

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-33070

EARL CARROLL OVERTON

Debtor

**MEMORANDUM ON TRUSTEE'S
OBJECTION TO CLAIM**

APPEARANCES: McGEHEE, NEWTON & WYKOFF, P.C.
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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

On February 20, 2001, Judy Ann Payne filed a claim in the amount of \$34,355.00 asserting a security interest in real property located at 7215 Central Avenue Pike in Powell, Tennessee (Central Avenue Pike Property). On December 29, 2000, John P. Newton, Jr., the Chapter 7 Trustee (Trustee), filed an Objection to Claim asserting that Ms. Payne's claim should either be reduced or disallowed in its entirety.¹ An evidentiary hearing was held on April 23, 2001. The record before the court consists of the testimony of the Debtor and Ms. Payne and twenty-three exhibits admitted into evidence by stipulation of the parties.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(B) (West 1993).

I

The Debtor signed a \$35,000.00 Fixed Monthly Payment Note (Note), dated August 13, 1997, in favor of Ms. Payne. The Note was accompanied by a Deed of Trust granting Ms. Payne a security interest in the Debtor's Central Avenue Pike Property. The Deed of Trust was recorded on August 14, 1997. Ms. Payne asserts that the Note and Deed of Trust were made to secure the repayment of funds expended by her on the Debtor's behalf between late December 1995 and mid-1997. Included among the exhibits stipulated into evidence is a list prepared by Ms. Payne documenting bills of the Debtor purportedly paid out of Ms. Payne's personal funds;² an Amortization Schedule indicating that the Debtor made forty payments on the Note of \$247.37

¹ The Trustee was apparently served with a copy of Ms. Payne's claim in advance of its filing. Upon receipt, he filed the Objection to Claim notwithstanding that Ms. Payne had not in fact filed the claim. Rather than overrule the Objection to Claim, thus necessitating its re-filing, the court permitted the Trustee to proceed with his Objection after Ms. Payne filed her claim.

² The enumerated expenditures range from apparent business expenses such as truck parts, taxes, and repairs to more personal items like cell phone, cable television, and veterinary bills.

each through December 13, 2000; and Ms. Payne's federal income tax returns for 1995 through 1999.

By his Objection to Claim, the Trustee contends that the Deed of Trust and Note do not represent an arms-length transaction. He asserts that the loan documents were executed to shield the Central Avenue Pike Property from creditors of the Debtor.

II

A properly executed and filed proof of claim is *prima facie* evidence of the amount and validity of the claim. See FED. R. BANKR. P. 3001(f). Claims are allowed unless objected to by a party in interest. See 11 U.S.C.A. § 502(a) (West 1993). An objecting party must overcome the *prima facie* validity of the claim by "com[ing] forth with sufficient evidence to place the claimant's entitlement at issue." *Boehm v. Aton Components, Inc. (In re Aton Components, Inc.)*, No. 95-6475, 1996 WL 603862, at *1 (6th Cir. Oct. 21, 1996); accord *In re Russell Cave Co., Inc.*, 253 B.R. 815, 819 (Bankr. E.D. Ky. 2000) (citing and quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objector produces evidence sufficient to refute the claim, the burden of proof then shifts back to the claimant to prove the claim's validity and amount by a preponderance of the evidence. *Russell Cave*, 253 B.R. at 819. This shifting evidentiary burden has been summarized as follows:

[I]t may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. The objector is obliged to go forward and adduce sufficient evidence to rebut the claimant's *prima facie* case. Once this is achieved, however, it remains for the claimant to prove the claim as to its validity and as to its amount and not for the objector to disprove it. In short, once the *prima facie* effect given the claim is

overcome, the burden of ultimate persuasion rests on the claimant to prove that his claim is appropriate for purposes of sharing in the distribution of the debtor's assets. That proof must be by a preponderance of the evidence and it is for the bankruptcy judge to determine whether or not that has been achieved, with due regard being given to the probative value of the proof of claim itself.

DeLorean v. Allard (In re DeLorean Motor Co. Litig.), 59 B.R. 329, 337 (E.D. Mich. 1986) (quoting 3 KING, COLLIER ON BANKRUPTCY, at 502-22 (15th ed.)).

The Trustee has more than met his burden of overcoming the *prima facie* effect of Ms. Payne's claim. Conversely, Ms. Payne has not met her burden in establishing that she has a claim against the estate much less a claim secured by the Central Avenue Pike Property.

III

At times material to this contested matter, the Debtor was a truck driver. Ms. Payne was a tenant of the Debtor, residing in a trailer situated on the Central Avenue Pike Property. Ms. Payne and the Debtor had been business acquaintances for a number of years. At the time the Debtor filed his bankruptcy case, he and Ms. Payne were the joint owners of real property at 384 Longmire Drive in Clinton, Tennessee.

Sometime during late 1995, the Debtor decided to go into the trucking business. He purchased a truck, but for reasons not totally clear, he titled the truck in Ms. Payne's name. While it is undisputed that the Debtor was the driver of the truck, the record establishes that Ms. Payne received the revenues and paid the expenses attributable to its operation. She also paid the Debtor's living expenses. Ms. Payne testified, however, that she paid the trucking expenses and Debtor's personal expenses from her individual funds. These funds, she testified, came from

approximately \$40,000.00 in cash she secreted in her residence. Both the Debtor and Ms. Payne testified that they had a verbal agreement that if the trucking business did not work out, the Debtor would convert any debt he owed Ms. Payne attributable to her payment of his business and personal expenses to a mortgage.

The Debtor's financial situation deteriorated through 1996 and into 1997 and in mid-1997 he ceased operating the truck. On August 13, 1997, the Debtor executed the \$35,000.00 Note in Ms. Payne's favor secured by the Deed of Trust encumbering the Central Avenue Pike Property. The Debtor testified that he accepted Ms. Payne's word regarding the amount she claimed was due her. The truck was sold in 1998 for \$9,000.00.

Both the Debtor and Ms. Payne testified that the Debtor commenced payments on the Note on September 13, 1997, and continued to make payments after his bankruptcy case was filed. Through December 13, 2000, they assert that he made forty payments totaling \$9,894.80. If so, when he filed the Voluntary Petition commencing his Chapter 7 case on July 27, 1999, the balance owing on the Note would have been \$33,890.49. The balance after he made his last payment on December 13, 2000, would have been \$33,005.43. The Debtor and Ms. Payne claim that all Note payments were made in cash. Accordingly, they have no cancelled checks (or receipts) to offer as evidence of the alleged repayment.

Although Ms. Payne introduced into evidence an itemized list of expenses allegedly made on behalf of the Debtor, supported in part by copies of cancelled checks, to establish the amount she claims was owed her on August 13, 1997, her federal income tax returns do not support her

contention that the Debtor owed her any amount. Ms. Payne's tax returns lead the court to conclude that she, not the Debtor, operated the trucking business; that she paid the Debtor a commission for driving the truck; that all revenue generated by the Debtor's operation of the truck was paid to her; and that it was from these revenues that she paid both the Debtor's personal expenses and the expenses associated with the operation of the truck.

The court will analyze Ms. Payne's tax returns individually.³

1995

Ms. Payne filed a Form 1040X Amended U.S. Individual Income Tax Return on June 23, 1997. This return was accompanied by a Schedule C - Profit or Loss From Business, evidencing that Ms. Payne operated a "Trucking" business at the Central Avenue Pike Property from which she earned \$9,104.00 during the tax year, all of which was paid out in commissions and fees. There was, therefore, no reported profit or loss from the business during 1995. Ms. Payne received a \$139.00 refund for this tax year.

1996

Ms. Payne filed her 1996 Form 1040 U.S. Individual Income Tax Return on April 9, 1997. She again filed a Schedule C reporting that she was in the "Trucking" business at the Central Avenue Pike Property from which she earned \$21,936.00. She reported business expenses, totaling \$15,870.00, as follows: \$3,500.00 for commissions and fees; \$848.00 for insurance; \$40.00 for legal and professional services; \$3,834.00 for repairs and maintenance; \$303.00 for

³ While Ms. Payne's signature does not appear on the copies of the returns stipulated into evidence, the court presumes that these returns all were filed on the date signed by Ms. Payne's tax preparer. Ms. Payne has stipulated that these are the returns signed and filed by her with the Internal Revenue Service.

taxes and licenses; \$530.00 for utilities; and \$6,815.00 for "other expenses." Thus, Ms. Payne reported a net profit from the trucking operations during 1996 of \$6,066.00. She received a \$1,562.00 refund for this year.

1997

Ms. Payne filed her 1997 Form 1040 U.S. Individual Income Tax Return on April 5, 1998. She reported interest income received from the Debtor on Schedule B at \$810.00. On Schedule C, she again reported that she was in the "Trucking" business at the Central Avenue Pike Property. She reported gross receipts from the business of \$18,408.00 and expenses of \$11,660.00. The expenses were itemized as follows: \$1,741.00 for depreciation; \$174.00 for insurance; \$84.00 for office expense; \$1,316.00 for repairs and maintenance; \$340.00 for taxes and licenses; \$542.00 for utilities; and \$7,463.00 for "other expenses." Thus, Ms. Payne reported a net profit from the operation of the trucking business of \$6,748.00 during 1997. She received a refund of \$1,125.00 for this year.

1998

Ms. Payne, listing her occupation as a "Truck driver," filed her 1998 Form 1040 U.S. Individual Income Tax Return on March 20, 1999. She reported on Schedule B to her return that she received interest income from the Debtor of \$2,030.00. She also reported that she sold the truck used in the business for \$9,000.00 and realized a gain from its sale of \$8,130.00. As the business did not operate during 1998, there was no Schedule C filed with this return. She received a \$1,421.00 refund for this year.

1999

Ms. Payne's 1999 Form 1040 U.S. Individual Income Tax Return, filed March 10, 2000, again lists her occupation as a "Truck driver" and reflects at Schedule B that she received \$1,196.00 in interest income from the Debtor. No Schedule C was filed with this return. She received a \$763.00 refund for this year.

In summary, during 1996 Ms. Payne reported gross receipts from the operation of the trucking business of \$21,936.00. After deducting commissions and fees of \$3,500.00, her net income before expenses was \$18,436.00.⁴ The trucking expenses reported by Ms. Payne, less commissions and fees, totaled \$12,370.00. During 1997, Ms. Payne reported gross receipts of \$18,408.00 and expenses, excluding depreciation, of \$9,919.00.⁵ Therefore, during 1997 and 1998 Ms. Payne reported gross receipts of \$40,344.00 from the operation of the truck and deductible expenses, excluding commissions and depreciation, of \$22,289.00. With the commissions of \$3,500.00 paid in 1996 added back, her expenses totaled \$25,789.00. Her actual earnings from the operation of the truck accordingly exceeded expenses by \$14,555.00.

The personal and business expenses Ms. Payne contends she paid on behalf of the Debtor from her own funds (Exhibit 6), which formed the basis of the August 13, 1997 Note, evidence expenses during 1996 of \$20,654.94 and expenses during 1997 of \$14,153.36.⁶

⁴ The court presumes that the commissions and fees were paid to the Debtor as the driver of the truck.

⁵ Based on the Debtor's testimony that he and Ms. Payne terminated the trucking business in mid-1997, the court presumes that all income from the operation of the business was earned on or before June 30, 1997.

⁶ Ms. Payne itemizes only three expenses allegedly paid during December 1995. These expenses, totaling \$135.42, are *de minimis* and will not be considered by the court.

Based upon the gross income of \$40,344.00 received by Ms. Payne during 1996 and 1997 from the operation of the truck, the court cannot find that Ms. Payne advanced \$35,000.00 of her own funds to the Debtor. Only during 1996, when Ms. Payne states that she advanced \$20,654.94 on behalf of the Debtor, does the record support a finding of any possible loan. It was during that same year that Schedule C to her income tax return reflects income net of commissions of \$18,436.00. Thus, according to her own records, she expended \$2,218.94 more than she took in. In 1997 her gross receipts from the trucking business totaled \$18,408.00 while the monies she claimed that she advanced the Debtor for expenses totaled \$14,153.36.

Once the Trustee introduced sufficient evidence to rebut the *prima facie* evidence of the amount and validity of Ms. Payne's claim, it was incumbent upon her to prove her claim in the amount filed. *See DeLorean*, 59 B.R. at 337. This she has not done. Instead, Ms. Payne has established a possible claim of only \$2,218.94, but, according to her records, has received \$9,894.80 from the Debtor in monthly payments on the Note. Ms. Payne is entitled to nothing more from the Debtor's estate. Her claim of \$34,355.00 will be disallowed in its entirety.

An appropriate order will be entered sustaining the Trustee's Objection.

FILED: May 2, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-33070

EARL CARROLL OVERTON

Debtor

ORDER

For the reasons stated in the Memorandum on Trustee's Objection to Claim filed this date, the court directs the following:

1. The Objection to Claim filed by the Chapter 7 Trustee, John P. Newton, Jr., on December 29, 2000, objecting to the allowance of the claim filed by Judy Ann Payne on February 20, 2001, in the amount of \$34,355.00, is SUSTAINED.

2. Judy Ann Payne's claim, purportedly secured by real estate at 7215 Central Avenue Pike, Powell, Tennessee, more specifically described in a Deed of Trust executed by the Debtor on August 13, 1997, of record in Trust Book 3279, page 1063, in the office of the Register of Deeds for Knox County, Tennessee, is DISALLOWED in its entirety.

3. Judy Ann Payne has no claim against the Debtor, either secured or unsecured.

SO ORDERED.

ENTER: May 2, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE