

Ninth Circuit: Secured Creditors Must File Proofs of Claim in Chapter 13

In the case of Spokane Law Enforcement Federal Credit Union v. Barker (In re Barker), 14-60028 (9th Cir. Oct. 27, 2016), the Ninth Circuit held that a secured creditor must timely file a proof of claim in order to participate in distributions under a chapter 13 plan, despite the fact that the claims were already scheduled by the debtor.

BACKGROUND FACTS

In *Barker*, the debtor filed a chapter 13 petition and gave notice of the deadline for creditors to file proofs of claim, including to the Spokane Law Enforcement Federal Credit Union (the "Credit Union"). Id. at 1. The debtor timely filed a chapter 13 plan and served a copy of the plan on the Credit Union. Id. at 1-2.

The debtor later filed schedules of her assets and liabilities, listing the Credit Union as a secured creditor with a claim of \$6,646.00 secured by a purchase money security interest in a 2004 Ford F-150. Id. at 2.

The debtor then moved to amend and modify the chapter 13 plan over several months, each time giving notice to the Credit Union, and each time the Bankruptcy Court entering an order confirming the amended plan. Id. at 4.

More than four months after the Bar Date for filing proofs of claim had passed, the Credit Union filed 3 claims: a secured claim of \$5,490.78, and unsecured claims for \$28,293.94 and \$24,587.47. Id. at 4. The debtor challenged the late-filed claims and the Credit Union asked the Court to allow the late claims because a "disgruntled employee" failed to timely file the claims. Id. at 5.

The Bankruptcy Court held a hearing and denied the Credit Union's claims as untimely. Id. The Bankruptcy Appellate Panel affirmed the Bankruptcy Court's decision disallowing the late-filed claims. Id. at 6.

THE NINTH CIRCUIT'S DECISION

The Ninth Circuit explained that "[a] secured creditor, who wishes to receive distributions under a Chapter 13 plan, must . . . file a valid proof of claim," explaining that if a secured creditor does not wish to participate in a chapter 13 plan or fails to timely file a claim, it "does not forfeit its lien." Id. at 7.

The Credit Union admitted that it filed its proofs of claims late but argued that the Bankruptcy Court should have allowed it to participate in the Chapter 13 plan because the debtor listed the debt she owed the Credit Union in her bankruptcy schedules. *Id.* at 8. The Ninth Circuit disagreed. *Id.*

The Ninth Court focused on Bankruptcy Rule 3002(a), which says that "an *unsecured* creditor or an equity security holder must file a proof of claim . . . for the claim or interest to be allowed." *Id.* The Ninth Circuit explained that the "plain reading" of the applicable statutes and rules "places a burden on each Chapter 13 creditor to file a timely proof of claim." *Id.* The Ninth Circuit also explained that, because there is a specific rule that allows claims to be allowed in chapter 11 (Bankruptcy Rule 3003(c)(2)), but no similar rule for chapter 13 cases, there is a "purposeful omission" showing that Congress intended "to require all creditors wishing to enforce their claims to file a proof of claim in the chapter 13 context." *Id.* at 8-9. No mention was made of the fact that Rule 3002(a) speaks about "unsecured" creditors.

The Ninth Circuit rejected several theories posited by the Credit Union regarding why its claims should be allowed despite not timely filing of a claim, including:

(i) that the debtor's scheduling the claim amounted to a judicial admission; (ii) that the scheduled claim qualified as an informal claim; (iii) scheduling the claim was a proof of claim filed by the debtor; and (iv) the principles of equity required the Bankruptcy Court to allow a late-filed claim. *Id.* at 12-16.

CONCLUSION

The *Barker* decision is an important decision for lenders to be diligent in timely filing proofs of claim in chapter 13 cases or they can lose their rights to distributions.

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