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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re)
9) Case No. 03-24245-A-7
10 ROBERT and LAURIE HANSON,)
11) Docket Control No. KWS-1
12 Debtors.)
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On April 25, 2005 at 9:00 a.m. the court considered the motion of Thomas Aceituno, the chapter 7 trustee for the chapter 7 estate of Ronnie and Terri Matthews, Case No. 04-33664, for leave to file a late proof of claim in the above-captioned case. The text of the final ruling appended to minutes of the hearing follows. This final ruling constitutes a "reasoned explanation" for the court's decision and accordingly is posted to the court's Internet site, www.caeb.uscourts.gov, in a text-searchable format as required by the E-Government Act of 2002. The official record of this ruling remains the minutes of the hearing.

19 **FINAL RULING**

20 The motion will be denied.

21 Thomas Aceituno, the chapter 7 trustee in the bankruptcy
22 case of Ronnie and Terri Matthews (Case No. 04-33664), seeks an
23 order allowing his late-filed proof of claim in the amount of
24 \$392,000 filed in the Hansons' case. The claim was filed on
25 March 7, 2005. The deadline to file a proof of claim was October
26 6, 2003 (and not January 1, 2004 as asserted in the motion).

27 Mr. Aceituno states that the proof of claim on behalf of the
28 Matthews' estate was filed late due to a lack of knowledge of the

1 claims deadline, and "also for reasons set forth in Rule
2 3002(e)(2)[sic] and (c)(5) of the Federal Rules of Bankruptcy
3 Procedure."

4 The Matthews' bankruptcy case was filed on November 30,
5 2004. Also, the Matthews did not schedule any claim against the
6 Hansons. The motion indicates that Mr. Aceituno only learned of
7 the claim when examining the Matthews at their first meeting of
8 creditors conducted in early 2005.

9 Mr. Aceituno asserts that the court has the equitable power
10 to retroactively extend the October 6, 2003 deadline. The motion
11 will be denied.

12 First, Mr. Aceituno could not be expected to file a claim on
13 behalf of the Matthews estate on or before October 6, 2003 when
14 that estate did not come into being until November 30, 2004.
15 However, this does not explain why the Matthews did not file
16 their own claim. The deadline was outstanding while the Matthews
17 were in charge of their assets. Accordingly, they were required
18 to protect those assets and their rights vis a vis the Hansons.
19 If they failed to do so, their chapter 7 trustee, appointed after
20 the claims' bar date had expired, is not given a new deadline to
21 file a claim against the Hansons. Their trustee takes whatever
22 rights the Matthews may have had on the date of their petition,
23 no more and no less.

24 Any extension would have to be provided in 11 U.S.C. § 108.
25 Section 108 provides no extension when the original deadline
26 expires before the petition was filed. In this case, the
27 deadline for claims in the Hansons' case expired before the
28 Matthews case was filed. Section 108 is of no avail.

1 Second, if the Matthews' claim against the Hansons was not
2 duly scheduled and if the Matthews did not have actual knowledge
3 of the case to file a claim, the Matthews (or Mr. Aceituno as
4 their bankruptcy trustee) have the remedy provided in 11 U.S.C. §
5 523(a)(3).

6 Third, a late claim filed in a chapter 7 case is not
7 disallowed. Rather, it is accorded a lower priority of
8 distribution. See 11 U.S.C. § 726(a)(2)(C), (3). Generally, a
9 late claim is paid after timely filed claims are paid. So, at
10 least to this extent, it was unnecessary to move for the
11 allowance of the claim.

12 Fourth, the motion cites Rule 3002(e)(2) as a basis for
13 granting the motion. There is no Rule 3002(e)(2).

14 Fifth, to the extent the motion is based on Rule 3002(c)(2),
15 it is not applicable to this case. Rule 3002(c)(2) provides that
16 the court may extend the time for a representative of an infant
17 or an incompetent person to file a proof of claim on behalf of
18 the representative's ward. There is no evidence that the
19 Matthews are or were incompetent. Nor is it likely they were
20 below the age of majority at any time in relation to the bar date
21 to file claims in the Hansons' case. A review of the Matthews'
22 schedules, Schedule I in particular, reveals that they are
23 married and had a 19 year old son when their petition was filed.
24 It is exceedingly unlikely that they were younger than 18 years
25 of age when the Hansons filed their case.

26 Sixth, Rule 3002(c)(5) provides that if notice of
27 insufficient assets to pay a dividend was given to creditors
28 under Rule 2002(e) and the trustee later informs the court that

1 payment of a dividend appears possible, the creditors will be
2 notified that they may file proofs of claim within 90 days of the
3 mailing of such notice. In the Hansons' case, however, the first
4 meeting notice advised all creditors to file proofs of claim on
5 or before October 6, 2003. The first meeting notice did not
6 inform creditors that the Hansons' chapter 7 case was likely to
7 be a "no-asset" case. Consequently, Rule 3002(c)(5) does not
8 help Mr. Aceituno.

9 Seventh, the court has no general "equitable power" to allow
10 late claims. Failing to file a timely proof of claim is a ground
11 for its disallowance or its subordination to timely filed claims.
12 Internal Revenue Service v. Osborne (In re Osborne), 76 F.3d 306,
13 310 (9th Cir. 1996); 11 U.S.C. § 502(b)(9); 11 U.S.C. §
14 726(a)(2)(C), (3).

15 11 U.S.C. § 502(b)(9) clearly requires that a creditor file
16 a proof of claim if the creditor wishes to participate in
17 distributions from a chapter 7 estate. Fed. R. Bankr. P. 3002(c)
18 prescribes the time limit for filing a proof of claim. A
19 creditor must file one not later than 90 days after the date
20 first set for the section 341(a) meeting. This was October 6,
21 2003. The claim filed was not timely and as a result, it is
22 entitled only to the distribution specified in section
23 726(a)(2)(C) or (3), as is appropriate. The court makes no
24 decision as to which level of distribution is appropriate.

25 The issue then becomes whether the deadline set by Rule
26 3002(c) can be extended to permit a creditor to file a belated
27 proof of claim that is entitled to the distribution on a par with
28 timely filed claims.

1 That deadline cannot be extended. Rule 3002(c) contains
2 five provisions for extensions for filing a timely proof of
3 claim. None of those exceptions are applicable here. Fed. R.
4 Bankr. P. 9006(b)(3) specifically precludes enlargement of the
5 time for creditors to file proofs of claim except to the extent
6 provided in Rule 3002(c). Rule 3002(c) provides no basis for an
7 extension in this case.

8 The applicability of Rule 3002(c) to this case rather than
9 Fed. R. Bankr. P. 3003(c)(3) (which applies in chapter 11 cases),
10 and the wording of Rule 9006(b)(3) prevent the Supreme Court's
11 decision in Pioneer Investment Services Company v. Brunswick
12 Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of
13 assistance to the creditors. Pioneer involved a chapter 11
14 proceeding. In chapter 11 cases, the filing of proofs of claim
15 is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to
16 chapter 7 cases. Rule 9006(b)(3) does not restrict extensions of
17 the time to file proofs of claim in chapter 11 cases.
18 Consequently, under Rule 9006(b)(1), the court may permit a
19 creditor to file a proof of claim in a chapter 11 case after the
20 bar date established under Rule 3003 has expired if excusable
21 neglect prevented the filing of a timely proof of claim.

22 In Pioneer, the Supreme Court determined what constituted
23 excusable neglect under Rule 9006(b)(1). That decision has
24 little or no applicability here. In a chapter 7 case, Rule
25 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are
26 applicable. And, as noted above Rule 3002(c) does not permit
27 enlargement of the time to file proofs of claim after the
28 expiration of the deadline even when excusable neglect is

1 present.

2 Accordingly, the motion must be denied.