

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

IN RE:)	
Armstrong Finishing, L.L.C.)	Case No. : 99-11576-C11
)	
Debtor(s))	
)	

**ORDER DENYING DEBTOR'S OBJECTION TO
CLAIM NO. 35 OF MEBANE KNITTING**

This matter came on for hearing before the undersigned Bankruptcy Judge upon the Debtor's Objection to Allowance of Claim No.35 filed by Mebane Knitting Mills, Inc. ("Mebane") in the amount of \$151,297.70 requesting that the claim be disallowed in its entirety. Appearing before the Court were James K. Talcott, counsel for the Debtor, and Richard M Hutson, II, counsel for Mebane. The Court, after hearing the testimony of the witnesses and reviewing the exhibits presented, makes the following findings of fact:

BACKGROUND

1. The Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 on July 9, 1999.
2. Prior to the filing of the petition, Mebane and the Debtor maintained a long established business arrangement. The president of Mebane at one time owned a one-third interest in the Debtor.
3. Mebane is in the business of manufacturing textile products and engaged the Debtor to dye and finish its fabrics. Mebane supplied the fabrics to the Debtor on a weekly basis, who in turn would dye and finish the fabric pursuant to the specifications of Mebane.
4. During the latter part of 1998, Mebane and the Debtor terminated their business

relationship and, prior to the termination, the Debtor accepted several shipments of fabric from Mebane. At the time of the termination of the business relationship, Mebane contends that they made demand upon the Debtor for the return of the lace fabric and provided the Debtor with a list of all outstanding orders. The Debtor contends that all fabric but for 3,500 pounds was returned to Mebane and that the 3,500 pounds of fabric had only nominal value.

5. On November 1, 1999, Mebane filed an unsecured proof of claim in the amount of \$151,297.70 based upon the wrongful retention and conversion of the fabric. The claim was filed on the official form, but Mebane did not attach copies of supporting documentation or a summary of such documents as is required under paragraph seven of the official claim form.

6. On November 17, 2000, the Debtor objected to the claim in its entirety on the grounds that the Debtor's books and records indicate that nothing is owing to Mebane and that no support was provided with the proof of claim to substantiate any debt.

SUMMARY OF THE EVIDENCE

Michael Selim, the President of Mebane, testified that he had a twenty-year relationship with the Debtor and its predecessors and that Mebane would ship various amounts of fabric to the Debtor on a weekly basis with instructions on how the fabric should be finished. Mebane would then sell the fabrics to customers such as Bed Bath and Beyond, JC Penney and Linens and Things. Many of the items to be dyed were seasonal items such as Christmas tablecloths.

In late 1998, Mebane and the Debtor terminated their business relationship and on November 11, 1998, Mebane sent a detailed statement to the Debtor asking for the status of various shipments of yarns. Mebane used this letter as the basis of its proof of claim and has listed a value for the different types of fabric identifying each order by lot number, style number, color and poundage. The letter reflects a total of approximately 27,000 pounds of fabric. Mebane

wrote a follow up letter on November 20, 1998, again asking about the status of various dye lots. Mebane provided evidence of shipments to the Debtor from the period of October 10, 1998 through November 2, 1998 showing total pounds delivered to the Debtor of 53,992 and total pounds received back from the Debtor of 35,067.¹

On November 20, 1998, the Debtor advised Mebane that they had shipped out greige goods to Mebane totaling 19,732 pounds and that the balance of greige goods in inventory that belonged to Mebane was only 3,515 pounds. Mebane does not dispute that they received the shipment of 19,732 pounds (it is part of the 35,067 pounds) but Mebane contends that these shipments have already been taken into account and have not been added to the proof of claim. On this same date, the Debtor advised Mebane that the Debtor would not release any additional goods until their factor, Liberty Financial, was paid.

Sam Kiser, Jr, the former president of the Debtor, testified that he was aware of the presence of Mebane goods on the Debtor's premises, aware that Mebane had made demand for the return of the goods and that he was instructed not to ship the goods back to Mebane. Mr. Kiser left the employment of the Debtor on or about December 10, 1998, and on the day he left the Mebane goods were still located on the Debtor's premises. Mr. Kiser was uncertain as to the exact amount of the Mebane goods that remained on the premises.

In December 1998, Ms. Catherine Hicks began to work for the Debtor as the controller and had access to the books and records of the Debtor. When the claim of Mebane was filed, Ms. Hicks went through the books and records of the Debtor and could not locate any information

¹Exhibit 3 contains shipping tickets evidencing the shipment of 53,992 pounds of fabric from Mebane to the Debtor from the period of October 9, 1998 through November 2, 1998. The exhibit also includes shipping tickets showing Mebane's receipt of 35,067 pounds of fabric from the Debtor.

that indicated Mebane was owed monies or that they had requested that goods be returned. It was only the day before this hearing that she located the correspondence that was sent to the Debtor by Mebane on November 11, 1998, requesting information about the status of various orders.

The Debtor liquidated all fabric on the premises with the last of the fabric being sold in November of 2000. The sale of the fabric in November of 2000 was to United Textiles. Mr. Selim has viewed the fabric that was sold to United Textiles and contends it was generated by Mebane. United Textiles purchased 38,100 pounds of fabric in November 2000.

The Court has found the records of shipments very difficult to follow but is convinced that Mebane had a more reliable accounting system in place and more accurate records indicating the correct amount of fabric at the Debtor's location. Mebane has furnished evidence of various shipments to the Debtor, including shipments that are not listed as part of the Mebane proof of claim.

The Court finds the testimony of the former President of the Debtor to be very credible and finds as a fact that the items listed on the November 11, 1998, letter to the Debtor were not returned to Mebane and that the goods were converted by the Debtor. The Court finds that the fair market value of the goods was \$151,297.70.²

Based on the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

Pursuant to 11 U.S.C. §502(a), a proof of claim filed under Section 501 is deemed allowed, unless a party in interest objects. In this case, the creditor filed the proof of claim but did not provide any supporting documentation. The debtor objected to the proof of claim stating

²Mr. Selim, testified that the amount requested in the proof of claim was his cost and did not have a profit factor built in.

that no supporting documentation had been furnished so that the Debtor could properly evaluate the claim. If a proof of claim has been properly filed by the claimant, the claim is entitled to prima facie validity. The Debtor then typically bears the initial burden of proof to overcome the presumed validity and amount of the creditor's claim. However, when the claim as filed lacks adequate factual support to be given prima facie validity, there is no burden placed on the objecting party. In re Circle J Dairy, Inc., 112 B.R. 297 (W.D. Ark. 1989). The Debtor is not required to disprove the claim. In re Kahn, 114 B.R. 40 (Bankr. S.D.N.Y. 1990). Only if the claimant alleges facts sufficient to support their claim, are they entitled to have the claim considered "prima facie valid." In re Allegeny Intern., Inc., 954 F.2d 167, 173 (3rd. Cir 1992) (citing In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)).

In the present case, the Court finds that Mebane failed to provide adequate factual support to its proof of claim, and the claim will not be given prima facie validity. Pursuant to Bankruptcy Rule 3001(f) only when a proof of claim is executed and filed in accordance with these rules shall the claim be given prima facie evidence of the validity and amount of the claim. Inasmuch as the claimant failed to attach any documents to support its claim, the proof of claim filed by Mebane is not entitled to *prima facie* evidence of the validity and amount of the claim. In re King Street Inv. Inc., 219 B.R. 848 (BAP 9th Cir 1998) (accord United States v. Baskin & Sears, P.C., 207 B.R. 84 (E.D. Pa. 1997)). The burden will not shift to the Debtor and the claimant has to prove the validity of its claim by a preponderance of the evidence. In re Tidewater Memorial Hosp., Inc., 106 B.R. 885 (Bankr. E.D. Va. 1989); In re Weidel, 208 B.R. 848 (Bankr. M.D.N.C. 1997).

Considering all the evidence, the Court finds that the books and records of Mebane are more reliable than those of the Debtor. The former employee of the Debtor admitted that

Mebane had fabric on hand at the Debtor's location as late as December 1998, and that Mebane had made demand for the return of the fabric which was refused. There has been no evidence presented that the amounts requested per pound are not within industry guidelines and therefore the Court finds that the amounts requested are fair and reasonable. The evidence as a whole establishes that Mebane had sent numerous shipments to the Debtor and that while some of the shipments had been returned, the claimant has been able to prove by a greater weight of the evidence that they had goods at the Debtor's location for which the return was requested and refused that had a fair market value of \$151,297.70.

Mebane filed an unsecured proof of claim in the amount of \$151,297.70. The Court finds that based upon the testimony presented and upon a review of the documents placed into evidence, Mebane has proved its claim by a preponderance of the evidence.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, that the Debtor's Objection to the claim is **OVERRULED** and that Mebane shall have an allowed unsecured claim in the amount of \$151,297.70.

This the 2 day of May, 2001.

CATHARINE R. CARRUTHERS
Catharine R. Carruthers
United States Bankruptcy Judge