2022 BCLS CLE
POSSIBLE QUESTIONS FOR THE "TOWN HALL" PORTION

1. How has the practice of law in your courtroom changed in light of the pandemic?

    a. Is it different now than it was a year ago?

    b. Do you see any changes as here for good?

    c. Are there any practice and procedure changes from the pandemic that you would like to see go away?

2. Since the pandemic started, Debtors have been able to file sworn declarations as opposed to physically appearing in court, most notably with Motions to Extend Stay. Are there any other circumstances/pleadings where sworn declarations would be acceptable? Or more importantly, are there any specific scenarios where a sworn declaration would NOT be acceptable?

3. Just about every docket these days is filled with Objections to Claims due to the debt being past the applicable statute of limitations. Could some of these Objections be granted by negative notice?

4. Along the same lines of #3, what specific pleadings can be granted by negative notice, and what specific information, if any, is required to allow a pleading to be granted by negative notice? *[Text of Local Rule 3007-1 attached]*

5. Has there been any recent discussion or consideration by the BK NDAL as to any new or amended local rules or administrative orders?

6. What are your thoughts as to subchapter V two and a half years later?

    a. Do you like that Congress kept the debt limit in subchapter V higher ($7.5MM)? Would it make sense to keep it at that level permanently?

    b. Going forward, do you think we will have more subchapter V cases than ordinary Chapter 11's in Alabama in the future? Is that a good thing, in your opinion?

7. Judge Mitchell, at a forum earlier this year, you noted that it's helpful when practitioners include in their case citations the name of the judge who issued the cited decision (i.e., Judge Cohen) because you like to have that information when evaluating the case law cited by parties in support of their position. Do you have any other or similar suggestions on how practitioners may best support their arguments to your court?

8. Are there any general practice tips for your courtroom that you wouldn't mind sharing with the audience? (i.e., pet peeves; do this, don't do that, etc.).

9. Are there any changes in the Bankruptcy Code (or related statutes) that you would like to see Congress address? ("Problems in the Code" or "Legislative Gaps"?).

a. Example—The omission of one of the three types of jurisdiction from a subsection of 28 U.S.C. § 1409, the bankruptcy venue statute. *[Text of 28 U.S.C. § 1409 and a case highlighting the issue attached]*

10. What is the best approach when your find yourself in a position where a deadline has been missed?

    a. Some deadlines leave a judge no discretion to extend—non-dischargeability for example. But what about others?

    b. Examples—7-day objection deadline as to Chapter 13 plans or witness and exhibit list disclosures in an AP or the proof of claim deadline? (not an exhaustive list)

        i. What should you do? File it anyway?

        ii. Try to work it out with the other side?

        iii. Excusable neglect? When does it come into play? *[Two Alabama bankruptcy court excusable neglect cases attached]*

        iv. What would you need to see to meet the burden (affidavit? witness testimony?).

11. Somewhat similar question—What's the best approach if a lawyer finds himself or herself in danger of missing a hearing (or you've missed a hearing) because you mis-calendared the date/time or otherwise dropped the ball?

12. Do you have any sense as to when bankruptcy case filings might pick up? Any particular industries?

13. Thoughts as to how we could improve the BCLS? Mentorship programs?

RULE 3007-1 OBJECTIONS TO CLAIMS

(a) General. An objection to claim is a contested matter governed by Bankruptcy Rule 9014 and should state with particularity the grounds for the objection.

(b) Notice, Service and Hearing. Except as provided in subdivision (c) of this Rule, upon filing any objection to claim, the clerk's office or some other person as the Court may direct must prepare a notice of hearing on the objection and transmit the notice to the following:

- the debtor or the debtor in possession;
- the claimant;
- the Trustee;
- any committee appointed in the case; and
- any other entity as the Court may direct.

The party filing the objection to claim must serve the objection upon the aforesaid parties and must attach a certificate of service to the objection. The hearing will be a final evidentiary hearing, and parties must be prepared for trial.

(c) Negative Notice Allowed for Certain Objections.

(1) A party may use negative notice for an objection to claim based on the following grounds, provided the party's objection and notice substantially comply with the objection to claim and notice forms found on this Court's website at http://www.alnb.uscourts.gov/forms/all-forms:

(A) the claim is a duplicate of another claim;

(B) the claim was untimely filed, and the claimant is a creditor whose name and address were accurately shown on the debtor's timely filed schedules and matrix;

(C) the claim is satisfied or excessive as evidenced by a refund of payment from the claimant to the Trustee or debtor or written notice from the claimant to the Trustee or debtor;

(D) the claim is not entitled to secured status, and, if the ground for the objection to claim is because the claim is not entitled to secured status because the claimant's lien on the debtor's property was avoided by an order previously entered by this Court, the party filing the objection to claim must attach the applicable order;

(E) the claim is for an unsecured debt or obligation that was incurred prior to the filing of a prior bankruptcy case in which the debtor received a discharge, the party filing the objection to claim must attach copies of the petition filed in the prior case, the schedule listing the debt or obligation, and the discharge order; or

(F) the claim is not entitled to priority status.

(2) The party filing the objection to claim must serve the objection and the notice upon the following:

- the debtor or the debtor in possession;
- the claimant;
- the Trustee;
- any committee appointed in the case; and
- any other entity as the Court may direct.

(3) The notice must advise the parties of the date by which a response is due, that the Court may set a hearing date on the objection through a subsequent notice, and that the failure to

file a response with the Court by the given date may result in the Court sustaining the objection to claim without a hearing.

(4) Any responses to the objection to claim must be served upon the following:

- the debtor or the debtor in possession;
- the Trustee;
- any other affected creditors;
- any committee appointed in the case; and
- any other entity as the Court may direct.

The responding party must attach a certificate of service to the response.

