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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 MODESTO DIVISION
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8)
9 In re) Case No. 07-90094-A-13G
10 BENITO and DORA MATA,) Docket Control No. LRP-1
11 Debtors.) Date: August 27, 2007
12) Time: 2:00 p.m.
_____)

13 *On August 27, 2007 at 2:00 p.m., the court considered the*
14 *Lee Financial Services to allow its late filed proof of claim.*
15 *The court's ruling on the motion is appended to the minutes of*
16 *the hearing. Because that ruling constitutes a "reasoned*
17 *explanation" of the court's decision, it is also posted on 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, however, remains the ruling appended to the
minutes of the hearing.

18 **FINAL RULING**

19 The motion will be denied.

20 Fed. R. Bankr. P. 3004 and 11 U.S.C. § 502(c) permit a
21 debtor to file a claim on behalf of the creditor as early as the
22 date first set for the meeting of creditors but not later than 30
23 days after the expiration of the time for the creditor to file
24 its own proof of claim.

25 Unlike the deadline set by Fed. R. Bankr. P. 3002(c) for
26 creditors to file their own proofs of claim, nothing in Fed. R.
27 Bankr. P. 9006(b) bars the enlargement of the time for the debtor
28 to file a proof of claim on behalf of a creditor.

1 General Order 05-03 extends this deadline. At Paragraph
2 6(e), the General Order provides: "If a creditor fails to file a
3 proof of claim within the time required by FRBP 3002(c) or
4 section 502, the debtor or the Trustee may file a proof of claim
5 on behalf of the creditor pursuant to FRBP 3004. The time for
6 the filing of such a claim is extended to 60 calendar days after
7 service on the debtor or his counsel of the Notice of Filed
8 Claims."

9 The General Order also provides for the filing and service
10 of the Notice of Filed Claims. General Order 05-03, ¶ 6(b)
11 provides: "The Notice of Filed Claims shall be filed and served
12 by the Trustee upon the debtor and the debtor's attorney, if any,
13 no later than the longer of 250 calendar days after the order for
14 relief or 180 calendar days after plan confirmation."

15 A review of the docket reveals both that the deadline for
16 the trustee to serve the Notice of Filed Claims has not yet
17 passed, and that the trustee has not yet served the Notice of
18 Filed Claims. Hence, the extended deadline for the debtor or the
19 trustee to file proofs of claim on behalf of creditors has still
20 not expired.

21 This case was commenced on February 1, 2007. The last date
22 for a nongovernmental creditor to file a timely proof of claim
23 was June 19, 2007. The movant, Lee Financial Services, did not
24 file a proof of claim on or before June 19. Its claim was filed
25 after the deadline had expired on July 19, 2007. Pursuant to 11
26 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), that proof of
27 claim must be disallowed as untimely. See In re Osborne, 76 F.3d
28 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th

1 Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114
2 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska),
3 920 F.2d 1428, 1432-33 (9th Cir. 1990).

4 While the creditor's proof of claim is untimely and must be
5 disallowed, it still has an allowed claim because the debtor
6 filed a proof of claim on its behalf on August 1, 2007. If the
7 creditor disagrees with any aspect of the claim filed on its
8 behalf, the creditor is free to amend the claim. "A creditor is
9 permitted to file a proof of claim after the bar date when the
10 proof of claim is an amendment to a timely filed claim...." In
11 re Osborne, 159 B.R. 570, 573 (Bankr. C.D. Cal. 1993), *affirmed*,
12 167 B.R. 698 (B.A.P. 9th Cir. 1994), *affirmed*, 76 F.3d 306 (9th
13 Cir. 1996).

14 Looking a gift horse in the mouth, rather than amend the
15 claim filed on its behalf by the debtor, the creditor wants the
16 court to allow its late filed claim as if it were filed timely.

17 The deadline set by Fed. R. Bankr. P. 3002(c) for creditors
18 to filed claims cannot be extended. First, Rule 3002(c) contains
19 five exceptions to the requirement that a timely proof of claim
20 be filed. None of those exceptions are applicable here. Second,
21 Fed. R. Bankr. P. 9006(b) (3) specifically precludes enlargement
22 of the time for creditors to file proofs of claim except to the
23 extent provided in Rule 3002(c).

24 The applicability of Rule 3002(c) and not Fed. R. Bankr. P.
25 3003(c) (3) to this case, and the wording of Rule 9006(b) (3),
26 prevent the Supreme Court's decision in Pioneer Investment
27 Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S.
28 380 (1993), from being of assistance to the creditor. Pioneer

1 involved a chapter 11 proceeding. In chapter 11 cases, the
2 filing of proofs of claim is governed by Rule 3003 and not Rule
3 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b) (3)
4 does not restrict extensions of the time to file proofs of claim
5 in chapter 11 cases. Consequently, under Rule 9006(b) (1), the
6 court may permit a creditor to file a proof of claim in a chapter
7 11 case after the bar date established under Rule 3003 has
8 expired if excusable neglect prevented the filing of a timely
9 proof of claim.

