

IT IS SO ORDERED.

Dated: September 10, 2015
02:37:29 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

MARK T. HISSOM,

Debtor.

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CASE NUMBER 12-40193

CHAPTER 13

HONORABLE KAY WOODS

ORDER DENYING CO-CREDITORS' MOTION FOR RECONSIDERATION

This cause is before the Court on Co-Creditors' Motion for Reconsideration ("Motion for Reconsideration") (Doc. 67) filed by Jeffrey W. Hall and Hall of Legends, Inc. (collectively, "Hall") on September 4, 2015. The Motion for Reconsideration asks the Court to reconsider and "reverse" the Order Sustaining, in Part, Objection to Claim No. 11-2 ("Order") (Doc. 64) entered by this Court on August 28, 2015. The Order disallowed Claim No. 11-2 filed by Hall to the extent the Claim asserted priority status pursuant to 11 U.S.C. § 507(a)(8), but allowed the Claim as a

general unsecured claim in the amount asserted, pending further order of the Court.

Hall asserts that the Order should be reconsidered and reversed because Debtor Mark T. Hisson's Objection to Amended Proof of Claim No. 11 ("Objection") (Doc. 56) did not raise the issue of priority; such Objection only requested that Claim No. 11-2 be disallowed in its entirety because the Claim had been satisfied. Hall submits that the Court abused its discretion in entering the Order because it "is not supported by the Record; and is contrary to law and equity." (Mot. for Recons. at 2.) Hall further argues that Claim No. 11-2 "had been previously allowed pursuant to 11 U.S.C. § 502(a)." (*Id.*)

Although Hall does not cite any statutory basis for his Motion for Reconsideration, 11 U.S.C. § 502(j) provides, "A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. . . ." 11 U.S.C. § 502(j) (2015). Section 502(a) provides, "A claim . . . is deemed allowed, unless a party in interest . . . objects." § 502(a). Hence, although Hall asserts that Claim No. 11-2 had been previously allowed, such Claim was only deemed allowed until the Debtor filed the Objection.

Hall is correct that the Debtor's Objection did not object to the priority status of Claim No. 11-2; however, the record of the hearing on August 27, 2015 fully supports the Order. At the

hearing, counsel for Hall acknowledged that the only basis for the asserted priority status was § 507(a)(8), which expressly applies only to "claims of governmental units." 11 U.S.C. § 507(a)(8) (2015). The term "governmental unit" is defined in 11 U.S.C. § 101(27), which states:

(27) The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

11 U.S.C. § 101(27) (2015). Hall is not a governmental unit, does not allege the status of a governmental unit and cannot come within the definition of governmental unit. Thus, the priority in § 507(a)(8), by definition, does not apply to Claim No. 11-2.

A governmental unit is given the priority in § 507(a)(8) because it is an involuntary creditor.

The imposition of time limits [in § 507(a)(8)] reflects a balance created by Congress between the interests of governmental units and the interests of the debtor and of other creditors. The reason for according priority treatment to taxing authorities is because taxing authorities, unlike most other creditors, did not voluntarily extend credit to the debtor. As the legislative history notes:

"A taxing authority is given preferred treatment because it is an involuntary creditor of the debtor. It cannot choose its debtors, nor can it take security in advance of the time that taxes become due. . . . [T]he taxing authority [has] three years to pursue delinquent debtors and obtain secured status. If a debtor files bankruptcy before that three-year period has run, the taxing

authority is given a priority in order to compensate for its temporarily disadvantaged position.”

COLLIER ON BANKRUPTCY, 4-507 at 507.11 (16th Ed. 2015) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 190 (1977)). This same rationale does not apply to Claim No. 11-2 because Hall voluntarily entered into the pre-petition transaction with the Debtor.

Thus, the record at the hearing fully supports disallowance of the priority status of Claim No. 11-2. If the Court were to vacate the Order, the Debtor could simply file a new objection to the priority status of Claim No. 11-2, which, as set forth above, would be sustained. Indeed, the Debtor has indicated that Claim No. 11-2 is a general unsecured claim in Withdrawal of Objection to Amended Claim No. 11 (“Withdrawal”) (Doc. 68) filed on September 9, 2015. “Debtor, Mark T. Hissom, withdraws the balance of his objection to claim no. 11 hereby acknowledging that said claim shall be treated as a general unsecured claim at this juncture.” (Withdrawal at 1.)

As a consequence, based on the equities of this case, the Court hereby denies the relief Hall seeks in the Motion for Reconsideration.

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