

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: March 23, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 23, 2021 at 1:00 p.m.

1. 20-24202 -B-13 EVERLENA JONES RDG -1 Scott D. Shumaker	OBJECTION TO CLAIM OF HYUNDAI CAPITAL AMERICA, CLAIM NUMBER 5 2-18-21 [29]
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Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 5 of Hyundai Capital America and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Hyundai Capital America ("Creditor"), Claim No. 5. The claim is asserted to be in the amount of \$11,545.92. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002©. The deadline for filing proofs of claim in this case for a non-government unit was September 25, 2020. The Creditor's claim was filed January 26, 2021.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002© governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them.

March 23, 2021 at 1:00 p.m.

Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): “[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor’s claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

Introduction

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court has also determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the Covid-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). Oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to overrule the objection to Claim No. 2.

Background

Debtor Harold Grigsby ("Debtor") objects to the \$12,862.87 secured proof of claim, Claim No. 2, that Quantum 3 Group LLC ("Quantum") filed as agent for Aqua Finance ("Aqua"). See also Dkt. 20 ¶ 3 (conceding Quantum's agent status for Aqua). The Debtor asserts that the claim should be allowed as a general unsecured claim rather than as a secured claim because there is no collateral for the debt and there is no lien in place. Debtor contends that the proof of claim does not support the claim being secured.

Schedule F lists a debt owed to Connexus Credit Union with an account number ending in 6024. Claim No. 2 includes the same Aqua account number.

Claim No. 2 describes the debt as being secured by "Household Good(s)/Fixture Lien(s)." It includes a retail installment sales agreement between an original creditor (defined therein as "Dealer") and the Debtor pursuant to which the Debtor purchased and financed what appear to be household or home improvement goods and services from the Dealer. The sales agreement also reflects that the Dealer assigned all rights and interest in the agreement - and in the goods and services purchased pursuant to the agreement - to Aqua.

Claim No. 2 also includes a UCC continuation statement which identifies Aqua as the secured party. The continuation statement describes the applicable collateral as "windows, roofs, and other home improvement." And it identifies the Debtor as the debtor party.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. 11 U.S.C. § 502(a). Once an objection is filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b).

A proof of claim executed and filed in accordance with the applicable bankruptcy rules is presumptively valid. See Fed. R. Bankr. P. 3001(f). Claim No. 2 meets this criteria. It is filed by or on behalf of the proper creditor, *i.e.*, Aqua. It also includes evidence that Aqua has a security interest in the Debtor's household and/or home improvement goods. See Fed. R. Bankr. P. 3002(c)(2)(B). Claim No. 2 is therefore presumptively valid.

As the party objecting to the proof of claim, the Debtor has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (9th Cir. BAP 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The Debtor has not met his burden. The extent of the evidence offered in support of the objection is the Debtor's unsupported and unsubstantiated statement that "the debt is not a secured debt . . . having no collateral and the claim offers no proof that the debt is secured." Dkt. 22 at ¶ 4. In that regard, the Debtor's evidence is tantamount to a mere assertion that the proof of claim is not valid and that the secured debt is not owed. It is therefore insufficient to overcome the presumptive validity of Claim No. 2. The Debtor's objection to the proof of claim filed as Claim No. 2 is therefore overruled.

Conclusion

The objection is ORDERED OVERRULED for reasons stated in the minutes.

The court will issue an order.

3. [19-23730](#)-B-13 TERRY/MICHELLE DINTELMAN MOTION TO MODIFY PLAN
[GSJ](#)-3 Grace S. Johnson 2-5-21 [[66](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

4. [20-24859](#)-B-13 RAMZI/GHADA ZUMOUT
[CDL](#)-8 Colby D. LaVelle

MOTION TO CONFIRM PLAN
2-12-21 [[67](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to not confirm the second amended plan.

Feasibility depends on the granting of motions to avoid lien of Citibank, N.A., Capital One, and Department Stores National Bank. Those motions were denied without prejudice on March 16, 2021.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.