

5-10-04

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE: : CASE NO. 03-91308
 :
 Michael M. Grier and Loren M. Grier, : CHAPTER 13
 :
 Debtors. : JUDGE MASSEY
 :

ORDER

A proof of claim filed in a bankruptcy case is deemed allowed regardless of when filed. 11 U.S.C. § 502(a). Nonetheless, if a party in interest objects to an untimely filed proof of claim on the ground that it was not timely filed, the Court must disallow that claim, except as provided in 11 U.S.C. § 502(a)(9) with respect to claims in a Chapter 7 case and claims of governmental units. A debtor's attorney can obtain notice of the filing of claims by signing up for e-mail notification in the Court's Case Management/Electronic Case Files system, but there is presently not a report available that would enable an attorney to easily search only for those claims filed late. As a courtesy to debtors' counsel, it has been the practice of Chapter 13 Trustees in this district to notify a debtor when a proof of claim is filed after the bar date and to delay payment for a short time to give the debtor time to file an objection to the claim.

In this case, the Trustee filed on July 24, 2003 and served on Debtors and their counsel a notice to pay a late filed claim. The Trustee's notice identified the creditor as "Child Support Network, Inc." The claim at issue is claim no. 7 filed on July 4, 2003. The bar date was June 16, 2003. In her notice the Trustee stated that she would pay the late claim if no objection to the claim was filed within twenty days of the notice.

Debtors and their counsel took more than 3 months to react to the notice. On November 3, 2003, they filed an objection to the notice. That objection evidences a misunderstanding of what such a notice means as a practical matter and what a debtor must do to avoid payment on an untimely claim. Their opposition to payment of the claim also raises a serious question about their management of their financial affairs and possibly their good faith.

It is the Trustee's duty to pay allowed claims and, as indicated, late filed claims are allowed the moment they are filed. So the notice of intent to pay is merely an imparting of information to the debtor and debtor's counsel, if any, that a proof of claim has been paid after the bar date and a warning that the Trustee must and will pay the claim if no objection to it is filed within the time specified in the notice. There is no explicit requirement in the Bankruptcy Code or Rules that a Trustee give such a notice. Challenging a Trustee's authority to pay a late claim to which no objection has been filed makes no sense. It would be like a pedestrian objecting to someone shouting, "look out for the Greyhound bus!" as a means of avoiding being hit by the bus. One avoids the bus by staying out of the crosswalk, not by contesting the warning.

In their objection to the Trustee's notice, Debtors assert that "Creditor Child Support Network, Inc." filed its proof of claim after the bar date, and they request a "judgment disallowing the Trustee's Notice of Intent to Pay Late Filed Claim, as filed." According to the certificate of service, Debtors' counsel served the Trustee and Child Support Network, Inc.

There are two monumental problems with the pleading filed by Debtors. First, it is not an objection to proof of claim no. 7 but rather an objection to the Trustee paying the claim because it was filed late. Because an untimely claim to which no objection has been filed is allowed to the same extent as if it had been timely filed, Debtors's objection to the Trustee's authority and intent

to pay the claim is totally without merit. Second, the creditor is not Child Support Network, Inc. The creditor, as the proof of claim plainly shows, is Lytrelle Y. Kelley, whose notice address stated in the proof of claim as "c/o Child Support Network, Inc." Consequently, even if the pleading filed by Debtors could somehow be construed as an objection to the claim, it was not properly served on the creditor, thereby depriving the Court of the jurisdiction to adjudicate the objection.

In their schedules, Debtors listed Child Support Network, Inc. as a creditor but not Lytrelle Y. Kelley. If this debt is for child support, it is not dischargeable. 11 U.S.C. § 523(a)(5). By choosing not to pay this claim, the Debtor who owes this debt is only making the financial situation worse, because in all likelihood, interest is running on a judgment to pay child support. A very good argument can be made that a debtor who is using Chapter 13 primarily for the purpose of avoiding a child support obligation is not proceeding in good faith, which would justify dismissing the case upon a proper motion to dismiss. Whether these Debtors are engaged in conduct that warrants dismissal the Court does not and cannot on this record decide.

Accordingly, it is

ORDERED that the Debtors' Objection to Trustee's Notice of Intent to Pay Late Filed Claim is not an objection to a claim, and the Trustee is directed to pay the allowed claim.

This 6th day of May 2004.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE