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District of New Mexico

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
RICHARD LUNA,
Debtor.

NO. 13-99-13304 SS

MEMORANDUM OPINION ON STANDING

This matter came before the Court on December 20, 1999, on 1) the Objection to Claim of Michelle Hutchinson ("Hutchinson"), as personal representative of the estate of Carol Luna filed by the debtor, 2) the Amended Motion by Creditor Michelle Hutchinson to Dismiss the Bankruptcy, 3) the Motion by Creditor Michelle Hutchinson for Relief from the Automatic Stay as to litigation pending in the Second Judicial District Court, Bernalillo County, New Mexico, and 4) Motion by Debtor to Stay Discovery Pending Determination Whether the Claim Filed by Michelle Hutchinson As Personal Representative of the Estate of Carol Luna Should be Disallowed. The Debtor appeared through his counsel Gerald Velarde. Michelle Hutchinson appeared through her attorneys Don Provencio and Brad Hall. The Standing Chapter 13 Trustee appeared through her attorney Annette DeBois. Also present was Joseph Reichert, counsel for J.O. Luna. The Court requested briefs from the parties, which have been filed. Having considered the arguments of counsel, and having reviewed the file in this case, and being otherwise informed and advised, the Court makes the following findings of fact and conclusions of law.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), and (G).

FACTS

Debtor commenced this Chapter 13 Proceeding on June 3, 1999. On June 6, 1999, the Clerk's Office caused to be mailed the Notice of Commencement of Case and section 341 meeting. The original mailing list shows that Hutchinson was listed as a creditor, with a mailing address of: Michelle Hutchinson c/o Gaddy & Hall, 2025 San Pedro NE, Albuquerque, NM 87110. The deadline for filing proofs of claim in the case was October 13, 1999. Debtor timely filed his original plan on June 17, 1999; objections thereto were due by July 14, 1999. Hutchinson filed an objection on October 22, 1999. Hutchinson filed a proof of claim on November 2, 1999, in the amount of $750,000.[1] Debtor objected to allowance of this claim based on its tardiness. Debtor filed an amended plan on November 5, 1999, and Hutchinson timely objected on November 24, 1999.

CONCLUSIONS OF LAW

[1]This claim is an unsecured claim for an estimated $750,000 based on a wrongful death action pending in the State District Court. Claimant is the personal representative for the estate of Carol Luna, debtor's ex-spouse.

Hutchinson filed a late claim, to which the debtor objected. The claim should be disallowed pursuant to § 502(b)(9)[2] and Bankruptcy Rule 3002(c)[3]. See In re Greenig, 152 F.2d 631, 636 (7th Cir. 1998)(In Chapter 12[4] case a creditor has 90 days to file proof of claim unless an exception of Rule 3002(c) applies, and this requirement may not be circumvented by a provision in a confirmed plan or by the presence of equitable considerations.); In re Dennis, 230 B.R. 244, 249 (Bankr. D. N.J. 1999)("[A]ny claim tardily filed in a chapter 13 case to which an objection has been raised based on tardiness shall be disallowed."); Aboody

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[2]Section 502(b)(9) provides:
[I]f [an] objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that ...(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a)[section 726 applies only in chapter 7 cases] of this title or under the Federal Rules of Bankruptcy Procedure.

[3]Bankruptcy Rule 3002(c) provides:
In a ... chapter 13 individual's debt adjustment case, 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 [five examples that do not apply to this case.]

[4]Bankruptcy Rule 3002(c) applies in both chapter 12 and chapter 13. The bar date for filing claims is the same under both chapters. In re King, 90 B.R. 155, 156 (Bankr. E.D. N.C. 1988).

v. United States (In re Aboody), 223 B.R. 36, 38-40 (1st Cir. B.A.P. 1998)(First Circuit adopts majority view, ruling that Bankruptcy Court erred as a matter of law in concluding that excusable neglect could justify an untimely proof of claim in a Chapter 13 case.); In re Stewart, 46 B.R. 73, 77 (Bankr. D. Or. 1985)(Creditor's motion to file late proof of claim is denied. Creditor is not a "party in interest" and has no standing to object to confirmation.). See also Jones v. Arross, 9 F.3d 79, 81 (10th Cir. 1993)(Even creditor with no notice of case bound by deadline for filing claims in Chapter 12 case); In re Chirillo, 84 B.R. 120, 121 (Bankr. N.D. Il. 1988)(same in Chapter 13 case.) The Hutchinson claim should be denied as untimely.

Section 1324 provides that a "party in interest" may object to confirmation of the plan. The Bankruptcy Code and Rules do not define "party in interest," a term that appears often in the code and rules. See, e.g., Section 107(b), 362(d), 727(c)(2), 1109(b), 1224, 1334; Rules 2004(a), 3008, 5010. Reference to cases analyzing those other sections and rules is useful when construing section 1324's use of the term. Davis v. Mather (In re Davis), 239 B.R. 573, 579 (10th Cir. B.A.P. 1999). The cases generally suggest that the term "party in interest" should be expansively construed, but at the same time limited to parties that can demonstrate an actual interest in the outcome of the controversy at issue.

In Nintendo Company, Ltd. v. Patten (In re Alpex Computer Corporation), 71 F.3d 353, 356 (10th Cir. 1995), the Court of Appeals for the Tenth Circuit analyzed Section 350(b) and Bankruptcy Rule 5010, which allows reopening of a case "on motion of the debtor or other party in interest." The Court noted that party in interest "is generally understood to include all persons whose pecuniary interests are, directly affected by the bankruptcy proceedings." Id. (citations omitted). The Court examined case law and found that while cases generally take an "expansive view," when applied to § 350 the courts "implicitly confine" the term as meaning "debtors, creditors, or trustees, each with a particular and direct stake ... cognizable under the Bankruptcy Code" in reopening a case. Id. In this particular case the Court found that Nintendo, as only a potential debtor to the confirmed Chapter 11 debtor, did not have standing to reopen the case. See also Vermejo Park Corporation v. Kaiser Coal Corporation (In re Kaiser Steel Corporation), 998 F.2d 783, 788 (10th Cir. 1993)("Bankruptcy courts must determine on a case by case basis whether the prospective party in interest has a sufficient stake in the proceeding so as to require representation." (citation omitted); holding that objecting parties had no interest in the debtor's estate and were not debtors of the debtor, and were therefore without standing to challenge a proposed settlement.)

In the case of McGuirl v. White, 86 F.3d 1232, 1234 (D.C. Cir. 1996) the Court of Appeals for the District of Columbia Circuit stated a general rule that debtors are "parties in interest" with standing to challenge claims only if the disallowance would create a surplus of assets to be returned to the debtor. The Court applied this rule to the issue of fee applications and ruled that because the debtors' discharge was denied they had standing to contest legal and accounting fees incurred by the trustee: "Because all of the [debtors'] debts are nondischargeable, any reduction in administrative expenses will necessarily reduce the amount of nondischargeable claims that remain unpaid and for which the [debtors] would be liable post-bankruptcy." Id. at 1235. Therefore, the debtors had standing, but only because they had a direct financial stake in the outcome of the fee application. The general rule stated above is also applicable when a debtor attempts to block a sale of estate assets. Unless the debtor can demonstrate an alternative sale can render the estate solvent he or she lacks standing to object. Willemain v. Kivitz (In re Willemain), 764 F.2d 1019, 1022-23 (4th Cir. 1985). The same general rule also applies to stockholders of insolvent corporations. Cofield v. Graham (In re Malmart Mortgage Company, 166 B.R. 499, 502 (D. Ma. 1994).

Chapter 11 cases involving mass tort litigation have also dealt with interesting and complex "party in interest" issues.

For example, in In re Amatex Corporation, 755 F.2d 1034, 1042 (3rd Cir. 1985) the Court of Appeals found that future asbestos claimants (i.e., persons exposed to asbestos but who had not manifested any symptoms of asbestos disease) would be sufficiently affected by the asbestos manufacturer's reorganization proceedings to require involvement. "Terming future claimants parties in interest will permit them to have a voice in proceedings that will vitally affect their interests...[but] at this juncture ... we do not know whether future claimants can or should be considered 'creditors' under the Code." Id. at 1043. Similarly, in In re Johns-Manville Corporation the Bankruptcy Court appointed a legal guardian to represent the interests of future asbestos claimants because they were "at least parties in interest." Kane v. Johns-Manville Corporation, 843 F.2d 636, 639 (2nd Cir. 1988). However, when an existing creditor challenged the treatment afforded to that class of future claimants the Court of Appeals held that he lacked standing. "Generally, litigants in federal court are barred from asserting the constitutional and statutory rights of others in an effort to obtain relief for injury to themselves." Id. at 643 (citing Warth v. Seldin, 422 U.S. 490, 499 (1975); Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 804-05 (1985); Singleton v. Wulff, 428 U.S. 106, 114 (1976)). Again, the concept of party in interest focuses on an actual personal stake in the outcome.

Although Davis v. Mather (In re Davis), 239 B.R. 573 (10th Cir. B.A.P. 1999) does not deal with a proof of claim fact pattern, the Bankruptcy Appellate Panel for the Tenth Circuit discussed standing in the context of section 1324 which allows a "party in interest" to object to confirmation of a chapter 13 plan. The debtor argued that his Chapter 7 trustee did not have standing to object to confirmation in his subsequent chapter 13 case. Id. at 579. The trustee had filed an adversary proceeding seeking recovery of real property and revocation of the chapter 7 discharge. Id. at 575. The debtor claimed that in order to be a party in interest, one must hold an allowed claim.[5] Id. at 579. The Appellate Panel disagreed. Id. It noted that "some courts have interpreted the phrase to exclude a Chapter 13 creditor who did not hold an allowed claim," Id. at 579 and n. 7 (citing In re Stewart, 46 B.R. 73, 77 (Bankr. D. Or. 1985) and In re Turpen[6],

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[5]The opinion is silent as to whether the Chapter 7 trustee filed a proof of claim in the Chapter 13 case.

[6]Hutchinson cites this case for the proposition that standing is not related to the filing of a proof of claim. This Court disagrees. In Turpen, the Court only ruled that standing to object to confirmation was not tied to an allowed proof of claim if the deadline for filing claims had not yet passed. 218 B.R. at 911. "I need not decide in this proceeding whether creditors who have filed untimely claims or creditors who can no longer file timely claims may still pursue confirmation objections" Id. It also appears that our Bankruptcy Appellate Panel limits Turpen to cases where the confirmation hearing predates the proof of claim deadline. See Davis v. Mather, 239 B.R. at 579 n. 7.

218 B.R. 908, 911 (Bankr. N.D. Ia. 1998)), but refused to "extrapolate" that a party in interest must be a creditor. Id. The Panel noted that the trustee "clearly had an interest" in property that was dealt with in the plan, found that this interest was within the Nintendo parameters (i.e., pecuniary interest directly affected), and ruled that the trustee was a party in interest. Id.

Following these guidelines, the Court finds that Hutchinson does not have standing in this case. See In re Stewart, 46 B.R. 73, 77 (Bankr. D. Or. 1985). Compare In re Dennis, 230 B.R. 244, 255 (Bankr. D. N.J. 1999)(undersecured creditor with untimely proof of claim lacks standing to object to confirmation based on its treatment under plan, but may have standing to object to items unrelated to claim because it will receive payments for its secured claim under the plan.) Under no circumstances can Hutchinson receive anything from this chapter 13 case.[7] Her claim was untimely, and the Court has no equitable power to allow the claim. In re Greenig, 152 F.2d at 636. The confirmation process therefore has no impact on her pecuniary interests. Furthermore, by not having an allowed claim she is not within the zone of interest protected by the code's requirements for

[7]Hutchinson concedes she has a "late claim", Response Brief filed Feb. 7, 2000 at 9, and that it prevents distributions under a plan. Id. at 11.

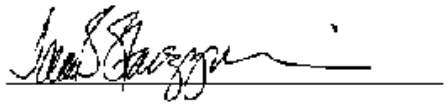
confirmation. See Southern Boulevard, Inc. v. Martin Paint Stores (In re Martin Paint Stores), 207 B.R. 57, 62 (S.D. N.Y. 1997)(a creditor of the debtor's creditor does not have an interest within the zone of interests protected by section 365, and therefore lacks standing to object to assumption of lease). Hutchinson has no standing to object to confirmation.

In her objection, Hutchinson argues that the plan should not be confirmed because it does not comply with the provisions of Chapter 13, has not been proposed in good faith, fails to meet the disposable income test, fails to meet the chapter 7 test, impermissibly classifies untimely claims into a separate class (which will receive no payment) and that the debtor is ineligible for chapter 13 relief. The Chapter 13 trustee has raised the same issues.

Hutchinson argues that the plan's classification of late claims into a class that receives nothing is improper, and opens the door for her to object to this classification because she is a member of this class and will be affected by its treatment. The Court finds that this classification is merely redundant of the treatment required by section 502(b)(9) and Bankruptcy Rule 3002(c). If the plan did not treat members of this class this way, the plan would not comply with the provisions of the code and would not be confirmable. See Section 1325(a)(1). See also Greenig, 152 F.2d at 636 (a plan cannot circumvent the deadlines

for proofs of claims). Because she has no pecuniary interest in this case, the Court finds that the other objections are attempts to raise issues that are, as in the Johns-Manville Corporation case discussed above, properly raised by others who do have an actual financial interest in this case.

In conclusion, the debtor's objection to claim should be sustained. The Court finds that Hutchinson, as holder of an untimely claim, lacks standing to object to confirmation, to bring the motion to dismiss, to obtain relief from the automatic stay, and to pursue discovery requests. Separate orders will enter.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date file stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, mailed, or delivered to the listed counsel and parties.

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