UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:	)	
	)	
James Edward Graves and	)	Case No. 00-10622C-13G
Bernice Ferguson Graves,	)	
	)	
Debtors.	)	
	)	

ORDER

This case came before the court on February 13, 2001, for hearing upon the Trustee's motion for disallowance of the claim of Summit Credit Union ("Summit"). J. Patrick Adams appeared on behalf of Summit, Phillip E. Bolton appeared on behalf of the Debtors and Anita Jo Kinlaw Troxler appeared on behalf of the Trustee. Having considered the motion, the response filed on behalf of Summit and the other matters of record in this case, the court finds and concludes as follows:

FACTS

1. This Chapter 13 case was filed on March 15, 2000.

2. Schedule D as filed by the Debtors on March 15, 2000, listed Summit Credit Union ("Summit") as a secured creditor with a claim of $21,900.00 secured by a lien on a 1997 Lincoln automobile.

3. On March 31, 2000, a notice was mailed to creditors in this case, including Summit, which stated that the deadline to file a proof of claim in the case was July 23, 2000.

4. On July 12, 2000, a motion for relief from automatic stay was filed on behalf of Summit requesting that the automatic stay be lifted "in order to allow Summit Credit Union to have a lien imposed

upon a car title owned by Bernice Ferguson Graves . . . ." According to the motion, Summit had loaned the female Debtor the sum of $22,554.00 in July of 1999 for the purchase of a 1997 Lincoln by the Debtor and Debtor had agreed to secure the loan with a lien on the automobile. Although the loan proceeds were used to purchase the Lincoln automobile, the motion states that the seller of the automobile failed to take the steps necessary to have a lien entered on the title to the automobile before the title was forwarded to the female Debtor.

5. The motion for relief from the automatic stay filed on behalf of Summit was scheduled for hearing on August 8, 2000, but was continued by consent of all parties.

6. On July 25, 2000, two days after the deadline for filing claims, Summit filed a proof of claim in which Summit asserted a secured claim in the amount of $22,070.93 secured by a lien on the 1997 Lincoln automobile.

7. On August 23, 2000, the Debtor's proposed plan was served upon creditors, including Summit. The proposed plan provided that "[a]ny timely filed claim [by Summit] documenting evidence of a non-preferential perfected lien shall be paid as secured up to the value of the vehicle with any balance an unsecured general claim." Under the proposed plan, the liquidation value of the estate increased by $24,000.00 if Summit were found not to have a lien on Debtor's 1997 Lincoln.

8. On August 29, 2000, a hearing was held with respect to Summit's motion for relief from automatic stay at which the motion was denied "due to the absence of a perfected security interest in the 1997 Lincoln Town Car . . . ."

9. On September 25, 2000, an order was entered confirming the plan of reorganization as proposed by the Debtors.

10. On November 6, 2000, the motion which is now before the court was filed by the Chapter 13 Trustee. In the motion, the Trustee asserts that Summit failed to document evidence of a non-preferential perfected lien against the Lincoln automobile and that the proof of claim filed by Summit was filed after the deadline for filing claims and prays that an order be entered disallowing Summit's claim.

LEGAL ANALYSIS

11. In the present case, it is not disputed that Summit's formal proof of claim was filed two days after the July 23, 2000 deadline for filing claims. However, Summit argues that the motion for relief from the automatic stay which it filed on July 12, 2000, should be treated as an informal proof of claim and that the formal proof of claim should be regarded as an amendment which relates back to the July 12 date. The Trustee disputes this contention arguing that the motion does not qualify as an informal proof of claim because it does not "manifest an intention to collect on the debt" and failed to state the amount of the debt as of the petition date. The Trustee also argues that treating the motion as an informal

proof of claim will result in uncertainty for trustees in processing claims and is inconsistent with the efficient administration of bankruptcy estates. The decisive issue, therefore, is whether Summit's motion for relief from stay should be treated as an informal proof of claim.

12. In order to be timely, a proof of claim in a Chapter 13 case must be filed within 90 days after the first date set for the meeting of creditors pursuant to § 341 of the Bankruptcy Code. See Fed. R. Bankr. P. 3002(c). Pursuant to Rule 9006(b)(3) of the Bankruptcy Rules, the conditions under which the court may enlarge the time for filing proofs of claims in Chapter 13 cases are limited to the circumstances set forth in Rule 3002(c), and do not include excusable neglect. In re Greenig, 152 F.3d 631, 635 (7th Cir. 1998); In re Stewart, 247 B.R. 515, 519-520 (Bankr. M.D. Fla. 2000); In re Armstrong, 238 B.R. 438, 440 (Bankr. E.D. Ark. 1999); In re Voccola, 234 B.R. 239, 240 (Bankr. D.R.I. 1999).

13. In order to ameliorate the harshness which sometimes can result from the ninety day 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 (15th ed. 2000). In reality, the 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. See In re Bargdill, 238 B.R. 711, 717 n.2 (Bankr. N.D. Ohio 1999).

14. 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 and a motion to set aside an order. See generally, 9 COLLIER ON BANKRUPTCY ¶ 3001.05[1] (15th ed. 2000).

15. 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).

16. 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. 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 (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.

