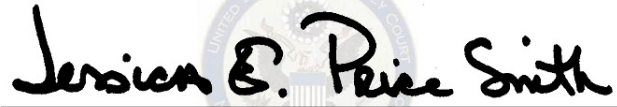


IT IS SO ORDERED.

Dated: 13 September, 2016 12:55 PM



Jessica E. Price Smith

JESSICA E. PRICE SMITH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY
COURT FOR THE NORTHERN DISTRICT OF
OHIO EASTERN DIVISION

IN RE: IN PROCEEDINGS UNDER CHAPTER 7

MORRIS H. ERVIN, SR. CASE NO. 15-14575
PATRICIA A. ERVIN,

DEBTORS. JUDGE JESSICA E. PRICE SMITH

MEMORANDUM OF OPINION AND ORDER

The matters before the Court are the Debtors' Objections to Claims Numbers 1, 2, 3, 4, 5, 6, 8, and 9. (Doc. Nos. 53, 55, 57, 59, 61, 63, 67, 69). The Trustee responded (Doc Nos. 71, 72, 73, 74, 75), and the Debtors replied (Doc. Nos. 83, 86, 87, 94, 95). The matter was heard at the duly noticed hearing scheduled before this Court on March 8, 2016.

Debtors objected to every claim filed in this case after the Trustee challenged the exemption claimed in Mr. Ervin's workers' compensation settlement. This Court found that the settlement proceeds were not exempt and were property of the estate. If these claim objections were sustained, the Debtors' creditors would receive no payment on their claims and the Ervins would retain the proceeds from the settlement check they were holding on the petition date. It was a poorly executed plan to achieve the same outcome they sought by claiming the exemption.

In their Objections to Claim Numbers 1, 2, and 6, Debtors state that the claims fail to demonstrate the balance owed as of the petition date, but fail to provide sufficient evidence to

overcome the prima facie presumption of validity and amount of the claims. Objections to Claim Numbers 3, 4, 5 and 8 state that the debts are in the name of Patricia Ervin only, however, they are listed in the Debtors' Schedule F of their bankruptcy petition as joint and undisputed, creating a presumption of validity and joint responsibility, which the Debtors fail to overcome. Objection to Proof of Claim Number 9 states that the claim should be denied since it was filed three days late. Debtors provide no authority for the denial of a claim under those circumstances, and the claim is listed on Debtors' schedules as joint and undisputed. For the reasons stated below, the Objections to Claims are overruled and the Trustee's responses are sustained.

DISCUSSION

Objections to Claim Numbers 1 and 2 (Doc. Nos. 53, 55) relate to claims filed by Quantum 3 Group LLC as agent for CP Medical LLC and CF Medical VI LLC, in the amounts of \$87.00 and \$230.00 respectively. Objection to Claim Number 4 (Doc. No. 59) relates to a claim filed by Midland Credit Management, Inc., in the amount of \$2,993.75. The Ervins allege that these claims fail to conform substantially to Official Form 10 as required under the Bankruptcy Rules, because they fail to demonstrate the balance owed as of the petition date. Also, the Ervins state that Claim Numbers 1 and 2 may have been paid from worker's compensation benefits previously received.

A properly filed claim is considered "prima facie evidence of the validity and amount of that claim." Fed.R.Bank.P. 3001(f). The party objecting to a claim has the burden of providing evidence to rebut the presumption. *In re Burkett*, 329 B.R. 820, 826-27 (Bankr.S.D.Ohio 2005). "If there is no underlying factual dispute as to the validity, ownership or amount of a claim, a debtor or trustee has no basis for filing an objection for lack of

documentation unless the debtor or trustee alleges a basis that would require reduction or disallowance under § 502.” *Id.* at 829. The Ervins do not offer any evidence or documentation to support these objections, beyond the bare assertion that they “fail to demonstrate the balance owed as of the petition date.” In fact, the amounts of Claim Numbers 1 and 2 as filed are less than or equal to the amounts listed by the Ervins on Schedule F of their bankruptcy petition and all three are listed as joint and undisputed debts. The representations made by the Debtors in their Objections are insufficient to overcome the presumption of validity and amount given to properly filed claims. Accordingly, Objections to Claim Numbers 1, 2 and 4 are not well founded and are overruled, and the Trustee’s responses are sustained.

Objections to Claim Numbers 3 (Doc. No. 57) and 5 (Doc. No. 61) relate to claims filed by Midland Credit Management in the amounts of \$11,704.85 and \$289.34 respectively. Objection to Claim Number 6 (Doc. No. 63) relates to a claim filed by Quantum 3 Group LLC in the amount of \$1,166.28. Objection to Claim Number 8 (Doc. No. 67) relates to a claim filed by LVNV Funding LLC in the amount of \$2,000.04. The Ervins point out in these Objections that the claims list the obligor as Patricia Ervin, and that the significant asset in this case was in the name of Morris Ervin (the workers’ compensation settlement). However, all of these claims are listed on the Ervins’ Schedule F as joint and undisputed, with the claim amount less than or equal to what was listed. “[W]hen a ‘proof of claim’ [against an estate surplus] has been filed in a chapter 7 case and the chapter 7 debtor objects to the same but scheduled the relevant claim as undisputed, the burden is on the debtor to offer some adequate level of explanation as to why his scheduling of that claim as undisputed was incorrect.” *In re Jorczak*, 314 B.R. 474, 483 n. 11 (Bankr.D.Conn. 2004). That has not been done here. Further, the listing of these debts as joint, along with the claim as submitted, is sufficient to

raise a presumption of liability of both Morris and Patricia Ervin. *Id.* at 482-83. Accordingly, the Objections to Claim Numbers 3, 5, 6, and 8 are not well founded and are overruled, and the Trustee's responses are sustained.

Objection to Claim Number 9 relates to a claim filed by Ally Financial in the amount of \$4,809.18, which was filed three days after the bar date. The Ervins object to this claim as untimely filed. In their Objection, the Ervins cite no authority for disallowance of a claim based on late filing, and § 726 of the Bankruptcy Code specifically allows for the payment of tardily filed claims, albeit at a lower priority. 11 U.S.C. § 726(a)(3). In addition, this debt is listed on the Ervins' Schedule F as joint and undisputed. Accordingly, the Objection to Claim Number 9 is not well founded and is overruled, and the Trustee's responses are sustained.

The Court notes that the Debtors' claim objections are inconsistent with how the debts were scheduled in their bankruptcy petition. Statements in schedules are made under penalty of perjury and can be used against a debtor as judicial admissions. *In re Bohrer*, 266 B.R. 200, 201 (Bankr.N.D.Cal. 2001). Further, "[s]o long as the proof of claim contains sufficient information to match it with a scheduled debt, the debt is undisputed, no other creditor has filed a proof of claim for the debt, and the debtor doesn't present any evidence to dispute the debt or ownership of the debt, the objection to claim is specious." *In re McFarland*, 462 B.R. 857, 882 (Bankr.S.D.Fla. 2011). This Court finds that these objections were not filed in good faith, but rather in an attempt to shield Mr. Ervin's non-exempt worker's compensation settlement from creditors. Objections to Claim Numbers 1, 2, 3, 4, 5, 6, 8, and 9 are overruled. The Trustee's responses are sustained.

IT IS SO ORDERED.