NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	)	BAP No. NC-09-1402-MkHDu
	)	
LARRY T. HEAL and KANDY K. HEAL,	)	Bk. No. 09-13026
	)	
Debtors.	)	
	)	
PATRICK BULMER,	)	
	)	
Appellant,	)	
	)	
v.	)	**MEMORANDUM**[*]
	)	
LARRY T. HEAL; KANDY K. HEAL,	)	
	)	
Appellees.	)	

Argued And Submitted On
March 17, 2010, at San Francisco, California

Filed: June 22, 2010

Appeal From The United States Bankruptcy Court
for the Northern District of California

Honorable Alan Jaroslovsky, Bankruptcy Judge, Presiding

Before: MARKELL, HOLLOWELL and DUNN, Bankruptcy Judges.

INTRODUCTION

Appellant Patrick Bulmer ("Bulmer") has appealed the bankruptcy court's order granting the motion brought by debtors

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[*]This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Larry and Kandy Heal (“Debtors”) for a protective order (“Protective Order”), which declared that Debtors were not required under § 521(e)(2)[1] to produce a copy of their tax return to Bulmer. The Protective Order also struck all papers that Bulmer had filed in the Debtors’ bankruptcy case, and effectively barred Bulmer from filing future papers therein, except through a licensed attorney. The Protective Order is founded upon the determination that an assignment to Bulmer from his limited liability company was invalid. Since we find that this determination was the product of reversible error, the Protective Order shall be VACATED, and this matter shall be REMANDED for further proceedings.

FACTS

Several years before the present bankruptcy, Kandy Heal worked for a temporary staffing company, at first named Workforce Services and later named Workwell. Both companies were owned and operated by a man named Tim Pelzel. According to Ms. Heal, Pelzel abruptly ceased doing business and left California. She then started her own temporary staffing company, called Heal Staffing, Inc.

Pelzel, either individually or through his staffing business, left unpaid creditors and liabilities. One such liability, owed to the Guidiville Indian Rancheria ("Rancheria") has been reduced to judgment (the “Rancheria Claim”). Another,

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[1]Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

apparently arising from some sort of financing arrangement between Pelzel and Flexible Funding, LLC ("Flexible Funding"), has not been reduced to judgment (the "Flexible Funding Claim").

Bulmer does business as a debt collector, specializing in obtaining recoveries on judgments. Bulmer is not, however, licensed to practice law. At one time, he did business through a company he owned, California Judgment Recovery, LLC (the "LLC"), but he contends that he ceased doing business through the LLC near the end of 2002. Thereafter, he operated his debt collection business as a sole proprietorship.

According to Bulmer:

> Due to business concerns not related to my claim in this case, I ceased doing any substantial business under the limited liability company and began to wind down that entity in the end of 2002, choosing instead to operate from that point forward as a sole proprietor. I did retain use of the trade name "California Judgment Recovery", and any judgments or claims held by [the LLC] were assigned to me as an individual.

October 20, 2009, Declaration of Patrick Bulmer, at ¶ 4.

Bulmer claims to hold legal title to the Rancheria Claim through a series of three assignments: (1) an assignment from Rancheria to a "J. Veerhees dba Summit Judgment Recovery," which assignment is memorialized in a written acknowledgment of assignment of judgment dated May 5, 2000; (2) an assignment from Jeff Verhees dba Summit Judgment Recovery to Bulmer's LLC, which is memorialized in a written acknowledgment of assignment of judgment dated March 3, 2001; and (3) an assignment from Bulmer's LLC to Bulmer individually, which is memorialized in a written acknowledgment of assignment of judgment dated

January 2, 2003. Bulmer also claims to hold legal title to the Flexible Funding Claim. According to Bulmer, Flexible Funding assigned this claim to Bulmer directly in July 2004.[2]

