

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division**

IN RE:

IN PROCEEDINGS UNDER CHAPTER 13

LOUISE M. VERTAL, *pro se*.

CASE NO.: 03-23830

Debtor.

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

The matter before the Court is the Debtor's objections to certain proofs of claim. Debtor objects to the following claims: Claim Number 2 filed by The Cleveland Clinic Foundation in the amount of \$589.23; Claim Numbers 3 and 6 filed by National City Bank in the amount of \$24,334.02 and \$3,288.09, respectively, and Claim Number 7 filed by MBNA America Bank, N.A. by eCast Settlement Corporation as its agent in the amount of \$29,301.98. Debtor also objects to attorney fees being paid through her confirmed plan to Attorney Claudia Fitzgerald in the amount of \$1,250.00.¹ Responses were filed by eCast Settlement Corporation to objection to Claim Number 7 and Attorney Claudia Fitzgerald, the Debtor's prior counsel, to the Debtor's objection to payment of her attorneys fees.

The Court acquires core matter jurisdiction over the instant matter pursuant to 28 U.S.C. §§ 157(a) and (b), 28 U.S.C. § 1334, and General Order Number 84 of this District. Following a duly noticed hearing, the following findings and conclusions are rendered:

¹The objection to Claim number 12 filed by Sherman Acquisition LP dba Resurgent Acquisition, in the amount of \$2,959.36 was withdrawn. The objection to Claim Number 13 filed by Sherman Acquisition LP, dba Resurgent Acquisition, in the amount of \$13,934.91 was overruled. The remainder of the objections were taken under advisement and are addressed herein.

The Debtor filed for relief under Chapter 13 proceedings on October 17, 2003. Her Chapter 13 plan was confirmed, without objection, on November 25, 2003. The Debtor filed the subject objections on February 17, 2004. She filed her objection to the order confirming payment of attorney fees to Attorney Claudia Fitzgerald on April 30, 2004.

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Although no statutory authority or case authority was provided in the pro se Debtor's objections, the dispositive issues here are whether the Debtor's objections are timely filed and whether she has met her burden of proof in objecting to the proofs of claim.

Section 501 and Fed. R. Bankr. P. 3002 address the filing of proofs of claim. Section 502(a) provides that a properly filed proof of claim is allowed unless a party in interest timely objects. Rule 3001(f) provides that "a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). Once a plan is confirmed, however, the parties' rights generally become fixed by the terms of the plan as finally confirmed. See 11 U.S.C. §§ 1323(b), 1327(a).

There are a line of cases which have viewed post-confirmation claim objections as prohibited collateral attacks upon the plan's confirmation order. See e.g., Universal Am. Mortgage Co. v. Bateman (In re Bateman), 331 F.3d 821 (11th Cir. 2003)("Although § 502(a) does not provide for a time limit to file an objection, it must be filed prior to plan confirmation); accord In re Justice Oaks II, Ltd., 898 F.2d 1544, 1553(11th Cir. 1990); Adair v. Sherman, 230 F.3d 890, 894-95 (7th Cir. 2000) ("[W]hen a proof of claim is filed prior to confirmation, and the debtor does not object prior to

confirmation, the debtor may not file a post-confirmation collateral action that calls into question the proof of claim." (footnotes omitted); Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1553 & n. 11 (11th Cir. 1990) (holding that a claim objection, concerning classification in the plan, is barred by the doctrine of *res judicata* if brought post-confirmation.); In re Simmons, 765 F.2d 547, 553 (5th Cir. 1985)(Section 506(a) and § 1325(a)(5) require that a proof of secured claim must be acted upon--either allowed or disallowed--or be deemed an allowed secured claim under § 502(a) for purposes of the plan, before plan confirmation, and that an objection is thereafter barred by § 1327(a)).

