

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

In re	)	
	)	
CHERYL M. RUSSELL	)	Case No. 95-20056
	)	Chapter 13
	)	
Debtor	)	

MEMORANDUM AND ORDER

This matter came before the court for hearing on September 19, 1995, upon the exception to disallowance of claim filed by Chrysler Credit Corporation ("Chrysler") on August 25, 1995. In the exception, Chrysler requests that the court reconsider its order entered August 15, 1995, disallowing the claim of Chrysler because the claim was filed on July 19, 1995, after the bar date of June 5, 1995. As grounds for reconsideration, Chrysler alleges that notice of the debtor's bankruptcy filing and of the deadline for filing claims was deficient because notice was not provided to Stone & Hinds, P.C., the attorneys for Chrysler, even though the debtor knew that Stone & Hinds represents Chrysler in its collection efforts against the debtor. Chrysler also alleges that the notice to Chrysler was confusing because it was mailed in care of Stone & Hinds, Attorneys, although mailed to Chrysler's address. Chrysler asserts that these errors by debtor provide excusable neglect for Chrysler's failure to timely file its claim.

11 U.S.C. § 502(b)(9) provides that a claim shall be allowed

except to the extent proof of such claim is not timely filed. Fed. R. Bankr. P. 3002(c) specifies that in chapter 7 and 13 cases, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors, although an extension of time may be permitted for the United States, a state or subdivision of the United States or an infant or incompetent person. Chrysler clearly does not fall within any of these categories.

Pursuant to Fed. R. Bankr. P. 9006(b), the time for filing a proof of claim under Rule 3002(c) can only be enlarged to the extent and under the conditions stated in Rule 3002(c) and numerous courts have held that late proofs of claims in chapter 13 are governed exclusively by Rule 3002(c). See, e.g., *Jones v. Arross*, 9 F.3d 79 (10th Cir. 1993); *In re Thomas*, 181 B.R. 674, 676-77 (Bankr. S.D. Ga. 1995). In other words, "the 90 day deadline for filing claims under Fed. R. Bankr. P. 3002(c) cannot be extended for excusable neglect". *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428 (9th Cir. 1990). One court has observed that the Supreme Court in *Pioneer* suggested as much when it stated:

Subsections (b)(2) and (b)(3) of Rule 9006 enumerate those time requirements excluded from the operation of the "excusable neglect" standard. One of the time requirements listed as excepted in Rule 9006(b)(3) is that governing the filing of proofs of claim in chapter 7 cases. Such filings are governed exclusively by Rule 3002(c).

*In re Thomas*, 181 B.R. at 676-77 quoting *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. Partnership, et al*, \_\_\_\_\_ U.S. at \_\_\_\_\_ n. 4, 113 S.Ct. at 1495 n. 4, 123 L.Ed.2d at 85 n. 4 (1993). "The fact that under Rule 9006(b)(3) Chapter 13 proofs of

claim are filed pursuant to Rule 3002(c) means that late proofs of claim in Chapter 13 are also 'exclusively' governed by Rule 3002(c)." *In re Thomas*, 181 B.R. at 676-77.

Despite these limitations, a court may nevertheless consider allowing a late filed proof of claim where the creditor's due process rights have been implicated. See *In re Dartmoor Homes, Inc.*, 175 B.R. 659 (Bankr. N.D. Ill. 1994); *In re Somar Concrete, Inc.*, 102 B.R. 44, 46 (Bankr. D. Md. 1989). In the present case, however, there has been no allegation that Chrysler did not receive notice of the bankruptcy filing and of the bar date in a timely fashion. Therefore, in the absence of any evidence that Chrysler falls within one of the exceptions to the claims bar date provided by Fed. R. Bankr. P. 3002(c) and in the absence of any allegation that Chrysler's Fifth Amendment due process rights have been violated, Chrysler's exception must be disallowed. Accordingly, based on the foregoing, it is hereby

ORDERED that the exception to disallowance of claim filed by Chrysler on August 25, 1995, is DENIED and OVERRULED.

SO ORDERED.

ENTER: September 28, 1995

BY THE COURT

  
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MARCIA PHILLIPS PARSONS  
United States Bankruptcy Judge