

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

IN RE:

Curtis Allan Flint,

Debtor(s).

C/A No. 21-00702-HB

Chapter 7

**ORDER OVERRULING OBJECTION
TO CLAIM**

THIS MATTER came before the Court for hearing on May 17, 2022, to consider the Objection to Claim filed by creditor Robert T. Hackl, requesting the claim filed by creditor Navient Solutions, LLC be disallowed because it was filed after the claims bar date.¹ Navient did not file a timely responsive pleading. The Chapter 7 Trustee has not objected to the claim, but instead filed a Response² to which Hackl filed a Reply,³ prompting a hearing. Thereafter, on May 16, 2022, Navient filed a Response and Motion to Extend Claims Deadline and Allow its Claim as Timely pursuant to Fed. R. Bankr. P. 3002(c)(6).⁴

Debtor Curtis Allan Flint filed a voluntary petition for Chapter 7 relief on March 15, 2021. A Notice of Chapter 7 Bankruptcy Case was issued on March 16, 2021, and the Court docket indicates service on creditors properly listed on the mailing matrix on March 18, 2021. The Notice of Chapter 7 Bankruptcy Case instructs creditors not to file a proof of claim unless they later receive notice to do so after it appears there are assets to liquidate. Flint filed schedules on March 16, 2021 but did not list Navient as a creditor.⁵ On May 10, 2021, Flint filed an Amended Schedule E/F that listed Navient as having a claim in the amount of \$42,679.28, for student loans and

¹ ECF No. 51, filed Mar. 31, 2022.

² ECF No. 71, filed May 4, 2022. Because Navient filed a Response to the Objection, the Trustee did not attend the hearing to pursue the issues noted in her pleading.

³ ECF No. 74, filed May 5, 2022.

⁴ ECF Nos. 78 & 79. Hackl's counsel asked the Court to strike the Responses to the Objection to Claim as untimely but did not object to the Court's consideration of the Motion to Extend.

⁵ ECF No. 3.

checked the box indicating it is “contingent.”⁶ There is no evidence that Navient was provided notice of this bankruptcy at or prior to that time.

Flint’s meeting of the creditors under 11 U.S.C. § 341 was held on May 14, 2021. Upon the Trustee issuing a Notice of Assets & Request for Notice to Creditors on June 29, 2021, the Clerk of Court entered the Notice to File Proof of Claim Due to Recovery of Assets (“Claims Notice”).⁷ The Claims Notice stated that assets were recovered by the Trustee; therefore, creditors who wish to share in any distribution must file a proof of claim within ninety (90) days after the mailing of the Claims Notice. The Certificate of Notice indicates the Claims Notice was mailed on July 1, 2021, resulting in a claims bar deadline of September 29, 2021, for all non-governmental creditors (“Claims Bar Date”).⁸ There is no evidence that Navient was given or received notice of the Claims Bar Date at that time.

Thereafter, a Certificate of Service filed by Flint indicates he mailed Navient a copy of the Notice of Chapter 7 Bankruptcy Case on February 24, 2022, giving notice of the bankruptcy filing five (5) months after the Claims Bar Date.⁹ On March 8, 2022, Navient filed a proof of claim for an unsecured debt in the amount of \$42,938.16, based upon unpaid student loans (“Claim”).¹⁰ The only other claims filed in this case are for debts owed to Hackl. Hackl objected to Navient’s Claim, requesting it be disallowed because it was filed after the Claims Bar Date. Hackl argues he will be prejudiced if Navient’s Claim is allowed because it will diminish the recovery on his claims, but Navient will suffer no prejudice if its Claim is disallowed because he asserts the Claim is not subject to discharge.

⁶ ECF No. 19.

⁷ ECF No. 32.

⁸ ECF No. 33, filed July 1, 2021.

⁹ ECF No. 49, filed Mar. 8, 2022.

¹⁰ POC No. 3-1.

In response, Navient argues it did not receive timely notice of this bankruptcy case or the Claims Notice providing the Claims Bar Date. Because the only basis stated in the Objection is that the Claim was untimely, Navient asserts the status of its Claim is established under § 726(a)(2) or (3), rather than disallowance of the Claim in its entirety. Alternatively, Navient requests the Court grant its Motion to Extend the Claims Deadline under Fed. R. Bankr. P. 3002(c)(6), filed on May 16, 2022, due to the failure to timely provide notice. At the time of the hearing, no distributions to creditors have been made in this case.

Section 502(a) of the Code provides “[a] claim or interest . . . is deemed allowed, unless a party in interest . . . objects.” A creditor in a Chapter 7 case “is a ‘party in interest’ under § 502(a) and, at least in theory, has standing to object to the claim of another creditor.” *In re Goss*, 568 B.R. 525, 528 (Bankr. D.S.C. 2017). However:

absent leave of court, the chapter 7 trustee alone may interpose objections to proofs of claim. Leave to object is not generally accorded an individual creditor unless the chapter 7 trustee refuses to object, notwithstanding a request to do so, and the bankruptcy court permits the creditor to object in the trustee’s stead.

Id. (quoting *Kowal v. Malkemus (In re Thompson)*, 965 F.2d 1136, 1147 (1st Cir. 1992)). This limitation is imposed to promote the efficient and orderly administration of the estate. *Id.*

In a voluntary Chapter 7 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief. Fed. R. Bankr. P. 3002(c). However:

[i]f notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days’ notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

Fed. R. Bankr. P. 3002(c)(5).

The Bankruptcy Code and Rules are explicit on the treatment of tardily filed proofs of claims in Chapter 7 cases. A claim may be disallowed if it “is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal

Rules of Bankruptcy Procedure . . .” 11 U.S.C. § 502(b)(9). A tardily filed proof of claim is paid along with timely filed claims if the creditor that holds the claim did not have notice or actual knowledge of the case in time to timely file a proof of claim and the claim is filed in time to permit payment. 11 U.S.C. § 726(a)(2)(C). “The legislative history indicates that although it is in the interest of the estate to encourage timely filing, when tardy filing is not the result of a failure to act by the creditor, the normal subordination penalty should not apply.” 6 *Collier on Bankruptcy* ¶ 726.02 (16th ed. 2022) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 383 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 96-97 (1978)). All other tardily filed proofs of claims are paid after timely filed proofs of claims are paid. 11 U.S.C. § 726(a)(3). *See also In re Nwonwu*, 362 B.R. 705, 707 (Bankr. E.D. Va. 2007) (“a late claim . . . may be paid where the creditor did not have notice or actual knowledge of the case in time to file a timely proof of claim and the claim is filed in time to permit such payment . . . even where the creditor had notice, a late-filed claim may be paid to the extent that funds remain after all timely-filed claims have been paid in full.” (citing 11 U.S.C. § 726(a)(2)(C), (3))).

Further, Rule 3002(c) applies in Chapter 7 cases and expressly provides when the Court may extend the deadline to file a proof of claim. Rule 3002(c)(6) provides, in relevant part:

On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that:

- (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors’ names and addresses required by Rule 1007(a) . . .

Fed. R. Bankr. P. 3002(c)(6)(A). This provision was added in 2017 to “expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim.” Fed. R. Bankr. P. 3002, 2017 Committee Note.

If a debtor omits a creditor from the schedules and list of creditors, then he fails to fulfill his duties under § 521 and Rule 1007(a). *In re Jackson*, C/A No. 18-03159-HB, slip op. at 2 (Bankr. D.S.C. July 24, 2019) (citing 11 U.S.C. § 521(a)(1)(A) (“The debtor shall – (1) file – (A) a list of creditors . . .”); Fed. R. Bankr. P. 1007(a)(1) (“In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms.”)). When the schedules are amended, Rule 1009(a) requires the debtor give notice of the amendment to the trustee and any entity affected thereby. This Court’s Local Rules further require:

- a. **Statement of Change.** In addition to the requirements under Fed. R. Bankr. P. 1009, when the debtor amends the petition, lists, schedules, or statements, the debtor must file with the Court and give notice of, to any party in interest affected by the amendment, a statement indicating the changes made by the amendment. The statement of change shall be the first page of the amendment filed.
- b. **Amendments Adding Creditors.** When the debtor adds a creditor by amending either the schedules or the list of creditors, or if the debtor initially files schedules that add creditors to the list filed with the petition, in addition to the requirements of subsection (a), the debtor also must update the mailing matrix for noticing purposes and simultaneously give notice to the added creditor of the following: (1) Notice of Bankruptcy Case; (2) Your Statement About Your Social Security Numbers; (3) the order granting discharge (if any); and (4) any other document filed in the case which affects the rights of the creditor.

