

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)
) Chapter 13
JEROME FAYETTE REICHENBACH,)
) Bankruptcy No. 03-03148
Debtor.)

ORDER RE: OBJECTION TO TRUSTEE'S REPORT ON CLAIMS

The above-captioned matter came on for hearing on April 15, 2004 on Creditor BankIowa's objection to its exclusion from Trustee's Report on Claims. Trustee Carol Dunbar appeared in person. Creditor BankIowa appeared by Attorney Joseph Schmall. After the presentation of evidence, the Court took the matter under advisement. The time for filing briefs has passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

STATEMENT OF THE CASE

Creditor BankIowa ("BankIowa") objects to its exclusion from the Report on Claims filed by Trustee Carol Dunbar ("Trustee"). BankIowa argues that because the Chapter 13 plan specifically provides for BankIowa's claim, its claim should be deemed allowed. Trustee argues that BankIowa did not file a proof of claim by the Bar Date for filing proofs of claim, and that only allowed claims are provided for in the Report on Claims. Trustee filed the Report on Claims on March 4, 2004. BankIowa's objection was filed on March 19, 2003.

FINDINGS OF FACT

Debtor Jerome Reichenbach ("Debtor") filed for Chapter 13 relief on August 19, 2003. BankIowa had a secured claim of \$61,337.41, resulting from a judicial lien on Debtor's Chevy pickup truck, household furnishings, and wearing apparel. The Iowa District Court in and for Linn County granted BankIowa's judicial lien in Case Number LACV045867. On November 18, 2003, the Court granted Debtor's motion to avoid the fixing of BankIowa's judicial lien pursuant to 11 U.S.C. § 522(f)(1)(A). BankIowa did not object to Debtor's motion.

Debtor filed an Amended and Substituted Chapter 13 Plan ("the Plan") on October 28, 2003. Paragraph 1 states that:

Debts. All debts are provided for by this Plan. Only creditors holding claims duly proved and allowed shall be entitled to payments from the Trustee. (See Notice of Filing for the Bar Date within which to file claims with the Bankruptcy Court.)

The Plan specifically addresses BankIowa's claim in paragraph 3B, listing its \$61,337.41 claim among "[s]ecured claims which resulted from a judicial lien . . . which shall be treated as GENERAL UNSECURED CLAIMS under this Plan."

BankIowa received notice of the November 17, 2003 bar date for objections to confirmation of the Plan, but did not object to confirmation. The bar date for filing a proof of claim ("Bar Date") was December 10, 2003. Although BankIowa had previously received notice of the Bar Date on August 21, 2003, it failed to file a proof of claim. The Plan was confirmed on December 12, 2003.

On March 4, 2004, Trustee filed the Report on Claims and did not include BankIowa as a claimant. BankIowa's March 19, 2004 objection was its first appearance in the bankruptcy case.

CONCLUSIONS OF LAW

A creditor may file a proof of claim within ninety days after the first date set for the 11 U.S.C. § 341 meeting of creditors. 11 U.S.C. § 501(a); Fed. R. Bankr. P. 3002(c). The form and content of a formal proof of claim are set forth in Bankruptcy Rule 3001(a), which states that "[a] proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form." Fed. R. Bankr. P. 3001(a).

Absent any objection, a claim is allowed when it is timely filed pursuant to § 501. 11 U.S.C. § 502(a). A tardily filed proof of claim is allowed unless a party in interest objects. 11 U.S.C. § 502(b)(9).

If a creditor fails to meet the formal requirements for filing a proof of claim, the claim may still be allowed as an informal proof of claim. The informal proof of claim is a common law doctrine allowing courts to "treat filings that do not conform to the formal requirements of the Federal Rules of

Bankruptcy Procedure as informal proofs of claim that can be amended to conform to such rules." In re Montgomery, 305 B.R. 721, 725 (Bankr. W.D. Mo. 2004). Once an informal proof of claim is established, a formal proof of claim must be filed to amend any deficiencies. In re Square Shooter, Inc., 130 B.R. 108, 109 (Bankr. S.D. Ala. 1991).

An informal proof of claim exists if the creditor clearly states in a writing (1) the nature and amount of its claim and (2) its desire to pursue that claim in the debtor's bankruptcy estate, and does so (3) before the bar date for filing proofs of claims. In re Michels, 286 B.R. 684, 690 (B.A.P. 8th Cir. 2002).

The document constituting the informal proof of claim does not have to be filed with the bankruptcy court. In re Haugen Constr. Servs., Inc., 876 F.2d 681, 682 (8th Cir. 1989). The creditor's intent to assert a claim through such a document may be inferred from "active participation throughout the earlier bankruptcy proceedings." Id. The debtor's knowledge of the creditor's claim alone is not enough to constitute an informal proof of claim. Square Shooter, 130 B.R. at 108.

While § 501(a) is permissive and "[n]o one is ever required to file a proof of claim[,] . . . not doing so has consequences" for both unsecured and secured creditors. In re Baldrige, 232 B.R. 394, 396 (Bankr. N.D. Ind. 1999). The provisions of a Chapter 13 plan bind Debtor and the creditors. 11 U.S.C. § 1327(a). After confirmation, however, distribution is made only to creditors with allowed claims. Fed. R. Bankr. P. 3021; In re Walters, 219 B.R. 520, 523 n.1 (Bankr. W.D. Ark. 1998). Even if the plan specifically provides for payments on a creditor's claim, the creditor is not entitled to distributions without an allowed claim. In re Griggs, 306 B.R. 660, 664 (Bankr. W.D. Mo. 2004).

BankIowa did not file a formal proof of claim. The sole document in evidence from BankIowa in these bankruptcy proceedings is the post-Bar Date objection to Trustee's Report on Claims. BankIowa did not provide any other assertion of its claim or its intention to pursue that claim from Debtor's estate, written or otherwise. BankIowa did not object to Debtor's § 522(f)(1)(A) motion to avoid BankIowa's lien nor to confirmation of the Plan. The docket shows no involvement by

BankIowa in Debtor's bankruptcy proceedings at any stage prior to the bar date for filing a proof of claim.

BankIowa's reliance on Debtor's treatment of its claim in the Plan is misplaced. While paragraph 3B does specifically address BankIowa's claim, the Plan clearly states in Paragraph 1 that "[o]nly creditors holding claims duly proved and allowed shall be entitled to payments from the Trustee" (emphasis added). Furthermore, the Plan was confirmed two days after the Bar Date, precluding any argument that the Plan provision itself might be considered an informal proof of claim. BankIowa cannot argue it relied on the Plan's provision in failing to file its proof of claim when the Plan was confirmed after the Bar Date.

CONCLUSION

BankIowa does not have an allowed claim. No formal proof of claim was filed before the bar date. BankIowa has not shown that it had any involvement in the bankruptcy case prior to its post-bar date objection to Trustee's Report on Claims. There is no evidence that an informal proof of claim existed prior to the bar date. Despite the Plan provision addressing its claim, BankIowa is not entitled to any distributions without a formal or informal proof of claim.

WHEREFORE, Creditor BankIowa's objection to its exclusion from Trustee's Report on Claims is OVERRULED.

SO ORDERED this 5th day of May, 2004.



PAUL J. KILBURG
Chief Bankruptcy Judge