IT IS SO ORDERED.

Dated: March 9, 2015
03:52:15 PM

Kay Woods
Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 14-41106**
LINDSEY ERIN BANGOR,	*	**CHAPTER 13**
Debtor.	*	**HONORABLE KAY WOODS**

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ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT OR ORDER

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This cause is before the Court on Motion for Relief from Judgment or Order ("Motion") (Doc. 26) filed by Columbiana County School Employees' Credit Union Inc. ("Credit Union") on March 7, 2015. The Motion asks the Court to review and reverse the "Order of this Court dated February 19 [sic] 2015." (Mot. at 1.) The Court entered two Orders on February 19, 2015 disallowing two different claims asserts by the Credit Union. The Order at Docket No. 22 disallowed Claim No. 14 on the basis that what was filed

was "not a claim." The Order at Docket No. 23 disallowed Claim No. 15 as a duplicate of Claim No. 14.

The Credit Union admits that it "filed claim number 14 in this case, which was incomplete. Creditor then filed claim number 15 a few days later[.]" (*Id.* at 1.) The Credit Union's statement about Claim No. 14 being "incomplete" in not accurate. Neither Claim No. 14 nor Claim No. 15 is the proof of claim form (Official Form 10). Both documents are one-page documents, which appear to be the first page of a Promissory Note dated October 27, 2011. Neither document is signed by the claimant nor asserts a liquidated debt that is owed.

The Credit Union purports to invoke Federal Rule of Bankruptcy Procedure 9024, which incorporates Rule 60 of the Federal Rules of Civil Procedure (with some exceptions not relevant here). Rule 60(b) provides specific grounds for obtaining relief from a final judgment, order or proceeding. These are:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has

> been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b) (2015).

The Credit Union does not specify any of these grounds as the basis for its Motion. The Motion makes no effort to state any reason that would fall within grounds (2) through (5). The only possible basis for the Motion would be in subsection (1) or the catchall in subsection (6).

Counsel for the Credit Union states that he wrote two letters — one to Debtor's counsel and the other to the Chapter 13 Trustee — explaining that he intended to only file one claim. He also states that he was aware of the Debtor's objections to the claims, but erroneously thought that the objections were only an effort to strike the redundant claim. Based on these statements, the Court assumes that the Credit Union relies on mistake or excusable neglect as the basis for its Motion.

> Because Congress has provided no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include, as the Court of Appeals found, the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 395 (1993) (citing *In re Pioneer Inv. Servs. Co.*, 943 F.2d 673, 677 (6th Cir. 1991) (n.13-14 omitted).

In this case, any mistake is the result of carelessness on the part of the Credit Union and/or its counsel. Regarding excusable neglect, the *Pioneer* factors favor the Debtor.

First, there would be prejudice to the Debtor because the last day to file a proof of claim was October 7, 2014. Allowing either Claim No. 14 or Claim No. 15 to stand, when neither filing constitutes a valid proof of claim would, in effect, extend the claims filing deadline for the Credit Union. Whatever document (Claim No. 14 or Claim No. 15) was allowed would have to be replaced with an actual proof of claim form that asserted an actual claim. The Credit Union has filed proofs of claim in the past, but, inexplicitly, did not use the proper official form for filing a claim in this case when it filed Claim No. 14. When the error was allegedly corrected with Claim No. 15, the same improper document was re-filed.

The Credit Union acted within 16 days after entry of the Orders disallowing the Claims when it filed the Motion, so there was not a long delay; this factor is in the Credit Union's favor.

The Credit Union's failure to respond to the objections to Claim Nos. 14 and 15, however, was entirely within its control. Counsel for the Credit Union admits to knowing that the claim

objections had been filed, but states that he misread them. This factor militates against granting the Motion.

The issue of good faith is difficult to access. Although the Court does not believe that either the Credit Union or its counsel is guilty of bad faith, their subjective intent does not control. Counsel for the Credit Union acknowledges that he became aware that Claim No. 14, which was filed on October 3, 2014, was "incomplete." Yet, four days later, the same document was re-filed as Claim No. 15, which did not correct the incomplete or erroneous claim. It appears that there was neglect in filing Claim Nos. 14 and 15 and in failing to respond to the objections to those claims, but such neglect is not excusable.

The Credit Union has not posited any other reason that would justify relief.

As a consequence, the Court hereby denies the Motion for Relief from Judgment or Order.

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