

[NOT FOR PUBLICATION]

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE FIRST CIRCUIT

BAP NO. MB 97-016

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In re: BRIDGET M. HAYES,

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BRIDGET M. HAYES,  
Appellant

v.

UNITED STATES OF AMERICA,  
Appellee

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Appeal from the United States Bankruptcy Court  
for the District of Massachusetts  
[Hon. Joan N. Feeney, Bankruptcy Judge]

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Before

VOTOLATO, Chief Judge and HAINES and VAUGHN, Bankruptcy Judges.

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Bridget M. Hayes, Lexington, Massachusetts, appellant pro se.

Christopher Alberto, Assistant United States Attorney, with whom  
Donald K. Stern, United States Attorney, Boston, Massachusetts were  
on brief for appellee.

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August 6, 1997

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PER CURIAM.

The pro se Chapter 7 debtor Bridget M. Hayes, appeals the  
bankruptcy court's January 24, 1997, order allowing the claim of

the U.S. Department of Housing and Urban Development ("HUD") and authorizing distributions in payment of the claim. We affirm.

**I. FACTS AND PROCEDURAL HISTORY:**

From May 1976 to November 1982 Hayes participated in HUD's Section 8 Housing Assistance Payment Program. Thereafter, pursuing allegations that Hayes and her then husband, Andrew S. Klein, misrepresented their financial resources and leasing arrangements, HUD instituted a criminal action against Hayes for theft of government property in violation of 18 U.S.C. § 641.<sup>1</sup> After a jury trial in the United States District Court for the District of Massachusetts, Hayes was convicted of "embezzling, stealing, purloining and knowingly converting to her own use, money belonging to HUD, which money was in the form of monthly checks."<sup>2</sup> She was given a suspended sentence and placed on probation for two years.

Thereafter, HUD brought a civil action against Hayes under the False Claims Act, 31 U.S.C. § 3729, in the district court. Hayes failed to answer and HUD obtained a \$60,150.00 default judgment against her on May 21, 1987.<sup>3</sup> Hayes filed a Chapter 7 bankruptcy petition on June 6, 1989. HUD filed a timely proof of claim for \$60,150.00.

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<sup>1</sup> Although Klein is not a party in the bankruptcy case, he is mentioned to aid in understanding the underlying facts, and to address the Debtor's reference to him in argument.

<sup>2</sup> It appears that Hayes represented to HUD that she was a tenant leasing the residence from owner Klein when, in fact, Klein was her husband and she owned the property.

<sup>3</sup> The default judgment may be broken down as follows: \$22,065.00 in actual damages, \$22,065.00 in double damages, \$16,000.00 in civil penalties, and \$20.00 in court costs.

On March 14, 1995, the Chapter 7 trustee moved the bankruptcy court to approve distribution to HUD in the amount of its claim. Hayes objected, asking the court to reduce HUD's claim to its "actual damages" of \$22,065.00 and to order HUD to "seek satisfaction from Mr. Klein" as he was "financially secure." In the alternative, Hayes requested that the court "order HUD to assign to debtor its claim against Klein or ... recognize the debtor's right to seek contribution or indemnification from Mr. Klein for HUD's claim."

At the hearing on the trustee's motion, the bankruptcy judge overruled Hayes' objection and on January 24, 1997, authorized the \$60,150.00 distribution to HUD.<sup>4</sup> The bankruptcy court subsequently denied Hayes' emergency motion to stay distribution.<sup>5</sup>

## **II. DISCUSSION:**

In the absence of a factual dispute the allowance of HUD's claim presents only legal issues. We review the bankruptcy court's ruling de novo. Official Unsecured Creditors' Comm. v. Stern (In

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<sup>4</sup> The court's rationale for overruling Hayes' objection to the HUD claim was stated as follows:

The equitable argument of the debtor does not rebut the prima facie validity of the proof of claim and the judgment that was entered in connection with it, so the objection is overruled.

It appears that the bankruptcy court's ruling was not docketed until February 20, 1997.

<sup>5</sup> Although the January 24 Order is the one being appealed, the February 20 Order provides the legal basis for the January 24 Order approving disbursement over debtor's objections. Therefore, both the January 24 and the February 20 Orders are referenced.

re SPM Mfg. Corp.), 984 F.2d 1305, 1311 (1st Cir. 1993).<sup>6</sup>

A proof of claim filed in accordance with 11 U.S.C. § 501 "shall constitute prima facie evidence of the validity and amount of the claim," Fed. R. Bankr. P. 3001(f), and, absent objection, claims are deemed allowed. 11 U.S.C. § 502(a)<sup>7</sup>; Agricredit Corp. v. Harrison (In re Harrison), 987 F.2d 677, 680 (10th Cir. 1993); 4 Collier on Bankruptcy 502.02 (Lawrence P. King ed., 15th ed. Rev. 1997) (hereafter "Colliers").

Once a claimant sets forth facts sufficient to support its claim, any party in interest may object to it. E.g., In re Allegheny Intern., Inc., 954 F.2d 167, 173 (3d Cir. 1992). The objection must be substantial to overcome the proof of claim's prima facie force. Juniper Dev. Group v. Kahn (In re Hemingway Transport, Inc.), 993 F.2d 915, 925 (1st Cir. 1993) (an objection does not deprive the proof of claim of its presumptive validity unless supported by substantial evidence); Fullmer v. United States

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<sup>6</sup> Although the parties have not briefed the issue of Hayes' standing to appeal the denial of her objection to HUD's proof of claim, we note that the issue was addressed and considered by the bankruptcy court. Because a successful objection to HUD's claim would result in a return of surplus assets to the debtor, we may proceed with the merits. See Kapp v. Naturelle, Inc., 611 F.2d 703, 706-07 (8th Cir. 1979) (debtor has standing to appeal when it appears that if contested claims are disallowed there will be surplus of assets to be returned to debtor).

<sup>7</sup>

Title 11 U.S.C. § 502(a) provides:

A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(In re Fullmer), 962 F.2d 1463, 1466 (10th Cir. 1992) (objecting party must bring forth evidence equal to the probative force of the evidence supporting the claim); Allegheny, 954 F.2d at 173 (the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency). The ultimate burden of persuasion is always with the proponent of the claim to prove its amount and validity. Harrison, 987 F.2d at 680; Fullmer, 962 F.2d at 1466.

In this case, HUD's proof of claim included a certified copy of the district court's civil judgment, an order of execution, and a certification of attachment on real property. The proof of claim satisfied § 501's requirements and established HUD's claim, prima facie.

Hayes asserts that the civil judgment relied on by HUD to establish the amount of its claim was not returned on the merits, and it was therefore error for the bankruptcy court to base its decision on the judgment.<sup>8</sup> Although the application of collateral estoppel to default judgments is sometimes rejected because the doctrine requires that the issue to be precluded must have been "actually litigated" in the prior proceeding, the circumstances of

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<sup>8</sup> We have carefully reviewed, and charitably construed, Hayes' arguments in view of her pro se status. "Pro Se pleadings are 'entitled to a more lenient construction that [sic] might otherwise be required in litigation in which both parties are represented by counsel.'" In re Reider, 177 B.R. 412, 414 n.2 (Bankr. D. Me. 1994) (quoting Barrows v. Bezanson (In re Barrows), 171 B.R. 455, 459 (Bankr. D.N.H. 1994)).

this case allow for preclusion.<sup>9</sup> See, e.g., Federal Deposit Ins. Corp. v. Daily (In re Daily), 47 F.3d 365 (9th Cir. 1995); see generally 18 J. Moore, Moore's Federal Practice, § 132.03[2][k] (3d ed. 1997). Hayes' underlying criminal conviction triggered the civil suit for a determination of damages under the False Claims Act, 31 U.S.C. § 3729.<sup>10</sup> Hayes participated fully in the criminal action where the requisite facts were determined and underlying liability established.

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<sup>9</sup> Collateral estoppel effect of a judgment requires: 1) the existence of a final judgment rendered on the merits; 2) a subsequent action between the same parties or those in privity with them; and 3) the presence of the same claim or demand. Baltimore Steamship Co. v. Phillips, 274 U.S. 316 (1927).

<sup>10</sup> Title 31 U.S.C. § 3729 provides:

A person not a member of the armed forces of the United States is liable to the United States Government for a civil penalty of \$2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person-

(1) knowingly presents, or causes to be presented, to an officer or employee of the Government or a member of the armed force a false or fraudulent claim for payment approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim allowed or paid;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of public property or money used, or to be used, in an armed force and, intending to defraud the Government or willfully conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, in an armed force and, intending to defraud the Government, makes or delivers the receipt without

completely knowing that the information on the receipt is true; or,

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from a member of the armed force who lawfully may not sell or pledge property.

Through the False Claims Act's straightforward arithmetic formula, Hayes' civil liability could easily be determined from the criminal record. E.g., United States v. Thomas, 709 F.2d 968, 972 (5th Cir. 1988) (as criminal actions require a higher burden of proof and provide greater procedural protections, a criminal conviction is conclusive as to issues arising in subsequent civil proceedings); Berdick v. United States, 612 F.2d 533, 537-38 (Ct. Cl. 1979) (where parties and issues are identical, defendant is estopped from denying facts established during a criminal proceeding in a subsequent civil action). Hayes presented no substantial allegation, and no evidence, impugning the correctness of the district court's damages calculation. The simple fact that Hayes did not participate in the civil action does not, under these circumstances, undercut the prima facie force of HUD's proof of claim.

Hayes argues that the claim is "wholly disproportionate to the damages sustained by HUD" and asks us to reverse allowance of statutory double damages and civil penalties, limiting HUD's claim to its "actual damages." Our jurisdiction, as established by 28 U.S.C. § 158 and Fed. R. Bankr. P. 8001, does not extend to entertaining a collateral attack on the district court's judgment and damages award. Hayes' avenue for relief on that score was to initiate a direct appeal within the time provided by the civil rules, something she failed to do. The district court's damages determination was binding on the bankruptcy court, and it similarly binds us.

Finally, Hayes asserts that, as a matter of equity, we should order HUD to seek payment from Klein, as he has sufficient financial resources. Alternatively, we should order HUD to assign its rights against Klein to Hayes. We decline to do so. Neither the bankruptcy court nor this panel has the power to modify a claim supported by a valid judgment. Issues of contribution or subrogation between Hayes and Klein were not before the court in connection with its allowance or disallowance of HUD's claim.

Although the bankruptcy court is expressly authorized to exercise its equitable powers, 11 U.S.C. §105(a), this equitable power is not limitless. See generally Roffman v. Butler (In re ROPT Limited Partnership), 209 B.R. 144 (B.A.P. 1st Cir. 1997); 2 Colliers 105.01 at 105-5. Such powers are to be exercised in furtherance of the Bankruptcy Code's provisions, In re Volpert, 110 F.3d 494, 500 (7th Cir. 1997), and may not be employed to override the Code's requirements, Feld v. Zale Corp. (In re Zale Corp.), 62 F.3d 746, 760 n.42 (5th Cir.1995) (bankruptcy court may not appoint itself "a roving commission to do equity" in a fashion inconsistent with other provisions of the Code); Matter of Fesco Plastics Corp., Inc., 996 F.2d 152, 154 (7th Cir. 1993); see also In re Plaza de Diego Shopping Ctr., Inc., 911 F.2d 820, 830-31 (1st Cir. 1990) ("Even as a court of equity, however, the bankruptcy court's equitable discretion is limited and cannot be used in a manner inconsistent with the commands of the Bankruptcy Code.").

Modification or disallowance of a valid claim filed in accordance with § 501, without substantial evidence rebutting its

prima facie effect, would have overridden the Code rather than enforced it. The bankruptcy court correctly declined Hayes' invitation to do so, as do we.

**III. CONCLUSION:**

The bankruptcy court's order allowing payment of HUD's claim in full is AFFIRMED.

**SO ORDERED.**