

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

Case No. 3:13-bk-5879-PMG

Martin David Mullen  
Lisa Ann Mullen,

---

Debtors.

Chapter 13

**ORDER ON MOTION TO ALLOW LATE PROOF OF CLAIM (CLAIM #10-1)  
FILED BY JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

**THIS CASE** came before the Court for hearing to consider the Motion to Allow Late Proof of Claim (Claim #10-1) filed by JPMorgan Chase Bank, National Association (the Bank). (Doc. 64).

The Bank holds a mortgage on the Debtors' homestead property, but did not file a Proof of Claim before the claims bar date of February 10, 2014. On May 9, 2014, the Debtors filed a Proof of Claim (Claim 9-1) on behalf of the Bank in the amount of \$23,216.55. On March 31, 2015, the Bank filed a Proof of Claim (Claim 10-1) in the increased amount of \$85,271.50.

Untimely claims in Chapter 13 cases are generally disallowed. Additionally, if an untimely claim was intended to amend an earlier claim in a Chapter 13 case, the late claim may be disallowed if its allowance would be inequitable. In this case, the allowance of Claim 10-1 would be inequitable, because the Bank did not file the claim until after the Debtors' case was pending for eighteen months,

and after the Debtors' Chapter 13 Plan had been confirmed and modified. Accordingly, the Bank's Motion to Allow the Late Claim should be denied, and Claim 10-1 should be disallowed.

The only Motion before the Court relates to the allowance or disallowance of Claim 10-1 filed by the Bank. Consequently, the Court makes no determination as to whether Claim 9-1, filed by the Debtors on the Bank's behalf, will have any effect on the Bank's lien after completion of the Debtors' Chapter 13 Plan.

### **Background**

The Debtors, Martin David Mullen and Lisa Ann Mullen, filed a petition under Chapter 13 of the Bankruptcy Code on September 27, 2013.

The Debtors listed the Bank on their schedules as a secured creditor holding a first mortgage on their homestead real property located in Jacksonville, Florida.

The Bank was served with Notice of the Chapter 13 Bankruptcy Case, including notice of the deadline to file a proof of claim. (Docs. 7, 9).

On October 9, 2013, the Debtors filed a Chapter 13 Plan. (Doc. 12). The Plan provided that payments to the Bank would be determined upon approval of a mortgage modification, and the Debtors filed a Motion for Referral to Mortgage Modification Mediation on the same date that they filed the Plan. (Doc. 13).

A mortgage modification mediation conference was conducted on January 31, 2014. The Bank participated in the mediation conference with the Debtors, but the parties did not reach a modification agreement. (Doc. 23).

The claims bar date was February 10, 2014.

On May 9, 2014, the Debtors filed a Proof of Claim (Claim 9-1) on behalf of the Bank. The Claim was not filed within the time permitted by Rule 3004 of the Federal Rules of Bankruptcy Procedure.

In any event, Claim 9-1 was filed as a secured claim in the total amount of \$23,216.55, with a prepetition arrearage component in the amount of \$1,848.25. The only documentation attached to the Claim is an offer to modify the Debtors' home mortgage dated August 31, 2012.

The Clerk's Office issued a Notice to the Bank of Claim 9-1 filed on its behalf by the Debtors in the amount of \$23,216.55. (Doc. 36).

On May 9, 2014, the Debtors also filed an Amended Chapter 13 Plan, which provided for the Bank's claim as follows:

The Debtors have been denied a mortgage modification. The Trustee shall make the regular monthly payment of \$450.25 per month in months eight (8) through thirty-six (36). The regular monthly payment shall not be changed without Order of the Court. The Debtors are currently in pre-petition arrears in the amount of \$1,848.25. The Trustee shall pay this arrearage in the amount of \$63.72 in month eight (8) through thirty-five (35); and \$64.09 in month thirty-six (36), until paid in full. . . .

(Doc. 28). The Amended Chapter 13 Plan was based on the amounts set forth in Claim 9-1, and was served on the Bank.

On October 24, 2014, the Court entered an Order Confirming the Debtors' Amended Chapter 13 Plan. (Doc. 54).

On December 5, 2014, the Debtors filed a Motion to Modify the Confirmed Plan. (Doc. 56). Generally, the Modified Plan extended the plan period, including the payments to the Bank, from 36 months to 60 months. The proposed Modification was served on the Bank.

On January 22, 2015, the Court entered an Order Granting Debtors' Motion to Modify Confirmed Plan. (Doc. 61).

On March 31, 2015, the Bank filed a Proof of Claim (Claim 10-1) as a secured claim in the total amount as of the petition date of \$85,271.50, with a prepetition arrearage component in the amount of \$37,974.24.

On July 31, 2015, the Bank filed the Motion to Allow Late Claim (Claim 10-1) that is currently before the Court. (Doc. 64). In the Motion, the Bank asserts that a Consent Final Judgment was entered in a foreclosure action before the Chapter 13 case was filed, and that the Final Judgment evidences a total debt owed to the Bank in the amount of \$90,350.41. According to the Bank, therefore, Claim 10-1 should be allowed to reflect the actual amount of the mortgage debt owed by the Debtors.

### **Discussion**

It is well-established that "liens pass through bankruptcy unaffected" or, in other words, that a secured creditor's lien survives a debtor's discharge in bankruptcy. In re Matteson, 535 B.R. 156, 161 (6<sup>th</sup> Cir. BAP 2015); In re Green, 2015 WL 2374749, at 1 (Bankr. M.D. Fla.)(citations omitted).

Perhaps for this reason, a secured creditor is not required to file a proof of claim in a Chapter 13 case in order to preserve its lien on the collateral to which its interest attaches.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. Federal Rule of Bankruptcy Procedure 3002(a) requires only unsecured creditors to file a proof of claim for the claim to be allowed. Secured creditors "are not required to file a proof of claim solely to preserve their lien." *In re Nwonwu*, 362 B.R. 705, 708 (Bankr. E.D. Va. 2007)(examining late filed proof of claim).

In re Matteson, 535 B.R. at 163). “[M]ost courts have concluded that secured creditors in chapter 7, 12, and 13 cases (all governed by Rule 3002) may, but need not, file a proof of claim.” In re Oscar, 2005 WL 6522763, at 2 (Bankr. E.D. Pa.)(citing In re Bateman, 331 F.3d 821, 827 (11<sup>th</sup> Cir. 2003)).

The failure of a secured creditor to file a proof of claim, however, affects its right to receive payment under a Chapter 13 plan. In re Matteson, 535 B.R. at 163.

If . . . the secured creditor wants to receive distributions under the chapter 13 plan, it must have an allowed claim. *See* Fed.R.Bankr.P. 3021(requireing distributions under plans to be made only to those creditors whose pre-petition claims are “allowed”).

In re Belser, 534 B.R. 228, 234 (1<sup>st</sup> Cir. BAP 2015). *See also* In re Pajian, 785 F.3d 1161, 1163 (7<sup>th</sup> Cir. 2015)(All creditors, both secured and unsecured, must file a proof of claim in order to participate in Chapter 13 distributions.).

The deadline for filing claims in a Chapter 13 case is provided by Rule 3002(c) of the Federal Rules of Bankruptcy Procedure. “Under Federal Rule of Bankruptcy Procedure 3002(c), a creditor in a chapter 13 case must file a proof of claim within ninety days from the date first set for the meeting of creditors in order to receive payments under a plan.” In re Green, 2015 WL 2374749, at 1.

Untimely claims in Chapter 13 cases are generally disallowed. In re Glawson, 2013 WL 4777194, at 3 (Bankr. M.D. Ga.)(“The Bankruptcy Code provides for disallowance of untimely claims in Chapter 13.”).

Federal Rule of Bankruptcy Procedure 3002(c) requires that proofs of claim in a Chapter 13 case be filed not later than 90 days after the first day set for the meeting of creditors. The applicable Bankruptcy Rules do not permit allowance of a late-filed claim in a Chapter 13 case, even where the facts would otherwise support a finding of “excusable neglect.”

In re Matthews, 313 B.R. 489, 493 (Bankr. M.D. Fla. 2004). See also In re Jackson, 482 B.R. 659 (Bankr. S.D. Fla. 2012), and In re Mickens, 2005 WL 375661 (Bankr. D.C.)(A secured claim which included an arrearage was disallowed as untimely in a Chapter 13 case.).

If an untimely claim amends a prior, timely-filed claim, the court may allow or disallow the amended claim within its discretion. “The decision to grant or deny an amendment to a timely filed proof of claim rests with the sound discretion of the bankruptcy court.” In re Belser, 534 B.R. at 243. A bankruptcy court “has the discretion to allow a creditor to amend a debtor-filed proof of claim after the bar date pursuant to its equitable powers.” In re Walker, 526 B.R. 187, 190 (E.D. La. 2015).

In determining whether a late-filed amendment should be allowed, courts typically consider a number of equitable factors, such as whether the parties relied on the earlier claim, and whether the delay in filing the amendment was justified. In re Green, 2015 WL 2374749, at 2(citing In re International Horizons, Inc., 751 F.2d 1213, 1218 (11<sup>th</sup> Cir. 1985)). Courts generally do not allow creditors to amend a debtor-filed proof of claim when allowance of the amendment would be inequitable. In re Belser, 534 B.R. at 244.

Post-confirmation amendments are disfavored, for example, in part because of the res judicata effect of the confirmed plan and the likelihood that the distribution to other creditors will be altered. In re Green, 2015 WL 2374749, at 3. See In re Henry, 532 B.R. 844, 849 (Bankr. N.D. Okla. 2015)(A post-confirmation amended claim was not allowed, where it would essentially nullify the final confirmation order and disrupt the Chapter 13 process.).

### **Application**

In this case, the Bank acknowledges that Claim 10-1 is untimely. (Doc. 64, ¶ 7). The claims bar date was February 10, 2014, and Claim 10-1 was filed more than a year later, on March 31, 2015.

Accordingly, Claim 10-1 should be disallowed, because it was not filed within the time provided by Rule 3002(c) of the Federal Rules of Bankruptcy Procedure.

The claim does not indicate on its face that it was intended to amend Claim 9-1, which was previously filed by the Debtors on behalf of the Bank. Even if Claim 10-1 was intended as an amendment of the earlier claim, however, the claim should be disallowed based on the equitable considerations in this case.

The Bank was served with notice of the Debtors' Chapter 13 case and notice of the deadline for filing claims on October 2, 2013. (Doc. 9). Additionally, the Bank was served with the Debtors' original Chapter 13 Plan and appeared at an unsuccessful mortgage modification mediation prior to the bar date, but did not file a timely proof of claim.

In May of 2014, the Bank was served with the Debtors' Amended Chapter 13 Plan, and was also served with notice that the Debtors had filed a Claim on the Bank's behalf, but did not object to confirmation or file an amended claim to assert an increased arrearage or principal balance.

The Debtors' Amended Plan was confirmed on October 24, 2014, without objection by the Bank.

In December of 2014, the Bank was served with the Debtors' Motion to Modify the Confirmed Plan, and the modification was approved in January of 2015, again without objection by the Bank.

The Bank did not file Claim 10-1 until March 31, 2015, more than a year after the claims bar date, and more than five months after confirmation of the Debtors' Chapter 13 Plan.

The Motion to Allow the Late Claim was not filed until July 31, 2015. (Doc. 64). In the Motion, the Bank asserts only that it was unable to file the claim by the deadline due to circumstances beyond its control. (Doc. 64, ¶ 7). At the hearing on the Motion, the Bank contended that it was delayed in

filing the claim because it was attempting to assemble the assignment of mortgage and other documents to establish its standing to file the claim.

The Debtors' Chapter 13 case remained pending for approximately eighteen months before the Bank filed its claim. During that time, the Bank was notified of the proposed treatment of its claim, and now contends that the proposed treatment was based on erroneous debt amounts. Nevertheless, the Bank did not assert its interest by participating in either the claims process or the plan process, and its delay in filing a claim or requesting an extension is not justified in the record.

The Court entered an Order confirming the Debtors' Amended Chapter 13 Plan without opposition by the Bank, and the confirmed Plan is final and binding on the Debtors and creditors. 11 U.S.C. § 1327.

The equitable factors in this case show that the claim should be disallowed, and the Court therefore should exercise its discretion to disallow the Bank's Claim 10-1. See In re Green, 2015 WL 2374749, at 3("There is no evidence that [the secured creditor] took any action in the Debtor's bankruptcy case during that eleven-month period to protect its rights. It did not object to the proof of claim filed on its behalf, and it allowed the Debtor's plan to be confirmed without objection.").

#### **Claim 9-1**

The only Motion before the Court relates to the allowance or disallowance of Claim 10-1 filed by the Bank. Consequently, the Court makes no determination as to whether Claim 9-1, filed by the Debtors on the Bank's behalf, will have any effect on the Bank's lien after completion of the Debtors' Chapter 13 Plan.

Accordingly:



**IT IS ORDERED** that the Motion to Allow Late Proof of Claim (Claim #10-1) filed by JPMorgan Chase Bank, National Association, is denied, and Claim 10-1 is disallowed.

**DATED** this 16 day of November, 2015.

**BY THE COURT**

Paul M. Glenn

---

PAUL M. GLENN  
United States Bankruptcy Judge