

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

George E. Mitchum and
Gloria P. Mitchum,

Debtors.

C/A No. 02-07573-W

JUDGMENT

Chapter 13

Pursuant to the findings of fact and conclusions of law provided in the attached Order, the Chapter 13 Trustee's objection to Chase Manhattan Mortgage Corporation's amended proof of claim is overruled. Allowance of that claim and distribution to Chase Manhattan Mortgage Corporation in this case shall be subordinated to all previously paid claims.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

August 25, 2004

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

George E. Mitchum and
Gloria P. Mitchum,

Debtors.

C/A No. 02-07573-W

ORDER

Chapter 13

THIS MATTER comes before the Court upon the Chapter 13 Trustee's Objection to Claim (Objection) and Chase Manhattan Mortgage Corporation's (Chase) Response thereto. In the Objection, the Chapter 13 Trustee contends that allowing Chase's Amended Proof of Claim against George E. Mitchum and Gloria P. Mitchum (collectively, the Debtors) would interfere with the orderly distribution of funds to Debtors' creditors. After hearing the parties' arguments, the Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, which is applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7052.¹

FINDINGS OF FACT

1. On June 26, 2002, Debtors filed a Chapter 13 bankruptcy petition. In this case, October 21, 2002 was the established claims bar date for non-governmental creditors.
2. On August 12, 2002, Debtors submitted an amended Chapter 13 plan to the Court.
3. On September 13, 2002, the Court issued an Order confirming Debtors' amended Chapter 13 plan.
4. The confirmed plan required Debtors to cure an arrearage arising from a secured claim held by Chase and required Debtors to resume regularly scheduled payments to Chase in August 2002.

¹ To the extent any of the following Findings of Fact constitute Conclusions of Law, the Court adopts them as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

5. Debtors' confirmed Chapter 13 plan also states:

Any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within a reasonable time after the removal of the property from the protection of the automatic stay. Any funds that would have been paid to such creditor will be distributed to other creditors, unless the court orders otherwise.

6. On September 18, 2002, Chase filed a proof of claim in Debtors' Chapter 13 case. The September 18, 2002 proof of claim reflects Chase's secured claim in the amount of sixty-thousand-eight-hundred-seventy-three dollars and eighty two cents (\$60,873.82) and an arrearage in the amount of one-thousand-fifty-four dollars and two cents (\$1,054.02).²

7. Chase attached a copy of a Manufactured Home Retail Installment Contract, Security Agreement, and Disclosure Statement (the Retail/Security Agreement) and a Certificate of Title to the proof of claim to evince a security interest on a 1999 Fleetwood mobile home (Serial Number- NCFLX46AB08787) titled to Gloria P. Mitchum.

8. On June 30, 2003, Chase filed a Motion for Relief from Stay in order to foreclose on the mobile home securing its claim because Debtors defaulted on their obligation to make regularly scheduled payments to Chase pursuant to their confirmed Chapter 13 plan.

9. On July 18, 2003, the Court entered an Order providing Chase with relief from the automatic stay.

10. Following foreclosure proceedings in state court, Chase took possession of the mobile home on August 22, 2003.

11. On March 30, 2004, Chase sold the mobile home for thirty-eight-thousand-nine-hundred

² On October 21, 2002, Chase filed a second proof of claim that was substantially a duplicate of the proof of claim filed on September 18, 2002.

dollars (\$38,900).

12. Because the proceeds that Chase collected from the sale of the mobile home did not completely satisfy Chase's secured claim and the additional expenses incurred in pursuit of its foreclosure action against Debtors, Chase asserted a deficiency claim against Debtors for forty-two-thousand-six-hundred forty-four dollars (\$42,644.00) by filing an amended proof of claim on April 15, 2004.

13. Debtors did not file a response or objection to Chase's amended proof of claim.

14. One day thereafter, on April 16, 2004, the Chapter 13 Trustee filed a report which certified that Debtors completed their payments of all previously filed claims pursuant to their confirmed plan and were entitled to receive a discharge pursuant to 11 U.S.C. § 1328(a).

15. Based upon the Chapter 13 Trustee's final report and certification, the Court entered an Order granting a discharge to Debtors pursuant to 11 U.S.C. § 1328(a) on April 19, 2004.

16. On June 3, 2004, the Chapter 13 Trustee filed an Objection to Chase's amended proof of claim. In the Objection, the Chapter 13 Trustee contends that allowing Chase's amended proof of claim would interfere with the orderly distribution of funds to Debtors' other creditors.

17. Chase filed a response to the Chapter 13 Trustee's Objection. In the Response, Chase alleged that the Court should allow its amended proof of claim because (1) Chase timely filed its secured claim, (2) Chase foreclosed and sold the 1999 Fleetwood mobile home serving as collateral for its secured claim in a reasonable and expedient manner, and (3) allowing Chase's amended proof of claim would not prejudice any other parties.

18. Further, in a Joint Statement of Dispute and Stipulation filed by the Chapter 13 Trustee and Chase on August 3, 2004, Chase alleged that Debtors paid all other filed claims by making only eighteen (18) of the thirty-six (36) payments proposed under their confirmed plan when

they received their discharge.

19. During the hearing on the Chapter 13 Trustee's Objection, the Chapter 13 Trustee confirmed that all of Debtors' other filed claims had been paid in full.

20. Chase further agreed that it would not seek a distribution from the dividend that the Chapter 13 Trustee had paid to other creditors and would subordinate its amended claim to the claims of the other previously paid creditors.

21. In light of the fact that Chase did not seek to upset the distribution made to other creditors, the Chapter 13 Trustee conceded that allowing Chase's amended proof of claim would not delay distribution or, with the exception of Debtors, prejudice other parties.

CONCLUSIONS OF LAW

Deciding whether to allow an amendment to a proof of claim is within the sound discretion of a bankruptcy court. In re Ben Franklin Hotel Assocs., 186 F.3d 301, 309 (3rd Cir. 1999). Moreover, when deciding whether to permit an amended proof of claim courts must scrutinize post bar date amendments to timely filed proofs of claim to make sure that the creditor is not seeking to file a new claim under the guise of an amendment. Miller v. ChanneLinx, Inc. (In re ChanneLinx, Inc.), Nos. 03-01262-W, 03-80475, slip op. at 6 (Bankr. D.S.C. Feb. 9, 2004)(citing United States v. Int'l Horizons, Inc. (In re Int'l Horizons, Inc.), 751 F.2d 1213, 1216 (11th Cir. 1985)); In re Newcomb, 60 B.R. 520, 522 (Bankr. W.D. Va. 1986). An amendment to a timely filed claim should be freely allowed when the purpose of the amendment is to cure a defect in the claim as originally filed or to describe the claim with greater particularity. In re Mitchell, 116 B.R. 63, 64 (Bankr. W.D.Va. 1990); In re Vlavianos, 71 B.R. 789, 794 (Bankr. W.D. Va. 1986). Furthermore, if allowing an amendment to a proof of claim will cause undue prejudice to an opposing party, then the amendment should not be allowed. In re Mitchell, 116

B.R. at 64; In re Vlavianos, 71 B.R. at 794.

In the original proof of claim that Chase filed on September 18, 2002, Chase asserts a secured interest on Debtors' mobile home by submitting documents evincing a note and lien on the mobile home. Chase's amended proof of claim derives from the same operative facts giving rise to its original proof of claim because the amended proof of claim simply asserts an unsecured deficiency judgment caused by Debtors' failure to make timely payments pursuant to their confirmed Chapter 13 plan and the note and lien described in Chase's original proof of claim. Therefore, Chase does not appear to be asserting a new claim against Debtors under the guise of an amended proof of claim.

The next issue for the Court to consider is whether allowing Chase's amended proof of claim will cause undue prejudice to an opposing party. In his Objection to Chase's amended proof of claim, the Chapter 13 Trustee contends that allowing Chase's amended proof of claim would interfere with the orderly distribution to Debtors' other unsecured creditors. However, Chase stipulated that it did not seek a distribution from the dividend to Debtors' other unsecured creditors; and thereafter, the Chapter 13 Trustee conceded that notwithstanding the Debtors' interests, allowing Chase's amended proof of claim would not prejudice any other parties. Since Debtors did not file an objection to Chase's amended proof of claim, there is insufficient evidence in the record demonstrating that allowing Chase's amended proof of claim would subject Debtors to undue prejudice.

Chase also contends that allowing its amended claim would not prejudice Debtors because of the following factors: (1) Debtors received their discharge after only making payments for the first eighteen (18) months of the thirty-six (36) month repayment period provided in their plan; and (2) Chase only seeks to satisfy its unsecured deficiency judgment by

collecting payments for the remaining eighteen (18) months of the thirty-six (36) month repayment period provided by Debtors' plan.

Approximately eight months elapsed from the date Chase received relief from the automatic stay to the date it filed its amended claim. Two months of the eight-month period appear attributable to the foreclosure and repossession of the mobile home from Debtors and the additional time needed to prepare the mobile home for resale. Generally, a debtor may benefit from a diligent secured creditor that chooses the best method to sell repossessed collateral in order to reduce or eliminate any deficiency claim arising from the sale. Considering the lack of Debtors' objection or argument of undue prejudice, the six-month period Chase utilized to market and sell the repossessed mobile home does not appear unreasonable under the facts of this case.

Therefore, in the absence of any evidence indicating a delay of distribution or undue prejudice by the allowance of Chase's amended proof of claim, the Chapter 13 Trustee's objection to Chase's amended proof of claim is overruled. However, allowance of Chase's claim and distribution to Chase are subordinate to all previously paid claims.³

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
August 25, 2004

³ Despite the allowance of Chase's amended proof of claim, nothing in this Order should be read as disturbing the Order of Discharge issued to Debtors on April 19, 2004 because the record of this case reflects that such relief has not been requested and sufficiently noticed to Debtors or other parties in interest.