All of the above-referenced assignments might qualify as assignments for collection purposes. Bulmer certainly has urged for the assignments to be so characterized. His arguments are expressly based on collection assignment cases; the above-referenced assignments all refer to and/or are structured to address matters of collection; and, he expressly states that the assignments were entered into for collection purposes: "It is clear here that BULMER, Guidiville Indian Rancheria and Flexible Funding, LLC agreed and intended to enter into agreements to assign choses in action for collection . . . ." February 22, 2010, Reply Brief, at 9:20-23. Nothing in the record counters the notion that the subject assignments were collection

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[2]The written agreement for the assignment from Flexible Funding to Bulmer was not presented to the bankruptcy court before it entered the Protective Order. Rather, it was submitted to the bankruptcy court for the first time as an Exhibit to the Proof of Claim that Bulmer filed on his own behalf on January 19, 2010. Bulmer has requested that we take judicial notice of his Proof of Claim, but we see no basis to depart from the general rule that we will not consider matters not presented to the bankruptcy court at or before the time of entry of the order on appeal. Oyama v. Sheehan (In re Sheehan), 253 F.3d 507, 512 n.5 (9th Cir. 2001). Accordingly, while we note the existence of the Flexible Funding assignment, our analysis does not rely on the written assignment agreement. Bulmer also requests that we take judicial notice of the Debtors' chapter 13 plan filed on September 17, 2009. While the plan was filed in the Debtors' bankruptcy case before the bankruptcy court entered the Protective Order, there is no indication that the plan was presented to or considered by the court as part of the proceedings leading up to the entry of the Protective Order. Accordingly, both judicial notice requests are hereby denied.

assignments. Further, at oral argument, Debtors' counsel similarly characterized the assignments as collection assignments. However, one of the fundamental concerns presented by this appeal is the absence of real evidence in the bankruptcy court record regarding these assignments.

In July 2004, at about the same time that Bulmer alleges that he received the assignment of the Flexible Funding Claim, Bulmer filed a pro se Complaint in Mendocino County Superior Court against Kandy Heal and Heal Staffing, among others, for fraudulent transfer, bulk sale liability, unjust enrichment, conversion, conspiracy, interference with prospective economic advantage, unfair competition and punitive damages. Case No. SCUK-CVPO-04-92901 (the "State Court Lawsuit").

Neither party provided to the bankruptcy court a detailed account of the nature and history of the State Court Lawsuit. The bankruptcy court's and our knowledge of this lawsuit is limited to a copy of the caption page, and a few paragraphs in Bulmer's declaration testimony. Bulmer's allegations suggest that, when Pelzel's company ceased doing business, Kandy Heal took some of Pelzel's company's assets without providing any consideration, and used those assets to establish and operate Heal Staffing. Bulmer further alleges that, after five years of litigation, he was two weeks away from trial on at least some of his causes of action, and had received a favorable interlocutory ruling concerning the alleged "destruction of relevant documentary evidence," when the Debtors commenced their bankruptcy case.

The Debtors filed their chapter 13 bankruptcy on September 17, 2009, and Debtors' bankruptcy schedules listed Bulmer as the holder of a disputed claim in the amount of $211,384.20 that was the subject of a pending lawsuit, Case No. SCUK-CVPO-xx-x2901. This appears to be the same State Court Lawsuit mentioned in Bulmer's papers.[3]

Shortly after Debtors commenced their bankruptcy case, Bulmer made a written request to Debtors pursuant to § 521(e)(2) for the Debtors to produce a copy of their federal income tax return (the "Tax Return Request"). Bulmer filed a copy of his Tax Return Request in the bankruptcy court on October 5, 2009, fifteen days prior to the date set for the Debtors' § 341 meeting of creditors. On or before October 13, 2009, the deadline under § 521(e)(2) for the Debtors to provide their tax return to the chapter 13 trustee and Bulmer, the Debtors produced a copy of their tax return to the trustee, but not to Bulmer. Three days later, apparently in lieu of providing Bulmer a copy of their tax return, Debtors filed a motion for protective order seeking a ruling that they did not have to provide Bulmer with the return.

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[3]On November 13, 2009, Debtors filed an amended schedule F. In the amendment, Debtors listed a contingent, unliquidated and disputed claim held by Bulmer, allegedly arising from a judgment against Pelzel with a balance of $68,000. It is unclear whether the Debtors intended the amendment as a new, additional claim of Bulmer's, distinct from the claim of his listed in their original schedules or as a replacement/correction of that originally-listed claim. Regardless of what Debtors intended, our analysis herein is not affected. Debtors filed a motion to augment the record on appeal to include this amended schedule F. While the amended schedule F is not material to our decision, we see no reason to deny the motion to augment the record. Accordingly, Debtors' motion to augment the record is hereby granted.

On October 9, 2009, just before they filed their motion for protective order, Debtors filed an objection to Bulmer's claim. Because Bulmer had not yet filed a proof of claim in the bankruptcy case, Debtors requested that the bankruptcy court treat the Tax Return Request as an informal proof of claim. By way of the motion for protective order and the objection to claim, Debtors sought a determination that Bulmer was not really a creditor of theirs and a declaratory ruling based thereon that they were not obligated under § 521(e)(2) and Rule 4002(b)(4) to produce a copy of their tax return to Bulmer.

In response, Bulmer filed several different papers in propria persona, including but not limited to, an opposition to the motion for protective order, an opposition to the claim objection, a declaration in support of those oppositions, and an objection to Debtors' plan. He also filed a motion to dismiss Debtors' bankruptcy case based on their noncompliance with § 521(e)(2).

According to Bulmer, he unequivocally was entitled to production of Debtors' tax return under § 521(e)(2) because Debtors had admitted that Bulmer was a creditor holding a disputed claim in their bankruptcy schedules. Bulmer further asserted that any determination of his disputed claim would require an evidentiary hearing following discovery.

The Debtors opposed Bulmer's motion to dismiss. They urged that the bankruptcy court determine that Bulmer was not their creditor, that he had no claim, that he was attempting to represent others, that he was engaging in the unauthorized

practice of law, and that the State Court Lawsuit was filed by Bulmer in his representative capacity, rather than for himself.

Bulmer then filed a reply and an additional declaration in support of his motion to dismiss, in which Bulmer provided a bit more information regarding the State Court Lawsuit and divulged to the bankruptcy court for the first time the existence of the Flexible Funding Claim.

The bankruptcy court held a joint hearing on the motion for protective order and the motion to dismiss. Both the Rancheria Claim and the Flexible Funding Claim were referred to during the hearing, but no party offered any additional evidence. After the parties made their respective arguments, the bankruptcy court took both matters under submission.

On November 27, 2009, the bankruptcy court issued its Memorandum re Unlicensed Practice of Law (the "Memorandum"). In the Memorandum, the bankruptcy court found that the assignment of claim between the LLC and Bulmer indisputably was a sham undertaken by Bulmer for the purpose of attempting to represent the interests of others in court. It also concluded that it had the authority to prohibit Bulmer from practicing law before the bankruptcy court. Relying on this one finding of fact and this one conclusion of law, the bankruptcy court granted the Debtors' motion for protective order, struck all papers that Bulmer had filed in the bankruptcy case, and prohibited Bulmer from filing any further papers except through a licensed attorney.[4]

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[4]Whereas the bankruptcy court said it was striking Bulmer's "pleadings" it is fairly clear from the entire record that the

(continued...)

The bankruptcy court entered the Protective Order on December 3, 2009, and appellant timely appealed thirteen days later, on December 16, 2009.[5] Bulmer also filed a motion for leave to appeal, which we address below.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2).

Under the pragmatic approach to finality applicable to bankruptcy appeals, an order is considered final for appeal purposes if it "1) resolves and seriously affects substantive rights and 2) finally determines the discrete issue to which it is addressed." Bonham v. Compton (In re Bonham), 229 F.3d 750, 761 (9th Cir. 2000) (quoting Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis), 113 F.3d 1040, 1043 (9th Cir. 1997)); Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 779-80 (9th Cir. 1999).

"Protective" orders typically are interlocutory, discovery-related rulings, but the substance of the Protective Order here resolved and seriously affected Bulmer's substantive rights to represent himself in federal court pursuant to 28 U.S.C. § 1654, and his right to a copy of Debtors' tax return under § 521(e)(2). Furthermore, the Protective Order determined the discrete issue

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[4](...continued)
bankruptcy court meant its ruling to apply to any paper that Bulmer filed, including his motions, his oppositions, and his Tax Return Request.

[5]Pursuant to amendments effective as of December 1, 2009, Rule 8002 now gives an appellant fourteen days from entry of a judgment or order to file a notice of appeal.

of Debtors' obligations under § 521(e)(2). Thus, the Protective Order is final for appeal purposes under the flexible finality standard applicable to bankruptcy appeals, and we have jurisdiction to hear this appeal under 28 U.S.C. § 158.

Because we have concluded that the order on appeal is a final order, Bulmer's motion for leave to appeal is hereby denied as unnecessary.

ISSUES

1. Did the bankruptcy court err when it determined that the assignment to Bulmer from his LLC was invalid?
2. Did the bankruptcy court err when it excused Debtors from giving Bulmer a copy of their tax return, and when it struck all pro se papers Bulmer already had filed or might file in the future?

STANDARDS OF REVIEW

We review findings of fact for clear error and issues of law de novo. United States v. Gould (In re Gould), 401 B.R. 415, 421 (9th Cir. BAP 2009). Construction of rules of procedure and the Bankruptcy Code present questions of law that we review de novo. Litton Loan Serv'g, LP v. Garvida (In re Garvida), 347 B.R. 697, 703 (9th Cir. BAP 2006); Ruvacalba v. Munoz (In re Munoz), 287 B.R. 546, 550 (9th Cir. BAP 2002).

A factual finding is clearly erroneous, when there is evidence to support it, only if we have a definite and firm conviction that a mistake has been committed. Banks v. Gill Distrib. Ctrs., Inc. (In re Banks), 263 F.3d 862, 869 (9th Cir. 2001)(citing Anderson v. City of Bessemer City, N.C., 470 U.S.

564, 573 (1985)). Alternately stated, we must affirm the bankruptcy court's findings of fact unless those findings are "illogical, implausible, or without support in inferences that may be drawn from the record." U.S. v. Hinkson, 585 F.3d 1247, 1263 (9th Cir. 2009).

DISCUSSION

All of the relief granted in the Protective Order stems from a single determination of the bankruptcy court: that the assignment to Bulmer from his LLC was a sham and therefore was invalid. We examine this determination first.

A. Determination That The Assignment To Bulmer From His LLC Was Invalid.

According to the bankruptcy court's Memorandum, the 2003 assignment of the Rancheria Claim from the LLC to Bulmer was a sham that Bulmer arranged for the improper purpose of evading the rule that a non-lawyer principal may not represent his company in court. As the bankruptcy court stated: "A company cannot avoid the effect of this rule by 'assignment' of its rights to a principal. If it could, the rule would be rendered meaningless and every corporation, partnership or other fictitious entity could appear pro se merely by assigning its right to a principal." Memorandum at p. 2:12-15. Based on its conclusion that the LLC/Bulmer assignment was a sham, the bankruptcy court disregarded this assignment and held that Bulmer improperly was attempting to represent before the court the rights of his LLC.

The bankruptcy court's invalidation of the LLC/Bulmer assignment was erroneous as a matter of law and fact.

We are not aware of any law generally prohibiting assignments from a company to its principals or employees. To the contrary, California law, which governs Bulmer's substantive rights as against the Debtors, generally encourages the free assignability of property. See Essex Ins. Co. v. Five Star Dye House, Inc., 38 Cal.4th 1252, 1259, 137 P.3d 192, 195 (2006). California has long upheld assignments of choses of action, specifically where the assignments have been made for purposes of facilitating collection by a third party. Ledoux v. Credit Research Corp., 52 Cal.App. 3d 451, 453-55, 125 Cal.Rptr. 166, 167-69 (1975); see also Greig v. Riordan, 99 Cal. 316, 323, 33 P. 913, 916 (1893); Grant v. Heverin, 77 Cal. 263, 264-65, 19 P. 493 (1888); Clark v. Andrews, 109 Cal.App. 2d 193, 198-99, 240 P.2d 330, 333-34 (1952); Cohn v. Thompson, 128 Cal.App.Supp. 783, 787, 16 P.2d 364, 365 (1932).

One common variation of this type of assignment, upheld under California law, is an assignment from the business to one of its employees. As stated long ago in Leitch v. Marx, 21 Cal.App. 208, 131 P. 328 (1913):

> The plaintiff was an employé of the corporation, and it is clearly apparent from his testimony that the assignment to him of the claim against the defendant was merely for the purposes of collection. Assignments for such purposes are of frequent occurrence, and the defendant in an action by an assignee of a claim against him is only concerned to know that the assignment is of such a character as to bind the assignor. That the assignor in this case will be bound by the assignment is a fact, as before stated, clearly inferable from the testimony.

Id. at 213; 208 P. 330.

Moreover, as a factual matter, Bulmer disputed that the LLC/Bulmer assignment was made for the purpose of enabling him to represent the interests of his LLC, and he presented evidence to support his position. According to his declaration testimony, the assignment between his LLC and himself was made years before the Debtors' bankruptcy filing and was related to his winding down of his LLC, as he had decided to pursue his collection business as a sole proprietorship.

The Debtors argued that the LLC/Bulmer assignment and the winding down of Bulmer's LLC were all part of a scheme by Bulmer to prosecute collection claims belonging to others without retaining a lawyer. However, there was no dispositive evidence in the record tying the LLC/Bulmer assignment to any such alleged scheme. The evidence Debtors presented was highly circumstantial in nature. It consisted of evidence regarding Bulmer's debt collection practices and the general nature of his debt collection business. In any event, even if we assume that there was sufficient evidence to support Debtors' argument, there is no indication that the bankruptcy court weighed all of the relevant evidence; rather, it appears that it simply disregarded the evidence that Bulmer offered.

Licht v. Am. W. Airlines, Inc. (In re Am. W. Airlines, Inc), 164 B.R. 315 (9th Cir. BAP), aff'd in part and vacated in part, 40 F.3d 1058 (9th Cir. 1994), offers some instructive analysis. In Licht, the appellant Licht filed a pro se motion seeking to disband the appellee equity security holders committee, and the committee moved to strike Licht's motion and to bar Licht from

appearing pro se. According to the committee, Licht improperly was attempting to represent his company's interests in the America West bankruptcy. After holding a hearing, the bankruptcy court agreed with the committee and granted the relief requested. On appeal before the BAP, Licht argued that the bankruptcy court erred because he only was representing himself. After carefully reviewing the evidence in the record, the BAP concluded that the bankruptcy court did not clearly err in finding that Licht was attempting to represent his company. The BAP pointed out that a $10,000 debenture in Licht's name (rather than in the name of his company) was the only evidence that Licht offered in support of his argument. Further, the BAP noted that the debenture was dated eight days after the bankruptcy court's oral ruling on the motion. According to the BAP, the timing of the debenture, on the heels of the bankruptcy court's adverse ruling, showed "a blatant attempt by Licht to circumvent the bankruptcy court." Id. at 317. The BAP also noted that there was ample evidence showing that Licht was attempting to represent his company, including a number of documents he filed which stated that he was acting on behalf of his company. Id.

In contrast to the facts presented in Licht, the LLC/Bulmer assignment was dated January, 2, 2003, almost seven years before the Debtors filed bankruptcy, and there is uncontroverted evidence in the record offered by Bulmer tending to show that the LLC/Bulmer assignment was made in relation to Bulmer's winding down of his LLC, and his decision to conduct his business as a sole proprietorship, rather than in response to a challenge to

his appearing in court in propria persona. Further, all of the papers filed by Bulmer in the bankruptcy court stated that he was acting on his own behalf.[6]

Most importantly, the record here reflects that the bankruptcy court did not weigh the relevant evidence before it. In its Memorandum, the bankruptcy court characterized as "undisputed" the so-called fact that Bulmer made the LLC/Bulmer assignment for the improper purpose of representing his LLC's interests in court. We must reverse a finding of fact of the bankruptcy court as clearly erroneous if it is "illogical, implausible, or without support in inferences that may be drawn from the record." Hinkson, 585 F.3d at 1263. The bankruptcy court's finding here that Bulmer's motivation for the LLC/Bulmer assignment indisputably was to attempt to appear in court on behalf of his LLC was clearly erroneous under this standard.

The bankruptcy court's reliance on the invalidity of the LLC/Bulmer assignment also is problematic because only the Rancheria Claim came to Bulmer by way of an assignment from his LLC. According to Bulmer's declaration testimony, the Flexible Funding Claim was assigned to him directly from a third party.

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[6]Bulmer's Tax Return Request did reference in the upper left-hand corner of the caption page, just below Bulmer's name, "California Judgment Recovery." However, the body of the Tax Return Request stated that Bulmer himself was making the request as a creditor and party in interest, and the signature block at the end of the Tax Return Request referred to Bulmer personally and not as an officer or agent of his LLC. In addition, Bulmer explained in his declaration testimony that "California Judgment Recovery" (without the "LLC" term) was his duly-registered fictitious business name through which he sometimes did business as a sole proprietor. See 10/20/09 Bulmer Decl. at pp. 1-2.

Bulmer further set forth in his declaration that the majority of his rights against the Debtors originate from the Flexible Funding Claim. The bankruptcy court did not take this into account. If it had done so, its determination that Bulmer was attempting to represent his LLC in court would have needed to be factually based on something in addition to the invalidity of the LLC/Bulmer assignment. But the record reflects that the LLC/Bulmer assignment was the sole factual basis for the bankruptcy court's determination.

The evidentiary problems that the bankruptcy court encountered are, perhaps, in part the consequence of the summary nature of the bankruptcy court proceedings. Certain aspects of the relief sought and/or granted via the motion for protective order arguably were in the nature of injunctive and declaratory relief. Assuming without deciding that an adversary proceeding was not necessary (see Rule 7001(2), (7), (9)), the motion for protective order at minimum qualified as a contested matter. See Rule 9014. Both adversary proceedings and contested matters afford parties many of the same procedural entitlements, including the opportunity to take discovery, and most importantly here, the holding of a trial or evidentiary hearing on disputed factual issues. No such trial or evidentiary hearing was held here, even though Bulmer requested one in his papers.

We are not saying that bankruptcy courts need an adversary proceeding to prohibit a non-attorney from practicing law. We only note that the complexity and type of issues presented, and

the contested nature of the key factual issues, made this matter a questionable candidate for summary procedures.[7]

Based on the analysis set forth above, the bankruptcy court erred when it determined that the LLC/Bulmer assignment was invalid. We now turn our attention to the relief granted in the Protective Order.

B. Effect of Bankruptcy Court's Determination On Relief Granted in the Protective Order.

The Protective Order declared that Debtors were not required under § 521(e)(2) to deliver a copy of their tax return to Bulmer. The Protective Order also effectively barred all pro se papers Bulmer already had filed in the bankruptcy court, or might file in the future.

All of the relief granted was founded upon the bankruptcy court's erroneous determination that the LLC/Bulmer assignment was invalid. Therefore, the Protective Order must be vacated in its entirety.[8]

According to the bankruptcy court, because the LLC/Bulmer assignment was invalid, Bulmer improperly was attempting to assert the rights of others before the bankruptcy court. While the bankruptcy court characterized this as an issue regarding the

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[7]Because we are vacating the Protective Order on other grounds, we need not reach the constitutional issue of whether Bulmer's due process rights were violated. See Meinhold v. Dept. of Defense, 34 F.3d 1469, 1474 (9th Cir. 1994).

[8]In light of our disposition of this appeal, we need not reach the issue of which of Bulmer's filings might have constituted the unauthorized practice of law. See generally Bigelow v. Brady (In re Bigelow), 179 F.3d 1164, 1165 (9th Cir. 1999)(holding that filing notice of appeal does not constitute practice of law).

unauthorized practice of law, we perceive it to be in the first instance an issue of constitutional and prudential standing: (1) whether Bulmer has factually established the injury in fact, the causation, and the redressability necessary for standing under Article III; and (2) whether Bulmer has factually established that he is asserting his own legal rights and not the rights of others. See Sprint Commc'ns Co., L.P. v. APCC Servs., Inc., 128 S.Ct. 2531, 2535, 2544 (2008)(evaluating constitutional and prudential standing of collection assignee of "dial-around compensation" claims).

The standing issue is, at its heart, a factual inquiry into the nature of the rights asserted. See, e.g., Sprint, 128 S.Ct. at 2534-35; In re Hwang, 396 B.R. 757, 769 (Bankr. C.D. Cal. 2008). Here, the bankruptcy court record was not sufficiently developed to definitively conclude whose rights Bulmer was attempting to assert: Rancheria's; Flexible Funding's; his LLC's; his own; some of the above; or, all of the above. To the extent that Bulmer obtained all of his alleged rights against the Debtors by way of assignments for collection purposes, an argument can be made that he was attempting to assert the interests of Rancheria and Flexible Funding, as their agent and/or fiduciary. See, e.g., Harrison v. Adams, 20 Cal.2d 646, 650, 128 P.2d 9, 12 (1942); Greig v. Riordan, 99 Cal. 316, 323, 33 P. 913, 916 (1893); Clark v. Andrews, 109 Cal.App. 2d 193, 198-99, 240 P.2d 330, 333-34 (1952). On the other hand, a counter-argument can be made that he was representing his own interests to the extent he was entitled to a percentage of the

collection recovery. Thus, it might be argued that he was asserting his own rights as a beneficial interest holder. See, e.g., Builders' Control Serv. of N. Cal., Inc. v. N. Am. Title Guar. Co., 205 Cal.App.2d 68, 74-75, 22 Cal.Rptr. 712, 716 (1962).

It would be premature for us to attempt to resolve the issues regarding whose rights Bulmer is attempting to assert, and to what extent he can represent himself in court if he also is attempting to assert the rights of others. After an evidentiary hearing is noticed and held, and after all of the relevant admissible evidence is considered, the bankruptcy court can determine whose rights Bulmer is attempting to represent. If the bankruptcy court concludes that Bulmer is attempting to represent partly his own rights and partly the rights of others, the bankruptcy court then can consider how to balance the prohibition against the unauthorized practice of law against Bulmer's statutory entitlement to represent himself under 28 U.S.C. § 1654.[9]

CONCLUSION

For all of the reasons set forth above, the Protective Order shall be VACATED, and this matter shall be REMANDED for further proceedings.

[9]It also would be premature for us to determine whether § 521(e)(2)(C) applies to the facts presented in this case. The bankruptcy court presumably will consider the merits of Bulmer's motion to dismiss under § 521(e)(2) after it determines whose interests Bulmer is representing in the bankruptcy case.