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CLAIM WARFARE

The Hostile Claim: An Examination of Defective, Informal, Amended, and Late-Filed Claims.

BY

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General Omar N. Bradley once said, “In war there is no second prize for the runner-up.” The same can be said if a claim is deficient, late-filed, or inequitable, which if objected to and disallowed, leaves the holder of the claim with little relief and ultimately a loser in the claim process. This is an attempt to examine how these claims can have a hostile impact on the Chapter 13 process and may be the demise of the creditor’s ability to participate under the plan.

1. Proof of Claim – Bankruptcy Rule 3001.

As most of us recognize, a proof of claim is a written statement setting forth a creditor's claim that is filed by a creditor or the creditor’s authorized agent. More importantly, when a claim or an interest in property of the debtor securing the claim is based on a writing, the original or a duplicate of the writing shall be filed with the proof of claim. However, if the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.¹

Additionally, if a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim. What is more, if a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim.²

A proper claim timely filed stands, absent an objection. Under the procedural framework provided by Rule 3001, the claim will be allowed unless the party who objects to the proof of claim produces evidence rebutting the initial presumption of validity.³ If the debtor succeeds in producing sufficient rebuttal evidence, the burden of going forward shifts back to the claimant

¹ Rule 3001 of the Federal Rules of Bankruptcy Procedure.

² Id.

³ *Gardner v. New Jersey*, 329 U.S. 565, 573 (1947); *Simmons v. Savell (In re Simmons)*, 765 F.2d 547, 552 (5th Cir.1985).

who bears the ultimate burden of persuasion to establish the validity and amount of its claim by a preponderance of the evidence.⁴ A preponderance of the evidence means “by the greater persuasive force thereof, and not the greater volume thereof, or the greater number of witnesses testifying thereto.”⁵

If the holder of a claim fails to provide any information required by Rule 3001(c) the court may, after notice and hearing, take either or both of the following actions; (1) preclude the holder from presenting the omitted information in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.⁶

Although the court may preclude the holder from presenting the omitted information, it does not follow that he is forever barred from establishing the claim. A creditor may be allowed to amend his incomplete proof of claim (what is often called an “informal proof of claim”) to comply with the requirements of Rule 3001, provided that other creditors are not harmed by the tardy completion of the filing.

2. Informal Claims.

An informal proof of claim gives a creditor the right to participate in distributions from the bankruptcy estate if the document designated as the informal claim, is filed within the time permitted under Rule 3002(c).

Additionally, an informal proof of claim is beneficial when a creditor fails to file a timely claim as proscribed by Bankruptcy Rule 3001 but files with the court a document that provides

⁴ *In re Pursue Energy Corp.*, 379 B.R. 100, 105 (Bankr.S.D.Miss.2006).

⁵ *Sorrell v. Electronic Payment Sys, Inc. (In re Sorrell)*, 292 B.R. 276, 288 (Bankr.E.D.Tex.2002).

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