

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

THOMAS R. BOHLER, Sr. and
DONNA E. BOHLER,
Debtors.

Chapter 13
Case No. 03-15740

APPEARANCES:

RONALD J. KIM, ESQ.
Attorney for the Debtors
Law Offices of Ronald J. Kim
P.O. Box 318
Saratoga Springs, New York 12866

PATRICK G. RADEL, ESQ.
Attorney for Partners Trust Bank,
successor-in-interest to BSB Bank & Trust
Getnick, Livingston, Atkinson, Gigliotti & Priore, LLP
258 Genesee Street
Utica, New York 13502

Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

Presently before the court is the motion objecting to BSB Bank & Trust Company's ("BSB") proof of claim pursuant to 11 U.S.C. § 502 filed by Thomas and Donna Bohler (the "Debtors"). The Debtors seek to expunge the unsecured portion of BSB's bifurcated claim. The court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(B) and 1334(b).

FACTS

The Debtors filed a chapter 7 petition on January 16, 2003 (Case No. 03-10278). The Debtors listed as an asset in their petition an interest in a 1995 Fairmont 30 x 70 double wide

mobile home located at 11 Faraone Drive, Ballston Spa, New York (the “Mobile Home”). (No. 1, Ch. 7.) Ballston Spa National Bank, P.O. Box 70, Ballston Spa, New York, is listed in the petition as the creditor holding a lien against the Mobile Home in the amount of \$46,818.51. *Id.* The Debtors allege, that as of the filing date, the Mobile Home had a fair market value of \$31,323.00, leaving Ballston Spa National Bank’s claim unsecured to the extent of \$15,495.51. The Chapter 7 Trustee filed a “no asset” report on February 14, 2003, and an order discharging the Debtors was entered on August 19, 2003. (Nos. 4 & 7, Ch. 7.)

On August 26, 2003, the Debtors filed a chapter 13 petition. The Debtors once again listed the Mobile Home as an asset. This time, however, the Debtors’ petition reflected BSB Bank & Trust (“BSB”), 58-68 Exchange Street, Binghamton, NY, as the creditor holding the lien against the Mobile Home. (No.1, Ch.13.) The Debtors scheduled BSB’s total claim as \$46,818.51. Again the Debtors alleged \$31,323.00 as the fair market value for the Mobile Home, leaving BSB’s claim unsecured to the extent of \$15,495.51. (No. 1, Ch. 13.) The Debtors outlined the treatment of BSB’s claim and stated they had no unsecured debt in paragraphs two and eight, respectively, of their chapter 13 plan which provide:

2. BSB Bank & Trust Company (“Creditor 1”) is secured by a 1995 Fairmont Mobile Home located at 11 Faraone Drive, Ballston Spa, NY. This property is [sic] Debtors’ residence. The value of the mobile home is \$31,323.00. The debt owed is \$46,818.51. Creditor 1 shall receive accrued interest on the secured portion of the debt at 5.5% interest. The secured portion of the debt shall be paid to Creditor 1, inside the Plan through a “cramdown” for sixty months. The “cramdown” portion of the monthly plan payment, with interest at the rate of 5.5% shall be **\$598.31** per month for sixty months inside the Plan. The unsecured portion of the debt is \$15,495.51. The unsecured portion of this debt shall be treated as an unsecured non-priority claim.
8. Debtor has no unsecured creditors having filed a Chapter 7 Petition (#03-

10278) on or about January 16, 2003, and having received a discharge on or about August 19, 2003.

(No. 2, ¶¶ 2 & 8, Ch. 13.) The parties have stipulated that BSB did not have notice or actual knowledge of the Debtors' chapter 7 filing. (BSB's Further Opp'n, Ex. A, Stip. of Facts ¶ 8.)

On September 11, 2003, BSB filed a secured proof of claim in the amount of \$47,718.93. (Claim No. 1, Ch. 13). On November 10, 2003, the Chapter 13 Trustee filed her Motion to Determine Value of Collateral for the Mobile Home. (No. 8, Ch. 13.) The trustee's motion reiterated the Debtors' value of \$31,323 with an interest rate of 5.5% to be paid on the secured portion of BSB's claim. No objections were filed and an order was entered granting the Chapter 13 Trustee's motion on December 31, 2003. (No. 11, Ch. 13.) Likewise, there were no objections to the confirmation of the Debtors' chapter 13 plan, and an order confirming the plan was entered on January 30, 2004. (No. 12, Ch. 13.)

Paragraph III (E)(4) of the confirmation order is one of three paragraphs that involved the treatment of BSB's claim. It sets the value of BSB's claim at \$31,323 to be paid with 5.5% interest. (No. 12, Ch. 13.) Paragraph V provides the dividend to unsecured creditors will be no less than 100%. (*Id.*) Lastly, paragraph X advises "[o]bjections, if any, to creditor claims by the debtor or debtor(s)' attorney in the instant case *must be filed by appropriate pleading within 90 days* of the service, by the trustee, of the 'Notice of Claims Filed.' " (*Id.*, ¶ X (emphasis added).) Neither party appealed the confirmation order.

On April 12, 2004, the Chapter 13 Trustee filed her Notice of Claims Filed¹ which

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The Notice of Claims Filed is an informational pleading regularly filed by the Chapter 13 Trustee for the Northern District of New York, Albany Division, after all deadlines for filing a proof of claim have passed. The notice lists all of the claims filed in a debtor's case. The notice also lists the name of the creditor, the account

indicated BSB's claim would be bifurcated into a secured portion of \$31,323 with interest at 5.5% and an unsecured portion of \$16,395.93. (No. 16, Ch. 13.) The Chapter 13 Trustee's notice also stated that the time period to file a claim had expired and reminded all parties that the claims would be deemed allowed unless an objection was raised by the Debtors or another party in interest. The Debtors filed their objection on October 26, 2005. BSB filed their response on November 23, 2005. On January 12, 2006, a briefing schedule was entered on the docket. The parties filed their respective memoranda of law and a stipulation of facts, and the matter was considered fully submitted as of March 8, 2006.

ARGUMENTS

The Debtors assert the unsecured portion of BSB's claim, as well as their personal liability on the underlying note, were discharged in their chapter 7 case. The Debtors argue their failure to correctly list BSB in their chapter 7 petition was inconsequential to the dischargeability of BSB's debt because no dividend was distributed to creditors. The Debtors further argue that BSB was appropriately noticed and listed as a creditor in their chapter 13 filing. It is the Debtors' contention that their chapter 13 plan bifurcated BSB's claim into a secured portion to be paid through the plan and an unsecured claim that would not be funded, as it was previously discharged. The Debtors assert that the court should enforce the provisions of the plan and expunge the unsecured portion of BSB's claim.

Conversely, BSB argues that their claim was not discharged because they did not receive notice of the chapter 7 filing until after the case had been closed and the deadline to obtain a

number, the type of claim, the amount of the claim, and the interest rate, if applicable. The notice is sent to the debtor and debtor's counsel and informs the parties the total amount of priority, secured and unsecured claims filed.

reaffirmation agreement or object to discharge had expired. BSB also argues its claim could not be discharged because it is excepted under 11 U.S.C. § 523(a)(3).² BSB contends the Debtors' loan was in default on the date of the chapter 7 filing and argues, if they had known of the bankruptcy, they could have filed a motion to lift the automatic stay pursuant to 11 U.S.C. §362(d)(1) or, alternatively, entered into a reaffirmation agreement with the Debtors.

Within the realm of the chapter 13 proceeding, BSB argues that the Debtors waived any right to object to their claim by waiting nearly two years after the entry of the confirmation order to raise such an objection. BSB argues it did not appeal the confirmation order because it believed its secured and unsecured claims would be paid through the Debtors' chapter 13 plan pursuant to both the terms of the plan and the confirmation order. In further support, BSB cites two cases holding that any ambiguity with plan language should be construed against the Debtors, as drafters of the document. *See In re Fareed*, 262 B.R. 761, 771 (Bank. N.D. Ill. 2001); *See Salmon v. Laser Plot, Inc.*, 189 B.R. 559, 561-562 (D. Mass. 1995). The Debtors have taken no position as to this argument.

² **§ 523. Exceptions to discharge**

(a) A discharge under section 727, 1141, 1228(a) 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit –

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

11 U.S.C. § 523(a)(3).

DISCUSSION

A. The Effect of the Debtors' Chapter 7 Discharge

In conformance with Rule 2002(e) of the Federal Rules of Bankruptcy Procedure and Rule 3001-2 of the Local Bankruptcy Rules for the Northern District of New York,³ the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines served in the Debtors' chapter 7 case identified the case as having no assets and instructed creditors not to file a proof of claim at this time. (No. 2, Ch. 7.) BSB argues it was unfairly prejudiced by not receiving notice of the Debtors' chapter 7 petition. Unfortunately, this argument is not persuasive given that the Chapter 7 Trustee issued a "no asset" report in the Debtors' case, and no distribution was made to creditors.

"[When] there are no proceeds to be distributed to the creditors in a no-asset case, [this] renders the notice function served by scheduling of debts far less important. For precisely this reason, there is no deadline for the filing of proofs of claim in a no-asset case. For the most part, creditors in a no-asset case do not stand to gain by having their debts scheduled, nor do they stand to lose by having their debts omitted from the schedules." *In re Madaj*, 149 F.3d 467, 470 (6th Cir. 1998).

The U.S. Supreme Court held that in a chapter 7 case, "a bankruptcy discharge extinguishes only one mode of enforcing a claim – namely, an action against the debtor *in*

³ **Rule 2002(e) Notice of No Dividend.**

In a Chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

Fed. R. Bankr. P. 2002(e).

Rule 3001-2: Claims and Equity Security Interest - No Asset Cases

In a chapter 7 case noticed as a no asset case, no proof of claim shall be filed. Local Bankruptcy Rule N.D.N.Y. 3001-2.

personam – while leaving intact another – namely, an action against the debtor *in rem*.” *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991). Thus, BSB’s lien survived the Debtors’ chapter 7 discharge. If the Debtors’ loan payments were in default, arguably, BSB could have taken measures to recover the Mobile Home prior to the Debtors’ chapter 13 case being filed. The record is void of any indication that BSB sought to repossess the Mobile Home.

Pursuant to 11 U.S.C. § 727(b), all prepetition debt incurred by a chapter 7 debtor is discharged, regardless if a proof of claim has been filed, unless the debt is excepted under 11 U.S.C. § 523. Although BSB argues its debt should be excepted from discharge pursuant to §523(a)(3), it has failed to produce any evidence that their claim would have been excepted from discharge as a kind specified in § 523(a)(2), (a)(4), or (a)(6).⁴ Thus, the court finds no merit to BSB’s request that their claim be excepted from discharge pursuant to 11 U.S.C. § 523(a)(3).⁵ Based upon the foregoing, BSB was not prejudiced by having its debt omitted from the Debtors’ chapter 7 schedules. Therefore, BSB’s underlying debt was discharged.

B. Untimely Objections to Proofs of Claim

Local Rule 3007-1(b), although not referred to in the confirmation order, reflects the same guidelines and time limits as set forth in the order confirming the Debtors’ plan.⁶ It is

⁴ See *supra* note 2.

⁵ A determination that BSB’s debt is excepted from discharge would require the commencement of an adversary proceeding. Fed. R. Bankr. P. 7001(6).

⁶ **Rule 3007-1: Claims - Objections**

(b) Claim Objections in Chapter 12 and 13 cases. Absent a court order approving an extension of time, objections to claims in chapter 12 and 13 cases must be filed and served within 90 days of the trustee’s service of the “Notice of Claims Filed” in the Albany court

Local Bankruptcy Rule N.D.N.Y. 3007-1.

disconcerting that Debtors' counsel seemingly disregarded the deadline for filing objections to claims, without any sort of explanation. The Debtors filed their objection on October 26, 2005, approximately fifteen months or 562 days after the Chapter 13 Trustee served her Notice of Claims Filed, well outside the ninety-day deadline. Deadlines are an essential part of the Chapter 13 process. Deadlines for objections to claims are set so that the rights and liabilities of the parties can be established. In addition, there needs to be finality in the claims process so that the Chapter 13 Trustee can be certain she is disbursing funds to creditors within the parameters of a debtor's plan and the Code. Having found the Debtors' motion to be untimely, the court need not address the parties conflicting interpretations of the Debtors' plan, more specifically paragraphs 2 and 8, nor the res judicata effect of confirmation of the plan.

CONCLUSION

Based on the foregoing, the court overrules the Debtors' objection to BSB Bank & Trust's proof of claim and denies Debtors' request for additional attorney compensation.

IT IS SO ORDERED.

Dated: August 25, 2006

/s/ Robert E. Littlefield, Jr
Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge