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BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (6)

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re:) Chapter 11
)
POLYMER GROUP INC., et al.,[1]) Case No. 02-05773-W
) (Jointly Administered)
Debtors.)
)

ORDER

THIS MATTER comes before the Court upon an Objection to Certain Proofs of Claims ("Objection to Claims") filed by Polymer Group, Inc., et al. ("Debtors") on November 27, 2002. As part of the Objection to Claims, Debtors objected to Claim #876 filed by High Tech Environmental, Claim #875 filed by Donna Mack, Claim #877 filed by Calvin Blystra, and Claim #878 filed by Jon R. Pettigrew (collectively, the "Claimants"). These claims were filed against Debtor Fibertech Group, and all are based upon three separate lawsuits pending as of the petition date in the United States District Court for the District of New Jersey ("District Court").

The above-referenced claims were timely filed, and they incorporated by reference copies of the Complaints pending in the District Court. The Complaints respectively indicate ten or more separate causes of action, including actions for breach of contract, fraud, and conversion. The District Court action was stayed upon the filing of bankruptcy.

The Debtors' Objection to Claims states:

> The plaintiffs in the three above-referenced cases filed their

[1]Debtors are the following entities: Polymer Group, Inc., PGI Polymer, Inc., PGI Europe, Inc., Chicopee, Inc., FiberTech Group, Inc., Technetics Group, Inc., Fibergol Corporation, Fabrene Corp., Fabrene Group LLC, PNA Corp., FNA Polymer Corp., FNA Acquisition, Inc., Loretex Corporation, Dominion Textile (USA) Inc., Poly-Bond Inc., FabPro Oriented Polymers, Inc., PGI Asset Management Company, PGI Servicing Company, Pristine Brands Corporation, PolyIonix Separation Technologies, Inc., Bonlam (S.C.), Inc.

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> respective actions against Edward McCullough, and his company, Chesapeake Services Corporation ("Chesapeake"), alleging that they were defrauded by the defendants. The Debtors were also sued as associates of McCullough and Chesapeake. The Debtors contend that the claims against them are baseless and intend to file for summary judgment.

The Objection to Claims was scheduled for hearing before the Court on December 26, 2002 and was continued at the parties' request to January 15, 2003 and further continued until April 24, 2003. On April 24, 2003, the Court also considered a separate motion wherein Debtors sought to establish a comprehensive claims determination procedure under which the vast majority of claims would be considered.

At the hearing, Claimants appeared through local counsel and argued that they effectively responded to the Objection by introducing copies of the respective District Court Complaints and thereby demonstrating that the claims are not baseless but are instead complex and serious matters pending in the District Court which deserve consideration on their merits. Claimants also argued that Debtors' failure to move for summary judgment in the District Court as indicated in the Objection to Claims further suggests the claims are not baseless. Claimants offered no testimony or other evidence regarding their claims, indicating instead an expectation that this Court would either abstain to allow the actions to proceed in the District Court or set a further substantive hearing.

Debtors' counsel argued that Claimants had the burden of initially going forward with evidence to support their claims at the hearing, the Claimants failed to meet this burden, and, consequently, the Objection to Claims should be sustained and the claims disallowed. In response to the Court's inquiry regarding the status of the actions in District Court, Debtors' in-house counsel, Jerry Garfinkle, the Director of Contracts and Litigation, made a lengthy statement providing details of the pleadings in District Court and the results of discovery and expressed his conclusion that the Complaints were baseless. Debtors offered no further testimony or evidence regarding the Objection to Claims.

Considering the scant presentation, the determination of the Objection to Claims requires the Court to examine the allocation of the burden of proof in such matters. In this District, the burden of proof for claims has been described as one that shifts. See Host Management, Inc. et al. vs. The Palace Homeowner's Association, Inc., C/A No. 4:95-524-21, slip op. (D. S.C. Nov. 3, 1995).

> The burden of proof for claims brought in the bankruptcy court under § 502(a) rests on different parties at different times. First, the claimant must allege facts sufficient to support the claim. If the allegations in the claim meet this standard of sufficiency, it is "prima facie" valid. In re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 Lawrence P. King, Collier on Bankruptcy, § 502.02, at 502-22 (15th ed. 1991)). The burden of going forward then shifts to the objector to produce evidence sufficient to rebut the prima facie validity of the claim. Id. If the objector produces sufficient evidence to negate one or more of the facts in the proof of the claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. In re WHET, Inc., 33 B.R. 424, 437 (Bankr. D. Mass. 1983). The burden of persuasion is always on the claimant. In re Harrison, 987 F.2d 677, 680 (10th Cir. 1993); see also, 3 Lawrence P. King, Collier on Bankruptcy § 502.02, at 502-21 (15th ed. 1991).

Host Management, at 7-8; see also In re Field, 226 B.R. 178 (Bankr. D. S.C. 1998); In re Stallings, 118 B.R. 387, 390 (Bankr. D. S.C. 1989) (noting that the burden of going forward with evidence in opposition to a claim is on the objecting party); In re Hoffman Associates, C/A No. 90-02419, slip op. at 6 (Bankr. D. S.C. Dec. 12, 1995) ("It is well established that in objecting to a claim against the Debtor, it is the burden of the objecting party to initially present sufficient evidence to overcome the prima facie presumption of validity enjoyed by a validly filed proof of claim. Having overcome the prima facie presumption, however, the burden of proof then shifts to the party submitting the claim to prove its claim.") (citing In re Allegheny Intern. Inc., 954 F.2d 167 (3d Cir. 1992)).

In the first stage of the claims objection process, courts defer to the "probative force" of a creditor's proof of claim and any supporting documentation. See In re Sendmygift.com, Inc., 280 B.R. 667, 674 (Bankr. D. Minn. 2002). This deference goes as far as to assume all findings of fact and conclusions of law that would be prerequisites to the creditor's recovery on the claim outside of bankruptcy -- even if those predicates are not recited on the face of the proof of claim. See id. (citing In re Brown, 82 F.3d 801, 805 (8th Cir. 1996)); see also In re Fullmer, 962 F.2d 1463, 1466 (10th Cir. 1992) ("A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. This evidentiary presumption remains in force even though an objection to the claim is filed by a party in interest.") (citing In re Wells, 51 B.R. 563, 566 (D. Colo. 1985); In re Weidel, 208 B.R. 848, 854 (Bankr. M.D. N.C. 1997) (noting that, if the averments in the filed claim allege sufficient facts to support the claim, it is prima facie valid and that a claim alleging facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward).

Upon submission of copies of the Complaints in District Court, which were also attached to the proofs of claim, Claimants alleged significant facts to support a legal liability on the part of Debtors and therefore are entitled to an evidentiary presumption of the validity of the claims. Contrary to Debtors' argument, Claimants are not initially required to fully justify their claims by evidence before the burden of proof shifts to Debtors as the objecting parties. See In re Gates, 214 B.R. 467, 472 (Bankr. D. Md. 1997) ("To overcome the prima facie validity [of a claim], the objecting party must demonstrate by evidence, a defense to one or more elements of the cause of action asserted in the claim, which defense, if uncontravened, would be sufficient to defeat the legal basis for the claim asserted.") (citing Weidel, 208 B.R. at 854).

While Debtors offered a detailed statement by their in-house counsel regarding the actions in the District Court, counsel's opinions and conclusions regarding the merits of the actions on which the claims are based are not sufficient evidence to rebut the prima facie validity of the claims. Even if the statements of in-house counsel were in the form of testimony, they nevertheless would represent evaluations and summary conclusions of the claims' merits by Debtors' employee, albeit a learned one, that does not reach the level of a legal defense to the claims. Without more, Debtors have not met the burden of proof necessary to sustain the generally stated nature of their objection to claims.[2]

Therefore, Debtors' Objection to Claims is overruled without prejudice to the refiling of further objections to these claims and Claimants' response thereto. Upon the filing of further objections to claim numbers 875, 876, 877 and 878 and any responses thereto, the Court will set a hearing and consider a scheduling order if further discovery is requested by the parties.

AND IT IS SO ORDERED.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
May 21, 2003.

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[2] The Court notes that Debtors' original objection to these claims was both cursory and conclusive in nature and did not specify the issues for response by Claimants or for this Court to consider in a contested proceeding. Additionally, Claimants may have been confused by Debtors' selective attack of their claims while simultaneously and separately requesting approval of a different and comprehensive procedure for addressing the vast majority of claims in the cases.