10 In Pioneer, the Supreme Court determined what constituted
11 excusable neglect under Rule 9006(b) (1). That decision has
12 little or no applicability here. In a chapter 13 case, Rule
13 9006(b) (1) is not applicable; Rules 9006(b) (3) and 3002(c) are
14 applicable. And, as noted above Rule 3002(c) does not permit
15 enlargement of the time to file proofs of claim after the
16 expiration of the deadline even when excusable neglect is
17 present.

18 Of course, had the debtor not filed a proof of claim on
19 behalf of the creditor, the court would not apply the Bankruptcy
20 Rules in a way that deprived the creditor of its constitutional
21 rights. See Reliable Elec. Co., Inc. v. Olson Constr. Co., 726
22 F.2d 620, 623 (10th Cir. 1984); In re Rogowski, 115 B.R. 409,
23 412-14 (Bankr. D. Conn. 1990). The Fifth Amendment provides that
24 “[n]o person ... shall ... be deprived of ... property, without
25 due process of law....” In Mullane v. Central Hanover Bank &
26 Trust Co., 339 U.S. 306, 314 (1950), the Supreme Court held that
27 “[a]n elementary and fundamental requirement of due process in
28 any proceeding which is to be accorded finality is notice

1 reasonably calculated, under all the circumstances, to apprise
2 interested parties of the pendency of the action and afford them
3 an opportunity to present their objections.”

4 The claimant here asserts that it did not receive notice of
5 the filing of the petition or the deadline for filing proofs of
6 claim in time to file a timely proof of claim. It maintains
7 that, in this circumstance, it would be unfair if it is precluded
8 from filing a claim and participating in the case. The
9 creditor’s argument that it will, in effect, be deprived of due
10 process if its late claim is not allowed, is premised upon the
11 erroneous assumption that if its late claim is not allowed, the
12 debtor’s obligation to it will be discharged and/or the debtor
13 will be able to use its collateral without paying its claim.
14 This premise is incorrect.

15 As to the debtor’s discharge of their personal liability to
16 the creditors, 11 U.S.C. § 1328(a) provides in relevant part:
17 “As soon as practicable after completion by the debtor of all
18 payments under the plan ... the court shall grant the debtor a
19 discharge of all debts provided for by the plan or disallowed
20 under section 502 of this title....” The debtor had a duty to
21 accurately schedule or list all debts, In re Barnett, 42 B.R.
22 254, 256 (Bankr. S.D. N.Y. 1984), and to follow court orders. If
23 the debtor failed to schedule the creditor or to list its correct
24 mailing address, and as a result the creditor did not receive
25 notice of the bar date in time to file a proof of claim, the
26 debtor’s plan does not provide for the creditor’s claim. In re
27 Harris, 64 B.R. 717, 719 (Bankr. D. Conn. 1986) (“Distributions
28 under Chapter 13 plans are made only to creditors with allowed

1 claims."); In re Van Hierden, 87 B.R. 563, 564 (Bankr. E.D. Wis.
2 1988). It would require a tortured reading of 11 U.S.C. §
3 1328(a) to find that where a creditor is deprived of the
4 opportunity to hold an allowed claim by a debtor's negligence,
5 its claim is provided for by a plan. Southtrust Bank of Ala. v.
6 Gamble (In re Gamble), 85 B.R. 150, 152 (Bankr. N.D. Ala. 1988);
7 In re Cash, 51 B.R. 927, 929 (Bankr. N.D. Ala. 1985) ("[I]t would
8 be a strained construction to view the plan as providing for a
9 debt owed to a creditor, when the debtor omits the debt and
10 creditor from the Chapter 13 Statement.").

11 To discharge a debtor's personal liability for a claim in a
12 chapter 13 case, the plan must provide for that claim. To
13 provide for the claim, the creditor must be given notice so that
14 it has the opportunity to participate in the chapter 13 case and
15 the plan must provide for the creditor's claim. If this did not
16 occur in this case, the claim will not be discharged.

17 As to the use of the creditor's collateral without
18 compensation, had the debtor not filed a claim on its behalf the
19 court would grant relief from the automatic stay to permit the
20 creditor to obtain its collateral. Cf. In re Lee, 182 B.R. 354
21 (Bankr. S.D. Ga. 1995); Southtrust Bank of Alabama v. Thomas (In
22 re Thomas), 883 F.2d 991 (11th Cir. 1989), *cert. denied*, 497 U.S.
23 1007 (1990).

24 But, most of the foregoing is academic. Because the debtor
25 filed a proof of claim for the creditor, the creditor holds an
26 allowed claim. To the extent that proof of claim does not
27 accurately describe its claim, the creditor may amend it.

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