

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: October 13 2006

A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-75677
)	
John A. Skiadas & Georgette Skiadas,)	Chapter 13
)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

ORDER RE MOTION TO FILE CLAIM

The court held a hearing on October 10, 2006, on The City of Toledo's Motion for Leave to File Proof of Claim ("Motion") [Doc #70] and Debtors' Objection to Motion to File Proof of Claim ("Objection") [Doc #71]. For the reasons stated below and otherwise as stated on the record by the court at the hearing, the Motion will be denied.

Debtors commenced this Chapter 13 case on October 15, 2005, just before most of the amendments to the Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect on October 17, 2005. The City of Toledo was listed on Debtors' Schedule F as an unsecured creditor with a claim of \$42,611.42 on a guaranty for unpaid rent and a loan; the claim was listed as contingent, unliquidated and disputed. Notice of the commencement of the case was given by the Clerk to all creditors, including the City of Toledo, by first class mail sent on October 28, 2005. [Doc. #7]. The court's docket shows that mail sent to the City of Toledo by the Clerk has not been returned to the court. [See Doc. #3]. The notice included on its face a prominent section for Deadlines. The first deadline listed thereunder, beneath a bold faced heading, was the deadline for filing a proof of claim. The deadline for all creditors

except governmental units was April 6, 2006. The deadline for a governmental unit to file a proof of claim was specified as April 13, 2006. The deadline as noticed by the Clerk comported with the deadline for filing claims in Chapter 13 cases set by the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 3002(c).

Counsel for the City of Toledo did not contest that thereafter a representative of the City of Toledo appeared at two of the first meeting of creditors sessions held in this case by the Chapter 13 Trustee. The court finds that the City of Toledo had due, proper and actual notice of the filing of the case and of the deadline for filing proof of its claim in this proceeding. The City of Toledo did not, however, file a proof of claim.

The court held the confirmation hearing on Debtors' plan on June 13, 2006. [See Doc. #57]. The court's order confirming the plan was entered on June 28, 2006, and sent to all creditors and parties in interest by the Clerk on July 1, 2006. [Doc. ##63, 65]. The plan that was confirmed was Debtors' second amended plan, filed on May 10, 2006, after the expiration of the claims bar date. [Doc. #49]. The proposed payments in the second amended plan were changed and reduced from the proposal in the amended plan filed on February 24, 2006, [Doc. #34], to account for the passing of the claims bar date and the knowledge of what claims had actually been filed [See Doc. #52].

On August 14, 2006, the City of Toledo filed its Motion seeking leave to file its proof of claim after the expiration of the April 13, 2006, deadline. The enlargement of time for taking action within time periods set by the Federal Rules of Bankruptcy Procedure is governed by Rule 9006(b). Fed. R. Bankr. P. 9006(b). When the enlargement is sought after the time for taking action under the rules has already expired, the standard that must be shown is that the failure to act within the specified time period was the result of excusable neglect. Fed. R. Bankr. P. 9006(b)(1).

The United States Supreme Court addressed the standard for excusable neglect under Rule 9006 in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). The inquiry into whether neglect is excusable "is at bottom an equitable one, taking account of all the relevant circumstances surrounding the party's omission." Id. at 395. The Supreme Court listed several factors to be considered in deciding whether a party's omission constitutes excusable neglect, including (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; (4) whether the delay was within the reasonable control of the late party; and (5) whether the party acted in good faith.

Reviewing these five factors, there is no indication whatsoever that the City of Toledo is not acting in good faith. However, that is the only one of the five factors that mitigates in favor of the claimant.

Debtors will be seriously prejudiced if the City of Toledo is allowed to file its claim late. The amount of Debtors' payments to the Chapter 13 trustee required to fund their plan was calculated and determined in this case after the claims bar date. The plan was confirmed on the basis of those payments, which is what Debtors have been making to the Chapter 13 Trustee. The total claims filed in this case, both secured and unsecured, is \$227,524; the unsecured claims total \$76,724. The City of Toledo's claim would increase the total claims by nearly 20%. If unsecured, the total unsecured claims would be increased by some 55%. This is a material change that would cause Debtor's Chapter 13 payments to be insufficient and the plan to lack feasibility. *See* 11 U.S.C. § 1322(a)(1). As the plan is already a 60 month plan, it could not be extended out further to accommodate payment of the additional claim. *See* 11 U.S.C. § 1322(d). Lack of feasibility of the plan is cause that would lead to involuntary dismissal of the case under 11 U.S.C. § 1307(c).

For the same reasons that Debtor would be prejudiced, the impact on these proceedings would be material. Dismissal of the case would impact other creditors and the existing plan for repayment of their claims. No creditors objected to the proposed plan. The duration of the delay of three to four months was not extreme in the context of a 60 month Chapter 13 plan. But the timing of the request coming after a plan has been confirmed, where confirmation was held until after the claims bar date so as to proceed on an actual claims record, makes the request even more problematical than if confirmation had occurred before the claims bar date on the basis of claims appearing in Debtors' schedules.

The reason given for the delay was the transition in City of Toledo government administration and its law department occurring as a result of election of a new mayor after the commencement of this Chapter 13 case. Simply put, that is no excuse. The government entity claims bar date was not until April 13, 2006, well after both the election in November 2005 and the change over to the new administration in the first week of January 2006. Some bumps in the transition road are understandable. A delay of this magnitude coming through the most critical time period for this case is not. The delay was unquestionably within claimant's full control; Debtors had nothing to do with it. As shown by the appearances at the first meeting of creditors, the case was known and on claimant's radar screen. Rather than excusable, the City of Toledo's failure to file its proof of claim by the deadline seems inexplicable.

Taken as a whole and considering the equities of the situation, the court concludes that the City of Toledo's omission to file its claim by the bar date in this case does not constitute excusable neglect as defined by the Supreme Court.

IT IS ORDERED that The City of Toledo's Motion for Leave to File Proof of Claim [Doc #70] is **DENIED**.