In this Circuit, the Bankruptcy Appellate Panel for the Sixth Circuit (B.A.P.) recently opined that "[n]either the Bankruptcy Code nor Bankruptcy Rules contain a bar date or deadline for filing objections to claims in a Chapter 13 case...." See Morton v. Morton (In re Morton), 298 B.R. 301 (B.A.P. 6th Cir. 2003)(citing Hildebrand v. Hays Imports, Inc. (In re Johnson), 279 B.R. 218, 224 (Bankr. M. D. Tenn. 2002); United States I.R.S. v. Kolstad (In re Kolstad), 928 F.2d. 171, 174 (5th Cir. 1991); In re Barton, 249 B.R. 561, 566 (Bankr. E.D. Wash. 2000). Thusly, in accordance with Morton, the Debtors' objections to the above-referenced proofs of claim are timely filed. These objections are considered, in turn, below:

CLAIM NUMBER 2

Debtor objects to proof of claim number 2 filed by Cleveland Clinic Foundation in the amount of \$589.23 on the basis that her insurance carrier has paid 80% of the outstanding bill. Debtor has attached an exhibit which details certain charge amounts and insurance payments and adjustments. The balance reflected is an outstanding bill of \$44.58. Notwithstanding the balance reflected, Debtor

submits that she owes \$117.84 to Cleveland Clinic. No response was made by Cleveland Clinic to the objection upon due notice. As the Debtor has provided sufficient documentation reflecting certain payments made to Cleveland Clinic, she has met her burden of proof under § 502 and Rule 3001(f) on this objection. Her objection is therefore sustained. Proof of claim Number 2 shall be reduced and allowed in the amount of \$117.84.

CLAIM NUMBER 3

Debtor objects to proof of claim number 3, which is a mortgage security interest on her residence, on the basis that “she is having trouble paying this claim outside of the plan”. She has attempted to pay the mortgage outside of the plan, but asserts that National City is set to receive payments inside the plan and it cannot change the way it receives payment as dictated by the plan. Although National City did not file a response to Debtor’s objection to its proof of claim, Debtor’s objection is without merit. Her confirmed plan provides under ¶ 3 that the National City Mortgage will be paid **inside** the plan. An objection to National City’s proof of claim is an improper method to modify the terms of the confirmed plan. On this basis, the objection to claim Number 3 filed by National City Bank is overruled.

CLAIM NUMBER 6

Debtor objects to proof of claim number 6 also filed by National City Bank for a personal loan in the amount of \$3,288.09. Specifically, she argues that this claim should be classified as an unsecured claim. A review of claim number 6 provides that it is indeed classified as an unsecured nonpriority claim in the amount of \$3,288.09. Therefore, this objection is unwarranted and overruled.

CLAIM NUMBER 7

Debtor objects to proof of claim number 7 on the basis that it is a duplicate of Claim Number 12. This objection is also without merit. Claim Number 7 was filed by MBNA America Bank, N.A., by its agent eCast Settlement Corporation, in the amount of \$29,301.98. Whereas, Claim Number 12 was filed by Sherman Acquisition LP dba Resurgent Acquisition in the amount of \$2,959.36. These two proofs of claims are not duplicative. Therefore, the objection to Claim Number 7 is overruled.

OBJECTION TO ATTORNEY FEES OF CLAUDIA FITZGERALD

Debtor objects to attorney fees for Attorney Claudia Fitzgerald in the amount of \$1,250.00 which are to be paid in her confirmed plan. Generally, Debtor asserts that Atty. Fitzgerald disregarded ¶ 10 of the Court's Administrative Order Number 03-6 during her representation of the Debtor.² She also asserts that Atty. Fitzgerald did not include the payment of certain state taxes in the proposed plan. She also asserts that two creditors, Cleveland Medical Services and Erie Shores Emergency Physicians, were omitted from her Schedule F. Lastly, she claims that her plan provides that Claim Number 11 filed by The Heritage Home Condominiums was listed as unsecured, when it is a secured claim. For the following reasons, each of these alleged violations are without merit and the objection is overruled.

Section 521 of the Bankruptcy Code is captioned Debtor's Duties. That section provides in pertinent part: The debtor shall--

- (1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement

²Paragraph 10 provides that the attorney agrees to timely prepare and file the debtor's petition, plan, statements, and schedules, as well as any required amendments thereto.

of the debtor's financial affairs;
(2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate—

11 U.S.C. §§ 521(1),(2). Bankruptcy Rule 1007 provides, in part:

(a)(1) In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor unless the petition is accompanied by a schedule of liabilities. If the debtor is a corporation, other than a governmental unit, the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate.

Fed. Bankr. P. 1007(a)(1). Likewise, Rule 1009 allows the debtor to amend her schedules at any time before the case is closed. Fed. Bankr. P. 1009(a). The Bankruptcy Code and Rules place duties upon the debtor which place the ultimate responsibility for the accuracy and completeness of a debtor's schedules upon her, not her counsel.

On November 25, 2003, the Order confirming the Debtor's plan was entered. The Debtor's electronic signature was contained thereon. If modifications were necessary, the Debtor had a statutory right to do so. The attached exhibits reflect, in part, that at least on one occasion, Atty. Fitzgerald requested by email Debtor's recent pay stubs, a listing of increasing medical expenses, and a copy of Debtor's 2004 tax return so that the plan [could] be modified if the Debtor's situation changed. (See Fitzgerald email dated December 15, 2003 10:26:59 a.m.). No response was exhibited by the Debtor.

On January 10, 2004, Debtor sent a letter to the Chapter 13 Trustee notifying him that she instructed Atty. Fitzgerald to make corrections regarding scheduling of her tax exempt annuity and 2004 taxes. She apparently carbon copied Atty. Fitzgerald. Debtor sent Atty. Fitzgerald an email detailing the same on January 12, 2004. On that same date, Atty. Fitzgerald sent a response to the

Debtor seeking clarification as to what was needed. No further response was exhibited by the Debtor.

On January 13, 2004, Debtor terminated the services of Attorney Fitzgerald by way of a letter addressed to the Chapter 13 Trustee. On January 20, 2004, Atty. Fitzgerald filed a motion to withdraw as counsel which was granted, without opposition. It is apparent from the evidence presented that Atty. Fitzgerald did not receive adequate responses as necessary to make modifications to the plan prior to her termination. Administrative Order 03-6, cited by the Debtor, requires the Debtor to provide the attorney with accurate, and, to the best of the debtor's ability, complete financial information (§ 1), and to respond to all attorney requests as soon as possible. (§ 4). Because the Debtor did not comply with Attorney Fitzgerald's requests for information, her alleged violations are without merit.

Lastly, Debtor argues that the Heritage House (i.e. Heritage Home Condominiums) proof of claim (Number 11) is listed as "unknown", but it should be secured. She claims that Atty. Fitzgerald did nothing to change the "unknown" class to a secured class. However, she also states that Atty. Fitzgerald listed the claim as a secured claim in the plan. A review of the proof of claim reflects that it is indeed a secured claim. Moreover, the claim was listed under paragraph 4 of the plan as a secured claim, being paid inside the plan. Thusly, the Debtor's objection to Claim Number 11 is hereby overruled.

Accordingly, objection to Claim Number 2 is hereby sustained, in part. Objections to Claim Numbers 3, 6, 7, and 11 are hereby overruled. The objection to payment of attorney fees to Claudia Fitzgerald is overruled. Each party is to bear its respective costs.

IT IS SO ORDERED.

Dated, this 2 day of
August, 2004

/s/ Randolph Baxter

RANDOLPH BAXTER
CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:

IN PROCEEDINGS UNDER CHAPTER 13

LOUISE M. VERTAL, *pro se.*

CASE NO.: 03-23830

Debtor.

JUDGE RANDOLPH BAXTER

JUDGMENT

At Cleveland, in said District, on this 2 day of August, 2004.

A Memorandum Of Opinion And Order having been rendered by the Court in this proceeding,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Debtor Louise Vertal's objection to Claim Number 2 is hereby sustained, in part. Objections to Claim Numbers 3, 6, 7, and 11 are hereby overruled. The objection to payment of attorney fees to Claudia Fitzgerald is overruled. Each party is to bear its respective costs.

IT IS SO ORDERED.

/s/ Randolph Baxter

**RANDOLPH BAXTER
CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT**