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# Marks v. Brucker: The Bankrupt's Right to Settle Claims with After-Acquired Assets

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## MARKS V. BRUCKER: THE BANKRUPT'S RIGHT TO SETTLE CLAIMS WITH AFTER-ACQUIRED ASSETS

[A] state court *in personam* judgment for or against the bankrupt does not by force of law settle, resolve, liquidate or discharge a claim against the estate in bankruptcy. *A fortiori*, any release obtained or settlement made by the bankrupt with respect to his own personal liability can have no greater effect.<sup>1</sup>

Thus, in *Marks v. Brucker*,<sup>2</sup> the Court of Appeals for the Ninth Circuit ruled that, absent participation by the bankruptcy trustee, efforts by the bankrupt to discharge claims against his estate are of no binding effect.

In 1965, Brucker and his wife sued Marks and his wife in state court for \$127,195.21 due on a guaranty. Within a month Marks filed a petition in bankruptcy and five months later was granted a discharge. On July 25, 1966, in settlement of the still pending state court action, the Markses paid 1,500 dollars to the Bruckers in exchange for an agreement purporting to be a "mutual release of all claims by each party against the other and specifically a settlement of the pending law suit."<sup>3</sup> This settlement was made with after-acquired, nonbankruptcy-estate funds.<sup>4</sup> A year later, on the basis of this settlement, the state court action was dismissed with prejudice. Brucker, however, refused to withdraw his claim in the bankruptcy court.<sup>5</sup> Marks filed a written objection

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1. *Marks v. Brucker*, 434 F.2d 897, 901 (9th Cir. 1970). A state court in personam judgment rendered against the bankrupt after he has filed a petition in bankruptcy is not binding on the estate unless the trustee intervenes. *In re Paramount Publix Corp.*, 85 F.2d 42 (2d Cir. 1936); *In re James A. Brady Foundry Co.*, 3 F.2d 437 (7th Cir. 1924); *In re Kenwood Storage & Warehouse Corp.*, 4 F. Supp. 561 (E.D.N.Y. 1930); *In re Service Appliance Co.*, 39 F.2d 632 (N.D.N.Y. 1930); *In re Hoey, Tilden & Co.*, 292 F. 269 (S.D.N.Y. 1922). However, if the proceeding is in rem, the judgment is binding. 1A W. COLLIER, COLLIER ON BANKRUPTCY, ¶ 11.09, at 1177 (14 ed. J. Moore & L. King 1971) [hereinafter cited as COLLIER].

2. 434 F.2d 897 (9th Cir. 1970).

3. *Id.* at 898.

4. *Id.* at 898. The policy of the Bankruptcy Act, 11 U.S.C. § 1 *et seq.* (1970) [hereinafter referred to as the Act], suggests that to protect creditors, the bankrupt must relinquish all control of the assets. Upon appointment, the trustee assumes full control and responsibility to preserve and liquidate the assets in the estate. Act, § 47(a); 11 U.S.C. § 75(a) (1970); see 4A COLLIER, *supra* note 1, ¶ 70.04, at 48-62. This policy does not dictate that the bankrupt cannot bargain and make settlements with funds acquired after bankruptcy.

5. The bankruptcy estate had been closed as a no asset estate, holding as non-administered assets some stock in a public company. The trustee had reopened the estate when the nonadministered stock became actively traded and developed a value of 18,000 to 20,000 dollars. Marks had settled most of the claims in the estate in the same manner as Brucker's claim and now hoped to preserve for himself the newly

to Brucker's claim, asserting that it had been released and discharged and that the state court action had been dismissed with prejudice. The bankruptcy referee overruled the objection, and this finding was sustained on petition to review in the district court. On appeal, the decision was affirmed by the Ninth Circuit.<sup>6</sup>

#### PRECEDENT OVER POLICY

The policy underlying disallowance of state court in personam judgments rendered after the filing of bankruptcy is protection of other creditors from prejudicial action by the bankrupt. Premised upon non-intervention by the trustee,<sup>7</sup> this policy recognizes that an in personam judgment may be rendered where the bankrupt has either failed to defend the suit or has done so inadequately.<sup>8</sup> To give binding effect to such a judgment would unfairly prejudice the other creditors, contrary to the policies of the Bankruptcy Act. The *Brucker* court's refusal to give binding effect to the bankrupt-creditor settlement was an attempt to implement these policy considerations.

The cases cited by *Brucker* as supporting are reflective of this creditor protection policy.<sup>9</sup> In each case, the possibility existed that

valuable stock. The purpose of the settlement with Brucker was basically to discharge Mrs. Marks' obligation to Brucker. Brucker also had a judgment lien against Marks' residence. Although the lien could have been removed in the bankruptcy proceeding, it was also disposed of by the settlement. Letter from Lee J. Cohen (counsel for Marks) to Rory O'Bryan, Nov. 17, 1971, on file in Indiana University Law Library, Bloomington, Ind.

6. The only reported case on point is *In re Norris*, 190 F. 101 (D. Minn. 1911). The bankrupt had used postbankruptcy assets (stock in a corporation) to settle a claim against the bankruptcy estate. In exchange for the stock, the claimants agreed to release the bankrupt from all claims they had against him. When the claimants tried to assert their settled claims, the court held that the release had been bargained for and consideration given. Therefore, the release was binding. State contract law was controlling.

7. The bankruptcy court may order the trustee to defend a pending state court suit against the bankrupt; otherwise the trustee need not intervene. Act, § 11(b); 11 U.S.C. § 29(b) (1970); *Bowles v. Pacific Commissary Co.*, 199 Cal. App. 2d 438, 18 Cal. Rptr. 838 (Dist. Ct. App. 1962); *In re Edward's Will*, 94 N.Y.S.2d 810 (Sur. Ct.), modified on other grounds, 277 App. Div. 1091, 101 N.Y.S.2d 257 (1950).

8. To make a fair and equal distribution of the estate to creditors through the federal courts is a prime object of the Bankruptcy Act. To accomplish it, it is just as important that the claims of the distributees be ascertained by the bankruptcy tribunal as that the bankrupt's property should be collected by it. That the distribution should be controlled by the judgments of other courts in any jurisdiction where the bankrupt can be served, the creditor perhaps selecting a favorable forum, and the bankrupt perhaps playing favorites in defending, would be most unfortunate.

*In re Barrett & Co.*, 27 F.2d 159, 161 (S.D. Ga.), *aff'd sub nom. Rhodes v. Elliston*, 29 F.2d 737 (5th Cir. 1928).

9. In *In re James A. Brady Foundry Co.*, 3 F.2d 437 (7th Cir. 1924), a creditor won a state court default judgment several days after appointment of the

other creditors would be unfairly prejudiced if the bankruptcy court gave effect to a state court judgment. In *Brucker*, however, disallowance of the judgment was not required to effectuate this creditor protection policy. Indeed, this policy should have required that the judgment be given effect.

A *Brucker*-type rule that bankruptcy courts are not bound by post-bankruptcy settlements or in personam judgments does not seem justified. Such a rule fails to recognize that certain situations may exist in which a settlement or judgment<sup>10</sup> will not prejudice creditors. If the bankrupt settles a claim against the estate with after-acquired nonbankruptcy funds, as was the case in *Brucker*, the usual result will be a higher percentage distribution for the remaining creditors. In addition, a settlement which creates a surplus from what would otherwise be an insolvent

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trustee. The trustee objected to the judgment, alleging that there was nothing due from the bankrupt to the claimant. On appeal, the court held that there should be a hearing, and the case was remanded to allow the referee to hear the claim on its merits.

In *In re Barrett & Co.*, 27 F.2d 159 (S.D. Ga. 1928), bankrupt's counsel failed to defend a state court action by a creditor because the attorney was no longer retained by the bankrupt. The trustee's attorney did not intervene because the trustee was not a party. On appeal from the referee, the trustee prevailed.

*In re Hoey, Tilden & Co.*, 292 F. 269 (S.D.N.Y. 1922), involved a bankruptcy receiver who sought to enjoin a state court suit against the bankrupt. In denying the injunction, the district court said:

The bankruptcy might get a stay but not the receiver, who has no interest in protecting the bankrupt against suits in personam. The judgment, if obtained, would not be a liquidation of the claim against the estate which has no interest in the action.

*Id.* at 271.

In *re Service Appliance Co.*, 39 F.2d 632 (N.D.N.Y. 1930). The court held that where a claimant had prosecuted a rent claim in state court after the bankrupt's petition, the resultant judgment was properly disallowed as to the amount and the validity of the claim. In *In re Kenwood Storage & Warehouse Corp.*, 4 F. Supp. 561 (E.D.N.Y. 1930), the court held that an in personam deficiency judgment obtained in an action to which the trustee was not a party, was not binding on the trustee. In *In re Paramount Publix Corp.*, 85 F.2d 42 (2d Cir. 1936), a reorganization proceeding, the court recognized that an employee's state court judgment for lost wages was not binding because the trustee had not intervened.

The cases cited as analogous in *Brucker* (434 F.2d at 901) also failed to support the position because in them, too, it was the creditor who was asserting the judgment. *In re Paramount Publix Corp.*, *supra*; *Coleman v. Alcock*, 272 F.2d 618 (5th Cir. 1959) (creditor's state court judgment against bankrupt does not bind trustee); *In re Long Island Properties, Inc.*, 40 F. Supp. 611 (S.D.N.Y.), *modified on other grounds*, 42 F. Supp. 323 (S.D.N.Y. 1941) (state court without jurisdiction over the debtor's property as of the instant bankruptcy petition filed); *Pepper v. Litton*, 308 U.S. 295 (1939) (judgment creditor was controlling stockholder of bankrupt; bankruptcy court not bound by judgment).

10. A further reason to accept a state court judgment is to give effect to the doctrine of *res judicata*. The issue litigated was probably based on state law. If defended properly and if there is no overriding federal policy dictating otherwise, the state court judgment should be recognized by the bankruptcy court.

estate benefits both the creditors and the bankrupt.<sup>11</sup> Settlement of a nondischargeable claim may benefit all parties since it will remove a claim on the estate and will assure the bankrupt that the debt will not survive the bankruptcy proceedings.<sup>12</sup>

In cases involving a voluntary postbankruptcy settlement, only the creditor who has settled his claim runs the risk of being detrimentally affected. While it may be argued that the Act requires that no creditor be prejudiced, both equity and contract principles would seem to dictate that the creditor who has settled be bound by the burdens as well as the benefits of his contract. While he may have made a bad bargain, he has not been prejudiced.<sup>13</sup>

An analogy may be drawn to a third party's payment of a bankrupt's debt. If a third party pays a claim against the bankrupt, the creditor's acceptance of payment as a release should bind the bankruptcy court if that was the intent of the creditor and the third party.<sup>14</sup> The bankrupt's settlement of a claim with after-acquired funds should have the same effect since he is a "third party" as to claims against his estate in bankruptcy.<sup>15</sup> This analogy draws some support from *Woodmar Realty Co. v. McLean*,<sup>16</sup> in which the bankrupt had been given court authority to bargain for settlement agreements using assets held by the trustee.<sup>17</sup>

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11. It was alleged in *Brucker* that disallowance of Brucker's claim would result in a solvent estate. 434 F.2d at 899.

12. The Act recognizes that certain claims are nondischargeable. Act, § 17(a); 11 U.S.C. § 35(a) (1970). Allowing the bankrupt to settle these claims and to give effect to the settlements is a recognition of the policy of helping the bankrupt reestablish himself financially. This policy was recognized in *Williams v. United States Fidelity & Guar. Co.*, 236 U.S. 549 (1915).

13. The common thread running through the entire question is one of the intent of the parties. If the settling creditor intended to be bound by the agreement, the court should give effect to that intent. Obviously, the question of intent is difficult of proof.

14. *Adams v. Napa Cantine Wineries*, 94 F.2d 694 (9th Cir. 1938). A third party had made a payment of 2,000 dollars to the claimant in bankruptcy. The bankrupt and its president alleged that this was a payment on a claim against the estate; the payee-creditor denied this contention. In the face of conflicting testimony, the court found that the payment was not intended to be on one of the debtor's obligations. It then said: "We believe it must be held, under the circumstances here, that the payment was not intended to be one of the debtor's obligation." *Id.* at 699.

The negative inference is that had the payment been made and received with the intent to relieve the bankrupt's obligation, it would have been binding. Cf. *Luckenbach v. McCahan Sugar Co.*, 248 U.S. 139 (1918); *Bank of Italy Nat'l Trust & Sav. Ass'n v. Farmers' & Merchants' Nat'l Bank*, 44 F.2d 325 (9th Cir. 1930); *Bradley v. Lehigh Valley R.R.*, 153 F. 350 (2d Cir. 1907).

15. After filing for bankruptcy, the bankrupt's nonexempt assets become the res of the bankruptcy estate, with title vested in the trustee. Act, § 70; 11 U.S.C. § 110 (1970). The estate is a separate jural entity from the bankrupt.

16. 306 F.2d 479 (7th Cir. 1962), *cert. denied*, 380 U.S. 952 (1965).

17. Such negotiations were not binding until the court gave its approval. 306 F.2d at 480.

When this authority to negotiate for the estate was subsequently revoked, the court noted that :

Woodmar Realty is, of course, free to negotiate and settle any claims against the estate with funds other than those in the bankrupt estate.<sup>18</sup>

A similar analogy arises from a creditor's assignment of his bankruptcy claim.<sup>19</sup> The bankrupt who enters into a settlement using after-acquired funds may be thought to assume the "right" from the creditor. That the bankrupt is the "assignee" rather than some third party should not affect the "assignability" of the claim so long as other creditors are not prejudiced. No such prejudice is involved if the settlement does not deplete the assets of the estate. The nonprejudicial nature of such an "assignment" is reinforced if, as in *Brucker*, the bankrupt does not assert his newly acquired claim in the bankruptcy court.

Still another bankruptcy policy would seem to favor such mutual agreements when made with after-acquired funds. An accepted policy of the Act is to get the bankrupt back on his feet financially.<sup>20</sup> This will usually require reestablishing his credit.<sup>21</sup> If settlement of a claim with after-acquired funds can assist the bankrupt in this endeavor without prejudicing other creditors, bankruptcy policy would seem to indicate that the agreement be given binding effect.

A third policy of the Act is to relieve the bankrupt from harrassment by creditors seeking payment. It may be argued that giving binding effect to *Brucker*-type settlements contravenes this policy. Certainly creditors will pressure the bankrupt to enter into such arrangements. However, it is recognized that a bankrupt's reaffirmation of a claim may be given binding effect even after discharge.<sup>22</sup> While it might be asserted that no creditor pressure of any kind should be allowed, it makes little sense to allow reaffirmations but to prohibit postbankruptcy settlements.

#### THE STANDING AFFORDED TO THE BANKRUPT

The *Brucker* court failed to determine whether Marks (or any

18. 306 F.2d at 480.

19. For a discussion of assignability of claims, see 3 COLLIER, *supra* note 1, at ¶ 57.06.

20. *Williams v. United States Fidelity & Guar. Co.*, 236 U.S. 549 (1915).

21. The reality of many bankruptcies is that the bankrupt must continue to transact business with many of his old creditors. To reestablish himself will often require reestablishment of credit with these same people.

22. RESTATEMENT (SECOND) OF CONTRACTS § 87 (Tent. Draft No. 2, 1965). For a critical discussion of reaffirmation, see Boshkoff, *The Bankrupt's Moral Obligation to Pay His Discharged Debts: A Conflict Between Contract Theory and Bankruptcy Policy*, 47 IND. L.J. 36 (1971).

bankrupt) should be afforded standing to contest the claim. Instead, the court held that Brucker's failure to object to the bankrupt's standing in accordance with federal rules 9(a) and 12(g)<sup>23</sup> constituted a waiver of that defense.<sup>24</sup>

Barring waiver, however, the Act seems to indicate that a bankrupt should not have standing. Section 57(d) of the Act indicates that an initial objection to a claim must be made by "parties in interest" or by the court on its own motion.<sup>25</sup> A "party in interest" has been interpreted as one who has "an interest in the res which is to be administered."<sup>26</sup> Since the bankrupt usually has no interest in the res of the bankruptcy estate, he normally is denied standing to object as a "party in interest."<sup>27</sup>

The Bankruptcy Act specifies that a "person aggrieved" may petition for review of a referee's order.<sup>28</sup> Case law has traditionally excluded the bankrupt from the definition of "person aggrieved."<sup>29</sup> The "aggrieved party" standard has also been applied to determine whether an appellant has standing to appeal the decision of the district court.<sup>30</sup> The bankrupt is generally not considered to be an "aggrieved party" for purposes of such an appeal.<sup>31</sup>

Although continued reliance on these narrow interpretations of

23. FED. R. CIV. P. 9(a), 12(g).

24. 434 F.2d at 899.

25. Claims which have been duly proved shall be allowed upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest or unless their consideration be continued for cause by the court upon its own motion. . . .

11 U.S.C. § 93(d) (1970).

26. *In re Sully*, 152 F. 619, 620 (2d Cir. 1907), *cert. denied sub nom.* Miller v. McCormick, 27 S. Ct. 793 (1907).

27. *Skelton v. Clements*, 408 F.2d 353 (9th Cir.), *cert. denied sub nom.* Skelton v. United States Courts, 394 U.S. 933 (1969). The right of a bankrupt to object to an allowance is confined to exceptional cases. The theory is that since the bankrupt is insolvent and has turned over all of his assets to the trustee, he has no interest in the manner in which the assets are distributed among his creditors. 3 COLLIER, *supra* note 1, ¶ 57.17[2.1]. Cases in which the bankrupt has been held a "party in interest" with standing include: *In re Woodmar Realty Co.*, 241 F.2d 768 (7th Cir. 1957) (disallowance would create a solvent estate); *United States v. Walley*, 160 F. Supp. 67 (S.D. Cal. 1958), *rev'd on other grounds*, 259 F.2d 579 (9th Cir. 1958) (claims would not be discharged); *In re Ankeny*, 100 F. 614 (N.D. Iowa 1900) (no trustee appointed).

28. Act, § 39(c); 11 U.S.C. § 67(c) (1970).

29. *Skelton v. Clements*, 408 F.2d 353 (9th Cir. 1969); *Caldwell v. Armstrong*, 342 F.2d 485 (10th Cir. 1965); *Hartman Corp. v. United States*, 304 F.2d 429 (8th Cir. 1962); *In re Terrace Supprette, Inc.*, 229 F. Supp. 371 (W.D. Wis. 1964); *In re Tognetti*, 57 F. Supp. 286 (N.D. Cal. 1944); *In re Sawilowsky*, 284 F. 975 (S.D. Fla. 1922).

30. *Klein v. Rancho Montana De Oro, Inc.*, 263 F.2d 764 (9th Cir. 1958). This case applied the standard to an appeal under Act, § 25(a); 11 U.S.C. § 48(a) (1970). That section has since been superseded by FED. R. APP. P. 6.

31. *Wells v. Dickinson*, 403 F.2d 635 (6th Cir. 1968).

standing facilitates decision making, it contravenes both the plain meaning and the underlying policy of the Act. Section 7(a) of the Act<sup>32</sup> requires that the bankrupt assist the trustee in ascertaining and assuring that only valid claims are allowed. A creditor can also object to a claim as invalid,<sup>33</sup> but has no duty to do so. Therefore, the bankrupt's interest in ascertaining and determining the validity of claims may be greater than the creditors, for a violation of his § 7(a) duty may cause the bankrupt to be denied a discharge.<sup>34</sup> A creditor's failure to exercise his right is subject to no such sanction. Thus, there seems little justification for adjudging a creditor to be a "party in interest" while denying the bankrupt that appellation.<sup>35</sup>

A bankrupt has no right to object if the trustee fails to contest a claim. A creditor, however, is generally authorized to proceed further if the trustee fails to contest a claim objected to by the creditor.<sup>36</sup> Since in such a case a creditor is given standing to proceed in the trustee's name, it seems anomalous that the bankrupt, who may have a greater interest, should be denied the same opportunity.

Such a narrow interpretation of the Act ignores the fact that many bankrupts will continue to do business with their creditors and, therefore, will want to make every effort to assure that their creditors receive maximum benefits from the estate. A bankrupt can create substantial good will by fighting in his creditors' behalf to exclude claims that should

32. 11 U.S.C. § 25(a) (1970).

33. A creditor is, of course, a "party in interest" within the meaning of § 57(d). See note 25 *supra*. See also 3 COLLIER, *supra* note 1, ¶ 57.17[2.2].

34. Act, § 14(c); 11 U.S.C. § 32(c) (1970).

35. There are some exceptions to § 7 which allow the bankrupt the right to contest a claim. One example occurs when the bankruptcy estate is solvent so that the bankrupt has a direct financial interest. See also cases cited note 27 *supra*.

36. With only few exceptions, bankrupts and creditors are not proper parties to petition for reconsideration. *In re Fine*, 300 F. 429 (D. Conn. 1924).

Prior to allowance, direct or indirect, objections may be filed. The filing of objections is primarily the trustee's duty. Subsequent to allowance the objection assumes the form either of a petition to review, an appeal, or a petition for reconsideration. There is nothing in this change of procedural form to justify a deviation from the salutary rule of good order that the raising of objections is primarily the trustee's duty and privilege. . . . It is for good and valid reasons, therefore, that courts have generally confined the creditors' and the bankrupt's right to petition for reconsideration to cases in which there was either no trustee, or in which the trustee clearly and unreasonably refused to act. This principle is sound and worth preserving.

3 COLLIER, *supra* note 1, ¶ 57.23[2], at 360-61 (footnotes omitted). See also *Wells v. Dickinson*, 403 F.2d 635 (6th Cir. 1968); *In re Tyne*, 261 F.2d 249 (7th Cir. 1958), *cert. denied sub nom. Tyne v. Venetucci*, 359 U.S. 974 (1959); *In re Woodmar Realty Co.*, 241 F.2d 768 (7th Cir. 1957); *Heiser v. Woodruff*, 150 F.2d 867 (10th Cir. 1945), *rev'd on other grounds*, 327 U.S. 726 (1945); *In re Jayrose Millinery Co., Inc.*, 93 F.2d 471 (2d Cir. 1937).



not be allowed.<sup>37</sup> In *American Anthracite & Bituminous Coal Corp. v. Leonardo Arrivabene, S.A.*,<sup>38</sup> the Court of Appeals for the Second Circuit characterized General Order 21(6),<sup>39</sup> which concerns the bankrupt's standing to petition for reconsideration<sup>40</sup> of an allowed claim, as:

a recognition of the fact that a debtor, particularly one who anticipates that his business will continue after reorganization, has a real interest in seeing that his assets are distributed equitably among his creditors in accordance with the bankruptcy law.<sup>41</sup>

Furthermore, disallowance of a claim will increase each creditor's share, result in full payment and/or create a surplus. Thus, considering his § 7(a) duty, the possible sanctions for violating that duty and the benefit which might inure to him from successful objection to a previously settled claim, it is difficult to see how a bankrupt can be considered anything less than a "party in interest."

A similar analysis is applicable to the phrase "person aggrieved." The benefit which a bankrupt may derive from disallowance of an invalid claim would seem to require that a referee's or judge's decision denying disallowance would render the bankrupt a "person aggrieved." Once the bankrupt is adjudged a "party in interest," there can be little doubt that an adverse decision would render him a "person aggrieved."

The *Brucker* court, in dicta, did indicate that bankrupts should be afforded standing. The court implied that the policies which justify standing to petition for reconsideration under General Order 21(6) might also be applicable to a bankrupt wishing to raise an original objection or to appeal a ruling on such an objection. The *Brucker* court noted that while the facts were distinguishable, the language of *Arriva-*

37. Although § 7 gives the duty to the bankrupt to advise the trustee of claims that should not be allowed, this duty does not end with discharge. *Larcon Co. v. Wallingsford*, 136 F. Supp. 602 (W.D. Ark. 1955), *aff'd on other grounds*, 237 F.2d 904 (8th Cir. 1956).

38. 280 F.2d 119 (2d Cir. 1960). *Arrivabene* was a corporate reorganization proceeding under chapter XI. Act, § 301 *et seq.*; 11 U.S.C. § 701 *et seq.*; (1970).

39. When the trustee or any creditors or the bankrupt or debtor shall desire the reconsideration of any claim allowed against the estate, he may apply by petition to the referee. . . .

GEN'L ORD. IN BANKR. 21(6) (emphasis added).

40. The procedural stages for objection to claims (after the initial objection) are:

a petition to the district court to review the referee's order of allowance;  
 . . . an appeal from the district court's order of allowance; . . . a petition for reconsideration.

COLLIER, *supra* note 1, ¶ 57.17[2], at 251.

41. 280 F.2d at 122.

*bene* was persuasive.<sup>42</sup> A close look at *Arrivabene*, however, reveals that its holding was not based solely on General Order 21(6).<sup>43</sup> Furthermore, the *Arrivabene* court failed to consider the policy restrictions imposed on 21(6).<sup>44</sup> Therefore, the General Order 21(6) analogy cannot be a sufficient basis upon which to grant the bankrupt standing but must be reinforced by the underlying policies of the Act.

Section 57(d) does provide that the court may continue the consideration of any claim for cause and upon its own motion.<sup>45</sup> This may afford the bankrupt some protection. However, if the court should fail to act against a questionable or previously settled claim, the bankrupt must prove an abuse of judicial discretion in order to effect any remedy. Unfortunately, proof of such an abuse is highly unlikely in this context.

The *Brucker* decision was based more on precedent than on sound bankruptcy policy. Implementation of the policies behind the Bankruptcy Act should have required that the settlement and in personam judgment be given binding effect. No participating creditor would have suffered prejudice had the settlement been upheld. Recognition that the bankrupt was a "party in interest" or "person aggrieved" would have allowed the court to reach an equitable result.

The analysis of the problem in *Brucker* is circuitous. Sound bankruptcy policy dictates that Marks' settlement and the ensuing state court dismissal should bind the referee. Therefore, the bankrupt should be afforded standing as a "party in interest" or "person aggrieved." On the other hand, an initial holding that the bankrupt has standing is a recognition that he has an interest and should be able to enter into transactions which may bind the trustee.

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42. 434 F.2d at 899. The court noted that the policies behind General Order 21(6) might differ in a straight bankruptcy from those prevailing in a reorganization under chapter XI.

43. The *Arrivabene* court noted at least two other bases for standing: (1) The referee upon his own motion may reconsider a claim. Since the referee can act without anyone filing an objection, he should also be allowed to do so upon suggestion of the debtor. (2) In this particular case the debtor was in possession of the property. 280 F.2d at 122.

44. It may as a matter of policy and reasoning be perfectly justifiable to argue that, for instance, if a bankrupt may apply for reconsideration, he should also be entitled to prosecute an appeal, and possibly *a fortiori* be allowed to object to an as yet unallowed claim. Yet it is well to bear in mind that such conclusions are not always cogent, but frequently prove in the nature of an analogy that may or may not be warranted, since certain rules that properly apply to reconsideration or to review are not necessarily transferable to similar or cognate means of opposing an allowance such as an objection or an appeal.

3 COLLIER, *supra* note 1, ¶ 57.17[2], at 251-252 (footnotes omitted). See also *id.*, ¶ 57.23[2], at 360-62.

45. For text of § 57(d), see note 25 *supra*.