


ORDERED.

Dated: March 01, 2017



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
PROGRESSIVE PLUMBING, INC.,)	Case No. 6:15-bk-07275-KSJ
)	Chapter 11
Debtor.)	
)	

ORDER SUSTAINING DEBTOR’S OBJECTION TO CLAIM NO. 9

The deadline to file claims was December 7, 2015.¹ Claimant, Joseph Buttlieri, and his lawyer both received notice of this deadline but waited to file Claim No. 9 until December 11, 2015. Claimant sought no extension to file a late claim. Debtor, Progressive Plumbing Inc., seeks to disallow Claim No. 9 because the claim was filed untimely.² Claimant agrees Claim No. 9 was untimely but argues the slight delay was due to the excusable neglect of his lawyer who failed to properly calendar the bar date.³

Bankruptcy Rule 9006(b)(1) allows a claimant to submit a late filed claim when: (1) the request to extend the deadline was made to the court prior to the expiration of the time, or “(2) on

¹ Doc. No. 19.

² Doc. No. 397. Debtor also contends the claim has no factual or legal merit.

³ Doc. No. 467. Claimant’s response to the Debtor’s objection also was untimely. The deadline to file a response was October 21, 2016. Claimant did not file a response until October 31, 2016, ten days late. The Court, however, will consider the merits of the Claimant’s response, even though untimely filed.

motion made after the expiration of the specified [time] period [allow] the act to be done where the failure to act was the result of excusable neglect.”⁴ “[C]ourts [are] permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness....”⁵

Claimant has *never* made a request to extend the time to file a claim under either provision of Rule 9006(b). Buttlieri acknowledges he timely received notice of the claim deadline and that he failed to ask for an extension of time to file his claim before the deadline expired or later. Claimant now relies on the opinion of the United States Supreme Court in *Pioneer* where an untimely proof of claim was allowed because of excusable neglect. However, in *Pioneer*, the Claimant filed a separate motion asking the court to permit the late filing of the claim under Rule 9006(b)(1).⁶ Buttlieri has filed his proof of claim and a later, again untimely, response to the Debtor’s objection but has never filed a motion seeking any extension of time. The Court need never decide whether Claimant’s counsel neglect was excusable or not. Without a motion, the Court cannot consider whether there was excusable neglect to allow the untimely claim.

Accordingly, it is

ORDERED:

1. The Objection (Doc. No. 397) is **SUSTAINED**;
2. Claim No. 9 is disallowed.

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Attorney Michael A. Nardella is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

⁴ Refers to Fed. Rules of Bank. Proc.

⁵ *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388, 113 S. Ct. 1489, 1494 (1993).

⁶ *Pioneer*, 507 U.S. at 384, 113 S. Ct. at 1492.