

ORDERED.

Dated: October 12, 2022



Caryl E. Delano  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Case No. 2:15-bk-04241-FMD  
Chapter 7

Benjamin H. Yormak,  
  
Debtor.

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**ORDER DENYING  
STEVEN YORMAK'S MOTION/DEMAND FOR JURY TRIAL**

THIS CASE came before the Court without a hearing to consider the *Motion/Demand for Jury Trial* (the "Jury Demand")<sup>1</sup> filed by Steven R. Yormak ("Claimant"). In the Jury Demand, Claimant asks that "his proof of claim based on his previous action(s) against debtor be heard and adjudicated by a jury." The Court finds that Claimant, by filing proofs of claim in this bankruptcy case and

<sup>1</sup>Doc. No. 1013.

participating in the claims-allowance process, subjected himself to the bankruptcy court's equitable jurisdiction and waived his right to have a jury determine the validity and amount of the claims. Therefore, the Jury Demand is denied.

### **I. Facts Relevant to the Jury Demand**

On April 24, 2015, Benjamin H. Yormak ("Debtor") filed a Chapter 13 bankruptcy case.

On May 29, 2015, Claimant filed a proof of claim (Claim 4-1) in the bankruptcy case for an unliquidated amount exceeding \$724,275.00. Claim 4-1 was accompanied by a copy of a complaint (the "Complaint") filed by Claimant in the United States District Court in which Claimant sought damages against Debtor for alleged breaches of written and oral consulting agreements and for unjust enrichment. The Complaint included a demand for a jury trial.

On September 17, 2015, Debtor filed an objection to Claim 4-1, asserting in part that the claim is unenforceable because it sought to split legal fees with a lawyer who is not admitted to The Florida Bar.<sup>2</sup> Over the next 15 months, Debtor and Claimant litigated Debtor's objection to Claim 4-1 in this Court. For example, during this period Claimant filed a response to Debtor's objection, two motions for summary judgment, and additional papers in support of his Claim 4-1.<sup>3</sup>

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<sup>2</sup> Doc. No. 36.

<sup>3</sup> Doc. Nos. 68, 70, 78, 94, 126, 152, and 159.

In September 2016, Debtor's Chapter 13 case was converted to a liquidating case under Chapter 7.<sup>4</sup>

On December 29, 2016, Claimant filed an amended proof of claim (Claim 4-2) in the bankruptcy case for an unliquidated amount exceeding \$1,095,275.00 (the "Claim"). The Claim was accompanied by a copy of the same Complaint that Claimant had attached to Claim 4-1. Throughout 2017, Debtor and Claimant continued to litigate Debtor's objections to the Claim in this Court, with Claimant filing two additional motions for summary judgment<sup>5</sup> and other papers related to the Claim.<sup>6</sup>

On April 17, 2018, Debtor filed his second amended objection to Claimant's Claim, asserting that the parties' consulting agreements are void and unenforceable because they provide for the unlicensed practice of law (the "UPL Issue").<sup>7</sup> On May 15, 2018, Claimant filed his response to the objection and demanded a jury trial.<sup>8</sup> Around the same time, Claimant also filed a motion for leave to file a further amended claim and for a jury trial, which this Court denied,<sup>9</sup> and a motion to withdraw the reference, which the District Court denied.<sup>10</sup>

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<sup>4</sup> Doc. No. 138.

<sup>5</sup> Doc. Nos. 328 and 329.

<sup>6</sup> See Doc. Nos. 295, 292, and 355.

<sup>7</sup> Doc. No. 397.

<sup>8</sup> Doc. No. 415.

<sup>9</sup> Doc. Nos. 416 and 435.

<sup>10</sup> Doc. No. 420; Case No. 2:18-cv-00508-JES, Doc. No. 7.

Claimant thereafter filed three additional motions for summary judgment<sup>11</sup> and Debtor filed two additional motions for summary judgment regarding the allowability of Claimant's Claim.<sup>12</sup> The most recent motions filed by the parties related solely to the UPL Issue.

On February 3, 2021, the Court entered an order (1) denying Claimant's motion for summary judgment on the UPL Issue, and (2) granting Debtor's motion for summary judgment and disallowing Claimant's Claim (the "Summary Judgment Order").<sup>13</sup> Claimant appealed the Summary Judgment Order to the District Court,<sup>14</sup> and on April 13, 2022, the District Court entered an order reversing and remanding the portion of the Summary Judgment Order related to the UPL Issue.<sup>15</sup>

On October 3, 2022, Claimant filed the Jury Demand that is currently before the Court.<sup>16</sup>

## **II. Analysis**

The law regarding the right to a jury trial in bankruptcy cases is well-settled. In *Granfinanciera, S.A. v. Nordberg*,<sup>17</sup> the Supreme Court expressly held that creditors

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<sup>11</sup> Doc. Nos. 493, 575, and 798.

<sup>12</sup> Doc. Nos. 465 and 818.

<sup>13</sup> Doc. No. 851.

<sup>14</sup> Doc. No. 855.

<sup>15</sup> Doc. No. 1007.

<sup>16</sup> Doc. No. 1013.

<sup>17</sup> 492 U.S. 33, 109 S. Ct. 2782, 106 L. Ed. 2d 26 (1989).

who file claims in a bankruptcy case have subjected themselves to the bankruptcy court's equitable power to disallow their claims. The Court stated:

[B]y submitting a claim against the bankruptcy estate, creditors subject themselves to the court's equitable power to disallow those claims, even though . . . the Seventh Amendment would have entitled creditors to a jury trial had they not tendered claims against the estate.<sup>18</sup>

The Supreme Court revisited this issue in *Langenkamp v. Culp*,<sup>19</sup> stating:

In *Granfinanciera* we recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of "allowance and disallowance of claims," thereby subjecting himself to the bankruptcy court's equitable power.<sup>20</sup>

After *Granfinanciera* and *Langenkamp*, bankruptcy courts routinely deny creditors' demands for a jury trial to determine objections to their claims.<sup>21</sup> For example, in *In re Devey*,<sup>22</sup> the debtor was a defendant in a state court lawsuit when he filed a Chapter 13 bankruptcy case. The state court plaintiffs filed a proof of claim in the Chapter 13 case based on their "lawsuit for breach of contract and fraud." When the debtor objected to the claim, the plaintiffs responded to the objection and demanded a jury trial. Based on *Granfinanciera* and *Langenkamp*, the bankruptcy court ruled that the plaintiffs were not entitled to a jury trial, stating:

The Court [] finds that by filing a proof of claim, the Petersons waived their right to a jury trial. Once a claimant has submitted to this

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<sup>18</sup> *Granfinanciera, S.A. v. Nordberg*, 492 U.S. at 59, n. 14.

<sup>19</sup> 498 U.S. 42, 111 S. Ct. 330, 112 L. Ed. 2d 343 (1990).

<sup>20</sup> *Langenkamp v. Culp*, 498 U.S. at 44.

<sup>21</sup> See *In re Southern Produce Distributors, Inc.*, 616 B.R. 667, 672-73 (Bankr. E.D.N.C. 2020).

<sup>22</sup> 590 B.R. 706 (Bankr. D.S.C. 2018).

Court's equitable jurisdiction by triggering the claims allowance process, there is no Seventh Amendment right to a jury trial. . . .

By filing a proof of claim, actively participating in the bankruptcy process, and consenting to the jurisdiction and authority of this Court, the Petersons have waived both the right to a jury trial, and any challenge to this Court's authority to adjudicate the matters before it and enter judgments and final orders.<sup>23</sup>

Therefore, the bankruptcy court denied the plaintiffs' request for a jury trial and found that it had jurisdiction to determine the validity and amount of the plaintiffs' claim.<sup>24</sup>

### **III. Conclusion**

Here, Claimant filed Claim 4-1 and his amended Claim 4-2 in Debtor's bankruptcy case and has sought allowance of his claim for purposes of distribution from the estate.<sup>25</sup> Beginning in 2015, Debtor and Claimant actively litigated the issues raised by the claims and Debtor's objections. Over the course of seven years, Claimant filed a total of eight motions for summary judgment<sup>26</sup> asking the Bankruptcy Court to find that there were no factual disputes and that he was entitled to judgment as a matter of law.<sup>27</sup>

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<sup>23</sup> *In re Devey*, 590 B.R. at 717-18 (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), and *Langenkamp v. Culp*, 498 U.S. 42 (1990)).

<sup>24</sup> *In re Devey*, 590 B.R. at 728.

<sup>25</sup> See Doc. No. 888, ¶ 2, in which Claimant asserted that his claim constituted 90% of the claims against the estate and that creditors would receive a pro rata distribution if his claim were allowed.

<sup>26</sup> Doc. Nos. 70, 94, 328, 329, 428, 493, 575, and 798.

<sup>27</sup> Fed. R. Civ. P. 56(a), made applicable to this contested matter by Fed. R. Bank. P. 9014(c).

The Court finds that by filing his proofs of claim and participating extensively in the claims-allowance process in Debtor's bankruptcy case, Claimant submitted to the equitable jurisdiction of the Bankruptcy Court and has waived his right to have a jury determine the validity and amount of his claim.

Accordingly, it is

**ORDERED** that Steven R. Yormak's *Motion/Demand for Jury Trial* (Doc. No. 1013) is **DENIED**.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.