


SO ORDERED.**SIGNED this 7th day of May, 2025.**


 BENJAMIN A. KAHN
 UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF NORTH CAROLINA
 GREENSBORO DIVISION

In re:)	
)	
Richard C. Wells, Jr.,)	Chapter 13
)	Case No. 24-10609
Debtor.)	
_____)	

ORDER SUSTAINING OBJECTION TO CLAIM

This case came before the Court for hearing on the Objection to Claim of Diva Bryant and Jessica Bryant, ECF No. 55 (the "Objection"), filed by Debtor on February 18, 2025. Debtor requests that Claim No. 20 of Diva Bryant and Jessica Bryant ("Claimants") be disallowed because it was filed after the bar date. Id. Debtor properly served the Objection and noticed it on Claimants under Rule 3007(a).¹ ECF No. 56. On April 2, 2025, Claimants timely filed a response to the Objection, requesting that the Objection be denied and that the Court allow the claim as an amendment to a timely filed informal proof of claim. ECF No.

¹ All references to "Rule ____" herein shall refer to the Federal Rules of Bankruptcy Procedure unless otherwise specified.

69 (the "Response"). Counsel for Debtor, counsel for Claimants, counsel for the chapter 13 trustee, and the U.S. Bankruptcy Administrator appeared at the hearing. At the conclusion of the hearing, the Court took the matter under advisement. For the reasons set forth herein, the Court will sustain Debtor's Objection and disallow Claimants' claim as untimely under 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c).

FACTS

On February 3, 2021, Claimants filed suit against Debtor and his business, People's Tavern & Package Goods, LLC d/b/a PT Bar & Package Goods, in state court for damages related to an injury sustained by Diva Bryant while at Debtor's business. ECF No. 69-1. On March 11, 2022, the Superior Court of New Jersey, Gloucester County entered default judgment against Debtor and his business and in favor of Claimants, jointly, severally, in the amount of \$609,498.20. ECF No. 69-2. Claimants domesticated the judgment in Guilford County, North Carolina on April 24, 2024. ECF No. 69-3.

On September 27, 2024, Debtor commenced this case by filing a petition under chapter 13 of title 11.² ECF No. 1. Claimants were sent notice of Debtor's petition, which schedules Claimants

² In addition to Debtor's chapter 13 case, Debtor's business filed a petition under chapter 7 in the United States Bankruptcy Court for the District of New Jersey (the "New Jersey Bankruptcy Court") on November 6, 2024. Case No. 24-21029-JNP (Bankr. D.N.J.), ECF No. 1.

as an unsecured creditor with a total claim amount of "unknown." Id. at 26. Under Rule 3002(c),³ the Court set December 6, 2024, as the deadline for creditors to file a proof of claim. ECF No. 7, at 2. Claimants do not deny that they received the notice.

On October 8, 2024, Debtor filed an application to employ special counsel for representation in a potential legal malpractice claim. ECF No. 16 (the "Application to Employ Special Counsel"). Neither the Application nor the representation letter attached to the Application identifies Claimants or the nature of their claims. Id. The Application identifies the underlying lawsuit from which a potential malpractice claim arose only as "docketed in Gloucester County Docket L-000114-2 vs. People's Tavern & Dry Good, RBD3 Real Estate LLC, Richard C Wells, Robert Doble, ABC Corporation and John Does and was transcribed to Guilford County in 24 CVS 252." Id. at 1. Neither the Application nor the representation letter identifies the Claimants, the amount of any underlying judgment, whether any judgment had been satisfied, or the nature of the claims in the underlying lawsuit beyond a general description in the representation letter as "the personal injury case." ECF No. 16-1, at 1.

