



Dated: May 06, 2021
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
JACK W. HARANG,
Debtor.

Case No. 18-24543-L
Chapter 7

JACK W. HARANG,
Objector,
v.
HENRY T. DART and
HENRY DART, ATTORNEYS AT LAW, P.C.,
Claimants.

Objections to Claims No. 2 and 3
ECF Nos. 234, 243, 250

ORDER ON STANDING OF DEBTOR TO OBJECT TO CLAIMS

BEFORE THE COURT is the question of whether a debtor in a Chapter 7 case has standing to object to proofs of claim filed against his bankruptcy estate.

BACKGROUND FACTS

The Debtor commenced this case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on June 6, 2018. ECF No. 1. Bettye Sue Bedwell was appointed Trustee in

Bankruptcy on the same day. ECF. No. 6. The Trustee has not joined in the objection discussed below.

Henry T. Dart filed Proof of Claim number 2 and Henry Dart, Attorneys at Law, PC filed Proof of Claim number 3 on November 11, 2018. (Together, Dart and his law firm are referred to as “Dart”). Both claims are in the amount of \$1,628,696.14. Both claims are based upon a Final Judgment entered against the Debtor, Jack W. Harang, and Jack W. Harang, APLC in a case styled *Advocate Financial, LLC v. Henry Dart, Attorneys at Law, PC*, No. 2007-11565, 22nd Judicial District Court, St. Tammany Parish, Louisiana, January 9, 2018. Claims Register, Nos. 2-1 and 3-1.

The Debtor filed his *Objection to Creditor’s Claim No. 2 and Creditor’s Claim No. 3* on March 26, 2021. ECF No. 234. The Debtor filed a memorandum in support of his objections on March 29, 2021. ECF No. 236. The Clerk of Court gave notice of the objection and set a pretrial conference for April 29, 2021. ECF Nos. 238, 239.

Dart filed a timely “*Reply*” to the Objection on April 22, 2021, in which he raised the question of the Debtor’s standing to object to the proofs of claim. ECF No. 243.

The Debtor filed a “*Response to Creditor’s Reply*” on April 28, 2021. ECF No. 250.

The court conducted a pretrial conference on April 29, 2021, at which Dart, represented by Mr. Dart, again raised the question of the standing of the Debtor to object to proofs of claim. The parties submitted this preliminary issue to the court for decision.

The Debtor listed liabilities well in excess of his assets in his Voluntary Petition. James E. Bailey, counsel for the Trustee, appeared at the pretrial conference and informed the court that the Trustee does not anticipate that there will be assets available for distribution in excess of the claims filed against the estate. Mr. Bailey further stated that at the present time, the assets of the estate

consist of \$41,441.57.¹ For this reason, and while other litigation is still pending, the Trustee has not found it prudent to initiate the claims objection process.

The United States Treasury has filed a proof of claim in the total amount of \$1,329,242.62. Claims Register, No. 1-1. It asserts that \$11,266.75 of its claim is entitled to priority pursuant to 11 U.S.C. § 507(a)(8). Claims entitled to priority under section 507(a)(8) are excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(A). The United States may maintain that other portions of its claim are excepted from discharge pursuant to section 523(a)(1)(C). *See United States' Answer, in Harang v. United States*, Adv. Proc. No. 18-00213, ECF. No. 8 (October 10, 2018). No objection has been filed with respect to this proof of claim, but the Debtor filed a *Complaint to Determine Dischargeability of Personal Income Taxes* on August 30, 2018, in the referenced adversary proceeding. The court entered an *Order of Dismissal with Prejudice* on February 17, 2021, at the request of the Debtor/Plaintiff, but the Debtor/Plaintiff filed a *Notice of Appeal* from the court's order, which is pending before the Bankruptcy Appellate Panel for the Sixth Circuit. The claims of the United States for taxes are not among those that require a timely complaint and adjudication to be excepted from discharge (*see* 11 U.S.C. § 523(c)), so it appears that at least \$11,266.75 of the United States' claim is excepted from discharge. The court is not finally deciding this issue, which is not before the court, but is making note of it for reasons that will become apparent below.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy

¹ Proofs of claim have been filed in the amount of \$4,852,983.99. Even if the duplicate claim of Henry Dart, Attorneys at Law, PC, were eliminated, the claims against the estate far exceed the assets available for distribution.

judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The allowance or disallowance of claims against the estate is a core proceeding. 28 U.S.C. § 157(b)(2)(B). The bankruptcy court has authority to enter a final order allowing or disallowing a claim subject only to appellate review. *See* 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because this matter arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

ISSUE PRESENTED

The only issue before the court at this time is the question of whether the Debtor has standing to object to the Dart proofs of claim.

DISCUSSION

Consideration of who has standing to object to a proof of claim begins with section 502(a) of the Bankruptcy Code, which provides: “A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects.” 11 U.S.C. § 502(a). The term “party in interest” is not defined in the Bankruptcy Code but is generally understood to mean that the party has a pecuniary interest in the outcome of the controversy. *In re Malsch*, 417 B.R. 458, 461 (Bankr. N.D. Ohio 2009). The Bankruptcy Appellate Panel for the Sixth Circuit has described it thus:

[Party in interest] has been described as “an expandable concept depending on the particular factual context in which it is applied.” *In re River Bend–Oxford Associates*, 114 B.R. 111, 113 (Bankr. D. Md. 1990). In various contexts, a “party in interest” has been held to be one who has an actual pecuniary interest in the case, *Kapp v. Naturelle, Inc.*, 611 F.2d 703, 706 (8th Cir.1979); anyone who has a practical stake in the outcome of a case, *In re Amatex Corporation*, 755 F.2d 1034, 1041–44 (3rd Cir.1985); and those who will be impacted in any significant way in the case, *In re Johns–Manville Corp.*, 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984).

Normali v. O'Donnell (In re O'Donnell), 326 B.R. 901 (Table), 2005 WL 1279268 (6th Cir. BAP 2005), citing *In re Cowan*, 235 B.R. 912, 915 (Bankr. W.D. Mo. 1999). In most cases, the chapter 7 trustee has standing to object to proofs of claim and the debtor does not. *Id.* at *5. This is true because in most cases there are insufficient assets in the chapter 7 estate to pay the claims of the creditors leaving nothing to return to the debtor that would give him or her a pecuniary interest in the outcome of claims objections. There are two exceptions to this general rule, however. "A chapter 7 debtor may file an objection to a proof of claim: (1) where assets are more than sufficient to pay all administrative expenses and creditors in full; or (2) where the claim involved may not be discharged." *O'Donnell*, at *6, citing *Willard v. O'Neil (In re Willard)*, 240 B.R. 664 (Bankr. D. Conn. 1999). In *O'Donnell*, the Bankruptcy Appellate Panel held that a debtor may object to a proof of claim where the claim involved may never be discharged because, in that case, "the debtor has a direct pecuniary interest in the outcome of the action." *Id.* at *6.

Some courts have expanded the latter exception to permit debtors to object to a claim for administrative expenses if *any* of the claims against the estate is nondischargeable. *McGuirl v. White*, 86 F.3d 1232; 1235 (D.C. Cir. 1996) (Debtor objected to trustee's claim for administrative expenses); *Mulligan v. Sobiech*, 131 B.R. 917 (S.D.N.Y. 1991) (Trustee filed affidavit supporting debtor's objection to administrative expense claim filed by undersecured postpetition lender); *In re Moss*, 320 B.R. 143 (Bankr. E.D. Mich. 2005) (Debtor had standing to object to trustee's fee application). These courts reasoned that reduction in the amounts of administrative expenses to be paid by the estate would result in a higher distribution to creditor's claims, thus reducing the debtors' liabilities on their nondischargeable claims. In two of the cited cases, the Debtor was objecting to the *trustee's* claim for fees or expenses. It is not reasonable to expect that a trustee will object to his or her own fee application and thus the willingness of the courts to recognize the

debtor as the only person with a pecuniary interest in the outcome of that objection is understandable. In the second case, the trustee essentially joined in the debtor's objection by filing an affidavit in support of it. The theory that the debtor has standing to object to claims when there are nondischargeable claims against him has been criticized, however, on the basis that standing in bankruptcy requires that the court's order affect the debtor's pecuniary interest "directly and adversely" and that allowing standing to every debtor who happens to be subject to one or more nondischargeable claims would needlessly interfere with the administration of the bankruptcy estate. *In re Adams*, 424 B.R. 434, 436-37 (Bankr. N.D. Ill. 2010).

