

Dated: April 27, 2010
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re RAGONVA S. WALLS

Case No. 09-29225-L

Debtor.

Chapter 13

AMENDED ORDER SUSTAINING OBJECTION TO CLAIM
OF BAXTER CREDIT UNION

BEFORE THE COURT is the Debtor's objection to a proof of claim filed by Baxter Credit Union on February 11, 2010 (Claim No. 6), on the basis that the claim was late. The deadline for filing proofs of claim for creditors other than governmental creditors was December 30, 2009. The creditor asks that its tardy filing be excused on the basis that, "The bankruptcy department experienced a change in personnel coupled with a large increase in BK filings during the months of September and October 2009 which resulted in a delay in BCU's proof of claim filing." Letter of Brian Nuttall, Bankruptcy Specialist for Baxter Credit Union, dated March 9, 2010, Tr. Ex. 1. The Debtor responds that Mr. Nuttall informed counsel on February 16, 2010, that, "he had taken over

the job 10/08/09 and didn't realize that the claims hadn't been filed." Notes from telephone conference dated February 16, 2010, Tr. Ex. 2. The creditor argues that the late-filed claim should be allowed on the basis of excusable neglect.

Unlike in Chapter 7, if an objection is made, late-filed claims in Chapter 13 cases are not allowed. *See* 11 U.S.C. § 502(b)(9). *Cf.* 11 U.S.C. § 726(a)(2)(C), which permits the payment of late-filed claims in Chapter 7 cases if the holder of the claim did not have notice or actual notice of the case in time to timely file a proof of claim and proof of the claim is filed in time to permit payment of the claim. This is so because of the necessity for the trustee to determine the amount of distributions to be made creditors and to promptly commence distribution of plan payments to them. *See In re Bennett*, 278 B.R. 764, 766 (Bankr. M.D. Tenn. 2001);

The deadline for filing proofs of claim in Chapter 13 cases is established by Bankruptcy Rule 3002(c). Fed. R. Bankr. P. 3002(c). With some exceptions not applicable here, in Chapter 7, 12, and 13 cases, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors.. *Id.* The first date set for the meeting of creditors in this case was October 1, 2009. *See* Doc. No. 6. Ninety days thereafter was December 30, 2009. Claim number 6, filed by Baxter Credit Union on February 11, 2010, was not timely filed.¹ Baxter Credit Union argues that the claim should be allowed nonetheless because its failure to timely file the claim resulted from excusable neglect.

Bankruptcy Rule 9006(b)(3) specifies that the time for taking action under Rule 3002(c) may be enlarged only to the extent and under the conditions stated in that rule. Fed. R. Bankr. P.

¹ Baxter Credit Union actually filed two proofs of claim on February 11, 2010. The Debtor has elected not to object to Claim No. 5.

9001(b)(3). Rule 3002(c) does not permit the enlargement of time for filing proofs of claim in Chapter 13 cases on the basis of excusable neglect. *See, e.g., In re Nyeste*, 273 B.R. 148, 149 (Bankr. S.D. Ohio 2001); *In re Bennett*, 278 B.R. 764, 766 (Bankr. M.D. Tenn. 2001); *In re Brogden*, 274 B.R. 287; *see also Pioneer Inv. Services. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 113 S.Ct 1489, 123 L.Ed.2d 74 (1993)(Permitting late-filed claims in Chapter 11 cases on the basis of excusable neglect, but noting that late-filed claims are not permitted in Chapter 7 cases on that basis because Bankruptcy Rule 3003(c) rather Rule 3002(c) applies in Chapter 11 cases).

Even if the excusable neglect exception did apply to the late-filing of proofs of claim in Chapter 13 cases, the creditor has failed to establish *excusable* neglect in this case. Baxter Credit Union simply overlooked the necessity for filing proofs of claim. Mr. Nuttall was employed some 83 days prior to the claims deadline. Without any information about Mr. Nuttall's prior experience and/or knowledge concerning the requirement for filing proofs of claim in Chapter 13 cases, and without knowing the actual volume of bankruptcy case filings experienced by Baxter Credit Union in September and October 2009, the court can only conclude that the late-filing of the proof of claim was negligent but not excusable.

For the foregoing reasons, the objection to the proof of claim of Baxter Credit Union is SUSTAINED and the claim is DISALLOWED in its entirety.

cc: Debtor
Debtor's Attorney
Creditor
Creditor's Attorney
Trustee