The Court granted the Application to Employ Special Counsel on November 18, 2024. ECF No. 29. The time to file claims in

³ In a chapter 13 case, "the proof of claim is timely if filed within 70 days after the order for relief." Fed. R. Bankr. P. 3002(c).

this case expired on December 6, 2024. After the deadline to file claims, on December 13, 2024, Debtor filed a legal malpractice suit in the United States District Court for the District of New Jersey (the "New Jersey District Court") against the attorney who represented him in Claimants' personal injury lawsuit, seeking compensatory and punitive damages. Case No. 1:24-cv-11143-CPO-AMD (D.N.J.) (the "Malpractice Action"), ECF No. 1.⁴ As of the date of this Order, the Malpractice Action remains pending.

On February 10, 2025, two months after the deadline to file claims, Claimants filed Claim No. 20 as an unsecured claim in the amount of \$623,988.33.⁵ Claim No. 20-1 (the "Claim"). Claimants do not dispute that the Claim was filed after the claims bar date, but request that the Court permit the Claim as timely filed under the informal proof of claim doctrine. ECF No. 69. Specifically, Claimants assert that the following actions give rise to an informal proof of the Claim: (1) Claimants' prepetition filing of the underlying personal injury complaint against Debtor and Debtor's business in state court, the judgment entered against Debtor and Debtor's business in that action, and Claimants' domestication of that judgment against Debtor in North Carolina;

⁴ Debtor filed an amended complaint in the Malpractice Action on January 6, 2025, seeking the same relief as the original complaint. Case No. 1:24-cv-11143-CPO-AMD (D.N.J.), ECF No. 10.

⁵ The amount of the personal injury judgment was amended by the state court on December 15, 2023, from \$609,498.20 to \$623,998.33. Claim No. 20-1, Part 2.

(2) Debtor's filing of the Application to Employ Special Counsel to represent him in the Malpractice Action; and (3) Debtor's filing of the complaint in the Malpractice Action. See id.⁶ Claimants request that the Court construe their subsequently filed formal proof of claim as an amendment of this informal claim. See id. For the reasons that follow, Claimants have not demonstrated the existence of an allowable informal proof of claim.

DISCUSSION

This Court and others 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). See In re Graves, No. 00-10622C-13G, 2001 WL 1699649 (Bankr. M.D.N.C. Feb. 15, 2001). If a creditor filed an informal proof of claim before the claims deadline, the creditor may be allowed thereafter to amend the informal proof of claim with a formal proof of claim that complies with Rule 3001(a). Id. at *3 ("If a creditor has made an 'informal claim' during the filing period, then a late proof of claim may be

⁶ In their Response, Claimants assert only Debtor's filing of the complaint in the Malpractice Action as the basis for the informal proof of claim. ECF No. 69. However, at the hearing, the Court asked counsel for Claimants to identify all actions they took in this case before the claims filing deadline that put the trustee and other parties on notice that Claimants intended to seek enforcement of the Claim in this case. ECF No. 75, at 02:25-02:45. Counsel responded by identifying both Debtor's filing of the Application to Employ Special Counsel and Claimants' domestication of the state court judgment against Debtor. Id. at 02:45-03:05, 11:53-13:25. The latter of these events occurred over five months prepetition and outside the bankruptcy case.

treated as a perfecting amendment of the informal claim."); see generally 9 Collier on Bankruptcy ¶ 3001.05 (16th ed.). "[T]he reference to the creditor filing an 'informal proof of claim' is somewhat misleading because the doctrine arises where a document which 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." Graves, 2001 WL 1699649, at *2.

"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." Id. at *3. The Fourth Circuit has held that 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 771, 775-76 (4th Cir. 1991). As this Court previously observed:

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.

Graves, 2001 WL 1699649, at *3. The second element, a demand on

the estate (as opposed to the debtor) is mandatory. Id. (“[A]ffirmative action on the part of the creditor which reveals the existence of the claim and an intent to share in the estate is essential.”).

Claimants cite Fyne in support of their argument that an amendable informal proof of claim exists in this case. ECF No. 69, at 8-9.⁷ In Fyne, the Fourth Circuit used the informal proof of claim doctrine to allow a late-filed claim where the bankruptcy proceeding itself “show[ed] upon its face that it was based upon proceedings taken by claimant for the collection of the claim.” 245 F.2d at 108. There, although the claimant failed to timely file a proof of claim, counsel for the claimant took affirmative actions in the bankruptcy case before the claims bar date that demonstrated the existence and amount of the claim and manifested claimant’s intent to seek enforcement against the bankruptcy estate. Id. (during claim filing period, counsel for claimant

⁷ In Fyne, the claimant had obtained judgment against the debtor for the full amount of the claim and had caused execution to be levied upon the debtor’s property and the property to be advertised for sale under execution. 245 F.2d at 108. Shortly before the sale, other creditors of the debtor filed an involuntary bankruptcy petition. Id. The claimant’s claim was scheduled by the debtor. Id. Counsel for the claimant wrote a letter to the trustee prior to the claims deadline, attended the meeting of creditors, and participated in repeated conferences with the trustee and debtor’s counsel. Id. Despite this pre-deadline affirmative participation in the case, counsel for the claimant did not file a timely formal proof of claim, mistakenly believing that it had been filed by another attorney. Id. It was not until after the deadline to file claims had elapsed, and after there had been repeated conferences between counsel for the claimant and the trustee regarding payment of the claimant’s claim, that it was suggested that the claimant was barred from asserting his claim by reason of failure to file a formal proof of claim within the time allowed. Id.

attended and participated in first meeting of creditors and wrote a letter to bankruptcy trustee giving advice as to pending litigation). Claimants excise a quote from within Fyne that is originally from the Fourth Circuit's 1927 decision in Fant:

The trend of modern decisions on this question, without exception, is to the effect that, where there is anything in the record in the bankruptcy case which establishes a claim against the bankrupt, it may be used as a basis for amendment after the expiration of the statutory year, where substantial justice will be done by allowing the amendment.

245 F.2d at 108 (quoting 21 F.2d at 183) (internal quotations omitted). Although some cases decided under the current rules continue to cite Fyne and Fant,⁸ those cases clarify this potentially boundless language from Fant. See, e.g., Graves, 2001 WL 1699649, at *3 ("[M]ere knowledge of the claim on the part of the trustee or the listing of the claim in the Chapter 7 or 13 schedules is not sufficient, standing alone, to constitute an informal proof of claim.") (citing cases). As observed in Graves, the information in the record on which a creditor relies must result from some affirmative action by the creditor in the bankruptcy case. 2001 WL 1699649, at *3. The Court has reviewed the record in this case, and Claimants have failed to demonstrate

⁸ Fyne and Fant were decided under former bankruptcy acts, the 1938 Bankruptcy Act (the "Chandler Act") and the 1898 Bankruptcy Act (the "Nelson Act"), respectively. Because the Court has determined that Claimants have failed to meet even the potentially more lenient standards set out in these cases for the establishment of an informal proof of claim, the Court does not need to consider or determine the continuing vitality of these cases that were decided before the existence of current title 11 or the Federal Rules of Bankruptcy Procedure.

the existence of an informal proof of claim. At the hearing, counsel for Claimants conceded that Claimants took no action in this case prior to the deadline to file claims, and as explained in more detail below, each of the actions on which Claimants rely fails to meet the requirements for an informal proof of claim. See supra. n. 6 (and accompanying text).

Claimants' Domestication of the State Court Judgment

Although Claimants' domestication of the state court judgment was an action taken by Claimants before the expiration of the claims filing period, it occurred before the existence of this bankruptcy case. See ECF No. 69-3. An action taken by a creditor before a debtor has filed for bankruptcy cannot evidence an intent to hold a non-existent bankruptcy estate liable for the claim. In re A.H. Robins Co., Inc., 118 B.R. 436, 440 (Bankr. E.D. Va. 1990) (declining to find a letter mailed several months prior to bankruptcy case as informal proof of claim and holding that "[o]nly documents filed in connection with the bankruptcy case during the claims filing period shall be considered as constituting an informal proof of claim"). The expansion of the informal claims doctrine to include prepetition filings in other tribunals would render the claims deadline a virtual nullity. Therefore, Claimants' domestication of the state court judgment against Debtor is insufficient to constitute an informal proof of the Claim.

Debtor's Application to Employ Special Counsel

Debtor's Application to Employ Special Counsel does not qualify as an informal proof of claim. First, it does not disclose that a claim may exist against the estate. Instead, the Application reflects a potential claim held by the estate, evidencing an effort by the estate to pursue litigation to collect monies which Debtor claims are owed to him by his former attorney. ECF No. 16. Therefore, it cannot be construed as a demand against the estate. In any event, the Application lacks several of the requirements for an informal proof of claim: it was an action taken by Debtor, not by Claimants; it does not contain a demand on the estate; it does not identify Claimants; and it does not sufficiently state any amount claimed owed. Courts applying the informal proof of claim doctrine look to actions taken by the creditor in the bankruptcy case and before the expiration of the deadline to file claims that establish informal proof of the creditor's claim. See, e.g., In re Elleco, Inc., 295 B.R. 797, 800-01 (Bankr. D.S.C. 2002) ("Upon its review of recent case law in the Fourth Circuit, the Court is guided by the following decisions where courts have decided, as this Court once phrased it, whether creditors 'actively participated in the bankruptcy proceeding' sufficiently to constitute an informal proof of claim.") (quoting In re Faust, 180 B.R. 432, 435 (Bankr. D.S.C. 1994)). See also Graves, 2001 WL 1699649, at *4 (creditor filed

motion for relief from stay during claims filing period that supplied much of the information called for in a formal proof of claim). Claimants have not cited any case in support of filings by Debtor being accepted as informal proofs of claim. Moreover, both this Court and the Fourth Circuit have held that "mere knowledge of the claim on the part of the trustee or the listing of the claim in the Chapter 7 or 13 schedules is not sufficient, standing alone, to constitute an informal proof of claim." Graves, 2001 WL 1699649, at *3 (citing Davis, 936 F.2d at 775-76).

Even if the Application were an affirmative action by Claimants, as explained above, it did not provide sufficient notice to Debtor, the trustee, creditors, and other parties in interest of the nature and amount of the claim against the estate and did not evidence an intent to hold the estate liable. See Graves, 2001 WL 1699649, at *3. The Application merely identifies "the personal injury action" as a prior "lawsuit in which [Debtor] may have a claim for legal malpractice." ECF No. 16, at 1. Therefore, the Application to Employ Special Counsel is not an informal proof of claim.

Debtor's Malpractice Action Complaint

The complaint filed in the Malpractice Action similarly was an action taken by Debtor, not by Claimants. Further, Debtor filed the Malpractice Action complaint in the New Jersey District Court, and filing elsewhere is insufficient for a document to be

considered an informal proof of a claim. See In re McCutchen, 536 B.R. 930, 943-44 (Bankr. N.D. Okla. 2015) (only documents filed in the bankruptcy case before the claim deadline may be considered). Finally, the complaint was filed on December 13, 2024, seven days after the deadline to file claims in this case. Case No. 1:24-cv-11143-CPO-AMD (D.N.J.) (the "Malpractice Action"), ECF No. 1. Although both Claimants and Debtor include a copy of the complaint as an attachment to their respective Response and Reply to the Response, both of which were filed in this case, both of these filings similarly occurred well after the claims bar date.⁹

Claimants are not saved by Rule 3004. 11 U.S.C. § 501(c) permits a debtor or trustee to file a proof of claim for a creditor who does not timely file on its own behalf. Implementing this provision, Rule 3004(a) provides that "[i]f a creditor does not file a proof of claim within the time prescribed by Rule 3002(c) or Rule 3003(c), the debtor or trustee may do so within 30 days after the creditor's time to file expires." Thus, any claims filed on behalf of Claimants in this case must have been filed by January 5, 2025 to be considered timely filed under Rule 3004(a). Apart from filing its schedules, the only actions taken by Debtor before this date that Claimants assert constitute proofs of the Claim filed on their behalf are (1) Debtor's filing of the Application

⁹ Claimants' Response was filed on April 2, 2025, ECF No. 69, and Debtor's Reply to Claimants' Response was filed on April 11, 2025. ECF No. 72.

to Employ Special Counsel on October 8, 2024, and (2) Debtor's filing of the complaint in the Malpractice Action on December 13, 2024. ECF No. 69, at 12-13.