SC LBR 1009-1. “If the initial list of creditors omits a party or gives inaccurate information, amendments and corrections should be made to comply with these authorities. If that action is not taken or is untimely and, as a result, the creditor has insufficient notice under the circumstances to provide a reasonable time to file a claim, then an extension under Rule 3002(c)(6) may be appropriate.” *Jackson*, C/A No. 18-03159-HB, slip op. at 2 (citing *In re Mazik*, 592 B.R. 812, 818 (Bankr. E.D. Penn. 2018)); *see also In re Vanderpol*, 606 B.R. 425, 432 (Bankr. D. Colo. 2019) (broadly interpreting Rule 3002(c)(6) to apply whenever a “full and complete” list of creditors is

not filed and allowing an extension when the debtor timely filed her bankruptcy schedules and the list of creditors, but omitted one creditor from both that did not learn of the bankruptcy until one month after the claims bar date); *In re Fitzgerald*, C/A No. 8:19-bk-07741-RCT, 2020 WL 5745973 (Bankr. M.D. Fla. May 18, 2020) (extending deadline to file claim where the creditor received no notice because the debtor incorrectly listed the creditor's address); *In re Curtin*, C/A No. 8:19-bk-02502-RCT, 2020 WL 5745937 (Bankr. M.D. Fla. Mar. 10, 2020) (finding the creditor was eligible for relief under Rule 3002(c)(6) where the debtors filed a list of creditors late that included the creditor but the creditor did not receive notice until six days after the claims bar date).

There is no dispute that Navient was omitted from the initial schedules and notices and the earliest Navient may have received notice of this bankruptcy case was several months after the Claims Bar Date when Flint served it with a copy of the Notice of Chapter 7 Bankruptcy Case on February 24, 2022.¹¹ Less than two weeks later, Navient filed its Claim in time for payment. Navient had insufficient notice to give it a reasonable time to file a claim and the lack of notice resulted from the failure to comply with § 521(a), Rule 1007(a), Rule 1009(a), and SC LBR 1009-1. Under these circumstances, Navient is entitled to an extension of the claim deadline under Rule 3002(c)(6)(A).

Even if relief under Rule 3002(c)(6)(A) is not warranted, the relief requested by Hackl – that the Claim be disallowed – is not appropriate. Tardily filed claims are addressed in § 726(a)(2) and (3) and the Court must determine whether the Claim should be subordinated. *Cf.* Fed. R. Bankr. P. 3003(c)(3) (time for filing proofs of claim filed in Chapter 11 cases); and Fed. R. Bankr. P. 9006(b)(3) (enlargement of time permissible only to the extent otherwise allowable under Rule

¹¹ This Notice of Chapter 7 Bankruptcy Case instructed creditors not to file claims and there is no evidence in the record that Navient was ever served with the Claims Notice.

3002(c)). There is no dispute that Navient did not receive notice of this bankruptcy case until after the Claims Bar Date. There is no evidence that Navient otherwise had actual knowledge of this case in time to file a timely proof of claim. Accordingly, the Court finds that subordination under § 726(a)(3) is not appropriate here and Navient's claim may be treated with the other timely claims under § 726(a)(2)(C).

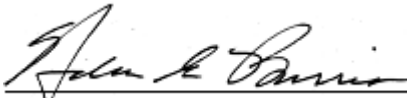
IT IS, THEREFORE, ORDERED that the Objection to Claim filed by Hackl is overruled. Pursuant to Fed. R. Bankr. P. 3002(c)(6)(A), the deadline for Navient to file a proof of claim is extended to March 8, 2022. To the extent Fed. R. Bankr. P. 3002(c)(6)(A) does not apply, Navient's tardily filed proof of claim is allowed and entitled to distribution under § 726(a)(2)(C).¹²

AND IT IS SO ORDERED.

**FILED BY THE COURT
05/18/2022**



Entered: 05/18/2022


Chief US Bankruptcy Judge
District of South Carolina

¹² The Court notes that Navient may need to reduce the amount of its Claim to the extent any other payments toward the debt balance have been made post-petition.