave PHH "notice it was enjoined from seeking to collect any fees or expenses allegedly incurred during the period encompassed by each Order, if not specified in the Order." Gravel II, 601 B.R. at 890. We disagree.

The Current Orders were not a clear and unambiguous prohibition on PHH's sanctioned conduct. To form the basis for contempt, an order must leave "no doubt in the minds of those to whom it was addressed . . . precisely what acts are forbidden." Drywall Tapers & Pointers of Greater N.Y., Local 1974 v. Local 530 of Operative Plasterers & Cement Masons Int'l Ass'n, 889 F.2d 389, 395 (2d Cir. 1989).

The declaration that a debtor is current does not in itself clearly forbid any conduct. Standing alone, it is an inadequate basis for contempt. The very purpose of the civil contempt power is to induce compliance with a court's injunction. Taggart, 139 S. Ct. at 1801. Aside from enjoining acts in other proceedings, there is no injunction here (or similar command or equitable

remedy) to enforce--i.e., the orders fail to describe an "act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(C); Fed. R. Bankr. P. 7065; see Steffel v. Thompson, 415 U.S. 452, 471 (1974) ("[N]oncompliance with [a declaratory judgment] may be inappropriate, but is not contempt."). And to imply a restraint where none is stated would violate the principle that a party must have "explicit notice" of what is forbidden or required. Taggart, 139 S. Ct. at 1802.

The Current Orders imposed a single injunction: PHH may not dispute the current status of the debtors "in any other proceeding." J. App'x 706, 709. However broad "other proceeding" may be in this context, there is fair ground of doubt as to whether it would reach PHH's out-of-court conduct in these proceedings.

The Trustee argues that, unless PHH is held in contempt, mortgage creditors will be able to assess improper fees with impunity. These concerns are overwrought. The bankruptcy court could have crafted an order that would have forbidden the conduct troubling the Trustee. The orders in Taggart, for example, relieved the debtor "from all debts that arose before the date of the order for relief" *and* operated "'as an injunction against the commencement or

continuation of an action, the employment of process, or an act, to collect, recover or offset' a discharged debt." 139 S. Ct. at 1799, 1801 (quoting 11 U.S.C. §§ 727, 524(a)(2)).

Although a bankruptcy court has "unique expertise in interpreting its own injunctions and determining when they have been violated," In re Anderson, 884 F.3d 382, 390–91 (2d Cir. 2018), this insight does not command deference. Anderson--in recognizing the expertise-- holds that a bankruptcy court is not required to compel arbitration of claims alleging violation of its discharge injunction. Id.; see also MBNA Am. Bank, N.A. v. Hill, 436 F.3d 104, 110 (2d Cir. 2006). But this Court still has a duty to conduct its own "exacting" review of contempt orders. Perez, 347 F.3d at 423. Expertise does not excuse a bankruptcy court from the fundamental limit on its power; a bankruptcy court cannot hold a party in contempt for violating an order that is subject to varying interpretations.

Moreover, the questionable proof of PHH's non-compliance could provide a second ground for vacatur, though we need not rely on it.[1] Because

[1] The mortgage statements excluded the fees at issue from the total payment due. The following, for example, is from the Beaulieus' statement:

"ambiguities and omissions in orders redound to the benefit of the person charged with contempt," Gucci Am., Inc. v. Weixing Li, 768 F.3d 122, 143 (2d Cir.

Dear Mr. and/or Ms.

Below is the monthly Bankruptcy statement for the above loan. This statement is provided with the intent of complying with the United States Bankruptcy Court Vermont District Permanent Rule (3071-1). *This is not an attempt to collect a debt.*

Loan Information:

Unpaid Principal balance:	$	11,851.98
Escrow Balance:	$	3,962.45
Maturity Date:		07-18
Interest Rate:		5.37500%
Contractual Due Date:		03-01-16
Post-Petition due date:		03-01-16
Late Charge Balance to date:	$	.00
NSF fees:	*$*	*30.00*
Property Inspection fees:	*$*	*56.25*
Interest Paid Year to Date:	$	485.79
Property Taxes Paid Year to Date:	$	.00

Breakdown of Contractual Monthly Payment:

Principal and Interest:	$	437.66
Escrow:	$	306.74
Total Payment Due:	*$*	*744.40*

J. App'x 675 (emphasis added).

2014), the Current Orders already lack the requisite clarity to hold PHH in contempt.

D. The $75,000 Sanction

The bankruptcy court imposed sanctions on PHH for violation of Bankruptcy Rule 3002.1 amounting to $25,000 in each case for the improperly-noticed fees listed on the mortgage statements. The sanction was calibrated to "the number of incorrect statements PHH sent" as opposed "to the amount of the charges on each incorrect statement," which in total across the three cases did not exceed $716 (and in fact were not even "charges" in any sense: they were not reflected in the balance due). Gravel II, 601 B.R. at 903. Thus, the bankruptcy court imposed a punitive sanction on PHH of $1,000 per statement to deter PHH from further non-compliance.

To impose the sanction, the bankruptcy court invoked Rule 3002.1's authorization to "award other appropriate relief" for violation of the rule. PHH argues that the bankruptcy court erred because "other appropriate relief" does not authorize punitive sanctions.

This is an issue of first impression among the circuit courts. And few bankruptcy courts have opined on it. Although one court declined to dismiss a plaintiff's claim for Rule 3002.1 sanctions in an adversary proceeding, In re Bivens, 625 B.R. 843, 850–51 (Bankr. M.D.N.C. 2021), it did not address the issue here. The bankruptcy court in this case is apparently the first and only one to impose punitive monetary sanctions under the rule. The only other court to have weighed in reached the opposite conclusion: that Rule 3002.1 "does not permit [the court] to impose punitive monetary sanctions." In re Tollstrup, No. 15-33924, 2018 WL 1384378, at *5 (Bankr. D. Or. Mar. 16, 2018); see also In re Reynolds, 470 B.R. 138, 144 (Bankr. D. Colo. 2012) (reaching similar conclusion that Rule 3001(c) does not authorize claim disallowance as a sanction). We agree.

* * *

Before Rule 3002.1 was adopted in 2011, mortgage holders would forbear asserting new obligations in the bankruptcy proceedings for fear of violating the automatic stay. The result was that debtors who had completed their chapter 13 plans were discovering that they had incurred new obligations and defaults. See

9 Collier on Bankruptcy ¶ 3002.1.RH (16th 2020); Fed. R. Bank. P. 3002.1 Advisory Committee Notes to 2011 Adoption.

As a solution, Rule 3002.1 ensures that debtors are informed of new post-petition obligations (such as fees). The rule requires formal notice to debtors and trustees, and it assures creditors that they will not violate the automatic stay. Debtors then have a chance to pay or contest the new obligations, which prevents lingering deficits from surfacing after the case ends.

The last subdivision of the rule provides an enforcement mechanism. If a creditor fails to give the requisite notice, the bankruptcy court may preclude the creditor from presenting evidence of its claim in the case--unless the failure was substantially justified or harmless. Fed. R. Bankr. P. 3002.1(i)(1). The court may also (or instead) "award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure." Fed. R. Bankr. P. 3002.1(i)(2).

Because "other appropriate relief" is a general phrase amid specific examples, it is best "construed in a fashion that limits the general language to the same class of matters as the things illustrated." Canada Life Assurance Co. v. Converium Ruckversicherung (Deutschland) AG, 335 F.3d 52, 58 (2d Cir. 2003).

Reasonable expenses and attorney's fees are compensatory forms of relief. They expressly remedy harms to the debtor "caused by the [creditor's] failure" to give proper notice of a claim. Fed. R. Bankr. P. 3002.1(i)(2). This suggests that "other appropriate relief" is limited to non-punitive sanctions, as that would cabin it to the most general attribute shared with an award of expenses and fees.

The rule's only other sanction reinforces that inference. It prevents a creditor from collecting an un-noticed claim so that a surprise deficiency does not later frustrate the debtor's fresh start. The rule makes an exception for harmless non-compliance, demonstrating that this evidence-preclusion sanction is tied to prejudice that a failure to notice causes the debtor. The sanction thus prospectively serves the remedial goal of shielding the debtor from unforeseen charges, and thus is also not a punishment.