The Court may have the discretion to allow a creditor to amend a claim a debtor has timely filed on the creditor's behalf under Rule 3004(a), even after the expiration of the deadline for the creditor to file a claim on its own behalf under Rule 3002(c). In re Dilone, No. 13-11303C-13G, 2015 WL 6951688, at *6 (Bankr. M.D.N.C. June 29, 2015) (citing In re Sacko, 394 B.R. 90, 96 (Bankr. E.D. Pa. 2008) (and cases cited therein)). However, as explained above, neither Debtor's Application to Employ Special Counsel nor Debtor's Malpractice Action complaint¹⁰ constitute informal proofs of the Claim. Even if these events could be considered informal proofs of the Claim, Claimants have not cited, and the Court is unable to locate, any case in which a court has allowed a creditor to amend a putative informal proof of claim filed by a debtor, and such an extension of the concept would be well beyond the provisions of Rule 3004. Moreover, a debtor's filings like those on which Claimants attempt to rely in this case are not demands against the estate. To construe such filings as amendable informal proofs of the Claim filed on Claimants' behalf

¹⁰ Although Debtor includes a copy of the Malpractice Action complaint in his Reply to Claimants' Response, ECF No. 72-1, this was not filed until April 11, 2025, over three months past the deadline under Rule 3004(a).

would suggest that Debtor's listing of the Claim in his filed schedules would qualify as an informal proof of claim, and it is well-settled that it does not. See Graves, 2001 WL 1699649, at *3 (citing Davis, 936 F.2d at 775-76). Therefore, the Court will decline to construe Claim No. 20 as an amendment to a claim filed by Debtor on Claimants' behalf under Rule 3004. The Court is unable to locate in the record any action taken by Claimants in this case to preserve their right to file a formal proof of claim beyond the claims bar date, and Claimants have not identified any. Therefore, Claimants have not demonstrated the existence of an informal proof of claim that is subject to amendment, and the Court will sustain Debtor's objection to Claimants' late-filed formal proof of claim.

Finally, Claimants request, in the alternative, that if the Claim is disallowed, then any recovery by Debtor in the Malpractice Action be allocated to Debtor's business's chapter 7 case. ECF No. 69, at 13-15. Under Rule 3007(b),¹¹ this sort of equitable relief must be sought in an adversary proceeding, not in a claims objection proceeding. In any event, it is the responsibility of the court in which the Malpractice Action is pending to determine

¹¹ "In objecting to a claim, a party in interest must not include a demand for a type of relief specified in Rule 7001 but may include the objection in an adversary proceeding." Fed. R. Bankr. P. 3007(b). Rule 7001(g) provides that "a proceeding to obtain an injunction or other equitable relief" is a type of adversary proceeding. Fed. R. Bankr. P. 7001(g).

and allocate damages in the action pending before it based on applicable non-bankruptcy law. The only matter before this Court is allowance or disallowance of the Claim against the bankruptcy estate. Accordingly, Claimants' requested alternative relief will be denied.

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

1. The Objection to Claim of Diva Bryant and Jessica Bryant, ECF No. 55, is sustained; and

2. Claim No. 20 of Diva Bryant and Jessica Bryant is disallowed.

[END OF DOCUMENT]

Parties to be Served
24-10609

Anita Jo Kinlaw Troxler
Chapter 13 Trustee

via electronic notice

John Paul Hughes Cournoyer
United States Bankruptcy Administrator

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