(5) If no response is filed to the objection to claim, the party filing the objection to claim must submit a proposed order no sooner than 30 days after the objection was filed and served and no later than 45 days after such filing and service. The proposed order must substantially comply with the objection to claim order form found on this Court's website at http://www.alnb.uscourts.gov/forms/all-forms?page=1.

(6) If the objection, notice, or proposed order does not comply with the applicable forms found on this Court's website, or if any information required by these forms is not provided, or if procedures required by this Rule are not strictly followed, the clerk's office will issue a deficiency notice. If the deficiency or error is not corrected within 2 business days, the objection may be dismissed, denied, or overruled, without prejudice, without further notice or hearing.

(Eff. 7/ 1/ 2010)

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 87. District Courts; Venue (Refs & Annos)

28 U.S.C.A. § 1409

§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

Currentness

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,525 [originally "$1,000", adjusted effective April 1, 2022] [1] or a consumer debt of less than $22,700 [originally "$15,000", adjusted effective April 1, 2022] [1], or a debt (excluding a consumer debt) against a noninsider of less than $27,750 [originally "$25,000", adjusted effective April 1, 2022], [1] only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

CREDIT(S)

(Added Pub.L. 98-353, Title I, § 102(a), July 10, 1984, 98 Stat. 334; amended Pub.L. 109-8, Title IV, § 410, Apr. 20, 2005, 119 Stat. 106; Pub.L. 116-54, § 3(b), Aug. 23, 2019, 133 Stat. 1085.)

ADJUSTMENT OF DOLLAR AMOUNTS

<For adjustment of dollar amounts specified in subsec. (b) of this section by the Judicial Conference of the United States, effective Apr. 1, 2022, see note set out under 11 U.S.C.A. § 104.>

<By notice published Feb. 4, 2022, 87 F.R. 6625, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2022, as follows:>

<Adjusted $1,375 to $1,525.>

<Adjusted $20,450 to $22,700.>

<Adjusted $25,000 to $27,750.>

<By notice published Feb. 12, 2019, 84 F.R. 3488, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2019, as follows:>

<Adjusted $1,300 to $1,375.>

<Adjusted $19,250 to $20,450.>

<Adjusted $12,850 to $13,650.>

<Pub.L. 116-54, § 3(b), Aug. 23, 2019, 133 Stat. 1085 in subsec. (b) subsequently struck out "$10,000" and inserted "$25,000". See 2019 Amendments note under this section.>

<By notice published Feb. 22, 2016, 81 F.R. 8748, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2016, as follows:>

<Adjusted $1,250 to $1,300.>

<Adjusted $18,675 to $19,250.>

<Adjusted $12,475 to $12,850.>

<By notice published Feb. 21, 2013, 78 F.R. 12089, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2013, as follows:>

<Adjusted $1,175 to $1,250.>

<Adjusted $17,575 to $18,675.>

<Adjusted $11,725 to $12,475.>

<By notice published Feb. 25, 2010, 75 F.R. 8747, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2010, as follows:>

<Adjusted $1,100 to $1,175.>

<Adjusted $16,425 to $17,575.>

<Adjusted $10,950 to $11,725.>

<By notice published Feb. 14, 2007, 72 F.R. 7082, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2007, as follows:>

<Adjusted $1,000 to $1,100.>

<Adjusted $15,000 to $16,425.>

<Adjusted $10,000 to $10,950.>

Notes of Decisions (49)

Footnotes

1 See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

28 U.S.C.A. § 1409, 28 USCA § 1409
Current through P.L. 117-166. Some statute sections may be more current, see credits for details.

598 B.R. 65
United States Bankruptcy Court, District of Columbia.

IN RE TADICH GRILL OF
WASHINGTON DC LLC, Debtor.
Wendell W. Webster, Chapter 7 Trustee for the Estate
of Tadich Grill of Washington DC LLC, Plaintiff,
v.
Republic National Distributing
Company, LLC, Defendant.

Case No. 18-00079
|
Adversary Proceeding No. 18-10029
|
Signed: March 11, 2019
|
Filed 03/12/2019

Synopsis

Background: Chapter 7 trustee brought adversary proceeding to avoid and recover prepetition transfers as alleged preferences and to recover amount of such transfers under bankruptcy statute governing liability of transferees on avoided transfers. Defendant moved to dismiss on theory that venue was improper in "home court" where bankruptcy case was pending.

Holdings: The Bankruptcy Court, S. Martin Teel, Jr., J., held that:

small-dollar exception to the bankruptcy venue statute's general venue provision was by its express terms limited to "proceedings arising in or related to" bankruptcy case, and

proceeding to avoid prepetition transfers as alleged preferences and to recover amount of such transfers under bankruptcy statute governing liability of transferees on avoided transfers were both proceedings that arose under the Bankruptcy Code.

Motion denied.

Procedural Posture(s): Motion to Dismiss.

Attorneys and Law Firms

***66** Jeffrey M. Sherman, Law Offices of Jeffrey M. Sherman, Arlington, VA, for Plaintiff.

Edward T. Kang, Alston & Bird LLP, Washington, DC, for Defendant.

MEMORANDUM DECISION AND
ORDER DENYING MOTION TO DISMISS

S. Martin Teel, Jr., United States Bankruptcy Judge

The chapter 7 trustee, Wendell W. Webster, in the underlying bankruptcy case, Case No. 18-00079, has brought this adversary proceeding seeking, pursuant to 11 U.S.C. § 547(b), to avoid prepetition transfers to the defendant, Republic National Distributing Company, LLC, as preferences, and seeking, pursuant to 11 U.S.C. § 550, a monetary judgment for the amount of the avoided transfers, $ 11,741.73. The defendant has moved to dismiss the complaint, contending that venue is improper under 28 U.S.C. § 1409(b) because the defendant is a noninsider, the defendant does not reside in this district, and the trustee seeks a recovery of less than $ 12,850. I will deny the motion to dismiss for the following reasons.

