THIS OPINION IS NOT INTENDED
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 91-15555
	)	
WESTERN RESERVE MANUFACTURING CO., INC.,	)	Chapter 11
	)	
	)	Judge Pat E. Morgenstern-Clarren
Debtor.	)	
	)	**MEMORANDUM OF OPINION**

This case is before the Court on the (1) Objection of Western Reserve Manufacturing Co. ("Debtor") to Claim No. 201 filed by Proficient Industries, Inc. and Herman Herman, as its sole stockholder; and (2) Motion of Herman Herman, Individually and dba Proficient Industries, Inc., Proficient Industries, Inc. and its Vice President, Herman Herman, to Amend Prior Proof of Claim in the Subject Proceeding. (Docket 246, 301, 303). These matters arise in Debtor's confirmed Chapter 11 case. An evidentiary hearing was held on the Objection and Motion, after which time the parties filed Proposed Findings of Fact and Conclusions of Law. (Docket 324, 325). For the reasons which follow, the Motion to Amend is denied and the Objection to Claim No. 201 is sustained.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O).

FACTS

A.

1. Herman Herman (sometimes referred to as "Mr. Herman") and various entities in which he asserts an interest filed multiple claims in this case. They are:

Date	Number	Amount	Claimant as Listed on Proof of Claim
11/2/92	183	$ 92,598.51	Herman Herman
11/2/92	184	$ 59,850.67	Trimatic Corp. and Zandec Ltd.
4/30/93	200	$700,000.00	Proficient Industries/ Herman Herman
4/30/93	201	$566,634.36	Proficient Industries, Inc. and its sole stockholder Herman Herman

2. The bar date for filing proofs of claim was April 30, 1993. (Docket 200).

3. Debtor objected to these four claims on April 14, 1994. (Docket 246). Mr. Herman, Proficient Industries, Inc. ("Proficient"), Trimatic Corp. ("Trimatic"), and Zandec Ltd. responded to the objection by stating that: "Proof of Claim No. 201 replaced and amended Proofs of Claims Nos. 183, 184 and 200. The total amount due is $566,634.36. Herman Herman is the sole stockholder of Proficient Industries, Trimatic Corp. and Zandec Ltd." (Docket 255).

4. The parties were given a considerable opportunity to resolve these objections without result. A status letter from Debtor's counsel regarding the possible need for Court involvement prompted the scheduling of a status conference on these and other pending claim objections. (Docket 270 and letter attached to it). The status conference was held on May 2, 1996. (Docket 275).

5. On May 29, 1996, the Court entered a stipulated Order submitted by the parties disallowing Claim Nos. 183, 184 and 200 in their entirety ("Agreed Order"). (Docket 276). This

Agreed Order states that claimants previously advised that "proof of claim no. 201 replaced and amended proofs of claim no. 183, 184 and 200." It further provides that "claims no. 183, 184 and 200 should be, and hereby are disallowed in their entirety." Thus, the four claims of Mr. Herman and the various corporations, partnerships and sole proprietorships in which he claims an interest were reduced to a single claim, Claim No. 201. The Agreed Order is signed by counsel for Debtor and counsel for "Claimants, Herman Herman, Proficient Industries, Inc., Trimatic Corporation and Zandec Ltd.".

6. After a July 11, 1996 pretrial, a Trial Order was entered setting forth dates to govern determination of the remaining claim No. 201. (Docket 282). This Order was modified to require that discovery be completed by September 25, 1996, with dispositive motions to be filed by September 30, 1996 and trial to commence October 23, 1996. (Docket 289). Debtor filed a timely Motion for Summary Judgment (Docket 294), which was denied at the final pretrial.[1]

7. On September 30, 1996, the dispute took a different direction. That day, a Notice of Representation was filed by new counsel as:

> Attorneys for Claimant-Creditors Herman Herman, individually and as dba Proficient Industries, Inc., an Ohio sole proprietorship and unincorporated business entity, Proficient Industries, Inc., a former corporate entity now dissolved, and Trimatic Corporation, and Herman Herman as its sole shareholder, and transferee of all of the assets of Proficient Industries, Inc. and Wisner Company.

(Docket 300).

8. The same day, "Herman Herman, individually and as dba Proficient Industries, Inc., an Ohio sole proprietorship, Proficient Industries, Inc., a former and now dissolved Ohio

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[1] A separate Order formalizing this ruling will be entered this same date.

corporate entity, and as the former Vice-President of said company" ("Movant") requested leave to amend Claim No. 201 to clarify, modify and add to the named claimants "Herman Herman, individually and as dba Proficient Industries, Inc., an Ohio sole proprietorship and unincorporated business entity, Proficient Industries, Inc., a former corporate entity now dissolved, and Trimatic Corporation, and Herman Herman as its sole shareholder, and transferee of all of the assets of Proficient Industries, Inc. and Wisner Company, a former Ohio partnership and now a sole proprietorship owned and operated solely by Herman Herman" ("Motion"). (Docket 301, 303). Debtor opposed the Motion. (Docket 308). Because of the impending trial on the Objection to Claim No. 201, this Motion was set for hearing on the same date.

B.

9. Claim No. 201 is based on two contracts titled "Non-Ferrous Metal Leases." Debtor was the named "lessee" under both contracts. Under the first contract, dated December 31, 1984, the "lessor" was Wisner Company ("Wisner"). (Exhibit A). This agreement was for the term January 1, 1985 through December 31, 1985. Mr. Herman signed it on December 31, 1984. Under the second contract, dated December 31, 1986, the "lessor" was Proficient Industries, Inc. ("Proficient"). (Exhibit B). The second agreement, signed retroactively, was for a one-year term from January 1, 1986 through December 31, 1986.

10. Wisner and/or Proficient delivered approximately 340,000 pounds of copper and zinc to Debtor from January through May 1985. Mr. Herman testified that Wisner owned 60% of all metal delivered under the contracts and Proficient owned the other 40% of the metal. Debtor did not receive any metal from Proficient or Wisner after May 1985.

11. **Proficient**:

(a) On December 29, 1986, the shareholders of Proficient, Katherine Geis and Anton Ludwig, and its directors, Geis and Mr. Herman, met to approve a complete liquidation and dissolution of the corporation. At that meeting, the shareholders and directors authorized the sale of Proficient's assets to Trimatic, with the sale to be accomplished no later than December 31, 1986. (Exhibit B, attached to Exhibit 6). Mr. Herman was vice-president of Proficient, but he was never a shareholder.

(b) The next day, December 30, 1986, Proficient entered into a Bill of Sale and Assumption ("Bill of Sale") with Trimatic. (Exhibit 8). Under the terms of that agreement, Proficient sold Trimatic all of its "accounts receivable, machinery and equipment, securities, vehicles and inventory together with [Proficient's] trade names and good will". Trimatic is wholly owned by Mr. Herman.

(c) There is no evidence of Proficient's legal existence after the sale. The State of Ohio canceled Proficient's articles of incorporation on April 30, 1987 for failure to pay franchise taxes. (Exhibit 15, 16A). The names "Proficient," "Proficient Industries" and/or "Proficient Industries, Inc." were never registered as trade names or fictitious names with the Ohio Secretary of State. (Exhibits 16B, 17). Movant did not present any credible evidence that Trimatic or Mr. Herman used the name "Proficient" as a trade name after the purchase of Assets from Proficient.

12. **Wisner**:

Wisner was an Ohio general partnership in which Mr. Herman and Ted Wisniewski each owned a 50% interest. The partners sued each other in state court based on disputes over the

operation, management, financial condition and obligations of the partnership. Ultimately, they resolved the litigation by entering into a settlement agreement dated April 6, 1991 among the Wisner partners and related entities. (Exhibit F). Under the terms of the agreement, Wisner was liquidated and all right, title, and interest in and to the Wisner assets was assigned to Mr. Herman.

13. Mr. Herman, a native of Austria, graduated from what is now Case Western Reserve University in Cleveland, Ohio in 1951 with a degree in mechanical engineering. He immigrated to the United States in 1956. In addition to receiving his degree from an English-speaking institution, he has spoken English for more than 40 years. He is an active businessman in the United States and reads the Wall Street Journal frequently. At pretrial and trial, Mr. Herman spoke fluent English (with an accent) and did not appear to have any difficulty in understanding English. He has been represented by counsel throughout these proceedings.

14. Debtor filed a petition under Chapter 11 of the Bankruptcy Code on October 9, 1991. The plan of reorganization submitted by the Official Creditors' Committee was confirmed by an Order entered on March 3, 1994. (Docket 243).

15. On April 30, 1993, when "Proficient Industries, Inc. and its sole stockholder Herman Herman" filed Claim No. 201, Proficient did not exist as a legal entity and Mr. Herman had never been a stockholder.

DISCUSSION

I. Motion to Amend Claim

Claim No. 201 is the subject of Debtor's Objection to claim. Movant seeks to amend this claim to include as the claimant-creditor "Herman Herman, individually and as dba Proficient

Industries, Inc. an Ohio sole proprietorship and unincorporated business entity, Proficient Industries, Inc., a former corporate entity now dissolved, and Trimatic Corporation, and Herman Herman as its sole shareholder, and transferee of all of the assets of Proficient Industries, Inc and Wisner Company, a former Ohio partnership and now a sole proprietorship owned and operated solely by Herman Herman." (Docket 301). Movant's argument, in essence, is that Mr. Herman was and is the controlling shareholder, partner, or operator of all the entities which are sought to be included as claimants, and that is sufficient to permit amendment. Movant further contends that the proposed amendment is not an untimely new claim and will not prejudice anyone. Debtor, in opposition, argues that amendment is inappropriate under the applicable law and would result in prejudice to it.

Section 501(a) of the Bankruptcy Code provides that "a creditor or an indenture trustee may file a proof of claim . . . ." A creditor is an entity that has a claim against the debtor. 11 U.S.C. § 101(10)(A). Under the terms of Bankruptcy Rule 3001(b), a claim is to be executed by the creditor or the creditor's authorized agent, with certain exceptions not relevant here. Claim No. 201 was filed by Proficient Industries, Inc. and Mr. Herman as its sole stockholder on April 30, 1993. The evidence establishes that Mr. Herman never held stock in that corporation and the corporation was no longer in existence when the claim was filed. Neither named "claimant", therefore, had a claim against Debtor. Consequently, Claim No. 201 was not filed by a creditor as required by the Code and Rules.[2] The time for filing claims in this case elapsed almost four

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[2] Debtor also references non-compliance with Bankruptcy Rule 3001(e)(1) which provides that a claim which has been transferred before a proof of claim has been filed, may only be filed by the transferee. This rule does not apply, however, because the claims at issue were not transferred during the pendency of the case.

years ago. Movant does not make any argument that Claim No. 201 as it presently stands provides a sufficient basis for allowing the claim. If any recovery is possible for Movant, therefore, it will be because Claim No. 201 can be amended to state a valid claim. The issues to be addressed are, then: (1) whether Claim No. 201 is subject to amendment; and (2) if it is subject to amendment, whether amendment is appropriate under the circumstances.

"Ordinarily, amendment of a proof of claim is freely permitted so long as the claim filed initially provided adequate notice of the existence, nature and amount of the claim as well as the creditor's intent to hold the estate liable. The court should not allow truly new claims to proceed under the guise of amendment." *In re Unioil*, 962 F.2d 988, 992 (10th Cir. 1992). Amendment is permitted to describe a claim with greater particularity, to cure a defect of form, or to plead a new theory of recovery on the facts set forth in the original claim. *In re International Horizons, Inc.*, 751 F.2d 1213 (11th Cir. 1985); *In re Meade Tool & Die Co.*, 164 F.2d 228 (6th Cir. 1947).

Leave to amend is properly denied where it would result in prejudice to the opposing party. *Unioil; LeaseAmerica Corp. v. Eckel*, 710 F.2d 1470 (10th Cir. 1983); *In re Wilson*, 96 B.R. 257 (B.A.P. 9th Cir. 1988). In determining whether an amendment would cause prejudice, courts consider unreasonable delay in filing the amendment, impact on other claimants, reliance by the debtor or other creditors, and change in the debtor's position. *Wilson, supra.* There "is a misunderstanding of what it means for an error to be harmful in the sense that it is 'prejudicial,' that is, entitling the person harmed to complain. To say that an error is prejudicial means not that if the error is corrected someone will lose, which is almost always true, but that the error itself imposed a cost, as by misleading someone." *In re Stoecker*, 5 F.3d 1022, 1028 (7th Cir. 1993).

A. Is Claim No. 201 Subject to Amendment?

Movant cites *In re Unioil* in support of its request. In that case, the bankruptcy court permitted amendment of a claim filed by a trustee in his individual capacity to designate the trust on whose behalf he was pursuing the claim as the claimant. The appellate court upheld the decision, finding that this type of amendment is appropriate where there is no change in the nature of the claim and the improperly named claimant and the party to be substituted bear some relation in interest. The court indicated that amendment is not appropriate, however, when it will result in prejudice.

In re Ellington, 151 B.R. 90 (Bankr. W.D. Tex. 1993), is cited by Debtor for the contrary position. That court held that a claim must first be properly filed by its owner before there is a basis for the allowance of an amendment. "There is a dearth of case law on whether an entity which sold its claim is a 'creditor' permitted to file a proof of claim. This is not surprising, because logic dictates that if one does not own a claim against the debtor, one may not file a claim against the debtor." *Ellington* at 95. That court disallowed amendment of claim by a transferee of the claim where the original claim had been filed by the transferor of the claim after the transfer. The court noted that on the date the claim was filed, the entity filing the claim no longer existed. As additional support for disallowance of the amendment, the court cited prejudice to other parties as a relevant consideration. These two cases, with limited exceptions, appear to represent the case law on this issue.

The cases cited, while addressing divergent factual situations, are in conflict regarding the availability of amendment to substitute claimants. The circumstances of this case, however, are distinguishable from those addressed by the court in *Unioil* and parallel those in *Ellington.*

Amendment is not being requested merely to indicate representational capacity, as was the case in *Unioil.* Here, Proficient was not a corporation or a legal entity when the claim was filed and Mr. Herman was not, and never had been, its sole shareholder. Claim No. 201 was not, therefore, filed by a legal entity. Additionally, neither Proficient nor Mr. Herman as Proficient's sole shareholder owned a claim against Debtor when they filed Claim No. 201. Those claimants were not, therefore, "creditors" of Debtor and the Proof of Claim filed by them was not properly filed. As the *Ellington* court noted, before a court can permit amendment, there must be something properly filed that is capable of being amended. *Ellington* at 94. In this case, Claim No. 201 was not properly filed by a creditor and it cannot, therefore, be amended.

Movant suggests that this claim was properly filed despite the liquidation and dissolution of Proficient because Trimatic or Mr. Herman used "Proficient Industries, Inc." as a trade name following the sale of Assets to Trimatic. There was no evidence to support this theory. Even if there had been, Movant would still have to show that Trimatic and/or Mr. Herman had viable claims, including any claim based on their use of a trade name, after the Agreed Order was entered. As is discussed in part II, below, they did not have any such claim. Consequently, the trade name theory does not provide a basis on which to amend Claim No. 201.

B. If Claim No. 201 is Subject to Amendment, Should Amendment be Permitted Under the Circumstances?

Alternatively, even if Claim No. 201 is subject to amendment, Movant has failed to establish that such relief is properly granted in this case. Movant asks the Court to exercise its equitable powers to permit the claim to be amended. While amendments are to be freely permitted in appropriate circumstances, permitting such an amendment in this case would clearly be prejudicial to Debtor. Movant urges amendment based on the fact that Debtor had notice that

Mr. Herman and certain entities were asserting a claim against it. Indeed, four claims were filed by Mr. Herman and the multiple entities in different claimant combinations, in varying amounts, and at different times. The prejudicial effect of amendment flows, however, from the events following the filing of those claims. Over a period of more than two years, these claims were discussed, negotiated, and litigated until they were finally reduced by agreement to one claim: Claim No. 201. Objection to Claim No. 201 was scheduled for trial, discovery had been completed, and a dispositive motion had been filed by Debtor when the Motion was filed.

There is no question but that Mr. Herman was at the center of the activities giving rise to this dispute and that he had access to the facts regarding the status of these entities and the ownership of the claims. Despite that, he has not provided any explanation or justification for the late and dramatic change of position. These circumstances establish that the request to amend was unreasonably delayed. Additionally, Debtor incurred attorney fees and costs and reasonably and detrimentally relied on the Agreed Order and its disposition of the various claims, only to have those claims turn up again at the last minute before trial.

There is an additional reason why equity does not favor amendment in this case. Amendment is freely permitted to describe a claim with greater particularity. *In re International Horizons, Inc.* While one of the stated purposes of this amendment is clarification, the proposed amendment certainly does not accomplish that end. Instead, it further obfuscates the identity of the proper claimant by including numerous entities, some no longer in existence when the Chapter 11 case was filed in 1991. Who is the proposed new claimant? Herman Herman? Mr. Herman dba Proficient Industries, Inc.? Proficient? Trimatic? Mr. Herman in his capacity as a shareholder of Trimatic? Wisner Company? All of them? Even after the close of evidence at

trial, it was not entirely clear who Movant was claiming should be permitted to prosecute the claim. In closing argument, Movant took the position that Mr. Herman is the real party in interest; in the post-trial Proposed Findings of Fact and Conclusions of Law, Movant argues that Proficient is the real party in interest. Amendment is prejudicial where the amendment does not clarify the appropriate claimant, but instead creates or leaves open significant questions as to who the new claimant will be. For all of these reasons, amendment of Claim No. 201 is clearly prejudicial and, therefore, must be denied.

II. Relief from Judgment

There is yet another obstacle that Movant would have to overcome before relief could be granted to permit amendment of Claim No. 201. As noted above, Movant argues that the real party in interest with standing to pursue this claim is Mr. Herman and/or Proficient. Movant further contends that the lease rights which are the basis for the claim against Debtor are held by Mr. Herman as successor to Wisner and by Trimatic as successor to the rights of Proficient under their purchase agreement. (Claimant-Creditor's Proposed Findings of Fact and Conclusions of Law ¶¶ 7, 9, 10, 11, 24, 25, 27,41). (Docket 324). Even if this is so, it does not help Movant's case. Trimatic and Proficient Industries/Herman Herman had all filed claims which were disallowed under the Agreed Order. Wisner had been liquidated by the time the claims were filed and its assets transferred to Mr. Herman. Mr. Herman's individual claims, including any he held as the owner of assets formerly held by Wisner, were also disallowed under the Agreed Order. The entry is clear that the parties intended that Claim No. 201, filed by Proficient and Mr. Herman as its sole shareholder, would be the only remaining claim. Granting relief on the Motion would, therefore, be equivalent to granting relief from the Agreed Order which

disallowed Claims No. 183, 184 and 200 and permitting the disallowed claimants to pursue their claims once again. Movant has not, however, requested reconsideration of the claim disallowance or relief from the Agreed Order.

Despite that, and in the interests of equity, the Court will analyze the Motion as a motion for reconsideration and/or a motion for relief from judgment, even though it is not presented in that context. In doing so, however, the Court is constrained to find that Movant has not asserted or established a basis for a finding of "cause" for reconsideration under the Bankruptcy Code and Rules or for relief from the Agreed Order. Section § 502(j) of the Code and Bankruptcy Rule 3008 provide that a claim which has been allowed or disallowed may be reconsidered for cause and allowed or disallowed according to the equities of the case.[3] "Cause" for reconsideration is not defined by the Code, but has been defined by courts in the context of relief from judgments available under other related rules, including Bankruptcy Rule 7055 (default judgments), Bankruptcy Rule 9023 (amendment of judgments), and Bankruptcy Rule 9024 (relief from judgment). *In re Aguilar,* 861 F.2d 873 (5th Cir. 1988); *In re Colley,* 814 F.2d 1008 (5th Cir. 1987), cert. denied 484 U.S. 898 (1987); *In re Motor Freight Express*, 91 B.R. 705 (Bankr. E.D. Pa. 1988); *In re Miles*, 39 B.R. 494 (Bankr. W.D. N.Y. 1984).

Since Movant is essentially requesting that the Agreed Order be vacated, relief on reconsideration under these circumstances would be akin to relief from judgment under Bankruptcy Rule 9024. *In re Stangel*, 68 F.3d 857 (5th Cir. 1995); *In re Food Barn Stores, Inc.*,

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[3] Additionally, Bankruptcy Rule 9024 provides that "Rule 60 F. R. Civ. P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b) . . . "

175 B.R. 723 (Bankr. W.D. Mo. 1994). Bankruptcy Rule 9024 incorporates Federal Rule of Civil Procedure 60(b) which provides for relief from an order based on: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation or misconduct of an adverse party; (4) judgment is void; (5) judgment has been satisfied, released or discharged; and (6) any other reason justifying relief. "In general, a party will not be granted relief from a consent judgment, although the facts and circumstances of a particular case may warrant relief from it." 7 James Wm. Moore et al., Moore's Federal Practice ¶ 60.19 (2d Ed. 1996). The burden is on the movant to bring himself within the provisions of this rule. *In re Salem Mortgage Co.*, 791 F.2d 456 (6th Cir. 1986).

The unfortunate situation is this: Movant, under the guidance of new counsel, has had a change of heart regarding the procedural consequences of what the parties agreed to in May 1996. Movant would now like to undo the Agreed Order and return the parties to the positions they were in before reaching that agreement. This is not, however, an appropriate basis for relief from a consent judgment.

> In extraordinary circumstances, Rule 60(b) may be invoked to override the finality of judgments in the interests of justice. (Citation omitted.) However, the Rule does not allow . . . courts 'to indulge a party's discontent over the effects of its bargain.' (Citation omitted.) Accordingly, 'when a party makes a deliberate, strategic choice to settle, [he] cannot be relieved of such a choice merely because [his] assessment of the consequences was incorrect. (Citation omitted.)

Andrulonis v. United States, 26 F.3d 1224, 1235 (2d Cir. 1994). See also *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572 (10th Cir. 1996). Moreover, it is not an appropriate basis for a finding of cause on reconsideration of a disallowed claim. *In re Mathiason,* 16 F.3d 234 (8th Cir. 1994).

Although Movant has not specifically identified any reasons that would justify vacating the Agreed Order, Movant has at times suggested that some of the difficulties in this case relate

to the fact that English is not Mr. Herman's native language. Be that as it may, the Court finds that Mr. Herman speaks and comprehends English quite well. He is an experienced businessman and he, Trimatic, and Proficient have been represented by counsel throughout these proceedings. The language issue, to the extent it is still being advanced, does not support relief from the Agreed Order.

As Movant has not made any argument or presented any evidence that would establish that the Agreed Order should be set aside, either on reconsideration of the claim or by vacating the Agreed Order, the Motion to Amend claim is denied on this additional basis.

III. Objection to Claim No. 201

Claim No. 201 was filed by Proficient Industries, Inc. and Herman Herman as its sole stockholder. The evidence establishes that at the time the claim was filed Proficient had no legal existence. Moreover, Mr. Herman was not and never had been a stockholder in that corporation. Neither Proficient nor Mr. Herman as sole shareholder in Proficient owned a claim against Debtor when they filed Claim No. 201. Claim No. 201 was not, therefore, filed by a creditor within the meaning of the Bankruptcy Code and Rules. Since the claim was improperly filed, it cannot be amended. Even if the claim could be amended, Movant has not established that such an amendment is appropriate under the facts of this case for all of the reasons discussed above. The Objection to Claim No. 201 is, therefore, well-taken. In light of this disposition, it is not necessary to address the additional arguments raised by Debtor for disallowance of this claim.

CONCLUSION

The Motion to Amend Claim should be denied and Debtor's Objection to Claim No. 201 should be sustained, as a result of which the claim will be disallowed. A separate judgment will be issued in accordance with this Memorandum of Opinion.

Date: 27 March 1997

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Jeffrey Baddeley, Esq.
Harry Tipping, Esq.

By: Joyce L Gordon, Secretary
Date: 3/27/97

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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 91-15555
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WESTERN RESERVE MANUFACTURING CO., INC.	)	Chapter 11
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER**

In accordance with this Court's determination made at the final pretrial, and based on the existence of genuine issues of material fact,

IT IS, THEREFORE, ORDERED that the Motion of Debtor Western Reserve Manufacturing Co., Inc. for Summary Judgment Disallowing Claim No. 201 (Docket 294) is denied.

Date: 27 March 1997

Pat E Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Court

Served by mail on: Jeffrey Baddeley, Esq.
Harry Tipping, Esq.

By: Joyce L Gordon, Secretary
Date: 3/27/97

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NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 91-15555
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WESTERN RESERVE MANUFACTURING CO., INC.	)	Chapter 11
	)	
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**JUDGMENT**

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that the Motion of Herman Herman, individually and dba Proficient Industries, Inc., Proficient Industries, Inc. and its Vice President, Herman Herman to Amend Claim is denied. IT IS FURTHER ORDERED that Debtor's Objection to Claim No. 201, filed by Proficient Industries, Inc. and Herman Herman as its sole stockholder, is sustained and that claim is disallowed.

Date: 27 March 1997

Pat E Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Jeffrey Baddeley, Esq.
Harry Tipping, Esq.

By: Joyce L Gordon, Secretary

Date: 3/27/97