

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
at \_\_\_ O'clock & \_\_\_ min \_\_\_ M

OCT 29 2002

BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (7)

IN RE: )

Lloyd Edwin Trimble, )

Debtor. )

Case No. 02-02557-W

Chapter 11

**ENTERED**

OCT 29 2002

**S. R. P.**

**JUDGMENT**

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion of BBA Nonwovens Simpsonville, Inc. and Fiberweb France, S.A. is granted. BBA Nonwovens Simpsonville, Inc. and Fiberweb France, S.A. may amend their informal claims by filing amended proofs of claim on the appropriate Official forms, which amended claims shall refer to this Order. Such amended claims shall be filed within fifteen (15) days of the entry hereof.

  
\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
October 28, 2002.

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**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

✓  
✓ OCT 29 2002 ✓ (WST)  
(McCarthy)

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

SHEREE R. PHIPPS

Deputy Clerk

✓ Carter

**FILED**

at \_\_\_ o'clock & \_\_\_ min \_\_\_ M

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Debtor. )  
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**ENTERED**

OCT 29 2002

S. R. P.

**ORDER AUTHORIZING BBA NONWOVENS SIMPSONVILLE, INC. AND FIBERWEB FRANCE, S.A. TO FILE AMENDED PROOFS OF CLAIM**

This matter is before the court on Motion of BBA Nonwovens Simpsonville, Inc. and Fiberweb France, S.A. (collectively the "Judgment Creditors") for Leave to File Amended Proofs of Claim. The Debtor in Possession Lloyd Edwin Trimble filed an objection to the motion, and the court held an evidentiary hearing on October 17, 2002. The court finds that the Judgment Creditors have established "informal" proofs of claim by the filing of several motions and pleadings prior to the bar date, as described herein.

The Judgment Creditors do not dispute that they did not file a proof of claim on the official form prior to the bar date of July 5, 2002. Rather, the Judgment Creditors maintain that their participation in the case constitutes an "informal" proof of claim that may be amended by the filing of claims on the official form for proofs of claim. This court recently summarized the applicable case law on "informal" claims:

This Court has recognized informal proofs of claim as a means of relieving creditors from failing to file a formal proof of claim of the type specified in Rule 3001(a) within the time specified in Rule 3002(c). See In re Delacruz, 2002 WL 362755, at \*2 (Bankr. D.S.C.). Under the informal proof of claim doctrine, if a creditor's

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actions before the expiration of the deadline to file a proof of claim constitutes an informal proof of claim, the creditor is allowed to amend the informal proof of claim with a formal proof of claim complying with Rule 3001(a). See Davis v. Columbia Constr. Co., Inc. (In re Davis), 936 F.2d 771, 775 (4<sup>th</sup> Cir. 1991) (citing Fyne v. Atlas Supply Co., 245 F.2d 107 (4<sup>th</sup> Cir. 1957)). Stated differently, the creditor must affirmatively act to alert other parties to the presence of its claim. See Davis, 936 F.2d at 775; In re Graves, 2001 WL 1699649, at \*3 (Bankr. M.D.N.C.). Finally, the Fourth Circuit has adopted a liberal view toward finding an informal proof of claim where, if there is anything in the bankruptcy case's record that establishes a claim, the informal proof of claim may be amended when substantial justice will be done by allowing the amendment. See Fyne, 245 F.2d at 108 (citing In re Fant, 21 F.2d 182, 198 (W.D.S.C. 1927)) (emphasis added).

In re Elleco, Inc., Case No. 00-06215-W, slip op. (Bankr. D.S.C. June 17, 2002). The Judgment Creditors were active in the case from its inception, as evidenced by the Judgment Creditors' attendance and participation at the meeting of creditors. Similarly, the Judgment Creditors introduced correspondence from their attorney to the attorney for the Debtor in Possession setting forth information about the Judgment Creditors' claims. The record supports the Judgment Creditors' contention that they have been active participants in this Chapter 11 case.

This case parallels the facts presented in In re Delacruz, Case No. 01-02118-W, slip op. (Bankr. D.S.C. Jan. 24, 2002). In that case, the court found that the creditor's filing of an adversary proceeding against the debtor seeking a determination of nondischargeability was sufficient to constitute an informal proof of claim, since the complaint provided notice of the claim and evidenced the creditor's intention to hold the debtor liable. Although the Judgment Creditors did not commence an adversary proceeding until after the bar date, the Judgment Creditors and the Debtor submitted a consent order prior to the bar date extending the deadline for the filing of an

adversary proceeding to determine dischargeability. This consent order, entered on June 3, 2002, alerted parties in interest and the court of the Judgment Creditors' claims and of the Judgment Creditors' intention to potentially seek to hold the Debtor liable.

Among the other pleadings introduced into evidence was the Judgment Creditors' Objection filed on May 13, 2002 in response to the Debtor's motion to sell real property. In their Objection, the Judgment Creditors list the judgments they held against the Debtor, assert that the judgments encumber the Debtor's real property, and argue that the Judgment Creditors have a right to receive a portion of the proceeds of sale in satisfaction of their secured claims in the property. Again, this pleading alerted the Debtor and the court of the basis of the Judgment Creditors' claims, and asserted a right to payment from assets of the estate. This pleading therefore satisfies the requirements of an informal claim under the standards of the Delacruz and Elleco cases. As a result, the court grants the Judgment Creditors' motion. It is therefore,

ORDERED, that the Motion of the Judgment Creditors is hereby granted. BBA Nonwovens Simpsonville, Inc. and Fiberweb France, S.A. may amend their informal claims by filing amended proofs of claim on the appropriate Official Forms, which amended claims shall refer to this Order. Such amended claims shall be filed within fifteen (15) days of the entry hereof.

  
\_\_\_\_\_  
John E. Waites  
United States Bankruptcy Judge

Columbia, South Carolina  
October 28, 2002

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Deputy Clerk

✓ Carter