

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:18-bk-5658-FMD
Chapter 13

Bernard Craig Sherman,

Debtor.

**ORDER DENYING
VERIFIED MOTION TO ALLOW LATE
FILED CLAIM (Claim #15) FILED BY
SILVERIO & HALL, P.A. AS TIMELY**

THIS CASE came on for hearing on October 17, 2019, to consider the *Verified Motion to Allow Late Filed Claim (Claim #15) Filed by Silverio & Hall, P.A. as Timely*.¹ After careful consideration, the Court finds that the Motion should be denied.

On July 9, 2018, Debtor filed a petition under Chapter 13 of the Bankruptcy Code. Silverio & Hall, P.A. (Creditor) was listed as a creditor on Debtor's schedules and mailing matrix at Creditor's address of 255 8th Street South, Naples, Florida, 34102.² On July 12, 2018, Creditor was served with a Notice of Chapter 13 Bankruptcy Case containing the deadline for filing proofs of claim in the Chapter 13 case.³ The bar date for filing claims was September 17, 2018.

On September 18, 2018, one day after the claims bar date, Creditor filed Proof of Claim No. 15 as an unsecured claim in the amount of \$72,028.50. On May 6, 2019, the Court entered an Order Confirming Debtor's Chapter 13 Plan. The Order Confirming Plan provided that Creditor's claim was filed after the bar date and was therefore

disallowed.⁴ On May 20, 2019, Creditor filed the Motion to Allow its Late Claim as timely.

Rule 3002(c) of the Federal Rules of Bankruptcy Procedure provides that a proof of claim in a Chapter 13 case is timely if it is filed not later than 70 days after the petition is filed.⁵ The Rule contains specific exceptions which permit the Court to extend the deadline to file a claim, but Creditor does not contend that any of the specific exceptions apply in this case. Instead, Creditor asserts that its claim was untimely because of a calendaring error in its office.⁶

Under certain circumstances, Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure provides the Court with discretion to enlarge a deadline if a request for enlargement is made after the deadline has expired and the failure to act was the result of excusable neglect.⁷ However, Rule 9006(b)(1) is subject to Rule 9006(b)(3), which provides that the Court may enlarge the time for filing a claim under Rule 3002(c) "only to the extent and under the conditions stated" in Rule 3002(c).⁸ The "conditions stated" in Rule 3002(c) to enlarge a Chapter 13 claims bar date are "static" and do not include a discretionary category.⁹

Consequently, "the catchall provision of Rule 9006, which allows relief from certain deadlines upon a showing of excusable neglect, is not available to extend the claims bar date" in Chapter 13 cases.¹⁰ In *In re Stone*, for example, as in this case, a creditor in a Chapter 13 case filed its claim one day after the claims bar date, and the Court denied the creditor's motion to deem the claim timely-filed. In *Stone*, the Court recognized the bar date under Rule 3002(c) as an "uncompromising deadline," and found that the excusable neglect

¹ Doc. No. 48.

² Doc. No. 1.

³ Doc. Nos. 7, 11.

⁴ Doc. No. 46, p. 11.

⁵ Fed. R. Bankr. P. 3002(c).

⁶ Doc. No. 48, ¶ 5.

⁷ Fed. R. Bankr. P. 9006(b)(1).

⁸ Fed. R. Bankr. P. 9006(b)(3).

⁹ *In re Somerville*, No. 18-20807-MMH, 2019 WL 4923928, at *3 (Bankr. D. Md. Oct. 9, 2019)(citing *In re Young*, No. 04-53818, 2007 WL 703493, at *5 (Bankr. M.D.N.C. Mar. 2, 2007)).

¹⁰ *In re Burtanog*, No. 16-4163-JCO, 2017 WL 4570701, at *2 (Bankr. S.D. Ala. Oct. 12, 2017)(citing *In re Thomas*, 181 B.R. 674, 675-76 (Bankr. S.D. Ga. 1995)).

standard of Rule 9006(b)(1) does not apply to the filing of claims in a Chapter 13 case.¹¹

Accordingly, it is

ORDERED that the Verified Motion to Allow Late Filed Claim (Claim #15) Filed by Silverio & Hall, P.A. as Timely is denied.

DATED: October 22, 2019.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge

¹¹ *In re Stone*, 473 B.R. 465, 468 (Bankr. M.D. Fla. 2012)(quoting *In re Windom*, 284 B.R. 644, 646 (Bankr. E.D. Tenn. 2002)).