

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

66 JUN -5 PM 3:35

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
C/A No. 95-8343-W

IN RE:

Robert Harvie Payne,

Debtor.

ORDER

Chapter 7

ENTERED

JUN - 6 1996

V. A. C.

THIS MATTER comes before the Court upon the Trustee's motion to estimate the proof of claim of Eldeco, Inc. pursuant to 11 U.S.C. § 502(c). Eldeco, Inc. filed a proof of claim on December 18, 1995 in an unspecified amount for damages to be later determined. The proof of claim is based upon a judgment as to liability only entered against the Debtor on January 24, 1995. The Trustee has administered the estate and is beginning to make distributions to the creditors and therefore has asked this Court to estimate Eldeco, Inc.'s claim at \$5,000.00. Eldeco, Inc. did not object to this estimation.

Although there were no filed objections to the Trustee's motion, the Debtor, appearing pro se, voiced his objection at the hearing and demanded a jury trial on the estimation of the proof of claim. For the following reasons the Court will continue the motion to estimate the claim until June 20, 1996 at 9:30 a.m. and will deny the Debtor's oral motion for a jury trial on the estimation of the proof of claim.

Initially, it appears from the Trustee that there will likely be a 100% distribution to unsecured creditors in this case and therefore the Debtor would appear to have standing to object to the Trustee's motion. See Willemain v. Kivitz, 764 F.2d 1019 (4th Cir. 1985) and In re F.A. Dellastations, Inc., 121 B.R. 487 (Bkrcty.E.D.Va. 1990). As to the jury trial request, it must be

Jw-1-

150

noted that effective October 22, 1994, 28 U.S.C. § 157 was amended to provide that if the right to a jury trial applies, the bankruptcy court may now conduct the jury trial if the bankruptcy judge is specially designated by the District Court and all parties to the proceeding have expressly consented. Therefore, the Court must first determine if the Debtor has a right to a jury trial on a claims objection.

The landmark decision on the issue of jury trials is the 1989 Supreme Court Granfinanciera opinion. In re Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989). In citing the 1830 Parsons v. Bedford opinion, the Supreme Court held that:

The Seventh Amendment provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..." We have consistently interpreted the phrase "Suits at common law" to refer to "suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered." Parsons v. Bedford, 3 Pet. 433, 447 (1830).

Supra, at 109 S.Ct. 2789, 2790. The Supreme Court then cited Schoenthal v. Irving Trust Co., 287 U.S. 92, 53 S.Ct. 50 for the proposition that issues related to the claims process would be equitable in nature.

We could not have made plainer that our holding in Schoenthal retained its vitality: "[A]lthough petitioner might be entitled to a jury trial on the issue of preference if he presented no claim in the bankruptcy proceeding and awaited a federal plenary action by the trustee, Schoenthal v. Irving Trust Co., 287 U.S. 92, 53 S.Ct. 50, when the same issue arises as part of the process of allowance and disallowance of claims, it is triable in equity." *Id.*, at 336, 86 S.Ct., at 476.

In re Granfinanciera, S.A. v. Nordberg, 109 S.Ct. at 2798, 2799.

Jw- 2 -

Section 502(c)(1) states that "[t]here shall be estimated for purposes of allowance under this section -- (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case..." As stated in one treatise, "section 502(c) of the 1978 legislation provides for an estimate of the amount of a contingent or unliquidated claim for purpose of its allowance, when the actual liquidation of the claim or its actual amount as determined by the court, would unduly delay the administration of the case." 3 Collier on Bankruptcy, ¶ 502.03 (15th ed. 1991). It appears in this case that the Trustee's motion for the estimation of claims and the Debtor's objection thereto is tantamount to the Debtor's objection to the claim of Eldeco, Inc., and therefore the claims allowance process has clearly been triggered.

The United States Supreme Court has expressly held that there is no Seventh Amendment right to a jury trial for determinations of objections to claims.

As bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession, and as the proceedings of bankruptcy courts are inherently proceedings in equity, there is no Seventh Amendment right to a jury trial for determination of objections to claims...

Katchen v. Landy, 382 U.S. 323, 336, 86 S.Ct. 467, 476 (1966) (citations omitted).

Although Katchen (Katchen v. Landy, 382 U.S. 323, 86 S.Ct. 467, 15 L.Ed. 2d 391 (1966)), Granfinanciera, and Langenkamp (Langenkamp v. Culp, 498 U.S. 42, 111 S.Ct. 330, 112 L.Ed. 2d 343 (1990)) involved the filing of proofs of claim, the substantive rationale in all three Supreme Court cases is clear: when the claims-allowance process is triggered, the bankruptcy court's equitable jurisdiction is also triggered...

In re Sunshine Trading & Transp. Co., Inc., 193 B.R. 752 (Bkrcty.E.D.Va. 1995) and

gwc-3 -

In re Stansbury Poplar Place, Inc., 13 F.3d 122 (4th Cir. 1993). Also see In re Washington Mfg. Co., 133 B.R. 113 (M.D.Tenn. 1991) (denying a Chapter 11 trustee's motion for jury trial in fraudulent conveyance action against a creditor that had filed a claim against the estate) and In re B & E Sales Co., Inc., 129 B.R. 133 (Bkrtcy.E.D.Mich. 1990) (denying a Chapter 7 trustee's motion for jury trial in a fraudulent transfer action against a creditor who filed a claim against the estate). For these reasons, the Court finds that there is no right to a jury trial on the Trustee's motions to estimate the claim of Eldeco, Inc. Based upon this finding, the Court need not discuss whether any such right may have been waived. See In re Ward, 184 B.R. 253 (Bkrtcy.D.S.C. 1995). It is therefore,

ORDERED, that the Debtor's oral request for a jury trial on the Trustee's motion to estimate the claim of Eldeco, Inc. is denied. It is further

ORDERED, that the hearing on May 22, 1996 on the Trustee's motion to estimate claim will be continued until June 20, 1996 at 9:30 a.m.

AND IT IS SO ORDERED.

Columbia, South Carolina,
June 5, 1996.


UNITED STATES BANKRUPTCY JUDGE

ju-4 -

*Payne
US Bankruptcy
Payne*

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

96 JUN -5 PM 3:35

U.S. BANKRUPTCY COURT
DIST OF SOUTH CAROLINA

C/A No. 95-8343-W

IN RE:

Robert Harvie Payne,

Debtor.

ORDER

Chapter 7

ENTERED

JUN - 6 1996

V. A. C.

Based upon the findings as recited in the attached Order of the Court, the Debtor's oral motion for a jury trial on the Trustee's motion to estimate the claim of Eldeco, Inc. is denied. The hearing on May 22, 1996 on the Trustee's motion to estimate claim will be continued until June 20, 1996 at 9:30 a.m.

John E. White
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,

June 5, 1996.

181

