

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

WILLIAM NUGENT
PEGGY NUGENT

CASE NO. 90-00132

Debtors

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Before the Court is the objection of William and Peggy Nugent ("Debtors") to the amended proof of claim of Creative Kitchen and Bath by Durham, Inc. ("Creative Kitchen"). A hearing on the objection was held in Utica, New York on April 30, 1992, and after the receipt of memoranda of law, the matter was submitted for decision on May 26, 1992.

JURISDICTION

The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§1334, 157(a), 157(b)(1) and (b)(2)(A &O).

FACTS

On January 9, 1990, Debtors filed a joint petition for relief under Chapter 7 of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code"). On April 22, 1991, Debtors converted their case to a case under Chapter 13 of the Code. On July 24, 1991, Creative Kitchen filed a proof of claim against Debtors in the amount of \$4,447.04. On January 2, 1992, Creative Kitchen filed an

amended proof of claim against Debtors in the amount of \$13,279.

Debtors objected to Creative Kitchen's amended proof of claim on the basis that they are not individually liable to Creative Kitchen. Debtors asserted that the debts upon which Creative Kitchen's amended proof of claim is based were incurred by the Nugent Builders, Inc., of which the Debtor William Nugent was a principal, and not by the Debtors personally.

As previously noted, a hearing on Debtors' objection was held on April 30, 1992. On August 31, 1992, while resolution of this contested matter was still pending, Debtors filed a notice of conversion of their case from Chapter 13 to Chapter 7, pursuant to Code §1307(a) and Federal Rule of Bankruptcy Procedure 1017(d).

DISCUSSION

In a Chapter 7 case, the Chapter 7 trustee ("trustee") is the representative of the estate, 11 U.S.C. §323, and has a duty to examine and object to proofs of claim against the estate. 11 U.S.C. §704(5). A Chapter 7 debtor has no standing to object to a claim unless such an objection might produce a surplus of assets which would yield a net dividend to the debtor. In re Coleman, 131 B.R. 59, 60-61 (Bankr. N.D.Tex. 1991); In re Olsen, 123 B.R. 312, 313 (Bankr. N.D.Ill. 1991). Because Debtors have not made a showing upon the reconversion of their case to Chapter 7 that the instant objection, if sustained, might result in a surplus dividend to them, they presently have been divested of standing to maintain the instant objection.

Therefore, Debtors' objection to Creative Kitchen's claim is denied without prejudice.

IT IS SO ORDERED.

Dated at Utica, New York

this day of September, 1992

STEPHEN D. GERLING
U.S. Bankruptcy Judge