Moreover, other sections of the Bankruptcy Code explicitly authorize punitive damages, whereas Rule 3002.1 is silent. See, e.g., 11 U.S.C. § 362(k)(1) ("[A]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.").

A broad authorization of punitive sanctions is a poor fit with Rule 3002.1's tailored enforcement mechanism and limited purpose. Punitive sanctions do not fall within the "appropriate relief" authorized by Rule 3002.1.

The bankruptcy court reasoned that Rule 3002.1 authorizes punitive sanctions because merely precluding evidence and awarding attorneys' fees might insufficiently deter misconduct, drawing an analogy to discovery sanctions under Federal Rule of Civil Procedure 37. The dissent likewise argues that Federal Rule 37 and Bankruptcy Rule 3002.1 have an "identical purpose." Dissent at 17. The analogy is unpersuasive.

Discovery sanctions under Federal Rule 37 are deterrents (specific and general) meant to punish a recalcitrant or evasive party. Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976); see Update Art, Inc. v. Modiin Publ'g, Ltd., 843 F.2d 67, 71 (2d Cir. 1988). A party might otherwise abuse or delay discovery, "embroil[ing] trial judges in day-to-day supervision." Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062, 1066 (2d Cir. 1979). "Without adequate sanctions the procedure for discovery would often be ineffectual," and the administration of justice would grind to a

halt. C. Wright & A. Miller, 8B Fed. Prac. & Proc. Civ. § 2281 (3d ed.). Federal Rule 37 protects more than the interest of a party in remedying or avoiding certain costs; it protects the interests of the parties, the court, and the public in a speedy and just resolution of the case.

To that end, Federal Rule 37 authorizes a range of sanctions, from mild to severe. In addition to precluding evidence, a district court may:

> (A) order payment of reasonable expenses, including attorney's fees, caused by the failure;
>
> (B) inform the jury of the party's failure; and
>
> (C) impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

Fed. R. Civ. P. 37(c)(1). Federal Rule 37(b)(2)(A) authorizes "further just orders" against a party that disobeys a discovery order, such as dismissal of the action, default judgment, and contempt of court.

The bankruptcy court cites district court decisions imposing punitive monetary sanctions on counsel under that "just orders" clause. See, e.g., J. M. Cleminshaw Co. v. City of Norwich, 93 F.R.D. 338, 355 (D. Conn. 1981); see also Dissent at 15 (collecting cases). This Court has not decided whether such

sanctions are proper. In any event, Bankruptcy Rule 3002.1 lacks the authorization of "just orders." More importantly, the rule does not share the aims and functions of Federal Rule 37. Bankruptcy Rule 3002.1 protects a debtor's interest in fully resolving the debtor's current status as to particular financial obligations; Federal Rule 37 protects "the integrity of our judicial process" with an array of far harsher sanctions. Update Art, 843 F.2d at 73.

In the alternative, the Trustee argues that the $75,000 sanction is authorized under the bankruptcy court's inherent power. True, "bankruptcy courts, like Article III courts, possess inherent sanctioning powers," which "include[s] the power to impose relatively minor non-compensatory sanctions on attorneys appearing before the court in appropriate circumstances." Sanchez, 941 F.3d at 628. But while the bankruptcy court alluded to its inherent power, it did not assess whether the sanction was authorized under it; we cannot reach this question. See Kalikow, 602 F.3d at 96 ("[It is] imperative that the court explain its sanctions order with care, specificity, and attention to the sources of its power." (quoting Sakon v. Andreo, 119 F.3d 109, 113 (2d Cir.1997)). In any event, there is no finding of bad faith; so it is dubious that the bankruptcy court

could exercise its inherent power to do that which is unavailable under powers expressly defined. See Schlaifer Nance & Co. v. Estate of Warhol, 194 F.3d 323, 338 (2d Cir. 1999); see also Chambers v. NASCO, Inc., 501 U.S. 32, 47 (1991). The sanction was imposed under Rule 3002.1(i), and our holding is that the sanction went beyond the relief authorized by that rule.[2]

* * *

The dissent challenges our ruling on Rule 3002.1 and inherent power. If inherent power is alone sufficient to affirm the $75,000 sanction, there would be no reason to consider Rule 3002.1; so I begin there.

The dissent concedes that sanctions may only be imposed based on "specific authority invoked." Dissent at 26 (quoting Kalikow, 602 F.3d at 96).

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[2] The dissent argues that the bankruptcy court should be "afforded the opportunity to provide additional reasoning" on remand based on the dissent's assumption that the bankruptcy court imposed sanctions under its inherent power and just neglected to give reasons. Dissent at 31. Remand is appropriate when there is an error to fix, a new standard to apply, or, as the dissent emphasizes, further explanation needed of the decision that the court made. Here, the bankruptcy court simply did not exercise its inherent power to sanction PHH. The problem is not that the bankruptcy court's reasoning is too sparse for review. Our role is to review what the bankruptcy court did, not to survey options.

But the invocation identified by the dissent is no more than a perfunctory mention. That does not do. A court must justify the sanction in view of the specific source of its authority--especially when the source is inherent power. Inherent power is constrained: it requires "caution" and notice before use; and it is a last resort for when an express authority is not "up to the task." Chambers, 501 U.S. at 50. Although, as the dissent observes, the bankruptcy court analyzed cases on inherent power, it did so to decide what amount it should sanction *under Rule 3002.1*.

In any event, there is still the matter of bad faith. The dissent posits that the bankruptcy court found bad faith, at least more or less. Dissent at 31. When it came to the issue, the bankruptcy court said that PHH's actions "cannot realistically be attributed to an innocent mistake" and raised "serious concerns about whether PHH is making a good faith effort to comply with Rule 3002.1." Dissent at 30 (quoting Gravel I, 556 B.R. at 576 n.10). A concern, even a serious concern, is not a finding. So the dissent characterizes this concern, and associated "findings by the bankruptcy court of PHH's repeated violations," as constituting a finding that PHH's conduct was "tantamount to bad faith."

Dissent at 29–31. But tantamount means of the same weight; it does not mean lesser, and it is not a consolation prize. The dissent transmutes concern into a finding, and would thereby uphold sanctions on a basis that the bankruptcy court did not venture to make.

No wonder the dissent leans heavily on a non-finding to support the $75,000 sanction--PHH never charged the debtors a dime, and never collected a dime. The fees to which no notice was given were never due. The dissent fastidiously avoids acknowledging this little thing: the mortgage statements are said to have been "incorrect"; and they were "showing" fees. Dissent at 5, 7. On the final statements, the fees were $86.25 in the Beaulieu case, $371 in the Knisley case, and $258.75 in the Gravel case. Iterations of the same fees were re-listed on monthly statements in each case, none of them reflected in the amount due, and none of them paid. The rest is hyperventilation. It is surely of some matter there was no damage or harm here.

As for Rule 3002.1, the dissent's challenge proves too little. The dissent argues that the rule's sanction provisions have a deterrence function. Dissent at 17–20. True, but all sanctions deter, including compensatory ones; an award of

attorneys' fees, which compensates, simultaneously inflicts pain that is an incentive for compliance. In short, all sanctions "punish." Dissent at 2. The issue is whether the sanction must be calibrated to the prejudice. See Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017) (distinguishing compensatory from punitive sanctions). With respect to Rule 3002.1(i), the answer is yes.

The dissent is concerned that our interpretation of Rule 3002.1 "will undoubtedly hamper the ability of bankruptcy courts" to deter violations and protect debtors. Dissent at 2. But this concern is at best overwrought. The punitive sanction here is the first and only of its kind that a bankruptcy court has imposed in the over nine years since Rule 3002.1 was adopted. In any event, the majority opinion does not limit a bankruptcy court's inherent power to sanction offenders who act in bad faith. That is just not what the bankruptcy court did here; others might be free to do so if they were to make sufficient findings.

CONCLUSION

For the foregoing reasons, the order of the bankruptcy court is **VACATED** and **REVERSED**.