I

The principal issue is whether a preference action is "a proceeding arising in or related to" the bankruptcy case within the meaning of § 1409(b). This requires a consideration of the entirety of § 1409, which provides:

> (a) Except as otherwise provided in subsections (b) and (d), **a proceeding arising under title 11 or arising in or related to a case under title 11** may be commenced in the district court in which such case is pending.
>
> (b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence **a proceeding arising in or related to such case** to recover a money judgment of or property worth less than $ 1,300 or a consumer debt of less than $ 19,250, or a debt (excluding a consumer debt) against a noninsider of less than $ 12,850, only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence **a proceeding arising in or related to such case** as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

***67** (d) A trustee may commence **a proceeding arising under title 11 or arising in or related to a case under title 11** based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) **A proceeding arising under title 11 or arising in or related to a case under title 11**, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

[Emphasis added.]

An adversary proceeding to avoid a preference and to obtain a monetary judgment for the amount of the avoided preference is "a proceeding arising under title 11" as to which § 1409(a) applies unless the proceeding falls within an exception in § 1409(b). However, there is a split of authority on whether § 1409(b), only applicable to "a proceeding arising in or related to" a case under title 11, applies to a proceeding "arising under title 11."

I agree with those decisions that conclude that § 1409(b) does not apply to a proceeding "arising under title 11." *See Klein v. ODS Tech., LP (In re J & J Chemical, Inc.)*, 596 B.R. 704 (Bankr. D. Idaho 2019); *Redmond v. Gulf City Body & Trailer Works, Inc. (In re Sunbridge Capital, Inc.)*, 454 B.R. 166 (Bankr. D. Kan. 2011); *Schwab v. Peddinghaus Corp. (In re Excel Storage Prods., L.P.)*, 458 B.R. 175 (Bankr. M.D. Pa. 2011); *Straffi v. Gilco World Wide Mkts. (In re Bamboo Abbott, Inc.)*, 458 B.R. 701 (Bankr. D.N.J. 2011); *Moyer v. Bank of Am. (In re Rosenberger)*, 400 B.R. 569 (Bankr. W.D. Mich. 2008); *Ehrlich v. Am. Express Travel Related Servs. Co. (In re Guilmette)*, 202 B.R. 9 (Bankr. N.D.N.Y. 1996); *Van Huffel Tube Corp. v. A & G Indus. (In re Van Huffel Tube Corp.)*, 71 B.R. 155 (N.D. Ohio 1987). The terms "arising under title 11," "arising in a case under title 11," and "related to a case under title 11" describe different categories of proceedings for purposes of § 1409(a) and (b).

There are decisions that conclude that § 1409(b) applies to proceedings to avoid a transfer and to recover a judgment for the amount of the avoided transfer. *See N1 Creditors' Trust v. Crown Packaging Corp. (In re Nukote Int'l, Inc.)*, 457 B.R. 668, 684 (Bankr. M.D. Tenn. 2011); *Dynamerica Mfg., LLC v. Johnson Oil Co., LLC (In re Dynamerica Mfg., LLC)*, Bankr. No. 08-11515, Adv. No. 10-50759, 2010 WL 1930269, at *3 (Bankr. D. Del. May 10, 2010); *Miller v. Hirn (In re Raymond)*, Bankr. No. 08–82033, Adv. Pro. No. 09-6177, 2009 WL 6498170, at *1 (Bankr. N.D. Ga. June 17, 2009); *Muskin, Inc. v. Strippit Inc. (In re Little Lake Indus., Inc.)*, 158 B.R. 478, 484 (9th Cir. BAP 1993). However, as discussed below, the grounds advanced in support of that conclusion are unpersuasive.

A. The Issue of Whether the Omission of "Arising Under" Language in § 1409(b) Was Unintentional.

In *Dynamerica Manufacturing*, 2010 WL 1930269, at *3, the court concluded that the absence of "arising under" language in § 1409(b) was unintentional. I find that conclusion (which is not supported by the statute's ambiguous legislative ***68** history) as not warranting treating § 1409(b) as including "arising under" proceedings. *See J & J Chemical*, 2019 WL 183516 at *6-7 (applying *Lamie v. United States Trustee*, 540 U.S. 526, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004), and *Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983), and rejecting the treatment of § 1409(b) as applicable to proceedings "arising under title 11" based on a conclusion that the omission of proceedings "arising under title 11" from § 1409(b) must have been inadvertent); *In re Rosenberger*, 400 B.R. at 573 (noting that under Supreme Court precedent, it "is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." (citing *In re Cormier*, 382 B.R. 377, 393-94 (Bankr. W.D. Mich. 2008)); *In re Guilmette*, 202 B.R. at 12-13.

With respect to the issue of inadvertent omission, it is worth noting that 28 U.S.C. § 1473 (1978), the original venue statute enacted as part of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 95 Stat. 2549 (1978), is evidence that perhaps Congress sometimes does inadvertently omit terms from a statute. Section 1473 provided in relevant part:

> (a) Except as provided in subsections (b) and (d) of this section, a proceeding **arising in or related to** a case under title 11 may be commenced in the bankruptcy court in which such case is pending.
>
> (b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding **arising in or related to** such case to recover a money judgment of or property worth less than $ 1,000 or a consumer debt of less than $5,000 only in the bankruptcy court for the district in which a defendant resides.

[Emphasis added.] The grant of venue in § 1473(a) did not include proceedings "arising under title 11." [1] It might have been argued that this was an apparent inadvertent omission and that the terms "arising in or related to" in that 1978 version of § 1473(a) (and necessarily in § 1473(b) as well) ought to be treated as including "arising under" proceedings which were part of the grant of jurisdiction in 28 U.S.C. § 1471 (1978). However, § 1473 is not the venue statute currently in place. The proper interpretation of "arising in or related to" in repealed § 1473(b) does not control the proper interpretation of "arising in or related to" in § 1409(b).

Significantly, when the venue provision was relocated to § 1409 in 1984 as part of the reaction to *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982), Congress added "arising under" proceedings to § 1409(a), the provision that provides generally for venue in the so-called "home court," and to § 1409(e), which sets forth an exception to venue under § 1409(a). [2] However, Congress did not add "arising under" proceedings to § 1409(b), the other provision setting forth an exception to § 1409(a). All subsequent versions of § 1409(b) have remained consistent in not including "arising under" proceedings. ***69** As noted in *In re Sunbridge Capital*, 454 B.R. at 172, "[t]he addition of 'arising under' to only two subsections of § 1409 lends support to the argument that the omission of 'arising under' in subsection (b) was intentional." [3]

B. The Issue of Whether "Arising In" Proceedings Include "Arising Under" Proceedings.

Nukote International and *Little Lake Industries* hold that the terms "arising under" and "arising in" in § 1409(b) were not meant to be mutually exclusive, with "arising in" proceedings being broad enough to include "arising under" proceedings. However, the omission of "arising under" in § 1409(b) must be viewed as intentional and purposeful. *See In re Rosenberger*, 400 B.R. at 573.

The terms "arising under" and "arising in" describe two different categories of proceedings. As explained in *In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987):

> Congress used the phrase "arising under title 11" to describe those proceedings that involve a cause of action created or determined by a statutory provision of title 11.... The meaning of "arising in" proceedings is less clear, but seems to be a reference to those "administrative" matters that arise only in bankruptcy cases. In other words, "arising in" proceedings are those that are not based on any right expressly created by title 11, but nevertheless would have no existence outside of the bankruptcy.

(Footnotes omitted.)

The obvious purpose for including "arising under" proceedings in § 1409(a) but not in § 1409(b) was to provide for venue over such proceedings in § 1409(a) and not to have § 1409(b) except such proceedings from § 1409(a). For the exclusion of "arising under" proceedings from § 1409(b) to have purpose, the reference in § 1409(b) to proceedings "arising in" the case must be viewed, consistent with *In re Wood*, 825 F.2d at 96-97, as limited to a residual category of proceedings, having an existence only because of the bankruptcy case and not based on title 11 causes of action (proceedings "arising under title 11").

Even if, out of the context of § 1409(a) and (b), a broad interpretation of "arising in" as including "arising under" claims would arguably be possible (as discussed in *In re*

Nukote International, Inc., 457 B.R. 668, 669-72 (Bankr. M.D.Tenn. 2011), and *Little Lake Industries*, 158 B.R. at 482), the inclusion of "arising under" proceedings in § 1409(a) (which would have been unnecessary if "arising in" proceedings included "arising under" proceedings) requires rejection of that interpretation of "arising in" in § 1409(b).

C. The Effect of the Failure of 28 U.S.C. § 1409(c) to Include "Arising Under" Proceedings.

Like paragraph (a) of § 1409, paragraphs (d) and (e) of § 1409 also include "a proceeding arising under title 11" as being a proceeding to which those paragraphs apply. Paragraph (c) of § 1409 does not. Section 1409(c) provides:

> Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or ***70** creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

Section 1409(c) provides an additional venue for pursuing proceedings specified therein, and is not a limitation on a trustee's authority to sue in the "home court" as provided by § 1409(a). Subsection (c) includes "a proceeding arising in or related to such case ... under section 541 or 544(b) of title 11 ...." A proceeding under 11 U.S.C. § 544(b) clearly arises under title 11. Some courts reason that § 1409(c) would be inapplicable to any proceeding under § 544(b) unless "arising in" proceedings include "arising under" proceedings, and that, to avoid that result, "arising in" proceedings in § 1409(c) must be interpreted as including "arising under" proceedings. These courts extend that interpretation to apply to "arising in" proceedings in § 1409(b) as well. *See Raymond*, 2009 WL 6498170, at *2; *Little Lake Industries*, 158 B.R. at 483.

Nevertheless, the inclusion of "arising under" proceedings in § 1409(a) but not in the restrictions of § 1409(b) on venue under § 1409(a) requires treating "arising under" proceedings for which venue is proper under § 1409(a) as not subject to § 1409(b). That conclusion is not altered by the language of § 1409(c), which, unlike § 1409(b), is not an exception to § 1409(a). Moreover, § 1409(c) does not provide an exclusive venue for the claims it specifies, but instead was intended to provide an alternative venue for certain claims described in § 1409(a). The important focus for purposes of the issue this decision addresses is on a comparison of § 1409(a) and the exceptions thereto contained in § 1409(b).

My analysis is not altered by the possibility that the language "arising in" in § 1409(c) might be viewed as including the § 544(b) proceedings it specifies (proceedings that "arise under" title 11). Correcting the oversight of not including "arising under" proceedings in allowing an alternative venue choice for § 544(b) proceedings hardly shows that the deliberate inclusion of "arising under" proceedings in § 1409(a) but not in § 1409(b) was not meant to have consequences. Whatever is the proper interpretation of § 1409(c), which is not the issue before the court in this adversary proceeding, will not alter the conclusion that § 1409(b) does not apply to avoidance proceedings such as this adversary proceeding. *See J & J Chemical, Inc.*, 2019 WL 183516, *3.

II

Section 1409(b) would produce odd results if it includes proceedings "arising under title 11." Section 1409(b) only applies in three types of proceedings:

> (1) "a proceeding ... to recover a money judgment of or property worth less than $ 1,300";
>
> (2) "a proceeding ... to recover ... a consumer debt of less than $ 19,250"; and
>
> (3) "a proceeding ... to recover ... a debt (excluding a consumer debt) against a noninsider of less than $ 12,850 ...."

Sometimes a trustee brings a proceeding only to avoid a transfer and not to recover a debt, money judgment, or property. For example, a trustee might bring a proceeding to avoid as preferential the prepetition grant of a security interest on tangible personal property that the trustee possesses. Once

the lien is avoided, the trustee does not need to recover a monetary ***71** amount, nor does the trustee need to recover the property (which the trustee already possesses). An avoidance proceeding is not, within the meaning of § 1409(b), a proceeding to recover a debt, money judgment, or property. It follows that a trustee can always sue in the "home court" of the case under § 1409(a) to avoid a transfer without running afoul of § 1409(b). *See* Byron C. Starcher, *Second Thoughts on "Home Court Advantage" for Small-Dollar Preference Defendants*, 25-MAR Am. Bankr. Inst. J. 10, 52 (2006) (stating that "a court cannot plausibly extend § 1409(b) to avoidance actions under § 547(b).").

When a trustee is entitled to avoid a transfer and also is entitled to recover a judgment once the transfer is avoided, § 1409(b) does not bar the trustee's suing to avoid the transfer in the "home court" as the proper venue under § 1409(a). However, if the "arising in" language in § 1409(b) includes a proceeding "arising under" title 11 to recover a money judgment, then a trustee, upon avoiding a transfer in the "home court" as a proper venue under § 1409(a), could nevertheless be barred by § 1409(b) from using the "home court" as the proper venue for recovering a judgment for the amount of the avoided transfer. The avoidance of the transfer is usually the more difficult step a trustee must pursue in the two-step process of first avoiding a transfer and only then recovering a monetary judgment for the amount of the transfer. It would be odd if, as allowed by § 1409(a), a trustee is entitled to sue the transferee in the "home court" to avoid the transfer and put the transferee to the burden of defending in the "home court" against avoidance of the transfer, but § 1409(b) (if it is interpreted as being applicable to "arising under" proceedings) could require the trustee, upon avoiding the transfer, to sue the transferee elsewhere to recover a monetary judgment for the amount of the avoided transfer. That odd result makes it doubtful that Congress intended to have "arising in" proceedings to which § 1409(b) applies include "arising under" proceedings.

Another odd result is that if § 1409(b) is interpreted as applying to "arising under" proceedings, a trustee could be barred by § 1409(b) from suing in the "home court" to make a recovery, *pursuant to the trustee's recovery powers*, of an avoided transfer but § 1409(b) would not bar a debtor's suing in the "home court" under 11 U.S.C. § 522(h) and (i) to avoid the same transfer and to recover, *pursuant to the trustee's recovery powers*, the amount of the transfer. When a trustee decides not to attempt to avoid an avoidable transfer, an individual debtor may be able to avoid the transfer under 11 U.S.C. § 522(h) by invoking the trustee's power to avoid the transfer and then proceed under 11 U.S.C. § 522(i) to recover a judgment for the amount of the avoided transfer by invoking the trustee's power to make such a recovery. Section 1409(b) applies only to proceedings brought by a trustee, and thus does not apply to proceedings brought by a debtor. Section 1409(b) plainly would never bar the debtor's suing under § 1409(a) in the "home court" both to avoid a transfer and to recover the amount of the transfer. It seems odd that § 1409(b) could be interpreted as barring a trustee from suing in the "home court" to recover the amount of an avoided transfer but if the trustee decides not to pursue avoidance of the transfer, § 1409(b) would *not* bar the debtor from suing in the "home court" both to avoid the transfer under § 522(h), and, *pursuant to the trustee's recovery powers*, to recover the amount of the avoided transfer under § 522(i). That odd result is avoided when § 1409(b) is interpreted as being inapplicable to "arising under" proceedings.

***72** III

For all of the foregoing reasons, it is

ORDERED that the motion to dismiss this adversary proceeding is DENIED.

All Citations

598 B.R. 65

Footnotes

1 In contrast, 28 U.S.C. § 1473(d) included proceedings "arising under title 11 ... based on claims arising after the commencement of the case from the operation of the business of the debtor" as proceedings that had to

be brought "only in the bankruptcy court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought."

2 In contrast, § 1473(a) and (e) had not included "arising under" proceedings.

3 Congress did not add "arising under" proceedings to § 1409(c) (which remained identical to repealed § 1473(c)), but as discussed later, § 1409(c) does not place restrictions on venue under § 1409(a) and was intended to provide an alternate venue for certain proceedings, with the proper interpretation of § 1409(c) having no impact on the proper interpretation of § 1409(b) as a restriction on venue under § 1409(a).

End of Document

347 B.R. 781
United States Bankruptcy Court,
M.D. Alabama.

In re ROBINSON FOUNDRY, INC., Debtor.

No. 06–30083.
|
Aug. 16, 2006.

Synopsis
Background: Creditor moved for entry of order allowing its late proof of claim.

The Bankruptcy Court, William R. Sawyer, J., held that creditor to which notice of claims bar date was mailed at lockbox address printed on its invoice, with no indication that this address was only for debtor's payments and not for other correspondence, would not be allowed to file late proof of claim on "excusable neglect" theory.

Motion denied.

Attorneys and Law Firms

***782** Von G. Memory, Memory and Day, Montgomery, AL, for Debtor.

MEMORANDUM DECISION

WILLIAM R. SAWYER, Bankruptcy Judge.

This Chapter 11 case is before the Court upon the motion of Ferrosource International, Inc. to allow its late filed claim. (Doc. 68). Ferrosource seeks to file an untimely proof of claim pursuant to Rules 3003(c)(3) and 9006(b)(1) of the Federal Rules of Bankruptcy Procedure. This motion was called for hearing on August 1, 2006, and this matter was taken under advisement. After consideration of the arguments of both parties and memorandum submitted by Ferrosource, the Court finds that Ferrosource's motion should be DENIED. Because Creditor has made no showing of excusable neglect, it will not be allowed to file its proof of claim.

I. ***Background***

Ferrosource International, Inc. (hereinafter "Creditor") is a distributor of pig iron. Between November 21, 2005, and January 11, 2006, it made six shipments to Robinson Foundry, Inc. (hereinafter "Debtor"). Creditor supplied Debtor with six invoices for the shipments, totaling $52,559.00, but it did not receive payment for any of the shipments. Two addresses were printed on Creditor's invoices: One address was a post office box in Tequesta, Florida; the other address was a post office box in Atlanta, Georgia. The Florida address was printed in bold letters at the top of the invoice, while the Atlanta address was written at the bottom along with the words "remit to." The invoices did not designate which address was used for business mail purposes.

The Atlanta address is a lockbox held by the Royal Bank of Canada for the sole purpose of receiving invoice payments. The Bank receives all payments on behalf of Creditor and posts the payments online. No other mailings are posted electronically; instead, the Bank scans all other correspondence onto a computer disk, which it mails to Creditor's president and manager. Creditor claims that the computer disks are not routinely viewed, because Creditor does not regularly receive correspondence, other than so-called "junk mail," at that address.

On January 28, 2006, Debtor filed a voluntary bankruptcy petition under Chapter 11 of the Bankruptcy Code. (Doc. 1). In its petition, Debtor listed 159 creditors under its Schedule F–Creditors Holding Unsecured Non-priority Claims.[1] Creditor ***783** was listed among the unsecured creditors as having a contingent, unliquidated, and disputed claim for $26,029.25. The address listed for Creditor was its payment lockbox in Atlanta. On January 30, the clerk sent the bankruptcy notice to all creditors, setting a May 8 deadline to file proofs of claims. (Doc. 10). The certificate of service stated that the notice had been sent to Creditor's Atlanta lockbox address. (Doc. 19). The notice was received by the Bank and scanned onto the February 2006 computer disk, which was sent to Creditor. However, Creditor contends that no one viewed the disk until June, after the bar date had passed.

Debtor's purchasing department informed Creditor's president of Debtor's bankruptcy filing on January 31. Creditor also received a letter from an attorney for the unsecured creditors' committee on February 10. However, it was not until May 31,

over three months later, that Creditor's president contacted an attorney and learned of the May 8 bar date. Creditor submitted its proof of claim form on June 2, and the clerk entered it on June 5. On July 6, Creditor filed this motion to allow its late filed proof of claim. (Doc. 68).

II. *Conclusions of Law*

Rule 3003(c) of the Federal Rules of Bankruptcy Procedure sets out the requirements for filing proofs of claim in Chapter 11 cases. Rule 3003(c)(2) provides that when a creditor's claim is listed on the debtor's schedules as contingent, disputed, or unliquidated, or is omitted from the schedule, the creditor is required to file a proof of claim with the bankruptcy court within the time prescribed by that court. [2] FED. R. BANKR.P. 3003(c)(2). Rule 3003(c)(2) must be read in conjunction with Rule 9006(b)(1), which empowers a bankruptcy court to permit a late filed claim if the failure to comply with the deadline was the result of "excusable neglect." The rule states as follows:

> (b)(1) Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given hereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on ***784** motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of *excusable neglect.* (emphasis added).
>
> FED. R. BANKR.P. 9006(b)(1).

The Supreme Court set the standard for determining whether a creditor's failure to file a timely proof of claim was the result of "excusable neglect" in Chapter 11 reorganization cases. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship,* 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). In evaluating whether neglect is excusable, a court must take into account all relevant circumstances surrounding the party's error. The Court listed four relevant circumstances for consideration: (1) the danger of prejudice to the debtor, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. *Id.* at 395, 113 S.Ct. 1489. No single factor is controlling; a court must weigh all relevant factors that "conspire to push the analysis one way or the other." *In re 50–Off Stores, Inc.,* 220 B.R. 897, 901 (Bankr.W.D.Tex.1998).

The facts of this case are easily distinguishable from *Pioneer.* In *Pioneer,* the Supreme Court considered significant the fact that the notice containing the bar date was "outside the ordinary course in bankruptcy cases.... [O]rdinarily the bar date in a bankruptcy case should be prominently announced and accompanied by an explanation of its significance." *Pioneer,* 507 U.S. at 398–99, 113 S.Ct. 1489. In the absence of any other factors, the Court found that the deficiency in the notice was controlling in that case. *See id.* at 399, 113 S.Ct. 1489. In this case, Creditor was provided with adequate notice of the claims bar date. In the Middle District of Alabama, a proof of claim deadline is routinely set in all Chapter 11 cases. A "Notice of Commencement of Case" is then sent to all creditors at the address provided by the debtor. *See In re Barnes,* 326 B.R. 832, 835 n. 3 (Bankr.M.D.Ala.2005). The notice in this case was sent to Creditor and stated that "Proof of claim must be *received* by the bankruptcy clerk's office by the following deadline: For all creditors (except a governmental unit): 5/8/06." (Doc. 10). The notice even included instructions for filing a proof of claim form.

Creditor argues that it did not receive actual notice of the bar date, because the notice was sent to what Creditor characterizes as an "incorrect address." Creditor bolsters this argument by claiming that the lockbox was used for payment purposes only, not for "business" mail, and that it did not have physical access to the lockbox. It further argues that Debtor could have obtained its "business" address with minimal effort. Creditor points out that the "remit to" address was on the bottom of the invoice and significantly less prominent than the mailing address listed on the same invoice. Creditor argues that the context in which the "remit to" address was used on its invoice should lead a reasonable business person to realize that such an address was only used for payment purposes and not business correspondence. However, there was nothing on the invoice that specified which address was used for business mail or where such business communication should be sent.

Notice by mail carries a presumption of adequacy if the notice is sent to the creditor's address. *See In re Eagle Bus Mfg.,* 62 F.3d 730, 735 (5th Cir.1995). *See also* FED. R. BANKR.P. 9006(e) ("[S]ervice of ... notice by mail is complete on mailing"). This Court finds Creditor's argument that notice

was sent an incorrect ***785** address unpersuasive, because the lockbox address was printed on Creditor's invoices with no explanation of its significance. Furthermore, Creditor had actual possession of the computer disk that contained the bar date. The fact that Creditor's manager and president chose not to review the disk is irrelevant. Because Creditor had a copy of the claims bar date notice in its possession, it cannot now claim that it did not receive notice simply because the notice remained unread.

The *Pioneer* decision cannot be "interpreted as allowing late-filing claimants without valid excuses to disregard the bar date. Such a result would contravene the policy underlying the existence of bar dates, which allow debtors to fix their liabilities with certainty for plan purposes." *In re Eagle–Picher Indus., Inc.,* 158 B.R. 713, 716 (Bankr.S.D.Ohio 1993). This Court will review the factors set forth in *Pioneer* as nonexclusive considerations, and the importance given to each factor will depend on the circumstances of the particular case. In this case, allowing Creditor's late filed claim will neither prejudice Debtor nor substantially impact the judicial proceedings, since Debtor's plan has not been confirmed and its disclosure statement has not yet been accepted. Furthermore, there is no evidence that leads this Court to believe that Creditor did not act in good faith. Although these considerations weigh in favor of allowing Creditor's claim, other circumstances override that conclusion.

This Court finds that Creditor's actual knowledge of the bankruptcy proceeding is particularly significant. The fact that Creditor knew about the bankruptcy filing and did nothing for almost four months is dispositive.[3] "[M]ere knowledge of a pending bankruptcy proceeding is sufficient to bar the claim of a creditor who took no action." *In re Alton,* 837 F.2d 457, 460 (11th Cir.1988). Creditor was also contacted twelve days after the bankruptcy filing by an attorney on behalf of the unsecured creditors' committee. However, Creditor did not reply to the letter or try to contact anyone concerning the bankruptcy for almost four months. This neglect and inattentiveness does not fall within the narrow definition of "excusable neglect" under Rule 9006(b)(1), as defined by the Supreme Court in *Pioneer.*

III. *Conclusion*

Because Creditor has failed to show excusable neglect, Creditor's motion for allowance of a later filed proof of claim is DENIED.

All Citations

347 B.R. 781, 46 Bankr.Ct.Dec. 262

Footnotes

1 Debtor listed all 159 unsecured creditors as having claims that were contingent, disputed, and unliquidated. Under 11 U.S.C. § 1111(a), a proof of claim "is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(1) or 1106(a)(2) of this title, *except a claim or interest that is scheduled as disputed, contingent, or unliquidated.*" (Emphasis added). Under this rule, only creditors whose claims fall into one of the above classifications are required to file a proof of claim. It appears that Debtor may be trying to defeat the proper application of this rule. By forcing all creditors holding unsecured claims to file a proof of claim, Debtor may be able to escape many of its liabilities. Many creditors may decide not to file a proof of claim and, therefore, forfeit their right to any payments under the plan.

Here, Debtor listed all its unsecured claims as disputed, contingent, and unliquidated. "It is quite unlikely that every claim could in good faith be contested and disputed." *In re Gire,* 107 B.R. 739, 744 (Bankr.E.D.Cal.1989). There is some concern that this broad classification of all unsecured creditors' claims as contingent, disputed, and unliquidated may not have been done in good faith. "Considering the blanket characterization of all unsecured claims as disputed, there is a genuine question as to whether there was a good faith dispute at all." *In re Rite Autotronics Corp.,* 27 B.R. 599, 603 (9th Cir. BAP 1982).

Creditor does not allege that Debtor acted in bad faith by listing its claim as disputed, contingent, and unliquidated. Therefore, this Court will not find that Debtor acted in bad faith. However, debtors should use the utmost care and precision when completing their schedules. "[M]isrepresentations in schedules go to the heart of the good faith requirement." *In re Nelson,* 2006 WL 2091899, at *2 (Bankr.N.D.Cal. July 26, 2006).

2 Rule 3003(c)(2) provides:

> (c)(2) Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

FED. R. BANKR.P. 3003(c)(2).

3 In his affidavit, Creditor's manager, Stephen Miller, admits that he had knowledge of the bankruptcy proceedings three days after Debtor filed the bankruptcy petition. (Doc. 68, Ex. 2).

2017 WL 4570701
Only the Westlaw citation is currently available.
United States Bankruptcy Court, S.D. Alabama, Southern Division.

IN RE: Daryl W. BURTANOG, Sr., and Lois L. Burtanog, Debtors.

Case No.: 16–4163–JCO
|
Signed October 12, 2017

Attorneys and Law Firms

Roland M. Slover, Mobile, AL, for Debtors.

MEMORANDUM OPINION AND ORDER

JERRY C. OLDSHUE, JR., U.S. BANKRUPTCY JUDGE

***1** This matter came before the Court on Capital One N.A.'s (hereinafter "Movant") Motion to Allow Late Claim. (Doc. 32). Appearances were noted on the record. Having heard from the Movant, the Court finds that the Motion to Allow Late Claim is due to be DENIED for the reasons set forth below.

This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the District Court's Standing Order of Reference dated August 25, 2015. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B), and the Court has authority to enter a final order.

FACTS AND PROCEEDINGS

The Movant is the holder of a Promissory Note and Security Deed securing real property owned by the Debtors (hereinafter "the Property"). The Property is described as having the address of: 4472 Barden Avenue, Mobile, Alabama 36619. The Debtors filed this case under Chapter 13 of the U.S. Bankruptcy Code on December 1, 2016. The deadline for all creditors to file a proof of claim (except governmental units) was April 19, 2017. An order confirming the Debtors' Chapter 13 plan was entered July 19, 2017. (Doc. 29). The claim at issue, claim number 11–1, was filed on August 7, 2017, and amended on August 9, 2017, as claim number 11–2. An objection to claim number 11–2 was not filed by any party in interest. Movant asserts that the claim was filed late because of Movant's attempts to verify and provide accurate and correct servicing amounts and fees within the projected proof of claim.

Although not set forth in Movant's Motion, this Court assumes based on the wording of Movant's proposed order that Movant's request for relief is based on an assertion of inadvertence or excusable neglect.

CONCLUSIONS OF LAW

This matter can be resolved by a brief review and analysis of the pertinent Bankruptcy Code provisions and Rules as they relate to the filing of proofs of claims. This issue is not a unique one and this Court need look no further than the Middle District of Alabama for an accurate and thorough analysis by Judge William Sawyer in *In re Bobby L. Edwards*, 2010 WL 3807161 (Bankr. M.D. Ala. 2010). There, Judge Sawyer wrote:

> "A creditor who hopes to be paid from a bankruptcy estate must file a Proof of Claim. 11 U.S.C. § 501. Once a proof of claim is filed, it is deemed allowed unless a party in interest objects. 11 U.S.C. § 501. Unless extended by the Court, a Proof of Claim must be filed not later than 90 days after the meeting of creditors. Rule 3002(c), Fed. R. Bankr.P. Claims which are filed late are subject to being disallowed. 11 U.S.C. § 502(b)(9). Bankruptcy Rule 3002, provides as follows:
>
> (a) Necessity for filing
>
> An unsecured creditor or an equity security holder must file a proof of claim or interest or the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.
>
> (b) Place of filing
>
> A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) Time for filing

In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

***2** (1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed no later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

(6) If notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

Thus, the plain language of the rule provides that claims in cases under Chapter 13, such as the case at bar, must be filed within 90 days of the first date set for the meeting of creditors. The rule further provides six exceptions, none of which are pertinent here.

The filing and allowance of claims of creditors are central to the operation of a Bankruptcy Court. A claims bar date provides a bright line so that the Trustee and the Debtor may proceed with the administration of a case. The case at bar is a Chapter 13 Bankruptcy in which the Debtor has proposed a Plan which provides for a 100% distribution to unsecured claims. In a case such as this, it cannot be determined how much the Debtor must pay, or indeed whether a Chapter 13 case is feasible unless all of the claims have been filed. A claims bar date provides certainty and allows the Court to go forward with the administration of a case. This same bright line which provides the necessary certainty can operate a hardship upon creditors. The Bankruptcy Rules provide relief for creditors who fail to file within the claims bar date only in a few narrowly defined circumstances. Rule 3002(c), Fed. R. Bankr. P. Moreover, the catchall provision of Rule 9006, which allows relief from certain deadlines upon a showing of excusable neglect, is not available to extend the claims bar date in cases under Chapters 7, 12 and 13. *See*, *In re Thomas,* 181 B.R. 674, 675–76 (Bankr. S.D. Ga .1995)(concluding that the excusable neglect provision of Bankruptcy Rule 9006(b) does not apply).

***3** Applying this analysis to the facts of the case at hand, two things become readily apparent: there is no path under the Bankruptcy Code or Rules that would allow this Court to grant Movant's Motion to Allow Late Claim; and the Motion itself is superfluous in light of 11 U.S.C. § 501.

Those Bankruptcy Courts in the Eleventh Circuit that have considered the issue[1] have unanimously held that the bar date for proofs of claim in Chapter 13 cases is a strict statute of limitations and that late filing of proofs of claim, over objection, is prohibited except under the narrowly defined circumstances listed in Bankruptcy Rule 3002(c). *See e.g.*, *In re Jackson,* 482 B.R. 659 (Bankr. S.D. Fla. Oct. 25, 2012); *In re Stone,* 473 B.R. 465 (Bankr. M.D. Fla. June 14, 2012); *In re Zich,* 291 B.R. 883 (Bankr. M.D. Ga. March 31, 2003); *In re Weisheipl,* 2013 WL 5429931 (Bankr. N.D. Ga. (Sept. 6, 2013); *In re Goodwin,* 183 B.R. 329 (Bankr. S.D. Ga. June 12, 1995); *In re Bobby L. Edwards*, 2010 WL 3807161 (Bankr. M.D.

Ala. 2010); *In re Ford*, 205 B.R. 960 (N.D. Ala. Feb. 14, 1996). This Court now joins the other Bankruptcy Courts of the Eleventh Circuit in holding that "excusable neglect" is not available as grounds for leave to file an untimely proof of claim in a Chapter 13 case.

It is clear from the facts of this case and the Debtors Attorney's assertions at the hearing, that this Motion was unnecessary. The debt underlying the late filed claim is secured by a mortgage on the Debtors' homestead, and there was never a dispute as to the mortgage balance or the arrears. By operation of statute, once a proof of claim is filed, it is deemed allowed unless a party in interest objects. 11 U.S.C. § 501.

Therefore, with no party in interest having filed an objection, claim number 11–2 as amended is deemed allowed. Movant's Motion to Allow Late Claim is due to be and hereby is DENIED.

All Citations

Not Reported in B.R. Rptr., 2017 WL 4570701

Footnotes

[1] To date, the only districts in the Eleventh Circuit that have *not* considered this issue are this district and the Northern District of Florida.