

MAR 18 2004

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE:	:	CASE NO. 00-71661
	:	
COASTAL CARE RESOURCES, L.L.C.,	:	CHAPTER 11
	:	
Debtor.	:	JUDGE MASSEY
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COASTAL CARE RESOURCES, L.L.C.	:	
and THE GMS GROUP, LLC,	:	
	:	
Movants,	:	
	:	
v.	:	CONTESTED MATTER
	:	
STEVEN L. DYE,	:	
	:	
Respondent.	:	
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ORDER DISALLOWING CLAIM OF STEVEN L. DYE

On September 4, 2003, Coastal Care Resources, L.L.C., the reorganized Debtor, and The GMS Group, LLC, a creditor in this Chapter 11 case, filed an objection to a claim of Steven L. Dye listed as contingent and unliquidated in the amount of \$503,974.93 on an amendment to Schedule F filed by the Debtor on June 25, 2002. From the inception of the case in September 2000 until shortly after the Court entered an Order on April 7, 2003, Mr. Dye was the managing member of the Debtor and its only equity security holder and controlled the Debtor in all respects. While under Mr. Dye's control, the Debtor moved for and obtained an Order pursuant to Fed. R. Bankr. P. 3003(c)(3) entered on January 23, 2002 setting April 6, 2001 as the last day for filing proofs of claim. Mr. Dye did not file a proof of claim at any time.

Movants contend that the failure of Mr. Dye to file a proof of claim prior to the bar date bars him from any distribution under the confirmed plan, and they seek an order disallowing his claim. Mr. Dye filed a response to the objection to his claim in which he repeated his diatribe raised early and often in this case that he is the victim of deceit. Mr. Dye did not and cannot controvert the facts that he did not file a proof of claim, that the amendment to Schedule F in which his claim was first scheduled by the Debtor listed his claim as contingent and unliquidated and that the Court entered an order establishing April 6, 2001 as the bar date for filing claims.

Section 501 of the Bankruptcy Code provides that a creditor “may file a proof of claim.”

Section 1111(a) provides:

A proof of claim or interest 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.

Rule 3003(c)(2) of the Federal Rules of Bankruptcy Procedure, which applies in Chapter 11 cases, provides:

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.

“Claims listed by the debtor on its schedule of claims as “disputed, contingent or unliquidated” typically require a proof of claim to be filed in order for a claimant to participate in a plan of reorganization. *In re South Atlantic Financial Corp.*, 767 F.2d 814, 817 (11th Cir.1985); 11 U.S.C. Section 1111(a)”. *In re Gateway Investments Corp.*, 114 B.R. 784, 786 (Bankr. S.D. Fla.1990). A creditor whose claim is scheduled as disputed or unliquidated but who fails to file a claim will not be treated as a creditor for purposes of distribution. *See Roman*

v. La Electronica, Inc. (In re La Electronica, Inc.), 223 B.R. 393 (D. P.R. 1998); *In re Rainbow Trust*, 179 B.R. 51, 53 (Bankr. D. Vt. 1995) (“The filing of a proof of claim is mandatory in Chapter 11 proceedings for creditors whose debts are scheduled by the debtor as disputed, contingent, or unliquidated.”).

The words “personal guaranty” appear in the column with the heading that includes “Consideration for Claim” and adjacent to Mr. Dye’s name on the Amended Schedule F listing his alleged claim. In the Findings of Fact and Conclusions of Law filed on April 7, 2003 in connection with entry of the confirmation order on the same date, the Court addressed a vote Mr. Dye attempted to cast against the GMS plan based on a claim he asserted in the same amount as that listed in Amended Schedule F. In those findings, the Court found that Mr. Dye’s claim was based on his guaranty of the claim of BEP Services, LP and that there was no evidence that he had paid BEP. The Court held that “Dye would ultimately have a claim against the Debtor only to the extent he paid BEP on his alleged guaranty.” In his response to the objection to his claim, Mr. Dye did not refer to a guaranty or to any payment to BEP. He did not respond to a supplement to the objection filed by Movants in which they alleged he had made no payment to BEP. Section 502(e)(1)(B) provides in relevant part that

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that -

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution[.]

Under this section, Mr. Dye’s claim could not be allowed, even if he had filed a timely proof of claim.

For these reasons, it is

ORDERED that the contingent and unliquidated claim of Steven L. Dye in the amount of \$503,974.93 listed in the amended Schedule F filed by the Debtor on June 25, 2002 is DISALLOWED in its entirety for purposes of distribution under the confirmed plan of reorganization in this case.

This 16th day of March 2004.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE