NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-07-1030-PaMkB
ANNETTE D. GOODE-PARKER, Debtor.	Bk. No. LA 01-30943-BR
ANNETTE D. GOODE-PARKER; PAULA LAUREN GIBSON, Appellants,	
v.	**M E M O R A N D U M**[1]
ALFRED SIEGEL, chapter 7 trustee, Appellee.	

Argued and Submitted on May 17, 2007
at Pasadena, California

Filed - June 14, 2007

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

Honorable Barry Russell, Chief Bankruptcy Judge, Presiding.

Before: PAPPAS, MARKELL[2] and BRANDT, Bankruptcy Judges

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[1] 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.

[2] The Honorable Bruce A. Markell, United States Bankruptcy Judge for the District of Nevada, sitting by designation.

Paula Lauren Gibson ("Gibson") and the chapter 7[3] debtor appeal the bankruptcy court's order sustaining the objection of Alfred Siegel, trustee ("Trustee"), to Gibson's proof of claim. We AFFIRM.

FACTS

Appellant Annette Goode-Parker ("Debtor") retained attorney Harold Greenberg ("Greenberg")[4] to represent her in a divorce action on May 29, 2001. At that time, Debtor and her spouse, Marvin Parker, jointly owned a condominium in Los Angeles County (the "Property"). Although Debtor desired to retain the Property, the mortgage payments on the condominium were delinquent, and a foreclosure sale was scheduled to occur on June 6, 2001. Greenberg alleges that, at his urging, Wells Fargo Bank, the mortgage holder, agreed to a 30-day stay of the sale. However, during this time, Debtor was unable to negotiate an arrangement satisfactory to Wells Fargo to further delay foreclosure.

Allegedly based upon advice given to her by Greenberg, Debtor filed a pro se petition for relief under chapter 13 of the Bankruptcy Code on July 6, 2001. Debtor alleges Greenberg told her this course of action was the only way she could save her ownership interest in the Property.

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[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23.

[4] Unless otherwise noted, we refer to Greenberg, his law firm, and his associate, Carlo Fisco, collectively herein as "Greenberg."

An attorney, Jeffrey Wishman, appeared for Debtor in her bankruptcy case on July 20, 2001. Because Debtor was unable to devise a chapter 13 plan that would pay both Wells Fargo and a large tax claim of the IRS, she moved to convert the case to a proceeding under chapter 7. The bankruptcy court granted the motion to convert the case on March 12, 2002. Alfred H. Siegel was appointed to serve as trustee in the case.

The bankruptcy court granted Debtor a discharge on June 24, 2002; the bankruptcy case was closed on July 12, 2002.

The Property was sold at a foreclosure sale on July 26, 2002, for $140,050. On August 10, 2002, Debtor received a letter from Wells Fargo informing her of the sale. She alleges that it was then she realized that the advice allegedly given by Greenberg to file for bankruptcy relief was, in her opinion, wrong.

On or about June 25, 2003, Debtor engaged a new attorney, Gibson, who commenced a malpractice action against Greenberg on Debtor's behalf. Annette Goode-Parker v. Harold Greenberg et al., Los Angeles Superior Court Case no. BC-299713 (the "Malpractice Action"). On February 3, 2004, Debtor's second amended complaint was filed in the Malpractice Action alleging, among other things, that Greenberg was negligent in not obtaining title to the Property for Debtor, and in advising her to file the bankruptcy case.

In December 2004, Gibson withdrew as counsel for Debtor in the Malpractice Action. Debtor engaged new counsel, David Cordier.

On March 29, 2005, the Superior Court ruled that, in light of her bankruptcy filing, Debtor lacked standing to prosecute the

Malpractice Action and granted leave to Trustee to intervene as the proper party-plaintiff in the Malpractice Action. On June 21, 2005, Trustee moved to reopen the bankruptcy case in order to participate in, and administer any recovery from, the Malpractice Action. The motion was granted by the bankruptcy court on August 15, 2005, and Trustee was reappointed. Trustee intervened in the state court action and, eventually, entered into a settlement agreement with Greenberg calling for payment of $35,000 to the bankruptcy estate, which the bankruptcy court approved.[5]

On January 9, 2006, Gibson filed a Proof of Claim in the bankruptcy case for "reasonable attorneys' fees" and $3,500 in costs incurred while serving as Debtor's counsel in the Malpractice Action from June 2003 to November 2004. Trustee objected to this claim on September 6, 2006, principally because Gibson was never employed by Trustee, the employment was never approved by the court, the representation was for a non-bankruptcy matter, and therefore, Gibson was not entitled to payment from the bankruptcy estate. On October 11, 2006, Gibson filed an opposition to Trustee's objection, arguing that she had inadequate notice of the hearing scheduled for October 24, 2006, that she claimed an attorney's lien on the proceeds of the Malpractice Action, and that Trustee had acted improperly in administering the Malpractice Action.

The bankruptcy court conducted a hearing on Trustee's objection to Gibson's claim on October 24, 2006. Trustee was

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[5] Appellants' objections to the proposed compromise were overruled by the bankruptcy court. The Panel affirms the bankruptcy court's order approving the compromise in the related appeal, Goode-Parker v. Siegel, case no. CC-06-1408 (9th Cir. BAP June 14, 2007).

represented by counsel; Gibson appeared pro se and was heard. Debtor appeared at the hearing, but did not participate in the argument.[6]

The bankruptcy court attempted on several occasions during the hearing to focus Gibson's attention on its concern that her claim arose after the filing of Debtor's bankruptcy petition, and therefore, that Gibson did not hold a valid claim in Debtor's bankruptcy case.

> THE COURT: Let me ask you because, again, I certainly sympathize with your situation and you've obviously spent time and effort, but doesn't the statute say this [claim] is post-petition?
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> MS. GIBSON: But it's also post-discharge and I think that's the key. . . .

Tr. Hr'g 3:6-11 (October 24, 2006).

> THE COURT: I want to ask you. The problem is it's still – I'm faced with the legal question dealing with the allowance of your claim.
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> MS. GIBSON: Your Honor, if I could just make this one point. I understand you're going to rule against me.

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[6] Debtor has joined as an Appellant in this appeal. While no objection has been raised to Debtor's standing in this appeal, we have a responsibility to examine the standing of the parties to an appeal because it implicates the jurisdictional authority of the Panel. Paine v. Dickey (In re Paine), 250 B.R. 99 (9th Cir. BAP 2000). On the surface, it would seem that Debtor lacks standing to appeal the outcome of Trustee's objection to Gibson's claim. Heath v. Am. Express Travel Related Servs. (In re Heath), 331 B.R. 424, 429 (9th Cir. BAP 2005)("debtors only have standing to object to claims where there is 'a sufficient possibility' of a surplus to give them a pecuniary interest."). Debtor did not actively participate in oral argument in the bankruptcy court, and thus has raised no issues or arguments distinct from those advanced jointly with Gibson in their pleadings and briefs. However, if Gibson is not paid from the bankruptcy estate, presumably she can collect amounts owed on this post-petition, undischarged debt directly from Debtor. Therefore, Debtor has the requisite pecuniary interest in the outcome of this appeal to justify her standing. Id.

> THE COURT: Let me ask you. . . . I still have the issue before me do I not of whether or not you can have a claim?
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> MS. GIBSON: Well, I think that in the other cases dealt with the situation where lawyers were doing things for the Debtor that were intimately connected to the bankruptcy. This is not that situation. As far as I know, this is a Debtor that's been discharged.
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> THE COURT: Let me stop you. You're asking for a claim as to the estate. You can still . . . have a claim against your client.
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> MS. GIBSON: Well, under California state law, my claim is against the attorneys who have taken over the case and I think I cited the cases in my papers.
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> THE COURT: I don't think California law will trump the bankruptcy statute, does it?
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> MS. GIBSON: Well –
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> THE COURT: That's sort of a rhetorical question.

Tr. Hr'g 5:10 – 6:9.

The bankruptcy court sustained Trustee's objection to Gibson's claim: "I'm going to disallow the claim. Again, from your standpoint I totally understand but I'm bound by the statute and bound by the Supreme Court." Tr. Hr'g 8:17-20. The court issued an Order Sustaining Objection to Claim of Paula Lauren Gibson on November 6, 2006. Appellants timely filed a notice of appeal on November 9, 2007.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334(b)and 157(b)(2)(B). We have jurisdiction under 28 U.S.C. § 158(b).

ISSUES ON APPEAL

Whether the bankruptcy court erred in sustaining Trustee's objection to Gibson's proof of claim because she did not hold an allowable claim in Debtor's bankruptcy case.

Whether Gibson's rights under the Fifth Amendment to the United States Constitution were infringed.

STANDARDS OF REVIEW

There are no issues of fact presented in this appeal. Whether the bankruptcy court correctly interpreted and applied the Bankruptcy Code is a legal question which we review de novo. Bitters v. Networks Elec. Corp. (In re Networks Elec. Corp.), 195 B.R. 92, 96 (9th Cir. BAP 1996). We review the bankruptcy court's ruling concerning constitutional issues de novo. Cogswell v. City of Seattle, 347 F.3d 809, 813 (9th Cir. 2003).

DISCUSSION

1. The court did not err in sustaining Trustee's objection to Gibson's proof of claim.

A primer on the Code's provisions for allowance of creditors' claims in bankruptcy cases is in order.

In bankruptcy cases, a "claim" refers to a party's right to payment from, or to an equitable remedy against, the debtor. § 101(5). Section 501(a) instructs that "A creditor . . . may file a proof of claim." Section 502(a) provides that a "claim . . . , proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." If an objection to a claim is made, § 502(b) mandates

that the bankruptcy court, "after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount . . ." unless one or more of several grounds for disallowance exist. (Emphasis added).

As noted above, only a "creditor" may hold an allowable claim. Under the Bankruptcy Code, with some exceptions not applicable here, a creditor is an " [an] entity that has a claim against the debtor that arose at the time of or before the order for relief concerning debtor . . . ." § 101(10)(A) (emphasis added).

When this statutory regime is applied to the undisputed facts,[7] it is clear that Gibson was not a creditor, and did not hold an allowable claim, in Debtor's bankruptcy case. This is because her right to payment from Debtor of the attorney fees and costs incurred in the Malpractice Action did not arise "at the time of or before the order for relief concerning the debtor . . ." for purposes of § 101(10)(A).

Appellants' argument on appeal that Gibson is a creditor of the estate is fundamentally flawed. It is apparently based on their contention in the bankruptcy court that an order for relief

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[7] A properly executed and filed proof of claim constitutes "prima facie evidence of the validity and amount of the claim." Rule 3001(f). An objection to the proof of claim "creates a dispute which is a contested matter" which must be resolved after notice and opportunity for hearing. Lundell v. Anchor Const. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000). "Upon objection, the proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Id. (quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (additional citations omitted). Here, Trustee has not disputed the facts which Gibson alleges establish her right to file a proof of claim.

was entered when the bankruptcy case was reopened:

> The Bankruptcy Code's definition of "creditor" includes "an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 10(A). [sic] The Code defines "Claim" as a (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . . . <u>The order for relief concerning the debtor was the reopening of the bankruptcy estate on or about June 2005.</u>

Opposition to Objection to Proof of Claim Filed by Paula Lauren Gibson, Points and Authorities at p. 2 (emphasis added).

Appellants' position is incorrect. Under § 348(a), "[c]onversion of a case from a case under one chapter of [title 11] to a case under another chapter of [title 11] constitutes an order for relief under the chapter to which the case is converted . . . ." Put another way, the conversion of Debtor's bankruptcy case from a chapter 13 case to a chapter 7 case on March 12, 2002, constituted the "order for relief" for purposes of Debtor's chapter 7 bankruptcy case. As a result, Gibson did not have a "right to payment" (<u>i.e.</u>, a "claim") which "arose at or before the order for relief concerning the debtor."[8]

Appellants assign too much significance to reopening. We have repeatedly ruled that reopening a bankruptcy case is "a

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[8] Gibson is also not protected by any of the statutory exceptions to this rule, in that she is not "an entity that has a claim against the estate of a kind specified in sections 348(d)(<u>i.e.</u>, a post-petition, preconversion debt), 502(f)(a debt arising in the "gap" between filing of an involuntary petition and entry of an order for relief on that petition), 502(g)(a claim arising from the rejection of an executory contract or lease), 502(h)(a claim arising from the avoidance of a transfer from the debtor to the creditor) or 502(i)(certain post-petition tax claims)" for purposes of § 101(10)(B). Gibson also does not hold a community claim for purposes of § 101(10)(C).

ministerial act that functions primarily to enable the file to be managed by the clerk as an active matter and that, by itself, lacks independent legal significance and determines nothing with respect to the merits of the case." Menk v. LaPaglia (In re Menk), 241 B.R. 896, 913 (9th Cir. BAP 1997)(citing, DeVore v. Marshack (In re DeVore), 223 B.R. 193, 198 (9th Cir. BAP 1998); Abbott v. Daff (In re Abbott), 183 B.R. 198, 200 (9th Cir. BAP 1995); United States v. Germaine (In re Germaine), 152 B.R. 619, 624 (9th Cir. BAP 1993).

We know of no case law which holds that reopening a bankruptcy case constitutes a new order for relief. In two reported decisions in which the courts considered such an argument, both concluded that deeming the reopening to be a new order for relief would substantially alter the structure of the Bankruptcy Code. Johnson v. Long Beach Mortgage Loan Trust, 451 F.Supp.2d 16, 50 (D.D.C. 2006); Hoffman v. Money Mortgage Corp. of Am., 248 B.R. 79, 87 (Bankr. W.D. Tex. 2001). The Hoffman court in particular noted that entering a new order for relief could change the Code's treatment of property interests, claims, exemption rights, and preferences, among others.

> If Congress intended the "reopening" of a case as the equivalent of the entry of an "order for relief" for some purposes . . . then we would expect to see a detailed listing of the circumstances in which these basic concepts are altered by the opening of the case within section 350 itself. After all, if a case is converted pursuant to section [348], or dismissed, pursuant to section 349, those sections set out in significant detail the resulting impact of the twin notions of "order for relief" and "commencement of the case." Section 350(b) is, by contrast, succinct and utterly silent with regard to impact on either of these notions.

Hoffman, 248 B.R. at 81.

Appellants offer no reasoned analysis as to why we should adopt the revolutionary view that reopening a case constitutes a new order for relief, and consequently, that Gibson's services rendered to Debtor, after conversion but before the reopening of the case, qualify Gibson as a creditor of the estate. Rather, we conclude that the entry of the order for relief in Debtor's case occurred on March 12, 2002, when, on Debtor's motion, the bankruptcy court converted her original chapter 13 case to a proceeding under chapter 7.

Gibson's services to Debtor allegedly began with the filing of the state court complaint in the Malpractice Action in June 2003 and ended with Gibson's withdrawal as Debtor's counsel in that action in November 2004. However, to support her claim, Gibson's proof of claim identifies services for the period from November 2003 through November 2004. But even if we were to accept the June 2003 date for the commencement of services, this date is fifteen months after entry of the order for relief. All of Gibson's services were provided after the conversion of the case and thus Gibson does not hold an allowable claim in Debtor's chapter 7 bankruptcy case.[9]

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[9] Considerable attention was devoted by Trustee, Gibson and the bankruptcy court to the implications of the Supreme Court's decision in Lamie v. U. S. Trustee, 540 U.S. 526 (2004), which held that, under the 1994 amendments to § 330(a), a debtor's attorney is not entitled to payment for services from the bankruptcy estate. See Tr. Hr'g 2:12-18, 8:10-20, 9:7-8. However, Gibson provided no services to Debtor in connection with the bankruptcy case, and therefore, would be entitled to no compensation from the bankruptcy estate, even if the statute allowed such, as "debtor's attorney." As such, Lamie is inapplicable here.

Before leaving this discussion, we briefly address Gibson's allegation that she holds an "attorney's lien" on the proceeds of settlement of the Malpractice Action. Gibson appears to argue that California law allows an attorney's charging lien for the services she provided and the costs she incurred in bringing and prosecuting the Malpractice Action from March 2003 through November 2004 against any settlement reached in that action. Gibson did not cite to any statutory authority for the attorney's lien, relying instead on three California cases which we discuss below.

Gibson did not properly raise this argument in Appellants' Opening Brief; it is first addressed in Appellants' Reply Brief.[10] "Issues not raised in the opening brief are usually deemed waived." Balser v. DOJ, 327 F.3d 903, 911 (9th Cir. 2004). We have discretion whether to entertain such issues. Id. We see no reason to exercise that discretion here.

Even were the Panel to consider Gibson's attorney's lien argument on the merits, it fails. Under California law, an

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[10] Appellants do not directly assert that Gibson had an attorney's lien in their Opening Brief. They make indirect references to an attorney's "property right" in litigation proceeds in their discussion of Lamie. Then, in opposition to Trustee's earlier citation in the bankruptcy court proceedings to Pac. Far E. Line v. Official Creditors Comm., 654 F.2d 664 (9th Cir. 1991), Appellants also cite Pac. Far E. Line for the proposition that "an attorney retained under a contingency fee contract, and later discharged by the client without cause, holds a claim against the client for the reasonable value of his services." Id. at 668. However, Appellants do not tie these references in their Opening Brief to any specific argument that Gibson held an attorney's lien in these settlement proceeds. We also note that Pac. Far E. Line dealt with a written contingency fee agreement and all the attorney services were performed prepetition. We discuss below our conclusion that attorney charging liens in California must be based on a written agreement between attorney and client.

attorney's lien upon a settlement or judgment for compensation of services provided in recovering funds from another is denominated a "charging lien," and is imposed to secure either an "hourly or contingency fee arrangement." Cetenko v. United Cal. Bank, 30 Cal.3d 528, 531-32 (Cal. Ct. App. 1982). The California Supreme Court recently examined attorney's liens in Fletcher v. Davis, 33 Cal.4th 61, 65 (2004), and ruled unequivocally that, with exceptions not relevant here, "an attorney's lien is created only by contract. . . . Unlike a service lien or a mechanic's lien, for example (Civ. Code §§ 3051, 3110) an attorney's lien is not created by the mere fact that an attorney has performed services in a case." Id. The court reasoned that a charging lien creates "an adverse interest within the meaning of Rule 3-300 [Code of Professional Responsibility] and thus requires the client's informed written consent." Id. at 69 (emphasis added).

In Fletcher, the court examined a case in which the attorney still possessed the recovered funds on which he asserted a lien. However, one of the cases cited by Gibson involved an attorney who, like her, asserted a charging lien on a fund after the attorney was discharged. Weiss v. Marcus, 51 Cal. App.3d 590, 598 (Cal. Ct. App. 1975). In that case, the court recognized a continuing lien based on the original written agreement between the attorney and client. The second decision cited by Gibson was Siciliano v. Fireman's Fund Ins. Co., 62 Cal. App.3d 745 (1976) in which the court enforced a lien based on a written contingent fee agreement between the attorney and client.

The other case cited by Gibson is Huskinson & Brown, LLP v. Wolf, 32 Cal.4th 453 (2004). Huskinson was a dispute between a

law firm and a second firm to which it had referred a client with a written referral fee agreement. The Huskinson court ruled that the first firm could recover from the second in quantum meruit. Interestingly, the word "lien" never appears in the Huskinson decision.

In short, California case law is consistent in holding that an attorney's lien on settlement proceeds is enforceable if supported by a written representation agreement between an attorney and his or her client. At oral argument before this Panel, Gibson admitted that no written agreement existed between Debtor and herself. Moreover, even if some form of agreement could be established, both Gibson and Debtor indicated to the bankruptcy court that Gibson's services were provided pro bono: "Objector previously represented the debtor in connection with Goode-Parker v. Law Office of Harold Greenberg, Los Angeles Superior Court case number BC 299713. . . such representation was intended to be on a pro bono basis. . . ." Objection of Creditor Paula Lauren Gibson to Trustee's Motion to Approve Settlement at p. 2; Debtor's amended Schedule F, filed January 9, 2006, lists Gibson as an unsecured creditor for "Pro Bono (for Debtor only) Legal Services."

For all the above reasons, we conclude that the bankruptcy court did not err in sustaining Trustee's objection to Gibson's proof of claim because she did not hold an allowable claim in Debtor's bankruptcy case.[11]

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[11] Our holding is limited to Gibson's asserted claim under § 502. Gibson has not argued, nor do we consider, whether she may assert a right to a post-petition administrative expense under (continued...)

2. Gibson's Fifth Amendment rights were not infringed.

Gibson's Fifth Amendment argument is articulated in a mere three sentences in her opening brief: "The fifth amendment of the U.S. Constitution prohibits the taking of property without just compensation. Without compensation, appellant Gibson's property has been taken to advantage [sic] the other unsecured creditors. in [sic] violation of that amendment." Appellants' Opening Brief at 8. Gibson provides no additional elaboration, authority or reasoned analysis for this argument.

The Fifth Amendment forbids the taking of "private property . . . for public use, without just compensation." U.S. CONST. AMEND. V. The Ninth Circuit utilizes a two-step analysis in order to determine whether a "taking" has occurred. Engquist v. Or. Dept. Of Agric., 478 F.3d 985, 1002 (9th Cir. 2007). The first step is to determine "whether the subject matter is 'property' within the meaning of the Fifth Amendment" and the second step is to determine "whether there has been a taking of that property, for which compensation is due." Id. (citing Konizeski v. Livermore Labs (In re Consol. U.S. Atmospheric Testing Litig.), 820 F.2d 982, 988 (9th Cir. 1987).

Constitutionally protected property interests have expanded beyond real and personal property and the actual ownership of real estate, chattels and money. Board of Regents of State Colls. v. Roth, 408 U.S. 564, 571-72 (1972). Property protected by the Fifth Amendment has now been extended to include such things as

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[11](...continued)
§ 503. At oral argument, counsel for the Trustee conceded that Gibson is not foreclosed from applying to the bankruptcy court for allowance of such a claim.

interests in health and welfare benefits. Goldberg v. Kelly, 397 U.S. 254, 261-62 (1970). Such an expansion does not, however, mean that every potential interest constitutes a protected right. Rather, a protected property interest requires "a legitimate claim of entitlement" to be established. Pierre v. West, 211 F.3d 1364, 1366 (Fed. Cir. 2000) (quoting Roth, 408 U.S. at 577; Am. Mfrs. Mut. Ins. v. Sullivan, 526 U.S. 40, 60 (1999)).

As discussed above, Gibson did not hold an allowable claim against, and could prove no entitlement to payment of fees from, the bankruptcy estate. She submitted her proof of claim in the reopened bankruptcy case, to which Trustee objected. Gibson appeared at the hearing conducted by the bankruptcy court concerning her claim, the court considered Gibson's arguments, and correctly disallowed the claim. As the bankruptcy court properly concluded, there was no statutory basis for Gibson to recover fees from the bankruptcy estate. Simply put, that Gibson will not be paid from the funds recovered by Trustee from settlement of the Malpractice Action does not, under these facts, amount to a "taking" by the bankruptcy court.

Gibson raised an additional, due process argument in the bankruptcy court, but has not specifically argued it on appeal: whether Gibson had adequate notice of the hearing on the objection to her claim. To the extent that Gibson's vague Fifth Amendment argument is intended to address procedural concerns, we will address it here.

Gibson alleges that she did not receive the notice until October 9, 2006, for the hearing scheduled on October 24, 2006. Rule 3007 requires 30 days' notice to the affected creditor of a

hearing on an objection to her claim. The Ninth Circuit ordinarily does "not condone violations of the Bankruptcy Rules' notice requirements." Preblich v. Battley, 181 F.3d 1048, 1051 (9th Cir. 1997). However, the Preblich court ruled that, to assert a violation of the Due Process Clause, an individual must first show that he or she has been deprived of life, liberty or property. Where a creditor can not establish that he or she is being deprived of property, the lack of notice or inadequate notice of a hearing denying their claim is harmless. Id. Here, Gibson has not been deprived of a property interest by the bankruptcy court and thus, to the extent notice to her was inadequate, it was harmless.

CONCLUSION

We AFFIRM the order of the bankruptcy court.