The Court of Appeals for the Sixth Circuit has not addressed the precise issue before the court but in an unpublished opinion has addressed the question of *appellate* standing to seek review of an order finding that the debtor was not a party in interest for purposes of section 502(a). *Khan v. Regions Bank (In re Khan)*, 544 Fed. Appx. 617 (6th Cir. 2013) (unpublished). The bankruptcy court in *Khan* held that a debtor who had no reasonable possibility of receiving a surplus once all her claims were paid was not a "party in interest" for purposes of section 502(a). *Khan v. Regions Bank (In re Khan)*, 2011 WL 4543962, at *4 (Bankr. E.D. Tenn. Sept. 29, 2011). The debtor appealed to the district court, which dismissed the appeal based upon the debtor's lack of appellate standing using the "person aggrieved" standard, which the court described as limiting standing from bankruptcy court orders to persons with a direct, pecuniary interest in the order. *Khan v. Regions Bank (In re Khan)*, 2012 WL 5381444, at *1 (E.D. Tenn. 2012). The court of appeals likewise used the "person aggrieved" standard to dismiss the debtor's further appeal. Although the question of whether a debtor with nondischargeable debts may object to a proof of claim was not before the court, the court of appeals did emphasize that in order to be considered a person aggrieved, the petitioner must prove that he has a financial stake in the order meaning that he is

“directly and adversely affected *pecuniarily* by the order.” 544 Fed. Appx. at 619 citing *In re Lunan*, 523 Fed. Appx. 339, 340 (6th Cir. 2013) (emphasis in the original). “A party may appeal an action of the bankruptcy court when that decision ‘diminishes a person’s property, increases his burdens, or impairs his rights.’” *Id.* at 620, quoting *In re Moran*, 566 F.3d 676, 681 (6th Cir. 2009) (quoting *Fid. Bank. Nat’l Ass’n v. M.M. Grp., Inc.*, 77 F.3d 880, 882 (6th Cir. 1996)); and *In re Troutman Enterprises*, 286 F.3d 359, 364 (6th Cir. 2002).

The Sixth Circuit has emphasized that the person aggrieved standard requires that a debtor have a direct pecuniary interest in the outcome of the appeal. It would be odd indeed if the Sixth Circuit adopted one standard for determining whether a debtor has standing to object to a proof of claim and another to determine whether the debtor has standing to appeal from an order denying him standing to object to a proof of claim. I believe that should the question come before the court of appeals, it would apply the person aggrieved standard to the question of whether a debtor has standing to object to a proof of claim when his only interest in the outcome of the claim is the possibility of increasing the pool of assets to be paid to other creditors thus reducing his liability on any nondischargeable claims. Although that is a pecuniary interest, it is a remote rather than a direct one. As the court in *Adams* noted, to permit the debtor to object to proofs of claim in every case in which there are nondischargeable claims would needlessly disrupt the administration of bankruptcy cases.

The Debtor seems to concede the remoteness of his interest in the Dart claims when in his *Response* he says, “[I]f Debtor’s Objection is taken as nothing more than information delivered to the Court prompting the Court to exercise, *sua sponte*, the Court’s obligation to insure that the Court does not inadvertently grant relief on a non-justiciable claim, the lack of jurisdiction of the Court to adjudicate the Dart claims has been raised and is before the Court for decision.” ECF

No. 250, pp. 1, 3. The Debtor did not directly respond to Dart's objection to his standing to bring objections to claims. He has not articulated and addressed the concern that the court raises and discusses in this opinion. The Debtor's concern is the underlying basis for the Dart claims. Those concerns will be raised, if at all, when the Trustee determines that there will be sufficient assets to make a distribution to creditors. Until that time, this court declines the Debtor's invitation to independently review the Dart claims.

CONCLUSION

For the foregoing reasons, the Debtor's objections to the Dart claims are DENIED for lack of standing.

cc: Debtor
Attorney for Debtor
Claimant
Attorney for Claimant
Chapter 7 Trustee
United States Trustee
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