

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

ENTERED

SEP 24 '01

U.S. Bankruptcy Court  
Greensboro, NC

MEL

IN RE: )  
 )  
Mack L. Scott, ) Case No. 00-10993C-7G  
 )  
Debtor. )  
 )

ORDER

This case came before the court on September 18, 2001, for hearing upon a motion by Kathryn S. Mitchell for allowance of her claim in the amount of \$12,500.00. Kathryn S. Mitchell ("Claimant") appeared pro se by telephone and Charles M. Ivey, III, appeared on behalf of the Trustee. Having considered the matters of record in this case and the arguments presented at the hearing, the court finds and concludes as follows:

1. The deadline for filing claims in this case was January 2, 2001.

2. On August 8, 2001, the Claimant filed a formal proof of claim in the amount of \$12,500.00.

3. On August 30, 2001, the Claimant filed the motion now before the court requesting that she be allowed a claim in the amount of \$12,500.00.

4. On September 4, 2001, the Trustee objected to the proof of claim filed on August 8, 2001, as untimely.

5. In order to ameliorate the harshness that sometimes can result from strict enforcement of a deadline for filing claims, courts have recognized informal proofs of claim as a means of

relieving creditors from a failure to file a formal proof of claim of the type specified in Rule 3001(a) within the time specified in Rule 3002(c). Under the informal proof of claim doctrine, if a creditor filed an informal proof of claim before the expiration of the claims deadline, the creditor is allowed thereafter to amend the informal proof of claim with a formal proof of claim complying with Rule 3001(a). See generally, 9 COLLIER ON BANKRUPTCY ¶ 3001.05 (15<sup>th</sup> ed. rev. 2001). In reality, the reference to the creditor filing an "informal proof of claim" is somewhat misleading because the doctrine arises where a document that was not intended to be a proof of claim when filed is treated as such for purposes of allowing a later filed amended claim to relate back to the filing of the so-called informal proof of claim. See In re Bargdill, 238 B.R. 711, 717 n.2 (Bankr. N.D. Ohio 1999).

6. Various documents and pleadings have been treated as informal proofs of claim, including an objection to confirmation of a debtor's Chapter 13 plan, a motion or complaint seeking relief from the automatic stay, a complaint in an adversary proceeding objecting to dischargeability, a disclosure statement filed by a creditor in support of its plan, a motion for a valuation hearing pursuant to § 506, a motion to set aside an order and correspondence between the claimant and the court clerk. See generally, 9 COLLIER ON BANKRUPTCY ¶ 3001.05[1] (15<sup>th</sup> ed. rev. 2001).

7. Whether a particular document will be treated as an informal proof of claim depends upon the contents of the document and the particular circumstances of the case. The cases vary somewhat in stating the prerequisites for an informal proof of claim. Frequently, it is said that the following elements are required: (1) it must be in writing; (2) it must contain a demand by the creditor on the estate; (3) it must express an intent to hold the debtor liable for the debt; (4) it must be filed with the bankruptcy court; and (5) the facts of the case must be such that allowance of the claim is equitable. Id. at ¶ 3001.05[2]. Another frequently stated standard is that an informal proof of claim exists when the document relied upon by the creditor states a demand showing the nature and amount of the claim against the estate and evidences an intent to hold the debtor liable. See In re Charter Co., 876 F.2d 861, 863 (5th Cir. 1989); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1989); In re Hall, 218 B.R. 275, 277 (Bankr. D.R.I. 1998); In re Anchor Resources Corp., 139 B.R. 954, 957 (D. Colo. 1992).

8. The doctrine of informal proof of claim is recognized in the Fourth Circuit. If a creditor has made an "informal claim" during the filing period, then a late proof of claim may be treated as a perfecting amendment of the informal claim. See In re Hardgrave, 1995 WL 371462, at \*1 (4th Cir.); In re Davis, 936 F.2d 771, 775 (4th Cir. 1991); Dabney v. Addison, 65 B.R. 348, 351

(Bankr.E.D.Va. 1985). An "informal claim" exists when "sufficient notice of the claim has been given in the course of the bankruptcy proceeding . . . ." Fyne v. Atlas Supply Co., 245 F.2d 107, 107 (4th Cir. 1957). A party provides sufficient notice of the claim by undertaking "some affirmative action to constitute sufficient notice that he has a claim against the estate." In re Davis, 936 F.2d at 775-76.

9. The official file in this case contains a document that the Claimant filed on May 9, 2000. Although not on an official claim form, this document reflects an intent on the part of the Claimant to hold the Debtor liable for \$12,500.00 and a demand on the estate by the Claimant for payment of \$12,500.00. Among other things, the May 9, 2000 filing states that "at present Mr. Scott owes me \$12,500.00 plus 8% interest" and has attached copies of the promissory note signed by the Debtor which verify the amount claimed. This filing was followed by the Claimant's formal proof of claim which was filed on August 8, 2001, and her motion for allowance which was filed on August 30, 2001, requesting that the Claimant be allowed a claim in the amount of \$12,500.00. The court finds and concludes that these filings by the Claimant satisfy the requirements of an informal proof of claim. The court further finds and concludes that the facts of this case are such that allowing the Claimant a claim in the amount of \$12,500.00 is equitable. In this case, the Claimant, in fact, mailed the

original and an acknowledgment copy of a formal proof of claim to the clerk's office on or about November 17, 2000, which was well within the claims deadline. However, through a mistake on the part of the postal service, the claim apparently was sent to an insurance company in Greensboro, North Carolina, with a box number similar to that of the clerk's office. Upon receipt of the claim, the insurance company apparently stamped on the copy of the proof of claim "office service November 19, 2000" and mailed the copy back to the Claimant. The Claimant, not knowing the difference between the filing stamp used by the clerk's office and the stamp that appeared on the returned proof of claim, assumed that she had properly filed her claim until she learned that she had no proof of claim on file with the clerk. By that time, the claims deadline had passed. Claimant then filed a formal proof of claim and the motion requesting that the claim be allowed.

10. Since the Claimant meets all of the requirements of the informal proof of claim doctrine, the formal proof of claim filed by the Claimant on August 8, 2001, should be treated as an amendment of the informal proof of claim that relates back to May 9, 2000, the date on which the informal proof of claim was filed. It follows that Claimant's claim was not untimely. Accordingly, the Trustee's objection will be overruled and the Claimant's motion for allowance will be granted and Claimant will be allowed a general unsecured claim in the amount of \$12,500.00.

IT IS SO ORDERED.

This 19th day of September, 2001.

William L. Stocks

---

WILLIAM L. STOCKS  
United States Bankruptcy Judge