

Dated: January 25, 2023
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
Western Division

In re
ROCKIE LANE HILLIARD,
Debtor.

Case No. 20-20371
Chapter 13

OPINION AND ORDER DISALLOWING CLAIM 15-1 WITHOUT PREJUDICE

This case came on for hearing before the Court on October 26, 2022, on Rockie Lane Hilliard's ("Debtor's") *Objection to Claim 15-1*.¹ Debtor contends that Proof of Claim 15-1 should be disallowed because there is no debt owed to Jazmine Tricoche ("Creditor"). The Court took this matter under advisement. Upon review of the record, filed documents, consideration of the argument by the parties, and relevant case law, the Court sustains Debtor's objection to Proof of Claim 15-1 and disallows Proof of Claim 15-1, without prejudice.

¹ ECF No. 54.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 15, 2020, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code.² On April 6, 2020, Debtor's plan was confirmed.³ Debtor did not list Creditor on the schedules because the claim arose post-petition and post-confirmation pursuant to a contract dispute.

On January 11 and 25, 2021, Creditor and Debtor entered into an agreement to create and install signs for the Creditor's two businesses in preparation for her grand opening on March 19, 2021.⁴

A few months later, Creditor sued Debtor in Shelby County General Sessions Court. Creditor contends that she obtained a default judgment against Debtor on September 8, 2021, in the amount of \$6,524.50.⁵ On March 29, 2022, Creditor issued a levy.⁶

On June 6, 2022, Creditor filed her proof of claim.⁷ Creditor is proceeding *pro se* in the bankruptcy case. Creditor learned of Debtor's bankruptcy case about a week before she filed her proof of claim.⁸ On June 8, 2022, an *Administrative Order Allowing Late Filed Claim* was entered, giving Debtor thirty (30) days to object to proof of claim 15.⁹ On July 8, 2022, Debtor

² ECF No. 1.

³ ECF No. 34.

⁴ At the hearing held on October 25, 2022, Debtor presented evidence, which included two contracts between the Debtor and Creditor for January 11, 2021, and January 25, 2021, for the service of installing and making the signs.

⁵ Hearing on *Objection to Claim 15*, Oct. 25, 2022, at 1:38 PM, 1:47 PM, *In re Hilliard*, 20-20371, Ex. 2. An actual copy of the judgment was never presented to the bankruptcy court. Rather, Creditor provided a copy of General Sessions court computer screen, showing the entry of a judgment.

⁶ *Id.* at 1:36 PM, Ex. 1.

⁷ Proof of Claim 15-1.

⁸ Hearing on *Objection to Claim 15*, Oct. 25, 2022, at 2:14 PM.

⁹ ECF No. 50.

filed a skeleton objection to the proof of claim stating that “no debt is owed to the aforementioned creditor and that Debtor has no knowledge of the debt.”¹⁰ On August 5, 2022, Creditor filed a response to Debtor’s objection stating Debtor “is aware of the debt owed to the creditor.”¹¹

On September 13, 2022, the Court held a preliminary hearing on Debtor’s *Objection to Claim 15-1*. Debtor explained that he did not owe a debt to Creditor.¹² Debtor further argued that the Creditor obtained the state court judgement in violation of the automatic stay because the Creditor did not file a motion to obtain relief from the automatic stay.¹³ Debtor believes that although Creditor obtained a judgment, the judgment is voidable.¹⁴ Creditor explained that Debtor was not present when the judgment was awarded.¹⁵ Creditor further explained the judgment was for “partial refund of improper signs that he installed that were hazardous and dangerous and not completed on [her] building on Summer Ave for both of [her] businesses.”¹⁶ The matter was continued to allow parties to present evidence.

On October 25, 2022, the Court conducted an evidentiary hearing where both parties presented documentary and testimonial evidence. Debtor testified and presented two contracts signed by the Debtor and Creditor that outlined the cost of the Debtor’s services.¹⁷ Creditor

¹⁰ ECF No. 54.

¹¹ ECF No. 57.

¹² Hearing on *Objection to Claim 15*, Sept. 13, 2022, at 11:16 AM.

¹³ *Id.* at 11:21 AM.

¹⁴ *Id.* at 11:22 AM.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Hearing on *Objection to Claim 15*, Oct. 25, 2022, at 1:22 PM.

testified and presented two exhibits, “screenshots” of “Case/Party Account History” and “Judgment Details,” which she states show the judgment against the Debtor and the amount awarded.¹⁸ The Creditor also presented evidence of a levy issued on March 29, 2022 against the Debtor.¹⁹ Debtor’s counsel further alleged there was fraud in the state court proceeding.²⁰ Debtor presented no evidence to support the “fraud” argument. Creditor agreed that Debtor was not present at the hearing but explained that she presented evidence and provided statements establishing Debtor’s liability and amount of debt.²¹ Creditor further explained that the judgment amount was based on the cost to have the signs repaired by another company and lightbulb replacements (based on estimates from the other company).²² The Court took this matter under advisement.

II. DISCUSSION

A. Operation of the Automatic Stay Against Post-Petition Debts

Section 362(a) of the Bankruptcy Code governs the automatic stay when debtors file for bankruptcy.²³ The automatic stay is a fundamental protection for debtors during their bankruptcy cases.²⁴ The automatic stay is immediately triggered once debtor files a bankruptcy petition.²⁵

¹⁸ *Id.* at 1:38 PM.

¹⁹ *Id.* at 1:36 PM.

²⁰ *Id.* at 1:36 PM (Debtor’s counsel argued the Creditor had someone stand in Debtor’s place during the state court proceeding but offered no evidence to support this argument).

²¹ *Id.* at 1:47 PM.

²² *Id.* at 1:48 PM.

²³ Section 362(a) states: “[A] petition filed under section 301, 302, or 303 of this title..., operates as a stay applicable to all entities[.]” 11 U.S.C. § 362(a) (2022).

²⁴ *In re Smith*, 636 B.R. 521, 528 (Bankr. E.D. Tenn. 2021) (explaining the importance and purpose of the automatic stay).

²⁵ *Id.*

The automatic stay is triggered “regardless of whether the creditor is aware that the petition has been filed.”²⁶ The automatic stay prohibits creditors from pursuing or continuing any action against debtors for prepetition debts and property of the estate.²⁷

The automatic stay “does not operate to stay proceedings or claims that arise post-petition unless the creditor seeks to enforce such claims against property of the estate.”²⁸ “A creditor can violate the automatic stay by attempting to collect post-petition debts if the creditor attempts to collect the debt from property of the estate.”²⁹ In a Chapter 13 case, a debtor’s wages are considered “property of the estate.”³⁰

Here, the Debtor filed his petition on January 15, 2020.³¹ Creditor’s purported default judgment against the Debtor was obtained on September 8, 2021, and arose from a post-petition contract dispute involving Debtor’s business.³² Creditor stated that she issued a levy on March 29, 2022.³³ On June 6, 2022, Creditor filed her proof of claim.³⁴ At the hearing on October 25, 2022, Creditor explained that she learned of the Debtor’s chapter 13 case about a week before

²⁶ *In re Childers*, 311 B.R. 232, 235 (Bankr. E.D. Wisc. 2004) (purpose of the automatic stay).

²⁷ *See* 11 U.S.C. § 362(a) (2022); *Smith*, 636 B.R. at 528.

²⁸ *See id.*; *In re Cano*, 410 B.R. 506, 523 (Bankr. S.D. Texas 2009) (citing *Bellini Imps. Ltd. V. Mason & Dixon Lines, Inc.*, 944 F.2d 199, 201 (4th Cir. 1991) (explaining how the automatic stay applies to post-petition debts).

²⁹ *In re Cano*, 410 B.R. at 524.

³⁰ *See* 11 U.S.C. § 1306(a)(2) (2023) (“Property of the estate includes, in addition to the property specified in section 541 of this title . . . earnings from services performed by the debtor after commencement of the case but before the case is closed, dismissed, or convert to a case under chapter 7, 11, or 12 of this title, whichever occurs first.”); *In re Gellington*, 363, 497, 501 (Bankr. N.D. Tex. 2007) (explaining debtor’s post-confirmation wages are considered property of the estate).

³¹ ECF No. 1.

³² Creditor’s Ex. 2.

³³ Creditor’s Ex. 1.

³⁴ Proof of Claim 15-1.

she filed her proof of claim.³⁵

Although obtaining a judgment against the Debtor resulting from a post-petition and post-confirmation contract dispute is not a technical violation of the automatic stay, the Creditor's actions to collect on her judgment was in violation of the automatic stay to the extent she is seeking to collect from property of the estate. The Creditor was presumably seeking payment from Debtor's earnings during Debtor's Chapter 13 case. Ideally Creditor should have first sought the entry of an order granting relief from the automatic stay (or a determination regarding the applicability of the automatic stay). Creditor, however, is without the assistance of counsel, and once she learned about of the Chapter 13 case, she stopped her collection efforts and filed her proof of claim. Consequently, Debtor's initial argument that the claim should be disallowed because the automatic stay was violated fails based on the unique facts of this case.

B. Post-Confirmation Proof of Claim 15-1

Filing and Allowance of Post-petition Claims Pursuant to 11 U.S.C. § 1305

Section 1305 of the Bankruptcy Code governs the filing and allowance of post-petition claims. This section of the code applies to two types of claims, "(1) for taxes that become payable to a governmental unit while the case is pending; or (2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan."³⁶ Consumer debts are "debt[s] incurred by an individual primarily for a personal, family, or household purpose."³⁷

Section 1305 does not apply in this case. The post-petition obligation asserted by the Creditor arose from a contract dispute. Therefore, the filed claim is not allowable pursuant to

³⁶ 11 U.S.C. § 1305(a)(1) & (2).

³⁷ *In re Bagby*, 218 B.R. 878, 888 (Bankr. W.D. Tenn. 1998) (describing consumer debts).

section 1305 of the Bankruptcy Code.³⁸

Filing a Proof of Claim under Federal Bankruptcy Rule 3001

Bankruptcy Rule 3001 governs the filing of a proof of claim, and subparagraph

3001(c)(1) states:

When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.³⁹

A properly filed proof of claim will include the creditor's name and address, basis of claim, date debt incurred, amount of claim, classification of claim, and supporting documents.⁴⁰ "Failing to attach the writing required by Bankruptcy Rule 3001(c) 'does not automatically invalidate the claim; it does, however, deprive the claim of *prima facie* validity under Bankruptcy Rule 3001(f).'"⁴¹ Since the presumption of validity is lost without supporting documents, the burden shifts to the creditor to prove the validity of the claim. "[T]his initial burden is fulfilled by the presentation of any evidence of the claim."⁴² The objecting party must then present evidence to prove the claim's deficiency.⁴³

Here, the Creditor filed her proof of claim without supporting documents. At the evidentiary hearing on October 25, 2022, the Creditor's evidence consisted of "screenshots" of

³⁸ The case law surrounding the allowance or disallowance of proofs claims for post-petition obligations (except for tax and consumer obligations) centers on debtors who are trying to get post-petition creditors to be treated the chapter 13 plans. Here, this post-petition creditor has filed a proof of claim and appears to be willing to have her post-petition obligation be a part of the Debtor's chapter 13 case, but the Debtor object to the claim.

³⁹ F. R. Bankr. P. 3001(c)(1).

⁴⁰ *In re Kemmer*, 315 B.R. 706, 712 (Bankr. E.D. Tenn. 2004) (explaining how to file a proof of claim).

⁴¹ *Id.* at 713.

⁴² *Id.*

⁴³ *Id.*

the State court's computers which purports to be the existence of a judgment and details of the judgment.⁴⁴ The lack of supporting documentation results in a loss of presumption of validity of the proof of claim. Evidence of "screenshots" presented at the hearing is insufficient to support the claim pursuant to Bankruptcy Rule 3001(c). Accordingly, Proof of Claim 15-1 is disallowed without prejudice to the Creditor filing amended proof of claim with appropriate attachments.

Debtor argued that the alleged judgment was obtained through fraud but failed to present evidence of fraud.⁴⁵ Debtor also disputed the underlying amount of the Debtor's claim. This ruling does not address the merits of the underlying post-petition obligation, and whether the Creditor may continue her collection efforts after the Debtor has completed this Chapter 13 case (or if this case gets dismissed without completion of the Chapter 13 plan). The Creditor never presented a copy of the judgment to the Court (with the proof of claim or at the evidentiary hearing), and therefore this ruling simply addresses that technical failure, and does not address Debtor's contention that the purported judgment should not have been entered. The disallowance of Proof of Claim 15-1 is also without prejudice Debtor and Creditor coming to a resolution how an amended proof claim could be treated during the remaining months of this Chapter 13 case.

III. CONCLUSION

For the reasons stated, the Court concludes that Jazmine Tricoche's ("Creditor") Proof of Claim 15-1 should be disallowed without prejudice. It is **ORDERED:**

1. The Debtor's Objection to Claim 15-1 is sustained in part.
2. Proof Claim 15-1 is disallowed without prejudice.

⁴⁴ *Hearing on Objection to Claim 15*, Oct. 25, 2022, at 1:38 PM.

⁴⁵ *Hearing on Objection to Claim 15*, Oct. 25, 2022, at 1:36 PM.

cc: Debtor
Debtor's attorney
Creditor Jazmine Tricoche
United States Trustee
All Creditors on the Matrix