

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:19-bk-03218-FMD
Chapter 13

Stanley J. Howe,
aka Stanley J. Howe as
Trustee of Price Trust II,

Debtor.

**ORDER SUSTAINING IN PART AND
OVERRULING IN PART DEBTOR'S
OBJECTION TO CLAIM NO. 4 OF CHRIS
LUCKERMAN AND LISA LUCKERMAN**

THIS CASE came before the Court without a hearing to consider Debtor's Objection to Claim No. 4 of Chris Luckerman and Lisa Luckerman (the "Objection").¹ Chris Luckerman and Lisa Luckerman ("Creditors") timely filed a proof of claim in this Chapter 13 case (the "Claim").² Debtor filed the Objection on January 13, 2020. On the same date, the Court entered an Order Directing Response to Objection to Claim,³ which permitted Creditors to file a written response to the Objection within thirty days of the order, and also provided that the Court may determine the Objection without a hearing if no timely response was filed. Creditors have not filed a written response to the Objection.

The Court, having carefully considered the Claim, the Objection, and the record in this case finds as follows.

Creditors are former tenants of Debtor. They filed a counterclaim for damages against Debtor in County Court for Sarasota County Florida, in an action styled *Stanley J. Howe, Plaintiff/Counter-Defendant v. Chris Luckerman and Lisa Luckerman, Defendants/Counter-Plaintiffs*, Case No. 2014 CC 3952 SC. On September 14, 2016, the

County Court entered an Amended Final Judgment (the "Judgment") in favor of Creditors and against Debtor for damages in the amount of \$2,850.00 for the disconnection of electricity service, \$2,850.00 for the disconnection of water service, \$950.00 for the unlawful retention of Creditors' security deposit, and \$81,866.11 for attorney's fees and costs, for a total Judgment amount of \$88,516.11. The Judgment was recorded in the Official Records of Sarasota County, Florida on September 15, 2016, and November 18, 2016.

On April 9, 2019, Debtor filed his Chapter 13 bankruptcy petition. Creditors filed the Claim as a secured claim in the amount of \$221,381.34. The attachment to the Claim reflects that it is based on the Judgment amount of \$88,516.11, post-Judgment interest of \$10,986.30, appellate attorney's fees of \$43,470.00, and collection attorney's fees of \$78,408.93. In his Objection, Debtor asserts that the Claim "included excessive and improper charges."

Under Federal Rule of Bankruptcy Procedure 3001(f), a proof of claim that is executed and filed in accordance with the rules "shall constitute prima facie evidence of the validity and amount of the claim."⁴ If a claim is filed in accordance with the rules, an objecting party bears the burden of producing evidence to overcome the claim's prima facie validity.⁵

Here, the Claim is based in part on the state court Judgment that was entered before Debtor's bankruptcy filing. Although Debtor asserts that the Claim includes excessive or improper charges, he does not present any basis to challenge the validity or enforceability of the Judgment. And under the doctrine of res judicata, a party is prevented from re-litigating matters that were, or could have been, litigated in a prior suit.⁶ Accordingly, the Claim should be allowed at least in the amount of the Judgment—that is \$88,516.11, plus post-Judgment interest to the date of Debtor's bankruptcy filing in the amount of \$10,986.30.

¹ Doc. No. 92.

² Claim No. 4.

³ Doc. No. 93.

⁴ Fed. R. Bankr. P. 3001(f).

⁵ *In re Walston*, 606 F. App'x 543, 546 (11th Cir. 2015).

⁶ *In re Anson*, 457 B.R. 130, 135 (Bankr. M.D. Fla. 2011)(citing *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986)).

However, the balance of the Claim in the amount of \$121,878.93 is based on “incurred appellate attorney’s fees” and “incurred collections attorney’s fees and costs” relating to Creditors’ post-judgment efforts to defend and collect the Judgment. These post-Judgment fees and costs had not been determined by the state court as of the date that Debtor filed his bankruptcy petition. And despite having been provided with an opportunity to respond to Debtor’s assertion that Creditors’ attorney’s fees and costs are excessive in light of the actual damages of \$6,650.00 awarded to them in the Judgment, Creditors have not filed a response to the Objection.⁷

The Court has considered the record, including the following documentation attached to Creditors’ Claim: (1) the Affidavit of Michael E. Schuchat as to Attorney’s Fees and Costs; (2) Berlin Patten Ebling, PLLC’s statement of fees and costs dated June 6, 2019; (3) the Affidavit of Jesse R. Butler as to Appellate Attorney’s Fees; and (4) Dickinson & Gibbons, P.A.’s Detail Fee Transaction File dated May 22, 2019. The attorneys’ billing records include a breakdown of the fees by date, attorney, description of the service, hourly rate, amount of time spent, and amount charged for each service.

Based on the fee statements attached to the Claim, Debtor’s Objection, and Creditors’ failure to respond to Debtor’s Objection, the Court finds that the amount claimed by Creditors for post-Judgment fees should be reduced and that a reasonable aggregate fee for Creditors’ appellate attorney’s fees and collection attorney’s fees is \$20,000.00. The Court further finds that Creditors’ post-Judgment costs⁸ were reasonably incurred.

Accordingly, the Court finds that Creditors’ Claim should be allowed in the total, reduced amount of \$128,514.84 as follows:

Judgment entered September 14, 2016 --
\$88,516.11

⁷ The Court notes that under its Order Directing Response, Creditors’ written response to the Objection was due to be filed on February 12, 2020. The record reflects that as of the date of this Order, no response has been filed.

Interest from Judgment to April 9, 2019 --
\$10,986.30
Post-Judgment attorney’s fees –
\$20,000.00
Berlin Patten Ebling, PLLC’s costs --
\$9,012.43
Total -- \$128,514.84

The balance of Creditors’ Claim should be disallowed.

In addition, Creditors filed their Claim as a secured claim based on the recordation of the Judgment in the Official Records of Sarasota County, Florida. In Debtor’s schedule of assets filed in the bankruptcy case, he lists an interest in real property located in Bradenton, Florida, two vehicles, and miscellaneous personal property.⁹ Certain items of personal property were claimed as exempt on Debtor’s Schedule C – Property Claimed as Exempt. Under § 506(a) of the Bankruptcy Code, an allowed claim of a creditor secured by a lien on property “is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property.”¹⁰ And under § 522(f) of the Bankruptcy Code, a debtor may avoid a judicial lien “to the extent that such lien impairs an exemption to which the debtor would have been entitled.”¹¹

Here, the Court cannot determine from the record whether Creditors’ Claim is secured by any property listed on Debtor’s schedules, or the value of Creditors’ interest in the property, or whether Creditors’ lien is avoidable under § 522(f). Accordingly, the Court is unable to determine the extent to which the Claim is a secured claim and will defer making that determination pending the filing of a motion to determine secured status, a motion to avoid judicial lien, or other motion to determine the extent, validity, or priority of Creditors’ secured claim.

⁸ Exhibit to Claim No. 4, Affidavit of Michael E. Schuchat, ¶ 6, Berlin Patten Ebling, PLLC statement dated June 6, 2019.

⁹ Doc. No. 9.

¹⁰ 11 U.S.C. § 506(a).

¹¹ 11 U.S.C. § 522(f).

Accordingly, it is

ORDERED:

1. Debtor's Objection to Claim No. 4 of Chris Luckerman and Lisa Luckerman is sustained in part and overruled in part.

2. Creditors' Claim No. 4 is allowed in the reduced amount of \$128,514.84 and the balance of Claim No. 4 is disallowed.

3. The Court defers the determination of the amount of Creditors' secured claim pending either parties' filing of a motion to determine secured status, a motion to avoid judicial lien, or other motion to determine the extent, validity, or priority of Creditors' secured claim.

DATED: March 2, 2020.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge