

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

ENTERED

JUN 07 '02

U.S. Bankruptcy Court  
Greensboro, NC

CPK

IN RE:

Lincoln-Gerard USA, Inc.,

Debtor.

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Case No. 01-11986C-11G

ORDER

This case came before the court on May 29, 2002, for hearing upon a Motion for Order Directing Debtor to Pay Secured Claim that was filed on behalf of Dixon Odom PLLC ("Dixon Odom"). Debtor's response and motion for reconsideration also was heard on May 29, 2002, with the consent of all parties. James R. Hundley appeared on behalf of Dixon Odom, R. Bradford Leggett appeared on behalf of the Debtor and Rayford K. Adams III appeared on behalf of the Committee of Unsecured Creditors ("the Committee").

The Dixon Odom motion is based upon an order that was entered in this case on August 23, 2001. The order authorized the Debtor to proceed with the sale of its furniture inventory free and clear of liens. Paragraph four of the order required secured creditors to file a proof of claim in order to receive a disbursement from the sale proceeds and required that any objection to a secured claim be filed within 180 days after the date the claim was filed. Paragraph four further provided that if no objections were filed, "the secured claim shall be deemed allowed for all purposes in this case." Dixon Odom filed a secured claim in the amount of \$116,405.29 pursuant to a proof of claim filed on August 14, 2001,

and an amended proof of claim filed on September 13, 2001. Dixon Odom filed its motion on March 26, 2002. Because no objection to the claim was filed within 180 days, Dixon Odom contends in its motion that the claim is deemed allowed and must be paid. In their response, the Debtor and the Committee acknowledge that no objection was filed within 180 days, but, pursuant to § 502(j) of the Bankruptcy Code and Bankruptcy Rule 3008, request that the court reconsider the August 23, 2001 order to the extent that the order provides for the allowance of the Dixon Odom claim and that the court enter an order that allows the Debtor and the Committee to object to the Dixon Odom claim.

Bankruptcy Rule 3008 provides that a party in interest may move for reconsideration of an order allowing or disallowing a claim against the debtor. Rule 3008 requires that the court enter an "appropriate order" after a hearing on a motion for reconsideration. A motion for reconsideration brings into play § 502(j) of the Bankruptcy Code, which provides that a claim that has been allowed or disallowed may be reconsidered "for cause." If the court decides to reconsider an allowed or disallowed claim, § 502(j) provides that the reconsidered claim may be allowed or disallowed "according to the equities of the case."

Neither the Bankruptcy Code nor the Bankruptcy Rules define the meaning of "cause" as used in § 502(j). Most of the cases agree that whether "cause" for reconsideration of an order exists

is a determination which must be made on case-by-case basis based upon the particular facts and circumstances of the case in which the issue arises. However, the cases are not entirely consistent regarding the standard to be used in evaluating the facts and circumstances of the case. Where proofs of claim have been actually litigated, some courts have equated a § 502(j) motion for consideration with a motion for relief from judgment under Rule 9024 of the Federal Rules of Bankruptcy Procedure (which adopts Rule 60 of the Federal Rules of Civil Procedure). These courts have held that the movant may seek reconsideration based only on the Rule 60(b) standards, e.g., mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. See Colley v. Nat'l Bank of Texas, 814 F.2d 1008 (5th Cir. 1987); United States v. Motor Freight Express, 91 B.R. 705 (Bankr. E.D. Pa. 1988). Other courts dealing with proofs of claim that have been actually litigated have based the determination of cause on the following factors: (1) whether the court patently misunderstood a party; (2) whether the court has made a decision outside the adversarial issues presented by the parties; (3) whether the court has made an error not of reasoning but of apprehension; or (4) whether there is a controlling or significant change in the law or facts since the submission of the issue to the court. See Olson v. United States, 162 B.R. 831, 833 (D. Neb. 1993) (citing Above the Belt, Inc. v. Bohannon Roofing, Inc., 99 F.R.D. 99 (E.D. Va.

1983)).

In the present case, the claim of Dixon Odom has not been actually litigated or considered on the merits. Instead, the August 23, 2001 order provides for the claim to be "deemed" allowed. This is an important difference and distinguishes the present case from the foregoing cases. "In cases where the proof of claim was not actually litigated but instead was deemed allowed . . . without objection, courts instead have articulated a different standard to establish cause for reconsideration under § 502(j)." In re Gomez, 250 B.R. 397, 401 (Bankr. M.D. Fla. 1999). As pointed out in the Gomez case, where a claim was not actually litigated, but was deemed allowed, the factors which should be considered in determining whether sufficient cause for reconsideration exists include (1) the extent and reasonableness of the delay, (2) the prejudice to any party in interest, (3) the effect on efficient court administration, and (4) the moving party's good faith. See id. Because the Dixon Odom claim has not been actually litigated and considered on its merits, the court concludes that the factors articulated in Gomez are more appropriate in the present case and should be utilized in deciding whether cause exists for reconsideration of the August 23, 2001 order to the extent that it provides for the allowance of the Dixon Odom claim.

The extent of the delay in the present case is minimal. The 180-day deadline for objecting to the Dixon Odom claim expired on or about March 12, 2002. The motion for reconsideration was filed on May 24, 2002. Hence, there was very little delay by the Debtor and the Committee in seeking reconsideration. Prior to the expiration of the deadline, counsel for the Committee and counsel for the Debtor discussed with counsel for Dixon Odom the need for invoices, billing records and other documents and requested such documents from Dixon Odom. The requested documents were not delivered by Dixon Odom until after the March 12, 2002 deadline had passed. After reviewing such documents, counsel for Debtor and the Committee concluded that questions existed regarding the Dixon Odom claim and acted promptly to raise such questions. Under these and the other circumstances of the case, the court is satisfied that there was no unreasonable delay on the part of the Debtor or the Committee in seeking reconsideration so that objections to the claim could be filed. The court likewise is satisfied that the granting of the motion for reconsideration will not prejudice any party. If the court grants reconsideration and permits the Debtor and the Committee to file objections to the Dixon Odom claim, any such objections can be expedited and resolved without undue delay. To the extent that any delay does result, it will not be prejudicial, since the funds required for the payment of the remaining secured claims are not presently available and will not

be available until the Debtor has sold additional furniture. Reconsideration will enable the Debtor and the Committee to file objections and, if such objections are filed, will require Dixon Odom to defend its claim on the merits. However, loss of what is tantamount to a default judgment and having to establish valid grounds for a claim does not constitute prejudice. On the other hand, if reconsideration is not granted, the Dixon Odom claim will be paid in full without being examined on the merits, which certainly could prejudice other creditors in this case. Reconsideration likewise will not have an adverse effect on the efficient handling of this case or efficient court administration. Although this case has been pending since July 18, 2001, no plan of reorganization has been submitted or approved. Moreover, most of the Debtor's inventory remains on hand and no matter what course this case takes, significant additional time will be required in order to liquidate the inventory in order to provide proceeds for payment to secured creditors and other claimants. Finally, the court concludes that the Committee and the Debtor have acted in good faith in seeking reconsideration. The motion for reconsideration was filed promptly after the Committee and the Debtor received the documents from Dixon Odom that prompted the questions raised by the Committee. Further, the court is satisfied that the objections regarding the claim which the Committee and the Debtor wish to raise have been raised in good faith and not for

purposes of delay or any other improper purpose.

In summary, having considered the foregoing factors, as well as the other facts and circumstances in this case, the court has concluded that cause for reconsideration of the August 23, 2001 order under § 502(j) has been established and that the motion for reconsideration should be granted. The court has further concluded that, upon reconsideration, the allowance of the Dixon Odom claim under the August 23, 2001 order should be vacated and that the Debtor and the Committee should be afforded an opportunity to object to the amended proof of claim filed on behalf of Dixon Odom.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The motion for reconsideration is granted and the order that was entered on August 23, 2001, is vacated to the extent that it provides for the allowance of the claim of Dixon Odom; and

2. The Debtor and the Committee are granted to and including June 28, 2002, within which to file objections to the proof of claim of Dixon Odom.

This 7th day of June, 2002.

*William L. Stocks*

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WILLIAM L. STOCKS  
United States Bankruptcy Judge