

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re:
Scott Andrew Green,

Debtor.

Case No. 8:12-bk-09222-CED
Chapter 13

**ORDER AND MEMORANDUM OPINION
ON DEBTOR'S OBJECTION
TO CLAIM NO. 3-2 OF MAYAN
MAINSTREET INVESTORS I, LLC**

The Debtor filed a proof of claim for Mayan Mainstreet Investors I, LLC, which holds a mortgage on the Debtor's house, when Mayan failed to file a claim by the claims bar date. Nine months after the Debtor's chapter 13 plan was confirmed, Mayan amended the proof of claim filed by the Debtor to increase the claim amount. The Debtor has objected to the amended claim. This Court must decide whether to allow the amended claim nine months after confirmation.

The Court concludes that it would be inequitable to allow Mayan belated claim amendment. After all, the Debtor and other creditors relied on the proof of claim the Debtor filed. And among other things, Mayan has failed to offer any justification for failing to timely file a claim or timely object to the Debtor's plan, which was based on the proof of claim filed by the Debtor. Besides, the res judicata effect of a confirmed plan precludes Mayan from amending its claim in any event. Accordingly, the Court will sustain the Debtor's objection to Mayan's amended proof of claim.

Background

The Debtor owns real property located at 4226 Summerdale Drive, Tampa, Florida.¹

¹ Doc. No. 1, Schedule A.

Mayan holds a first mortgage on the Debtor's property. The Debtor apparently defaulted on his mortgage in early 2010.² On June 14, 2012, the Debtor filed for Chapter 13 bankruptcy, presumably to cure his mortgage arrearages and save his house.³

According to the notice of commencement, the deadline for filing proofs of claim was October 15, 2012.⁴ Mayan, however, failed to file a proof of claim by the claims bar date. So the Debtor filed a \$20,800 proof of claim on behalf of Mayan under Bankruptcy Rule 3004 on November 2, 2012.⁵ The entire amount of the \$20,800 proof of claim filed by the Debtor is for secured pre-petition arrearages under the mortgage.⁶ Mayan did not object to the proof of claim the Debtor filed on its behalf.

Approximately two months after the Debtor filed the proof of claim on Mayan's behalf, the Court confirmed the Debtor's chapter 13 plan. Under his confirmed plan, the Debtor is obligated to pay \$2,176 per month for 60 months. Of that amount, \$1,600 is for the adequate protection payments to Mayan. Another \$346.67 per month is going toward the \$20,800 in arrearages. General unsecured creditors will receive a total of \$1,000.90 under the Debtor's plan.

On October 25, 2013, nine months after the Court confirmed the Debtor's plan, Mayan filed an amended proof of claim in the amount of \$293,151.48.⁷ The pre-petition arrearage component of the amended claim is \$86,651.48.⁸

² Doc. No. 42 at ¶ 2.

³ Doc. No. 1.

⁴ Doc. No. 6.

⁵ Doc. No. 21.

⁶ Claim No. 3-1.

⁷ Doc. No. 34.

⁸ Claim No. 3-2.

The Debtor now objects on the ground that Mayan's amended proof of claim is time barred.⁹

Conclusions of Law

There is no question the Debtor was authorized to file a proof of claim for Mayan. 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.¹⁰ Of course, Mayan can choose not to file a proof of claim and instead look to its lien, which survives the discharge of the debtor in bankruptcy, to satisfy its claim.¹¹ But if a creditor fails to file a proof of claim by the claims bar date, the debtor can file one for them within thirty days after the claims bar date expires.¹² Here, the Debtor filed the proof of claim on behalf of Mayan within thirty days after the claims bar date expired.

Likewise, there is no question Mayan's claim is an amendment—not a claim. Ordinarily, an amended claim arises out of the same transaction or occurrence underlying the original timely filed claim¹³ and cures a defect in the original claim, describes the original claim with greater particularity, or pleads a new theory of recovery on the facts in the original claim.¹⁴ It is generally held that a mere increase in the claim amount, without a change in the basis, priority,

or status, constitutes a permissible amendment.¹⁵ Mayan's claim simply changes the amount of the claim.

The sole issue before the Court is whether Mayan's amended claim was timely filed. An amended claim (i.e., not a new claim) filed after the bar date will generally relate back to the original timely filed claim.¹⁶ If that rule were applied here, Mayan's amendment would be timely because the Debtor's claim was timely filed. Some courts, however, decline to permit an amendment after the claims bar date—even though amendment should be freely permitted to cure a defect in the original claim, describe the original claim with greater particularity, or plead a new theory of recovery on the facts in the original claim—when allowing the amendment would be inequitable.¹⁷

The Eleventh Circuit considers the following five equitable factors used by other courts in deciding to allow late-filed claims as amendments to timely filed claims: (1) whether the debtor and creditors relied on the earlier proof of claim or had reason to know that a subsequent proof of claim would be filed; (2) whether other creditors would receive a windfall if the court refused to allow the amendment; (3) whether the claimant intentionally or negligently delayed in filing the amendment; (4) whether

⁹ Doc. No. 36.

¹⁰ Fed. R. Bankr. P. 3002(c).

¹¹ *Universal Am. Mortg. Co. v. Bateman (In re Bateman)*, 331 F.3d 821, 827 (11th Cir. 2003).

¹² 11 U.S.C. § 501(c); Fed. R. Bankr. P. 3004.

¹³ *Norris Grain Co. v. United States (In re Norris Grain Co.)*, 81 B.R. 103, 106 (Bankr. M.D. Fla. 1987).

¹⁴ *United States v. Int'l Horizons, Inc. (In re Int'l Horizons, Inc.)*, 751 F.2d 1213, 1216 (11th Cir. 1985).

¹⁵ *United States v. Kolstad (In re Kolstad)*, 928 F.2d 171, 175 (5th Cir. 1991). In *Kolstad*, the debtor filed a claim on behalf of the IRS, who did not file a timely claim in the bankruptcy case, pursuant to Rule 3004. Shortly before the confirmation hearing, the IRS sought to amend the claim to correct it to a higher amount. The appellate court held that the bankruptcy court had discretion to permit the IRS's amendment to the debtor's proof of claim. The court did not view the amendment as a new claim, but simply as an amendment to a filed claim to assert a higher amount. *Id.*

¹⁶ *In re Scott*, 67 B.R. 1011, 1013 (Bankr. M.D. Fla. 1986) (Paskay, J.).

¹⁷ *In re Marineland Ocean Resorts, Inc.*, 242 B.R. 748, 756 (Bankr. M.D. Fla. 1999); *In re Norris Grain Co.*, 81 B.R. at 103.

there is justification for the failure to file for an extension to the bar date; and (5) whether other equitable considerations exist that compel amendment.¹⁸ Four of the five factors weigh in favor of finding that allowing the amendment would be inequitable.¹⁹

First, the Debtor relied on the original proof of claim in confirming his plan and had no reason to know that an amended proof of claim would be filed. A \$20,800 arrearage claim would not reasonably put a debtor or creditor on notice of a subsequent proof of claim. Second, other creditors would not receive a windfall if the claim was barred because there are only \$1,000 in unsecured claims in this case. Third, Mayan was negligent in filing its amendment. Mayan sat on its rights for nine months while plan payments were being made throughout. Mayan had multiple opportunities to assert its claim or object to the plan's confirmation. But it did not. Fourth, Mayan fails to point to any other equitable considerations that would compel amendment.

Even if the equitable factors did not weigh in favor of disallowing the amendment, the res judicata effect of the Debtor's confirmed plan would preclude Mayan's subsequent attempt to amend its claim.²⁰ While amendment of a claim should be freely granted before confirmation, post-confirmation amendments are disfavored because they can, as the Eleventh Circuit has recognized, "render a plan infeasible or alter the

distribution to other creditors."²¹ For that reason, a confirmed plan should be accorded res judicata effect, and post-confirmation amendments must be justified only by the most compelling circumstances.²²

Here, Mayan fails to present any compelling circumstances warranting this Court disregarding the res judicata effect of its previous confirmation order. Mayan did not file the amended proof of claim until eleven months after the Debtor filed his proof of claim on Mayan's behalf. Meanwhile, the Debtor filed the original proof of claim, thereafter confirmed a plan based on the unchallenged claim on Mayan's behalf, and then made payments to other creditors based on the amount provided in the plan.²³ There is no evidence that Mayan 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,²⁴ and it allowed the Debtor's plan to be confirmed without objection. Instead, Mayan relies on the Eleventh Circuit's decision in *In re Bateman*²⁵ in support of its position that its amended proof of claim should be allowed.

¹⁸ *In re Int'l Horizons, Inc.*, 751 F.2d at 1218 (citing *In re Miss Glamour Coat Co.*, No. 79-civ-2605, 1980 WL 1668, at **4-5 (S.D.N.Y. Oct. 8, 1980)).

¹⁹ One of the factors—whether there is justification to seek an extension of the claims bar date—is inapplicable here. As Judge Glenn explained in *In re Jensen*, absent certain circumstances contained in Fed. R. Bankr. P. 3002(c)—not present in this case—the Court cannot extend the claims bar date in a chapter 13 case. 333 B.R. 906 (Bankr. M.D. Fla. 2005).

²⁰ *IRT Partners, L.P. v. Winn-Dixie Stores, Inc. (In re Winn-Dixie Stores, Inc.)*, 639 F.3d 1053, 1057 (11th Cir. 2011).

²¹ *Id.* at 1056.

²² *Id.* at 1056-57.

²³ *Cf. In re Bishop*, 122 B.R. 96, 96-97 (Bankr. E.D. Mo. 1990) (allowing a creditor to amend the proof of claim filed on its behalf by the debtor when the creditor attempted to amend the debtor's claim within a few days after it was filed and before confirmation) and *In re Oscar*, No. 04-18900F, 2005 WL 6522763, at *7 (Bankr. E.D. Pa. Apr. 14, 2005) (allowing a creditor to amend the proof of claim filed on its behalf by the debtor when the creditor filed a request to amend its claim "almost immediately" and well before any confirmation of the plan).

²⁴ See 11 U.S.C. § 502(a) (stating that a proof of claim is deemed allowed unless a party in interest objects); *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1553 (11th Cir. 1990) (finding that an objection that a plan misclassified the claim must be filed before plan confirmation).

²⁵ 331 F.3d 821 (11th Cir. 2003).

But *Bateman* is distinguishable from the present case on multiple grounds. In *Bateman*, the creditor timely filed a proof of claim, and the debtor failed to object before confirmation.²⁶ But the debtor listed a lower amount as the disputed amount on her proposed plan.²⁷ The plan was then confirmed without correction since the creditor did not participate at all in the confirmation process after it filed its proof of claim.²⁸ Here, unlike *Bateman*, Mayan did not file a proof of claim and instead sat on its rights for nine months after the Debtor's plan was confirmed.

Conclusion

The Debtor timely filed a proof of claim on Mayan's behalf. That claim was dealt with under the Debtor's chapter 13 plan. It would be inequitable to allow Mayan to amend its claim nine months after confirmation when it sat on its rights throughout this case. And in any event, any amendment is precluded by the res judicata effect of this Court's confirmation order.

Accordingly, it is

ORDERED:

1. The Debtor's Objection to Claim No. 3-2 is **SUSTAINED**.
2. Upon payment of the \$20,800 in pre-petition arrearages as required under his confirmed plan, the Debtor shall be deemed current on his mortgage.

DATED: May 8, 2015.

/s/ Michael G. Williamson

Michael G. Williamson
United States Bankruptcy Judge

²⁶ *Id.* at 822–23.

²⁷ *Id.* at 828.

²⁸ *Id.* at 823, 828.

Attorney Alan Borden is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.
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