17. In the Fourth Circuit, in deciding whether to permit an amendment based upon an informal claim, the court has discretion and may consider equitable factors such as whether the creditor's efforts have increased the value of the estate or any potential

adverse impact on the debtor, the trustee, other creditors or the public. In re Hardgrave, 1995 WL 371462, at *2. However, affirmative action on the part of the creditor which reveals the existence of the claim and an intent to share in the estate is essential, and 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. In re Davis, 936 F.2d at 775-776; In re Wilkins, 731 F.2d 462, 465 (7th Cir. 1984); In re Glick, 136 B.R. 654, 656 (Bankr. W.D. Va. 1991).

18. In the Hardgrave case, the issue was stated by the court as being "whether a bankruptcy court can treat an unsecured creditor's objection to the confirmation of the debtor's Chapter 13 plan as an informal claim where the unsecured creditor failed to file a formal proof of claim by the required deadline." 1995 WL 371462, at *1. In finding that the objection constituted an informal claim, the court emphasized the creditor's active involvement in the case from the inception and the fact that his efforts significantly increased the value of the bankruptcy estate by forcing the debtor to increase the amount being paid under the plan. In the Fyne case, the court stated 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 . . . where substantial justice will be done by allowing the amendment." 245 F.2d at 108 (quoting In re Fant, 21 F.2d 182,

183 (D.C.S.C. 1927)). In Fyne the record included the involuntary petition which initiated the case and which contained a description of the creditor's claim against the debtor. In finding that there was sufficient notice of the creditor's claim to permit amendment, the court noted that the creditor had actively participated in the case by attending the meeting of creditors and providing information by letter to the trustee.

19. Summit's motion for relief from stay supplies much of the information called for in the official proof of claim form. It is in writing and was filed with the court. It states the name and address of the creditor and is signed by an authorized representative, i.e., its attorney. It also provides detailed information concerning the basis for the claim, as well as the date on which the debt was incurred. The motion states that Summit loaned money to the female debtor for the purchase of a 1997 Lincoln automobile and provides specifics regarding the transaction. The motion states that Summit loaned the female debtor the sum of $22,554.00 on July 6, 1999, and has attached copies of supporting documents, including the $22,554.00 loan proceeds check issued by Summit on July 6, 1999. The motion also states that Summit is claiming a lien against the female Debtor's 1997 Lincoln automobile and seeks relief from the automatic stay for the expressed purpose of "allowing Summit Credit Union to obtain a lien on the title on the 1997 Lincoln Town Car to secure the purchase money loan made to the Debtor, Bernice Ferguson Graves." While this may not be an

explicit statement of a claim, the obvious inference is that Summit intended to utilize such lien in order to obtain payment of its unpaid loan in this case, which is reflective of an intention to make a claim against the Debtors and property of the estate. If this were not the case, why would Summit go to the trouble and expense of coming into court and filing the motion in the first place?

20. The court concludes that the filing of the motion for relief from stay was sufficient to reveal that Summit had a claim against the female Debtor, as well as an intent to share in the estate in the present case, and that, judged by the rather liberal standard articulated in the Fourth Circuit cases, the motion for relief from stay is sufficient to constitute an informal proof of claim.

21. In concluding that the motion constitutes an informal proof of claim, the court has considered whether doing so will result in prejudice to the Debtors, the Trustee, other creditors or the public. From the trustee's perspective, a belated recognition of an informal proof of claim after a Chapter 13 trustee has made extensive distributions could pose problems and possible prejudice. However, in the present case the issue regarding Summit's formal proof of claim being filed late and the possibility of the claim being allowed as an amendment to an earlier informal proof of claim arose well before a plan was confirmed and before any distributions were to be made by the Trustee. Prejudice to other unsecured

creditors as a result of the motion being treated as an informal proof of claim also is unlikely, nor is there any indication of prejudice to the public. Under the plan, when the court ruled that Summit did not have a perfected lien, the liquidation value of the estate increased by $24,000.00, and the Debtors became obligated to pay into the plan an additional $24,000.00 if needed to pay the unsecured claims in the case. It thus appears that the other unsecured creditors will be paid in full without regard to whether Summit's claim is allowed as an unsecured claim.[1] It is true that the Debtors will have to pay more into the plan as a result of Summit being allowed an unsecured claim. However, such additional payment by the Debtors represents more the loss of a fortuitous windfall than prejudice, and is not a sufficient reason for not recognizing Summit's motion as an informal proof of claim in this case. It is also true that Summit has not enhanced or increased the estate other than by its inadvertent failure to perfect a lien. While some of the Fourth Circuit cases indicate that a claimant's enhancement of the estate may be a contributing factor in recognizing an informal proof of claim, the court does not read these cases as establishing enhancement of the estate as a prerequisite to the recognition of an informal proof of claim. Under the circumstances of this case, the court is satisfied that

[1]The liquidation value of the estate is $25,000.00, not including the value of the 1997 Lincoln, while the unsecured claims, exclusive of Summit's claim, total only $8,600.00, and there are no priority claims in this case.

substantial justice will be done by treating Summit's motion as an informal claim and allowing Summit an unsecured claim for its unpaid loan balance.

It is therefore ORDERED that the Trustee's motion to disallow Summit's claim as untimely is denied; and it is FURTHER ORDERED that the motion for relief from stay filed by Summit on July 12, 2000, shall be treated as an informal proof of claim and that the formal proof of claim filed on July 25, 2000, constitutes an amendment to the informal proof of claim which relates back to July 12, 2000, with the result that Summit is allowed an unsecured, nonpriority claim in the amount of $22,070.93, less a $27.93 setoff for shares owned by the Debtors which were on deposit with Summit when this case was filed.

This 15th day of February, 2001.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge