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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 02-11117
)
JULIO MELENDEZ and) Chapter 13
ROSITA C. MELENDEZ,)
) Judge Arthur I. Harris
Debtors.)

ORDER

This cause came before the Court for consideration on the 9th day of January, 2003, upon the objection of Rosita C. Melendez, Debtor, to the secured claim filed by American General Finance (American General). Melendez alleges that American General's claim (Claim #21 in Clerk's Claim Register; Claim #4 in Chapter 13 Trustee's Notice of Intention to Pay Claims) should reflect an unsecured status rather than a secured status. Neither American General nor counsel for Melendez appeared at the hearing on January 9, 2003.

Melendez asserts in her motion that American General's claim should be relegated as an unsecured claim in accordance with the debtors' confirmed plan of reorganization. The debtors' plan, however, is completely silent as to the treatment of American General's secured claim, and due process does not allow the act of not mentioning a claim to relegate that creditor to an unsecured status pursuant to 11 U.S.C. § 1327. Nor does the creditor's failure to file a written

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response to the objection, in and of itself, defeat the evidentiary presumption under Bankruptcy Rule 3001(f) for a properly-filed proof of claim. That presumption can only be overcome by a valid factual or legal challenge, for example, by submitting a declaration from the debtor as to the fair market value of the property or by submitting evidence that the security interest was not properly perfected or that the claim was not timely filed.

Accordingly, Melendez's objection to American General's proof of claim is overruled, without prejudice.¹

IT IS SO ORDERED.

/s/ Arthur I. Harris 01/17/2003
Arthur I. Harris
United States Bankruptcy Judge

¹ The debtor remains free to challenge the amount of the secured claim by, for example, taking any of the actions described in the preceding paragraph to overcome the evidentiary presumption of a properly-filed proof of claim. Curiously, American General's proof of claim includes a copy of a certificate of title for a boat, but no boat is included in the debtors' schedule of personal property.