

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 06-03131

ORDER ON CLAIMS OBJECTIONS

The relief set forth on the following pages, for a total of 5 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
01/29/2007



Entered: 01/31/2007

A handwritten signature in black ink, appearing to read "S. R. O.", written over a horizontal line.

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:)	Chapter 7
)	Case No. 06-03131
Kenneth Wayne Prevatte)	
)	ORDER ON CLAIMS OBJECTIONS
Debtor.)	
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THIS MATTER is before the Court on the Chapter 7 Trustee’s objections to claims docketed as numbers 4, 7, 8, 9, and 10. No reply has been made to the objections and proposed orders were routed to me for entry. A review of the claims, the objections and other matters of record has been made. The Trustee’s objections are overruled and the claims are allowed as set forth at the foot of this order.

IT APPEARS that claim 4 was filed by SFC-Central Bankruptcy & Recovery Department for Security Finance. Claims 7, 8, 9, and 10 were filed by Midland Credit Management, Inc and are based on the Debtor’s transactions with Cross Country Bank, British Petroleum, Citgo, and British Petroleum - respectively. The Trustee objects to each claim and asks that it be disallowed; stating as his ground that the claims do not include proper documentation. Each claim is on the official bankruptcy form and is signed in the appropriate box above a notation that presenting a fraudulent claim can be penalized by fine and imprisonment. The instruction to attach supporting documents (with examples given of promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, court judgments, or evidence of security interests) is not followed. No explanation is given that the documents are not available nor are the documents alleged voluminous. The

claims are approximate¹ in amount to the claim amount reported by the Debtor in his schedules.

A creditor may file a proof of claim. 11 U.S.C. § 501(a).² A claim is deemed allowed if a timely proof of claim is filed unless a party in interest objects to the claim. § 502(a). If an objection is filed the court must determine the amount of the claim and allow the claim unless there is a prescribed ground for disallowing the claim. § 502(b). Bankruptcy Rule 3001 provides that “[a] proof of claim is a written statement setting forth a creditor’s claim . . .” that is to “conform substantially to the appropriate Official Form.” If the claim is based on a writing, the documents are to be filed with the proof of claim. Rule 3001(c). “A proof of claim executed and filed in accordance with [the] rules [constitutes] *prima facie* evidence of the validity and amount of the claim.” Rule 3001(f). The Judicial Conference of the United States has adopted Official Forms for use in bankruptcy cases, including a Proof of Claim form (Official Form 10). Official Form 10 instructs “You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If the documents are not available, you must attach an explanation of why they are not available.”

If written documentation is not attached to the proof of claim form then the proof of claim does not give rise to the presumption of validity and proof of the amount of the claim.

¹ Claim 4 is in the amount of \$ 402.00 and one of the Security Finance claims (with the same final 4 digits in the account number) was scheduled by the debtor in the amount of \$ 402.00; Claim 7 is in the amount of \$ 1759.71 and was scheduled by the debtor in the amount of \$ 1759.00; Claim 8 is in the amount of \$ 481.66 and was scheduled by the debtor in the amount of \$ 478.00; Claim 9 is in the amount of \$ 460.93 and was scheduled by the debtor in the amount of \$ 460.00; and Claim 10 is in the amount of \$ 219.92 and was scheduled by the debtor in the amount of \$ 219.00. The debtor sets forth in his schedules the name of the original creditor for each of the Midland Credit Management accounts and the names match the reference and account numbers on the pertinent proof of claim. Midland Credit Management is also listed in the schedules with account numbers and amounts that match the listings for the original creditors.

² Further reference to the Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*, will be by section number only. Reference to the Federal Rules of Bankruptcy Procedure will be by rule number only.

This does not however result in automatic disallowance of the claim. The modern majority view is that failure to attach the writing on which a claim is based does not, by itself, provide a basis for disallowance of the claim. See *In re Dove-Nation*, 318 B.R. 147 (8th Cir. BAP 2004); *In re Burkett*, 329 B.R. 820 (Bankr. S.D. Ohio 2005); *In re Shank*, 315 B.R. 799 (Bankr. N.D. Ga. 2004); *In re Cluff*, 313 B.R. 323 (Bankr. D. Utah 2004); *In re Moreno*, 341 B.R. 813 (Bankr. S.D. Fla. 2006). But cf. *In re Henry*, 311 B.R. 813 (Bankr. W.D. Wash. 2004). Disallowance of claims is limited to the nine exceptions set forth in § 502(b). The real issue is therefore the amount of the allowed claim. Deprived of the presumption as to the amount of the debt owed it because it failed to attach documentation and having failed to respond to the trustee's objection, what then is the status of the claim due the creditor? The claim itself, even devoid of documentation, is some proof of the debt. *Wright v Holm (In re Holm)*, 931 F2d 620 (9th Cir. 1991). Fortunately for the creditor there is additional proof of the amount of debt owed. Debtor's schedules admit the claims, without contingency or dispute, within pennies of the amount set forth on the proofs of claim.

The purpose for the requirement of documentation is to provide parties in interest with information on the validity of the claim and the correctness of the amount asserted through a simplified claims allowance process. See 9C Am.Jur.2d Bankruptcy § 2563. The purpose of the rule is not to serve as a snare for the less diligent creditor, at least not when there is no real dispute as to the claim³. There should be some other basis for challenging the amount of a claim and if doubt exists there are avenues of inquiry available to all parties.

Unsecured creditors filing proofs of claim in most consumer bankruptcy cases can anticipate only a small dividend. Hiring counsel to respond to a claims objection quickly

³ If the only basis for objection to a claim is that the monetary amount does not match the amount scheduled by the debtor, the proper objection would appear to be that the claim is not established beyond the amount admitted by the debtor. See *Burkett* at 829 fn. 5; *Shank* at 815.

dissipates any recovery and may not make economic sense. Where, as here, there appears to be no substantive dispute as to the general amount of the claim the just determination of the proceeding suggests allowance of the claim in the lesser of the amount filed or the amount admitted by the debtor. This is not intended as a reward for the lazy or neglectful creditor, who is deprived of the presumption of prima facie validity, but balances the equities and affords a dividend to a creditor who has filed a claim and whose debt is not disputed by the debtor. This is especially the case given the practice of treating an attached statement of debt as a sufficient writing for purposes of Rule 3001(c), even when the attachment contains no information other than that on the face of the proof of claim (i.e. the debtors name, account number and total claimed due).

The claims are allowed as follows:

Claim number	Claimant	Amount and priority
4	Security Finance	\$ 402.00 unsecured without priority
7	Midland Credit Management, Inc.	\$ 1759.00 unsecured without priority
8	Midland Credit Management, Inc.	\$ 478.00 unsecured without priority
9	Midland Credit Management, Inc.	\$ 460.00 unsecured without priority
10	Midland Credit Management, Inc.	\$ 219.00 unsecured without priority

A hearing on this matter may be requested by the trustee or United States Trustee within 10 days should either wish the Court to consider other matters respecting these claims.

AND IT IS SO ORDERED.