

IT IS SO ORDERED.

Dated: May 12, 2014
03:59:14 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

WAYNE ALLAN DETWEILER and
BECKY ELLEN DETWEILER,

Debtors.

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CASE NUMBER 12-40571

CHAPTER 7

HONORABLE KAY WOODS

ORDER DENYING CREDITOR'S MOTION TO ALLOW CLAIM

Before the Court is Creditor's Motion to Allow Claim ("Creditor's Motion") (Doc. 83) filed by Bank of America, N.A. ("Bank of America") on May 8, 2014. Bank of America seeks allowance of a late filed proof of claim on the basis of excusable neglect.

Wayne Allan Detweiler and Becky Ellen Detweiler filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on March 15, 2012. Richard G. Zellers was appointed Chapter 7 Trustee. Mr. Zellers commenced an adversary proceeding against

Bank of America on February 14, 2013, which was assigned Case No. 13-4016 ("Avoidance Litigation"). Pursuant to the Avoidance Litigation, the Trustee sought to avoid an alleged post-petition transfer to Bank of America of a mortgage interest in the Debtors' real property. On October 18, 2013, the Court entered Stipulation and Agreed Judgment Entry ("Judgment Entry") (Adv. Pro., Doc. 27), which had been agreed to and signed by counsel for the Trustee and Bank of America.

Paragraph 3 of the Judgment Entry stated:

3. BOA is hereby allowed an unsecured claim in the amount of Two Hundred Eighty-Six Thousand, Four Hundred and Thirty-Six Dollars and Eighty-Eight Cents (\$286,436.88) and the Trustee shall schedule BOA's total claim, [sic] as a general unsecured claim to be paid pro rata with other unsecured claimants. BOA shall have 30 days from the date of this Order to file its Proof of Claim.

(J. Entry at ¶ 3 (emphasis added)). Despite the explicit wording of the Judgment Entry, Bank of America did not file a proof of claim by November 17, 2013, which was the 30-day time limit.

On April 7, 2014, the Trustee filed Motion to Disallow Claim (Doc. 74) for the reason that Bank of America had not filed a proof of claim and the Trustee was "powerless to address payment thereof." Two weeks later, on April 21, 2014, Bank of America filed a proof of claim denominated Claim No. 6-1, in which it asserts a general unsecured claim in the amount of

\$271,194.55. On April 29, 2014, Bank of America filed Response to Trustee's Motion to Disallow Claim (Doc. 81), in which Bank of America asserts that "due to an internal issue" and "human error" a proof of claim was not prepared or timely filed.

The Court held a hearing on the Motion to Disallow Claim on May 1, 2014, at the conclusion of which, the Court denied the Trustee's Motion. The Court also directed counsel for Bank of America to file, within seven days, a motion concerning the late filed proof of claim, which is the motion currently before the Court.

In the Creditor's Motion, Bank of America argues that the Court "has authority to allow [Bank of America's] claim under Bankruptcy Rule 9006(b)(1)." (Creditor's Mot. at 2.) Bank of America likens its situation to the facts in *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd Partn.*, 507 U.S. 380 (1993) ("*Pioneer*"), in which a creditor's failure to timely file its proof of claim was excusable. Bank of America applies the *Pioneer* test of excusable neglect to the current facts and argues "it is clear that [Bank of America's] failure to file a timely claim is due to excusable neglect."

However, *Pioneer* involved a late filed claim in a chapter 11 case that was allowed because the creditor was not aware of the bar date due to a "'dramatic ambiguity' in the notification." *Id.* at 398. "The 'excusable neglect' standard

of Rule 9006(b)(1) governs late filings of proofs of claim in Chapter 11 cases but not in Chapter 7 cases.” *Id.* at 389. Notably, the Supreme Court distinguished the chapter 11 goals of reorganization and rehabilitation, in which the bankruptcy court is “entrusted with broad equitable powers to balance the interests of the affected parties, guided by the overriding goal of ensuring the success of the reorganization,” from the goals of prompt closure and distribution in chapter 7. *Id.*

Bank of America relies on Bankruptcy Rule 9006(b)(1), but the subsection of the Rule that actually applies is (b)(3), which reads:

Enlargement Governed By Other Rules. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under §1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

FED. R. BANKR. P. 9006(b)(3) (West 2014) (Emphasis added). One of the stated exceptions in subsection (3) is Bankruptcy Rule 3002(c), which states:

Time for Filing. In a chapter 7 liquidation, . . . a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under §341(a) of the Code, except as follows:

* * *

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

FED. R. BANKR. P. 3002(c)(3) (West 2014). The Judgment Entry is exactly the kind of judgment that is referenced in Bankruptcy Rule 3002(c)(3). Claim No. 6-1 attempts to assert the unsecured claim that arose in favor of Bank of America or became allowable as a result of a judgment that avoided Bank of America's interest in the Debtors' real property. Pursuant to both Rule 3002(c)(3) and the Judgment Entry, Bank of America had 30 days to file its proof of claim. The Court's discretion to extend that time period is limited by Bankruptcy Rule 9006(b)(3). Because the period of time for Bank of America to file its proof of claim is governed by Rule 3002(c)(3), the excusable neglect standard in Rule 9006(b)(1) and the *Pioneer* case are not applicable.

Bank of America further argues that its proof of claim should be allowed because it filed an "informal proof of claim" when it "filed the Stipulation and Agreed Judgment Entry on October 18, 2013." (Creditor's Mot. at 3.) This argument cuts against Bank of America rather than supporting its argument.

There is nothing in the Judgment Entry to suggest that the Stipulation was sufficient to stand as Bank of America's informal proof of claim. To the contrary, in the Stipulation, Bank of America agreed to file a proof of claim within 30 days after entry of the Judgment Entry. Moreover, the Judgment Entry expressly ordered Bank of America to file a proof of claim within 30 days. The Court finds that the Stipulation does not constitute an informal proof of claim.

Last, Bank of America contends that its claim should be allowed because it acted in good faith and the estate would not be prejudiced if the late filed claim is allowed. Toward this end, Bank of America argues that, if the claim is not allowed, it will receive no distribution and the Debtors will receive a windfall. This argument, standing alone, does not support the allowance of Bank of America's late proof of claim. The Court cannot disregard the provisions of the Code and the Rules on the alleged basis of "fairness."

For each of the reasons set forth above, the Court hereby denies the Creditor's Motion to Allow Claim.

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