NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-04-1618-MoBMa
RAY FERRY,	Bk. No. SV 00-19655 AG
Debtor.	
FREUND & BRACKEY LLP; THOMAS A. BRACKEY II,	
Appellants,	
v.	**M E M O R A N D U M**[1]
FORREST J. ACKERMAN,	
Appellee.	

Argued and Submitted on June 22, 2005
at Pasadena, California

Filed - August 26, 2005

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Arthur M. Greenwald, Bankruptcy Judge, Presiding.

Before: MONTALI, BRANDT and MARLAR, Bankruptcy Judges.

[1] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

A law firm and an attorney appeal from an order imposing sanctions against them pursuant to the bankruptcy court's inherent powers. The bankruptcy court concluded that the appellants had made untruthful representations to the court, basing its conclusion on inconsistent state court testimony by one appellant and an inconsistent agreement executed by appellants. We AFFIRM.

I.
FACTS

Appellee Forrest J. Ackerman ("Ackerman") sued debtor Ray Ferry ("Debtor") in state court on twenty-one causes of action, and Debtor filed a cross-complaint against Ackerman on five causes of action, including "Damages for Libel Per Se, Damages for Slander Per Se, Damages for Fraud and Deceit, Damages for Breach of Oral Contract, and Declaratory Relief." Appellants Freund & Brackey LLP (the "Law Firm") and Thomas A. Brackey II ("Brackey") (collectively, "Appellants") represented Debtor in the state court action.

In 1999, the state court struck Debtor's cross-complaint as a sanction for discovery abuse by Debtor. A jury trial commenced on April 15, 2000; the jury returned a verdict against Debtor in the total amount of $724,500.00 ($382,500.00 in compensatory damages and $342,000.00 in punitive damages).

A few days after the jury trial ended, the Law Firm entered into a letter agreement (the "May 18 Agreement") with Debtor wherein the firm stated it would pursue an appeal and Debtor agreed to "forego any financial interest in its outcome." The May 18 Agreement noted that Debtor could not afford to pursue an

appeal and required Debtor "to cooperate fully in [Law Firm's] efforts to pursue this matter."

On July 7, 2000, the state court entered an amended judgment in favor of Ackerman and against Debtor in the amount of $475,499.00 (including punitive damages) plus attorneys' fees in the amount of $30,000.00 and costs in the amount of $12,710.22. The Law Firm filed a notice of appeal identifying Debtor as appellant with respect to both the order striking his cross-complaint and the judgment against him.

On October 26, 2000, Debtor filed his chapter 7 petition.[2] In February 2001, Brackey testified before the state court that Debtor had "assigned over his appellate rights to us, so we're pursuing it [the appeal of the state court judgment] on our own" and that "my firm will pursue the appeal on its own as its own, but we're not going to be representing [Debtor] . . . any further."

On March 19, 2001, Debtor (through his bankruptcy counsel, Michael J. Berger ("Berger")) filed a motion for relief from stay to pursue the appeal of the state court judgment. In the context of the evidentiary hearing on Ackerman's request for sanctions against Appellants, Berger testified that he would not have filed this motion for relief from stay if he had known that Debtor had transferred his appeal rights, and that he understood that the appellate rights belonged to Debtor.

In June 2001, Weintraub & Aver LLP filed a motion for relief

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[2] Debtor's discharge was subsequently denied pursuant to section 727(a)(2)(A), (4)(A) and (5).

from stay identifying Law Firm as the movant ("Brackey MRS"). In the Brackey MRS, the Law Firm sought to have the stay annulled nunc pro tunc to the petition date, inasmuch as Law Firm had filed in the state court appeal an amended designation of record and a petition for a reporter's transcript after the petition date but before the court granted Debtor's motion for relief from stay. Ackerman opposed the Brackey MRS, arguing, inter alia, that Law Firm did not have standing to file the motion.

On June 15, 2001, Ackerman filed a supplemental memorandum with the bankruptcy court with respect to his motion seeking invalidation by the bankruptcy court of an order entered by the state appellate court granting Debtor's petition for preparation of a transcript. In this supplemental memorandum, Ackerman refers to Brackey's February 2001 testimony before the state court and states that "according to evidence newly discovered since the filing of Ackerman's original moving papers . . . [D]ebtor no longer owns the appeal actions."

In response to Ackerman's supplemental memorandum, Law Firm filed its own supplemental memorandum and declarations; in his declaration, Brackey testified that the Law Firm "is prosecuting the appeal without charge because [Debtor] cannot afford to pay the attorneys' fees to pursue the appeal" and that the Law Firm "has not received an assignment or transfer of the appeal from" Debtor. He then stated: "That is what I meant when I testified under oath at a hearing in state court on February 28, 2001, that '[Debtor has] assigned over his appellate rights to us, so we're pursuing it on our own.'" Appellants did not mention the May 18 Agreement in this supplemental memorandum or the supplemental

declarations. The bankruptcy court eventually granted the Brackey MRS and Law Firm proceeded with prosecution of the state court appeal.

On May 2, 2002, the state appellate court sua sponte raised the issue of whether Debtor had standing to prosecute the appeal. After the parties submitted letter briefs, the state appellate court entered an order requiring Debtor to obtain, prior to oral argument, an order from the bankruptcy court allowing him to proceed with the appeal.

On June 14, 2002, Raymond Aver ("Aver") filed on behalf of Law Firm (not Debtor) a "Motion for Order Authorizing Freund & Brackey LLP to Continue Prosecution of Appeal on Debtor's Behalf" (the "Appeal Authorization Motion").[3]

On June 26, 2002, David K. Gottlieb ("Trustee"), the chapter 7 trustee of Debtor's estate, filed an opposition to the Appeal Authorization Motion, arguing that Law Firm did not have standing to bring the motion and that the Law Firm had been unlawfully prosecuting Debtor's counterclaims through the state court appeal. Ackerman filed his opposition to the Appeal Authorization Motion on the same date. In their response,

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[3] On the same date, the state appellate court dismissed the appeal because -- as Appellants surmised themselves on page 10 of their response filed on July 15, 2002, with the state appellate court -- it concluded "either that [Law Firm] was pursuing the appeal by itself rather than on behalf of and at the instruction of [Debtor] and without permission from the Bankruptcy Court, or that [Law Firm] was not acting on behalf of [Debtor] in seeking a further order from the Bankruptcy Court." The state appellate court also entered an order to show cause why sanctions should not be imposed against Appellants for a frivolous appeal. The state appellate court eventually vacated the order to show cause and reinstated the appeal.

Appellants failed to disclose the existence of the May 18 Agreement and Brackey instead filed a declaration stating:

> 3. [Law Firm] represents [Debtor] in connection with his appeal from the State Court judgment . . .
>
> 4. I testified at a hearing before the Superior Court of the State of California on February 28, 2000 [sic]. My testimony related, in part, to the Ferry Appeal. During a portion of my testimony, I attempted to summarize the agreement reached between [Law Firm and Debtor]. In summary, [Debtor] agreed, as a condition of [Law Firm's] further representation in connection with the Ferry Appeal, that [Debtor] would not hold [Law Firm] responsible in any manner for anything having to do with the Ferry Appeal (i.e., for any actions taken by [Law Firm] or any inaction with the Ferry Appeal).
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> 5. The purpose of the agreement was to avoid any claims by [Debtor] that [Law Firm] had taken inappropriate action or had failed to take certain action, including any claims for malpractice or the like.
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> 6. I did not mean to infer [sic] from my testimony that the appeal was being pursued by [Law Firm] for [Law Firm's] benefit. Rather, the appeal is being pursued solely for [Debtor's] benefit, but [Debtor] has agreed that [Law Firm] may pursue the appeal on its own without any oversight by [Debtor].

This testimony, of course, is inconsistent with the May 18 Agreement's provision that Debtor would forego any interest in the financial outcome of the appeal.[4]

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[4] Brackey also filed a declaration with the state appellate court on July 15, 2002, stating:

> 13. By my testimony of February 28, 2000 [sic], I did not intend to convey that [Law Firm], or any other entity, had acquired [Debtor's] right to pursue this appeal. To the best of my knowledge the cause of action is, and always has been, the property of [Debtor]. It has never been the property of [Law Firm] or any affiliated entity. The only interests advanced by this appeal are those of [Debtor]. In my prior testimony, I was making reference to a written

(continued...)

On August 19, 2002, the bankruptcy court entered an order (the "No Standing Order") denying the Appeal Authorization Motion.[5] The court, without the benefit of seeing the May 18 Agreement, ruled that neither Debtor nor Law Firm had standing to prosecute the state court appeal. The state appellate court thereafter dismissed the appeal (for the second time), but reinstated it after Law Firm obtained a stay of the No Standing Order from the United States District Court. The state appellate court eventually affirmed the state court judgment in all respects.

On July 6, 2001, Trustee filed a complaint against the Law Firm to recover preferential and fraudulent transfers (including the transfer of a trademark) and to recover damages for breach of fiduciary duty and dual representation (the "Brackey AP"). Trustee sought damages in the amount of $500,000 for the fraudulent and preferential transfer claims and $750,000 for the other causes of action.

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[4](...continued)
> agreement between [Law Firm] and [Debtor] in which [Debtor] absolves [Law Firm] of the responsibility to continue prosecution of the appeal without compensation in the event it becomes unable or unwilling to do so. In the event the appeal is successful, neither [Law Firm], nor any affiliated entity, stand to gain.

Again, Appellants did not produce for the state appellate court the "written agreement" (i.e., the May 18 Agreement) that contained a term (i.e., Debtor's foregoing of any financial recovery from the appeal) that was inconsistent with the foregoing characterization of the agreement.

[5] The order indicates that Debtor filed his own motion to authorize Law Firm to prosecute his state court appeal. Debtor's motion is not in the excerpts of the record provided to us.

In the course of the Brackey AP, Trustee requested Appellants to produce documents; Appellants refused to produce many documents, including the May 18 Agreement, on the grounds of attorney-client privilege. Trustee filed a motion to compel and the bankruptcy court entered an order compelling production on August 19, 2002, holding that "the Requested Documents were subject to neither the Attorney-Client Privilege nor the Attorney Work-Product Privilege as there is at least reasonable cause to conclude that they were created in furtherance of an unlawful scheme to defraud creditors of the Estate . . . ." Nearly five months after entry of the order compelling production, Appellants finally produced the May 18 Agreement and other documents as required by the order.

After receipt of the May 18 Agreement, Trustee filed a motion requesting sanctions against Appellants for concealing the agreement from the court and parties, for filing false declarations with the court, and for multiplying costs of litigation. Thereafter, counsel for Ackerman filed a similar motion for sanctions ("Ackerman Sanctions Motion"), also arguing that Appellants had lied to the court and had caused unnecessary duplication of proceedings.

Appellants reached a settlement with Trustee, but chose to litigate Ackerman's Sanctions Motion. Appellants contended that (1) Brackey's declarations contained no false statements, (2) no unnecessary pleadings were filed by the Law Firm, (3) that the request was improperly brought under the bankruptcy court's

inherent powers pursuant to 11 U.S.C. § 105,[6] (4) that Ackerman had failed to comply with the safe harbor provisions of Rule 9011, (5) that Ackerman improperly sought to recover fees unrelated to the bankruptcy (or even to the sanctionable conduct), and (6) that Ackerman had not demonstrated the reasonableness of the fees of Ackerman's counsel.

Eventually, in March 2004, the bankruptcy court conducted a four day evidentiary hearing on the Ackerman Sanctions Motion. On September 14, 2004, the bankruptcy court entered a lengthy decision and findings of fact and conclusions of law in support of its imposition of sanctions against Appellants. The court quoted the language of the May 18 Agreement, a contemporaneous memorialization of the agreement between Debtor and Law Firm, and gave "substantial weight" to Brackey's February 2001 state court testimony, particularly when Brackey acknowledged the truthfulness of that testimony when he testified before the bankruptcy court.[7] The court gave "little if any, weight" to Brackey's declaration dated June 1, 2003, and his testimony in March 2004 "wherein he attempted to explain away his truthful statements of February 28, 2001[,] made under oath before the State court."

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[6] Unless otherwise indicated, all section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

[7] During the bankruptcy court hearing, Brackey was asked "when you testified in state court that you had executed an agreement whereby [Debtor] assigned his rights to the appeal to your firm, you were testifying truthfully, weren't you?" Brackey responded: "Yes, I was." See page 184 of the March 15, 2004, transcript.

The court found that Brackey's "false declarations were filed in bad faith for the improper purpose of representing to the court that [Law Firm] was representing the Debtor in the appeal process when, in fact, Debtor's appeal rights had been assigned to [Law Firm] as early as May 18, 2000. It was not until January of 2003 that [Appellants] produced involuntarily the letter agreement evidencing the assignment of Debtor's appeal rights to [Law Firm]."

On September 14, 2004, the bankruptcy court entered its order imposing sanctions against Law Firm and Brackey, jointly and severally, in the amount of $29,166.50 "as sanctions for their bad faith conduct." Appellants filed a timely motion for reconsideration on September 24, 2004. The bankruptcy court issued a lengthy memorandum decision explaining why it was denying the motion for reconsideration. On December 2, 2004, the bankruptcy court entered its order denying the motion for reconsideration. Appellants filed their timely notice of appeal on December 10, 2004.

II.
ISSUE

Did the bankruptcy court err in imposing sanctions against Appellants in the amount of $29,166.50 pursuant to its inherent powers under section 105(a)?

III.
STANDARD OF REVIEW

An order imposing sanctions is reviewed under an abuse of discretion standard. Miller v. Cardinale (In re DeVille), 361 F.3d 539, 547 (9th Cir. 2004) (reviewing bankruptcy court's

imposition of sanctions under its inherent authority and under Rule 9011); Caldwell v. Unified Capital Corp. (In re Rainbow Magazine), 77 F.3d 278, 283 (9th Cir. 1996) (same); Duff v. United States Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996). In addition, the amount of a trial court's award of sanctions is reviewed for abuse of discretion. B.K.B. v. Maui Police Dept., 276 F.3d 1091, 1106 (9th Cir. 2002); Hewitt v. City of Stanton, 798 F.2d 1230, 1233 (9th Cir. 1986).

Under the abuse of discretion standard, we must have a definite and firm conviction that the bankruptcy court committed a clear error of judgment before reversal is proper. AT&T Universal Card Servs. v. Black (In re Black), 222 B.R. 896, 899 (9th Cir. BAP 1998).

Findings of fact are reviewed for clear error. Neben & Starrett, Inc. v. Chartwell Fin'l Corp. (In re Park-Helena Corp.), 63 F.3d 877, 880 (9th Cir. 1995). Review under the clearly erroneous standard is "significantly deferential, requiring a 'definite and firm conviction that a mistake has been committed.'" Granite State Ins. Co. v. Smart Modular Techs., Inc., 76 F.3d 1023, 1028 (9th Cir. 1996) (quoting Concrete Pipe & Products of Cal., Inc. v. Constr. Laborers Pension Trust, 508 U.S. 602, 623 (1993)).

IV.
DISCUSSION

A. The Bankruptcy Court Did Not Abuse Its Discretion In Concluding That Appellants' Conduct Was Sanctionable

In Chambers v. NASCO, 501 U.S. 32, 35 (1991), the Supreme

Court upheld the authority of a trial court to exercise its inherent power to sanction a litigant for bad-faith conduct; see also Deville, 361 F.3d at 548-49 (bankruptcy courts possess the inherent power to sanction described in Chambers). "In this regard, if a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party." Chambers, 501 U.S. at 46, quoting Universal Oil Prods. Co. v. Root Ref. Co., 328 U.S. 575, 580 (1946). Therefore, an attorney's actions in testifying untruthfully can, in and of itself, constitute sanctionable bad faith conduct. A further finding of vexatious or unnecessary pleadings or motions is not required.[8]

Appellants argue on appeal that the bankruptcy court abused its discretion in sanctioning them because they had not engaged in bad faith conduct. In particular, they contend that the record does not support the bankruptcy court's conclusion that Brackey had been untruthful in his declarations. We disagree. The May 18 Agreement provided that Debtor would forego any financial interest in the outcome of the appeal[9] and Brackey

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[8] Appellants' argument that they did not file unnecessary pleadings is thus irrelevant as long as sufficient evidence exists that they were duplicitous with the bankruptcy court.

[9] The sentence indicating that the Debtor had agreed to forego any financial interest in the appeal is grammatically and stylistically awkward: "Accordingly, you [Debtor] hereby relieve us [the Law Firm] of any responsibility whatsoever associated with the prosecution, or defense, of any appeal to this matter and to forego any financial interest in its outcome." The infinitive phrase "to forego any financial interest in [the appeal's] outcome" is dangling; it appears to be the object of the verb "agree" but that word is not in the sentence.

(continued...)

testified in 2001 that Debtor assigned over his appellate rights to the Law Firm and that the Law Firm was pursuing the appeal "on its own as its own" but would not be representing Debtor as a client. Sufficient evidence exists in the record to support the court's finding that Law Firm did indeed intend to receive an assignment of Debtor's rights in the appeal and that Brackey was dissembling when he attempted to explain away his 2001 testimony and the May 18 Agreement.

Citing Arizona v. California, 460 U.S. 605 (1983), Appellants argue for the first time on appeal that when the bankruptcy court entered the No Standing Order and held that the appeal belonged to Trustee, it determined as law of the case that no assignment occurred. There is no express finding by the bankruptcy court in the No Standing Order with respect to the assignment or non-assignment of Debtor's appeal rights to the Law Firm, although the court's determination that Trustee held the

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[9](...continued)
Alternatively, the drafter simply failed to use parallel structure in the sentence; he should have deleted the "to" and made "relieve" and "forego" parallel verbs.

After a four-day trial, the bankruptcy court entered a finding that Debtor assigned his financial interests in the outcome of the appeal to the Law Firm. Its interpretation of the sentence gives the clause a reasonable, lawful and effective meaning, even if the court necessarily had to supply the word "agree" or delete the word "to" to make the sentence clear. Heidlebaugh v. Miller, 126 Cal. App. 2d 35, 38, 271 P.2d 557 (Cal. Ct. App. 1954) ("If necessary to carry out the intention of a contract, words may be transposed, rejected, or supplied, to make its meaning more clear.").

Appellants argue that the bankruptcy court's finding that the May 18 Agreement was an assignment was "simply erroneous." Appellants' Opening Brief at 15. They do not even assert, much less show, that the finding was clearly erroneous.

appeal rights necessarily assumes that Debtor possessed such rights as of the petition date. The bankruptcy court, however, did not have the benefit of the May 18 Agreement when it denied the Appeal Authorization Motion; that agreement placed Brackey's 2001 testimony in proper context. The No Standing Order disposing of that motion was entered on the same day as the order granting the Trustee's motion to compel, which (five months later) resulted in the Law Firm's production of the May 18 Agreement.

The law of the case does not prevent the reconsideration of matters already decided when new evidence, such as the May 18 Agreement, has surfaced. Jenkins v. County of Riverside, 398 F.3d 1093, 1094 (9th Cir. 2005) ("The law of the case doctrine is not an absolute bar to reconsideration of matters previously decided. The doctrine merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. Thus, the court may reconsider previously decided questions in cases in which there has been an intervening change of controlling authority, new evidence has surfaced, or the previous disposition was clearly erroneous and would work a manifest injustice.") (internal quotation marks and citations omitted) (emphasis added); see also Arizona v. California, 460 U.S. at 619 n.8 ("it is not improper for a court to depart from a prior holding if convinced that it is clearly erroneous and would work a manifest injustice").

Here, the doctrine of "law of the case" was not applicable because of intervening circumstances: the involuntary production of pertinent evidence (the May 18 Agreement). Appellants

therefore cannot rely on the No Standing Order, which was based at least in part on their untruthful declarations and issued without the benefit of highly relevant evidence, as proof that the declarations were truthful.

Pointing to the testimony of Debtor's bankruptcy counsel (Berger and Charles Shamesh), Appellants further argue that the actions of Debtor in filing his own motion for relief from stay in order to prosecute the appeals indicates that no assignment occurred. We disagree. The testimony of Berger and Shamesh simply demonstrates that had they known about an assignment, they would not have filed the motion for relief from stay. It does not mean that no assignment occurred. More importantly, Berger also testified that Debtor had lied to him and that he had never seen the May 18 Agreement.

Appellants also attempt to defuse the May 18 Agreement by arguing that "[t]o the extent it states that [Debtor] would forego any financial interest in the outcome of the appeal, this was simply a statement to ensure that [Debtor], to the extent he was successful on appeal, would not make any claim for the costs on appeal that had been advanced by [Law Firm]." We reject this argument as bordering on the frivolous.

In another implausible argument, Appellants contend for the first time on appeal (in an astonishing contradiction of their prior positions and testimony before the bankruptcy court) that the May 18 Agreement does not even apply to the state court judgment being appealed. Yet, as discussed in more detail in note 10 infra, Brackey admitted before the bankruptcy court that the agreement to which he referred in his 2001 state court

testimony about appellate arrangements with Debtor was in fact the May 18 Agreement.[10]

Finally, Appellants argue that Brackey did not lie in his declarations because Debtor's appellate rights were not assignable under California law. California Civil Code section 954 provides that "[a] thing in action [defined in Civil Code section 953 as "a right to recover money or other personal property by a judicial proceeding"], arising out of the violation of a right of property, or out of an obligation may be transferred by the owner." The only exception to this general rule of assignability is for purely personal torts, i.e., "those involving wrongs done to the person, reputation or feelings of

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[10] Appellants' contention that the May 18 Agreement does not apply to the state court judgment is inconsistent with Appellants' own opposition (at pages 6 and 7) before the bankruptcy court, wherein they acknowledge that the agreement pertained to the state court judgment. It is also inconsistent with Brackey's declaration to the state court acknowledging that a written agreement had been entered with Debtor regarding the handling of the appeal of the judgment. Most importantly, it is inconsistent with Brackey's own testimony before the bankruptcy court, in which he acknowledged that the agreement to which he referred in his state court testimony was the May 18 Agreement. See pages 181-183 of the March 15, 2004, transcript. In addition, the record is devoid of any contentions by the Appellants to the bankruptcy court that the May 18 Agreement did not apply to the state court appeal.

Appellants support their newly-asserted argument by noting that the May 18 Agreement refers to an appeal of the "Ackerman v. Ferry" matter and not to the "Ferry v. Ackerman" matter. This ignores (1) the timing of the May 18 letter, which was executed within eight days after conclusion of the state court trial and negative jury verdict in the pertinent state court action (Action Number 039960) and (2) the fact that the state court appeal involved counterclaims filed by Debtor against Ackerman, so the reference line of the letter is consistent with an agreement that Debtor had assigned any recovery from the successful reinstatement of those counterclaims on appeal.

the injured party." McLaughlin v. Nat'l Union Fire Ins. Co., 23 Cal. App. 4th 1132, 1146 (Cal. Ct. App. 1994); Reichert v. General Ins. Co., 68 Cal. 2d 822, 834 (1968). Therefore, while Debtor's counterclaims for libel and slander were not assignable as a matter of California law, his counterclaims for fraud and breach of oral contract were. Thus, California law would have permitted assignment of at least some of his appellate rights. In any event, the bankruptcy court did not err in concluding that Appellants and Debtor intended that an assignment occur.[11]

The record supports the bankruptcy court's conclusion that Brackey and Law Firm were not being honest when they filed declarations denying the existence of an assignment of Debtor's appellate rights to Law Firm. We therefore conclude that the bankruptcy court did not abuse its discretion in determining that Appellants had engaged in bad faith conduct by filing misleading and false declarations.

B. The Bankruptcy Court Properly Exercised Its Inherent Powers In Sanctioning Appellants

Appellants further argue that the bankruptcy court erred in invoking its inherent powers to sanction them because Rule 9011 was available as an alternate means of sanctioning. Appellants'

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[11] Ironically, Appellants' argument that the appellate rights were not assignable may provide an explanation for Appellants' motivations in denying the existence of an assignment in pleadings and declarations. If the libel and slander causes of action were not assignable as a matter of law, Appellants would not want the state appellate court to uphold the dismissal of those causes of action based on their lack of standing. It does not appear to be accidental that the May 18 Agreement was disclosed only after the state appellate court entered its decision affirming the state court judgment.

argument is baseless. The Supreme Court specifically held in Chambers that a federal court is not "forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules. . . . [I]f in the informed discretion of the court, neither the statute nor the Rules are up to the task [of sanctioning bad-faith litigation conduct], the court may safely rely on its inherent power." Chambers, 501 U.S. at 50.

The Ninth Circuit has held that even when the unavailability of other statutes and rules for sanctioning is due to the movant's failure to comply with such rules (such as the "safe harbor" provisions of Rule 9011), the bankruptcy court may rely on its inherent powers to sanction bad faith conduct. DeVille, 361 F.3d at 545-46 and 550-51. As noted by the Ninth Circuit in DeVille: "In discussing the foundation of a federal court's inherent power, the Supreme Court has emphatically rejected the notion that the advent of 28 U.S.C. § 1927 and the sanctioning provisions in the Federal Rules of Civil Procedure displaced the inherent power to impose sanctions for bad faith conduct." Id. at 551.

In light of these controlling authorities, the bankruptcy court did not err in exercising its inherent powers to impose sanctions in order to preserve the integrity of the judicial process. It did not have to resort to other remedies in order to vindicate its judicial authority.

C. The Bankruptcy Court Did Not Err In Holding That Ackerman Had Standing To Request Sanctions

Appellants argue that Ackerman did not have standing to

request sanctions for their conduct and, even if he did, he waived the right to request such sanctions by failing to seek them earlier. We disagree. First, Appellants' misrepresentations to the bankruptcy court affected not only the court, but the other litigants involved in the contested matters. Here, Ackerman was necessarily affected by motions pertaining to the state court appeal, including Law Firm's Appeal Authority Motion and the Brackey MRS. Appellants' obfuscation of the status of Debtor's standing to pursue the appeal resulted in Ackerman pursuing positions and filing pleadings regarding such standing without the benefit of material facts. And the fact that Ackerman may have been put on notice of the potential assignment as early as 2001 is irrelevant when Brackey continued to file declarations denying the existence of the assignment, particularly when the most important document (the May 18 Agreement) was not even produced until 2003.

D. The Bankruptcy Court Did Not Abuse Its Discretion In Deciding the Amount of Sanctions

On page 30 of their Opening Brief, Appellants state that "[i]t is well settled that attorney's fees incurred in making a Rule 11 motion are not allowable as sanctions under that rule," citing Pan-Pacific v. Pacific Union, 987 F.2d 594, 597 (9th Cir. 1993). Surprisingly, Appellants fail to note in their brief that Rule 11 was amended in 1993 to specifically allow a trial court to include in sanctions the costs associated with sanctions proceedings and that the Ninth Circuit has subsequently held that Pan-Pacific has been superseded by the amended Rule 11. Margolis v. Ryan, 140 F.3d 850, 854-55 (9th Cir. 1996) ("This court has

previously noted that the plain text of Rule 11 supercedes the former rule in this Circuit disallowing Rule 11 motion-related fees and costs.") (emphasis added); Buster v. Greisen, 104 F.3d 1186, 1190 n.5 (9th Cir. 1997), cert. denied, 522 U.S. 981 (1997). Because it relies on law that is no longer good (and has not been good for more than ten years), Appellants' argument that the bankruptcy court erred in awarding costs and fees associated with the prosecution of the sanctions motion is not well-taken.

Appellants also argue that because the bankruptcy court did not specify how the sanctions were calculated, the court abused its discretion in determining the reasonableness of the fees of Ackerman's counsel and thus the reasonableness of the sanctions. In particular, Appellants are concerned that the bankruptcy court failed to take into account various billing discrepancies and improper time entries by Ackerman's counsel.

As noted by the bankruptcy court in its memorandum decision regarding Appellants' motion for reconsideration, it did take into account the time sheets submitted by Ackerman's counsel as well as testimony before the court. "In arriving at the sum of $29,166.50, the court focused on those entries that identified with [Appellants'] bad faith conduct, as well as the prosecution of Ackerman's current Sanctions Motion." In addition, it did reduce the requested fees/sanctions from $70,000 to $29,166.50, taking into account the errors and mistakes by Ackerman's counsel:

> As more particularly set forth in their March 30, 2004 testimony before this court, Ackerman's counsel did point out certain mistakes and errors in computing the amount Ackerman had requested. These mistakes and errors, however, were taken into consideration by the

> court in determining the amount of sanctions imposed against [Appellants]. The court finds that the contents of the time sheets, minus the errors and mistakes, as well as Ackerman's counsel's testimony before the court, constitute credible evidence which supports the amount of sanctions imposed against [Appellants].

The bankruptcy court thus did consider the discrepancies and other purported billing improprieties identified by Appellants when fixing the amount of sanctions. Consequently, it did not abuse its discretion in awarding the amount it did.[12]

V.
CONCLUSION

In light of the foregoing, we AFFIRM.

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[12] Appellants have not pinpointed any specific errors by the bankruptcy court in making the award. To the contrary, when we asked at oral argument whether Appellants could identify those amounts which should be deducted from the award (because of discrepancies or because the fees were unrelated to the sanctionable conduct), counsel for Appellants simply replied "All of it."