

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

In re	)	
	)	
JENNIFER ANNETTE JONES	)	Case No. 93-34532
	)	Chapter 13
	)	
Debtor	)	

MEMORANDUM

This matter is before the court upon the objection of the debtor to the late filed claim of a scheduled creditor, MBNA America. The debtor contends that the claim of MBNA should be disallowed because it was not filed within the time requirement set forth in Fed. R. Bankr. P. 3002(c). This court agrees.

The debtor, Jennifer Annette Jones, filed a petition for relief under Chapter 13 of the United States Bankruptcy Code on November 3, 1993. Scheduled as an unsecured creditor on the debtor's list of creditors was MBNA America with two claims. An "Order for Meeting of Creditors, Combined With Notice Thereof and of Automatic Stays" was mailed to all creditors on November 10, 1993, advising them, *inter alia*, of the bankruptcy filing and the deadline or "bar date" for filing claims. The order provided that in order to share in any distribution from the estate, a creditor must file a claim, and that "[c]laims which are not filed on or before March 21, 1994, will not be allowed, except as otherwise provided by law." The March 21, 1994 date was set by the clerk of

the court in accordance with Fed. R. Bankr. P. 3002(c)<sup>1</sup> which provides that a proof of claim shall be filed within ninety days after the first date set for the meeting of creditors.

MBNA America filed one proof of claim in the amount of \$1,531.28 on December 6, 1993, prior to the expiration of the bar date. Subsequently on June 7, 1994, after the March 21, 1994 bar date, MBNA America filed a second proof of claim on another account in the amount of \$5,961.22. Upon receiving notice of the filing of this second proof of claim, the debtor tendered to the court an order disallowing the claim of MBNA America in the amount of \$5,961.22 due to its untimeliness, but giving the creditor ten days from the entry of the order in which to file a written exception to the disallowance. This order was entered by the court on July 5, 1994. Thereafter, on July 8, 1994, MBNA America filed a written exception to the order requesting that the court reconsider the disallowance of its claim. In its exception, MBNA America contends that untimeliness is not a valid basis for disallowing a claim under 11 U.S.C. § 502(b), citing the bankruptcy court decisions of *In re Babbin*, 156 B.R. 838 (Bankr. D. Colo. 1993) and *In re Hausladen*, 146 B.R. 557 (Bankr. D. Minn. 1992). The court set the matter for hearing and directed the filings of briefs with respect to this legal issue. Briefs have now been filed.

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<sup>1</sup>Entitled "Time for Filing," Fed. R. Bankr. P. 3002(c) specifically states: "In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code ...."

I.

Prior to *Hausladen*, it was well settled that claims had to be filed within the time set by Fed. R. Bankr. P. 3002(c) in order to be allowed in a Chapter 13 case. See *In re Friesenhahn*, 169 B.R. 615, 627 (Bankr. W.D. Tex. 1994). *Hausladen* rejected that long held notion concluding that "a time bar does not expressly exist under the Code or Rules." *In re Hausladen*, 146 B.R. at 559. The *Hausladen* court admitted that a reading of Fed. R. Bankr. P. 3002 implies that filing within the prescribed period is a prerequisite to allowance, but decided that this was an "erroneous reading [which] arose when the drafters of the new Rule 3002 hastily copied the substance of old Rule 302 without paying any attention to the major change in the underlying statute." *Id.* (*emphasis in original*). The court in *Hausladen* was referring to the fact that the Bankruptcy Act of 1898 specifically disallowed late filed claims providing that "claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed ..." 11 U.S.C. § 93(n) [repealed]. Old Rule 302 of the Bankruptcy Rules of Procedure reflected, word for word, this limitation on allowance. See *In re Friesenhahn*, 169 B.R. at 628. Under the present Bankruptcy Code, however, there is no specific provision which bars disallowance of late filed claims. Section 502 of the Bankruptcy Code lists eight grounds for disallowing claims and tardiness or late filing is not among them. Because of this absence from the Code, *Hausladen* concluded that late filed

claims must be allowed. *Hausladen* explained that rather than providing a bar date, Fed. R. Bankr. P. 3002 simply provides the criteria for determining whether a claim is timely or tardy, a distinction that is relevant in a Chapter 7 because the Code provides a different priority and distribution scheme for untimely claims and a distinction that may be relevant in a Chapter 13 if the plan establishes a separate payment scheme for untimely claims.

The *Hausladen* ruling generated an explosion of litigation on the issue of whether a late filed claim may be disallowed in a Chapter 13 solely because of its lateness.<sup>2</sup> In fact, as noted by one court recently, no less than three dozen published opinions have been released on the issue of claims bar dates under Fed. R. Bankr. P. 3002(c). See *In re Friesenhahn*, 169 B.R. at 626, n. 23.

This court respectfully disagrees with *Hausladen* and concludes that it is unpersuasive and wrongly decided. Instead, this court finds persuasive the careful analysis and conclusions reached by

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<sup>2</sup>This issue has now been resolved for cases filed on or after October 22, 1994, by the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 216, 108 Stat. 4106, 4126-27 (1994) which amends § 502 by adding a new basis for disallowance of claims, subsection 502(b)(9), when

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) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.

The legislative history to this amendment indicates that it is "designed to overrule *In re Hausladen*, 146 B.R. 557 (Bankr. D. Minn. 1992) and its progeny by disallowing claims that are not timely filed." 140 CONG. REC. H10752-01.

the *en banc* bankruptcy court in the case of *In re Zimmerman*, 156 B.R. 192 (Bankr. W.D. Mich. 1993), and the more recent decisions by District Judge Wiseman in *In re Gullatt*, 169 B.R. 385 (M.D. Tenn. 1994), and Bankruptcy Judge Clark in *Friesenhahn*.

Contrary to *Hausladen* and its progeny, Fed. R. Bankr. P. 3002 does in fact provide a bar date for filing claims. Rule 3002(a) states that an unsecured creditor "must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed." The rule then states in subsection (c) that such proof "shall be filed within ninety days after the first date set for the meeting of the creditors." The absence of a corresponding ninety-day time limitation in the Code is not indicative of a Congressional desire to refrain from imposing a time requirement for filing claims. Instead, the legislative history of the Bankruptcy Code informs us that in drafting the Code, Congress deleted the specific procedural details that had been a part of the Act, intentionally leaving them for the Federal Rules of Bankruptcy Procedure: "nearly all procedural matters formerly incorporated in the provisions of the act, have been removed and left to the Rules of Bankruptcy Procedure." H.R. REP. No. 595, 95th Cong., 1st Sess., 449 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6405, cited by *In re Bailey*, 151 B.R. 28, 32 (Bankr. N.D.N.Y. 1993).

Fed. R. Bankr. P. 3002 complements §§ 501 and 502 of the Code. 8 COLLIER ON BANKRUPTCY ¶ 3002.02[1] (15th ed. 1994). Section 502 of the Code provides that a claim or interest, proof of which is filed under § 501, is deemed allowed unless a party in interest objects.

11 U.S.C. § 501 states that a creditor may file a proof of claim and notes that if a creditor fails to timely file its claim, a proof of claim may be filed by other specified parties. Section 501 does not set forth what constitutes "timely"; instead, Fed. R. Bankr. P. 3002 provides the criteria consistent with Congressional intent to place all procedural requirements in the rules. The legislative history to §501 indicates that "the Rules of Bankruptcy Procedure will set the time limits, the form, and the procedure for filing, which will determine whether claims are timely or tardily filed." H.R. REP. No. 595, 95th Cong. 1st Sess., 351 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6307, cited by *In re Bailey*, 151 B.R. at 31. Therefore, it was unnecessary for Congress to place untimeliness as a basis for disallowance under § 502 because § 502 clearly requires compliance with § 501 as a prerequisite to allowance, that is, the proper filing of a claim under § 501, and correspondingly, Rule 3002, is a condition precedent to consideration under § 502. *In re Zimmerman*, 156 B.R. at 195; *In re Gullatt*, 169 B.R. at 387.

There is no indication in the legislative history that the drafters of the new code and the new rules intended to effect a major change in bankruptcy law by allowing late filed claims under Chapter 13. The United States Supreme Court has indicated its reluctance "to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history."

*In re Messics*, 159 B.R. 803, 809 (Bankr. N.D. Ohio 1993), quoting *Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992). As noted by the court in *Messics*, it seems anomalous to suppose that Congress would have made such a radical change from prior bankruptcy practice without some indication that this was its intent and it seems equally anomalous to suppose that such a change would have gone undetected by the draftsmen of the rules. *Id.*

## II.

In the alternative, MBNA America requests that even if this court rejects the rationale of *Hausladen*, that rather than disallowing its claim, the court should, pursuant to its equitable powers, subordinate the claim of MBNA America to the claims that were timely filed. The debtor's confirmed Chapter 13 plan provides that the debtor will make plan payments of \$243.00 biweekly for sixty months, a total of \$31,590.00 over the life of the plan, with unsecured creditors to receive the greater of 71% or funds available after payment of priority and secured claims. Including the late filed proof of claim of MBNA America, the filed claims total \$32,431.72. MBNA America submits that under the debtor's present plan, if MBNA America's claim were subordinated to all timely filed claims, sufficient funds would remain to pay MBNA America approximately 85% of its claim after paying all timely filed claims 100%. MBNA America notes that the idea of different treatment of claims tardily filed from those timely filed would not be inconsistent with the treatment of claims elsewhere in the

Bankruptcy Code, noting that the distribution scheme in a Chapter 7 case provides for the distribution of surplus funds to tardily filed claims after payment of allowed timely filed claims. See 11 U.S.C. § 726.

The law is clear, however, that this court is not free to exercise its equitable powers to impose a distribution scheme in a Chapter 13 case that is not authorized by the Code or provided for in the Chapter 13 plan. As stated by a bankruptcy court in this circuit, which ruling has been upheld by the Sixth Circuit Court of Appeals:

The bar date for filing proofs of claim is to provide the debtor and its creditors with finality. "The congressional goal of finality precludes the Bankruptcy Courts from finding exceptions to these rules in the supposed interest of equity."

*In re Johnson*, 84 B.R. 492, 494 (Bankr. N.D. Ohio 1988), *aff'd*, *In re Johnson*, 901 F.2d 513 (6th Cir. 1990), *quoting In re Norris Grain Co.* 81 B.R. 103 (Bankr. M.D. Fla. 1987).

In responding to a similar argument, another court has stated:

The inherent equity powers of the bankruptcy court ... are a tempting instrument to mitigate the harshness involved in any statutory time limitation, but ... courts have generally withstood the temptation even in situations in which the equities of the case ... spoke strongly in favor of equitable relief (citation omitted).

... Under no circumstances other than those specifically referred to in [Fed. R. Bankr. P. 3002(c)] may the court admit a claim to untimely proof, but is under a duty to disallow it, with no power to substitute equitable considerations for the manifest intent of Congress.

*In re Turner*, 157 B.R. 904, 909 (Bankr. N.D. Ala. 1993), quoting *In re International Resorts, Inc.*, 74 B.R. 428, 429-430 (Bankr. N.D. Ala. 1987). See also *In re Gullatt*, 169 B.R. at, 389; *In re Analytical Systems, Inc.*, 933 F.2d 939, 942 (11th Cir. 1991), quoting *Maressa v. A.H. Robins Co., Inc.*, 839 F.2d 220, 221 (4th Cir. 1988) cert. denied, 488 U.S. 826 (1988) ("The clear Congressional intent to require filing of valid proofs of claims within the established time limits precludes any exceptions based on general equitable principles."); *Matter of Andrew*, 162 B.R. 46, 49 (Bankr. M.D. Ga. 1993) ("A creditor ... cannot bypass the requirement to file a timely proof of claim by relying on general principles of equity."); 8 COLLIER ON BANKRUPTCY ¶ 3002.05 (15th ed. 1993) ("The court has no equitable power to extend the time fixed by Rule 3002(c).); cf. *Matter of Unroe*, 937 F.2d 346, 351 (7th Cir. 1991) (noting that although late filed claims should generally be barred, the bankruptcy court in its discretion may allow late proofs of claims on equitable grounds).

Regardless of whether this court has the equitable power to allow the late filing of a claim in a Chapter 13 case, the court believes that policy considerations dictate against the exercise of such power. As noted by MBNA America in its brief, the courts enforcing the bar date have held that a deadline is necessary in order to permit the proper administration of a Chapter 13 plan. These courts have observed that calculations involving plan distributions would be extremely difficult even if late claims were paid less than other claims because late claims would still be

taking something away from the timely filed claims. See *In re Gullatt*, 169 B.R. at 388, citing *In re Zimmerman*, 156 B.R. at 199. MBNA America argues that this concern is not applicable in the present case because all creditors can be paid 100% prior to the subordination of the MBNA America claim.

MBNA America's argument, however, fails to address what will happen in this case if other untimely claims are filed after the trustee has commenced distribution under the plan to MBNA America. These other untimely claims would be entitled to share pro rata with MBNA America the so-called "surplus" in the plan and the trustee would be placed in the difficult position of recovering from MBNA America a portion of the funds paid to it if future plan payments are insufficient to correct the imbalance. This scenario could go on indefinitely with the trustee and creditors never being sure that a distribution on late filed claims is final, because as long as a case is open, any creditor can file a claim in the case thereby requiring a reapportionment of the surplus plan funds, and subjecting creditors to a possible disgorgement of payments received. If the trustee is not able to recover the overpayments, she runs the risk of being sued for improper distribution.

As noted by one court, application of the Chapter 7 priority scheme as it relates to tardily filed claims to the Chapter 13 distribution process leads to an unmanageable system and a costly process in time as well as dollars.

Plans would generally have to be longer;  
reserves would have to be set up to provide  
for potential late claims, trustees would  
accordingly have to administer those reserves;

insufficient reserves would open the door to suits against the trustee and disgorgement orders directed at those creditors who timely filed claim; if disgorgement orders were not complied with freely, the trustee would have to take other action; trustees' bond would undoubtedly become more costly; and indeed trustees might be hard to come by.

*In re Friesenhan*, 169 B.R. at 638, n. 35.

III.

Accordingly, for the reasons set forth above, this court concludes that the late filed claim of MBNA America was properly disallowed. An order will be entered in accordance with this memorandum overruling MBNA America's exception to this court's July 5, 1994 order disallowing the claim of MBNA America filed June 7, 1994.

ENTER: December 23, 1994

BY THE COURT

  
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MARCIA PHILLIPS PARSONS  
United States Bankruptcy Judge