UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Elizabeth E. Brown

In re: Ryan B. Niebur Stacie K. Niebur, Debtors.	Case No. 18-10568 EEB Chapter 12
In re: Niebur Farms, Inc., Debtor.	Case No. 18-10570 EEB Chapter 12 **Jointly Administered Under Case No. 18-10568 EEB**

ORDER DENYING CLAIM OF CREDITOR NUTRIEN IN CORPORATE DEBTOR CASE

THIS MATTER comes before the Court on the Motion for Allowance of Claim ("Motion"), filed by creditor Nutrien Ag Solutions, Inc., formerly known as Crop Production Services Inc. ("Nutrien").[1] Nutrien holds an unsecured claim against the individual Debtors and the corporate Debtor, but filed a proof of claim in only one of these jointly administered cases. Nutrien asks the Court to deem its timely filed proof of claim in the individual Debtors' case to also be an allowed proof of claim in the corporate Debtor's case by treating it as either a claim amendment or an informal proof of claim. For the reasons set forth below, the Court denies the Motion.

I. BACKGROUND

The Debtors filed these chapter 12 cases on January 26, 2018. Prior to the petition date, Nutrien had sued both the corporate Debtor and the individual Debtors in state court. It obtained a judgment against all three, jointly and severally, in the amount of $1,030,107, plus interest.[2] Both the individual Debtors and the corporate Debtor listed this debt on their schedules as undisputed.

[1] Crop Production Services states that it changed its name to Nutrien Ag Solutions, Inc. on July 1, 2018. For ease of reference, the Court refers to this creditor as "Nutrien" throughout.

[2] The Court notes that the state court judgment in Nutrien's favor is dated January 31, 2018, which is five days *after* the petition date. Nutrien did not obtain relief from stay prior to obtaining the judgment and, because it entered in violation of the automatic stay, the judgment is likely void. However, the individual Debtors did not object to Nutrien's timely proof of claim on that basis and it is now an allowed claim in that case. The Court need not reach the issue of the enforceability of the state court judgment in the corporate Debtor's case because, for the reasons stated below, the Court declines to allow Nutrien's claim in that case on other grounds.

On January 29, 2018, the Court issued a Notice of Chapter 12 Bankruptcy Case in both cases and mailed it to all creditors of record. Both Notices stated that the claims bar date was April 6, 2018. The certificates of service for the Notice indicate that the Court's mailing service "bypassed" the address listed for Nutrien because that address (9915 W 21st St N STE C, Wichita, KS 67205-1895) was identified by the U.S. Postal Service as undeliverable. Nevertheless, Nutrien does not contend that it received insufficient notice of the Debtors' cases or of the bar dates. Nutrien was obviously aware of the individual Debtors' bankruptcy case because counsel for Nutrien entered his appearance in that case on February 2, 2018. And, as mentioned, on February 13, 2018, counsel filed a proof of claim on behalf of Nutrien in the individual Debtors' bankruptcy case. It simply failed to file a similar proof of claim in the corporate Debtor's case.

On February 14, 2018, the Debtors filed requests to jointly administer their two cases under the lead case of the individuals, No. 18-10586. The Court granted those requests. In its Orders Granting Motion for Joint Administration entered in both cases on February 16, 2018, the Court indicated that most pleadings should be filed in the lead case. However, "[a]ll proofs of claim shall be filed in the specific case to which they apply." Orders Granting Motions for Joint Administration, ¶ 2, Feb. 16, 2018, ECF No. 23 (Case No. 18-10568), ECF No. 25 (Case No. 18-10570).

The Debtors eventually confirmed a joint chapter 12 plan on September 10, 2018. That plan classified the unsecured creditors of the individual Debtors and those of the corporate Debtor into two separate classes. It further provided that the individual Debtors and the corporate Debtor would each pay $50,000 to the chapter 12 trustee for payment to their respective class of allowed unsecured claims on a pro rata basis.

II. DISCUSSION

There are several Bankruptcy Rules and Bankruptcy Code sections that govern the filing of proofs of claim. Section 501[3] of the Code provides that creditors "may" file a proof of claim and § 502 provides that "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. §§ 501, 502(a). The deadline for filing proofs of claim is set forth in Fed. R. Bankr. P. 3002.[4] In a chapter 12 case, that deadline may be extended only under the specific circumstances enumerated in Rule 3002(c). *See Jones v. Arross*, 9 F.3d 79, 81 (10th Cir. 1993) (concluding the excusable neglect standard in Rule 9006 does not apply to the claims bar date in chapter 12 cases). Nutrien does not argue, and this Court does not find, any basis under Rule 3002(c) to extend the proof of claim deadline in this case.

[3] All references to "Section" or "§" refer to Title 11, United States Code, unless expressly stated otherwise.

[4] Hereafter, all references to "Bankruptcy Rule" or "Rule" refer to the Federal Rules of Bankruptcy Procedure, unless expressly stated otherwise.

The timely filing of a proof of claim is important because, under Rule 3021, and consistent with § 1226(a), a trustee may only make distributions under a confirmed plan to creditors "whose claims have been allowed." Fed. R. Bankr. P. 3021. Since no one objected to Nutrien's timely filed claim in the individual Debtors' case, it is deemed allowed and it is entitled to receive its pro rata share from that estate. But lacking a timely filed claim in the corporate case, Nutrien will not share in the corporate Debtor's distributions.

The fact that these three Debtors filed a joint plan and that their bankruptcy cases were jointly administered does not change this conclusion. Joint administration does not cause a substantive consolidation of the Debtors' estates. Rather, joint administration is merely a "procedural tool" that "does not create substantive rights." *Reider v. FDIC (In re Reider)*, 31 F.3d 1102, 1109 (11th Cir. 1994). "An order of joint administration does not give the creditors of one entity a claim in the other, nor does it imply that they should be treated as such." *In re Continental Cast Stone, LLC*, 625 B.R. 203, 211 (Bankr. D. Kan. 2020). Further, the Debtors' joint plan specifies distinct treatments for the allowed unsecured creditors of the individual Debtors and those of the corporate Debtor.

Faced with these realities, Nutrien advances two arguments in support of its efforts to obtain an allowed claim in the corporate Debtor's case.

A. Amended Claim

Nutrien argues that it should be permitted to "amend" its existing proof of claim against the individual Debtors to include a claim against the corporate Debtor. Nutrien points to Tenth Circuit precedent that holds that amendments to proofs of claim should be treated liberally, as "leave to amend in a straight bankruptcy proceeding is freely allowed where the purpose is to cure a defect in the claim as originally filed." *Unioil v. Elledge (In re Unioil, Inc.)*, 962 F.2d 988, 992-93 (10th Cir. 1992). The problem with this argument is that it presumes that Nutrien has a proof of claim in the corporate Debtor's case that it may amend. However, its proof of claim in the individual Debtors' case has no legal effect in the corporate Debtor's case. The Orders for Joint Administration were clear that proofs of claim had to be filed in each particular case. Without a proof of claim, there can be no amendment. As stated by the Tenth Circuit, "[t]he court should not allow truly new claims to proceed under the guise of amendment." *In re Unioil,* 962 F.2d at 992.

B. Informal Proof of Claim

Second, Nutrien argues that its timely proof of claim filed in the individuals' case can be deemed an "informal" proof of claim in the corporate case. While neither the Code nor the Rules recognize the filing of an "informal" proof of claim, courts have deemed documents filed before the bar date to be an "informal" proof of claim under certain circumstances. "An informal claim is some document that was filed with the Court that is not, and was not intended to be, a proof of claim." *In re Spresser*, 2011

WL 2083964 at *2 (Bankr. D. Kan. May 19, 2011), *aff'd*, 2012 WL 124855 (D. Kan. Jan. 17, 2012).

1. The Test

The Tenth Circuit has adopted a five-part test to determine the existence of an informal proof of claim:

1. the [informal] proof of claim must be in writing;

2. the writing must contain a demand by the creditor on the debtor's estate;

3. the writing must express an intent to hold the debtor liable for the debt;

4. the [informal] proof of claim must be filed with the Bankruptcy Court; and

5. based on the facts of the case, it would be equitable to allow the amendment.

Clark v. Valley Fed. Savings & Loan Assoc. (In re Reliance Equities, Inc.), 966 F.2d 1338, 1345 (10th Cir. 1992). The party seeking to assert an informal proof of claim bears the burden of proof on these elements. *Id*.

a) Factors 1-3: A Written Demand with Intent to Hold an Estate Liable for a Claim

Nutrien's proof of claim filed in the individuals' case satisfies the writing requirement. It is an official bankruptcy proof of claim form (Official Form 410). But in this case, at the top of the form, Nutrien lists the names of the individual debtors, not the corporate debtor. While the form lists the amount of the debt, it nowhere lists Niebur Farms. Inc. It did include attachments—a summary page and a copy of the state court judgment. The summary page indicates that the Nutrien's claim arises from a state court judgment and lists the judgment amount and the amount of accrued post-judgment interest. However, it does not mention the corporate Debtor. It is only the state court judgment that mentions Niebur Farms, Inc. On that document, Niebur Farms, Inc. is listed as a defendant in the caption and the body of the judgment states, "Judgment shall enter in favor of the Plaintiff and as against the Defendants, jointly, severally, and individually in the amount of $1,030,107.99." Proof of Claim 4-1, Ex. A, at 2.

Without a doubt, the state court judgment made the corporate Debtor liable for this debt. However, the proof of claim taken, as a whole, does not clearly make a demand or express an intent to make the *corporate* Debtor's bankruptcy estate pay that claim. In *Liakas v. Creditors' Committee, of Deja Vu, Inc.*, 780 F.2d 176, 178 (1st Cir. 1986), the First Circuit held that a creditor's filing of a proof of claim in the bankruptcy case of a related entity did not amount to the filing of an informal proof of claim in subject debtor's case. Thus, the Court concludes that Nutrien has not established elements two and three.

b) Factor 4: Filing with the Court

The fourth element—a filing with the Bankruptcy Court—is more difficult to determine. In most informal proof of claim cases, there is only one bankruptcy case, making application of this factor straightforward. The purported informal proof of claim was either filed in the case or it was not. Here, we are dealing with two related bankruptcy cases. The Tenth Circuit has not addressed how to apply this factor when a document has been filed with the Court, but in the wrong case.

There are only a handful of reported decisions dealing with this specific situation. In all but one of these cases, the courts have declined to find an informal proof of claim based on a claim filed in a related case. In *In re Opus Management Group Jackson LLC*, 2017 WL 765764, at *10 (Bankr. S.D. Miss. Feb. 27, 2017), the court concluded that the filing of a proof of claim in one jointly administered case was not an informal proof of claim in the other case. In *In re Harris*, 341 B.R. 660, 665 (Bankr. N.D. Ind. 2006), the court held the proof of claim the creditor filed in an earlier dismissed case of the same debtor was not an informal proof of claim in the later filed case. In *In re Rowe Furniture, Inc.*, 384 B.R. 732, 736-38 (Bankr. E.D. Va. 2008), the court ruled that proofs of claim filed in the case of the debtor's parent holding company did not alone serve as an informal proof of claim in the debtor subsidiary's case. *See also Liakas v. Creditors' Committee, of Deja Vu, Inc.*, 780 F.2d 176, 178 (1st Cir. 1986). These cases generally reason that a document filed in one case has no legal effect as a claim in another case. "To be effective, a claim against a debtor must appear of record in [that] debtor's case." *In re Harris*, 341 B.R. at 665 (citing *In re Ne. Office & Comm. Prop., Inc.*, 178 B.R. 915, 919 (Bankr.D.Mass.1995)).

However, the Ninth Circuit Bankruptcy Appellate Panel came to a different conclusion in *VRE Acceptance, LLC v. Seaman (In re Gianulias)*, 2013 WL 1397430 (9th Cir. BAP April 5, 2013). That case involved two jointly administered chapter 11 cases of an individual real estate developer and his wholly owned real estate company. The debtors had sent out somewhat confusing notices of the claims bar date—one notice attached a proof of claim form that listed both debtors and both case numbers and the other listed only the individual debtor and his case number. A creditor holding a claim against both debtors filed a proof of claim in only the individual's bankruptcy case. Shortly thereafter, the debtors' cases were substantively consolidated. The Ninth Circuit Bankruptcy Appellate Panel held that the timely filed proof of claim filed in the individual debtor's case could serve as an informal proof of claim in the company's case.

In coming to this conclusion, the court focused on the content of the proof of claim, concluding that attachments to the claim form sufficiently established that the creditor's debts were founded upon the same loan documents and the same guaranty executed by both debtors. However, the Court glossed over the "filed with the court" requirement, merely holding that the one proof of claim was "filed . . . with the court." *In re Gianulias*, 2013 WL 1397430, at *9. The Court ignored the fact that the creditor had in fact filed nothing in the corporate debtor's case. Perhaps the court was less concerned with this factor because the cases were eventually substantively

consolidated. Regardless, this Court does not find the *Gianulias* reasoning persuasive. Perhaps more importantly, both debtors' bankruptcy petitions in that case were filed under chapter 11, which provides bankruptcy courts with a great deal more flexibility in dealing with untimely proofs of claim. As discussed further below, such flexibility is not available in a chapter 12 case.

c) Factor 5: Weighing the Equities

The fifth element of the informal proof of claim test is whether it would be equitable to allow the informal proof of claim. There are arguments that both support and undercut this element. On the one hand, it seems unfair to deny Nutrien an allowed proof of claim when the Debtors do not dispute the claim. Nutrien's failure to file a proof of claim in the corporate Debtor's case appears to be purely inadvertent on the part of its attorney. The bankruptcy rules impose innumerable deadlines and it seems that no attorney has a perfect record of meeting every one of these. Many a lawyer has woken up in a cold sweat with the fear of having missed such a deadline. So, if it is a valid claim and the failure to file it was an innocent mistake, why not find the equities favor allowance of the claim under the informal proof of claim doctrine? Certainly, this factor would appear to allow the Court to do so.

The Tenth Circuit confronted this very problem in the case of *Jones v. Arross*, 9 F.3d 79 (10th Cir. 1993), another chapter 12 case. In analyzing this dilemma, the court first looked to the Supreme Court's then recent decision, *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380 (1993). In *Pioneer*, the Supreme Court clarified the scope of the "excusable neglect" standard embodied in Fed. R. Bankr. P. 9006(b)(1). It did so in the context of a creditor's request for allowance of a late-filed claim in a chapter 11 case. The Supreme Court held that Rule 9006(b)(1) allows courts, in appropriate circumstances, "to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Id*. at 388. However, the Supreme Court also noted that the "excusable neglect" standard for filing proofs of claim applies only to cases brought under chapter 11. *Id*. at 389.

The *Jones v. Arross* the Tenth Circuit explained why relief from the deadline is only available in chapter 11. "This is because of the operation of subsection (b)(3) of Rule 9006." *Jones*, 9 F.3d at 82. That provision states: "The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), *3002(c)*, 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3) (emphasis added). Rule 9006(b)(3)'s reference to Rule 3002(c) is to the deadline for filing a proof of claim in chapter 7, 12, and 13 cases. It does not apply in chapter 11. Rule 3002(c) provides seven specific exceptions to its otherwise strict deadline. According to Rule 9006(b)(3), any enlargement of the time otherwise set in Rule 3002(c) for filing claims may only be granted to the extent of the seven exceptions listed in Rule 3002(c). Since none of these exceptions applied in the *Jones v. Arross* case, the Tenth Circuit concluded that it was error for the bankruptcy court to have excused the untimely filing. *Id*. at 81; *see also Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.),* 920 F.2d 1428, 1432 (9th

Cir.1990)). Based on this precedent, this Court finds that it does not have discretion to excuse an inadvertent failure to file in a chapter 12 case, when none of the seven exceptions in Rule 3002(c) apply. In other words, the judge-made doctrine of "informal proofs of claim," with its weighing of the equities, cannot override expressly contrary provisions in the Code and the Bankruptcy Rules.

2. The History of the Claims Filing Bar Date

The Court does not reach this decision lightly as it recognizes it leads to a harsh result in this case. It caused the Court to question why chapter 11 creditors are entitled to equitable relief that is not available in other chapters. The history of the bar date from as far back as the Bankruptcy Act of 1898 to the present sheds light on this question. It also provides a basis for concluding that the equities, if this Court were permitted to weigh them, might not favor leniency after all. The overall system that Congress has put into place, based on overarching policy concerns, favors a strict adherence to the time deadline for filing claims in chapters 7, 12, and 13.

The first claims bar date was established by Congress in the Bankruptcy Act of 1898 in response to the perception that the absence of a time limit unduly lengthened the administration of a debtor's estate. *In re Tucker*, 174 B.R. 732 (Bankr. N.D. Ill. 1994). Section 57(n) of the 1898 Act required proofs of claim to be filed within one year of the "adjudication" of bankruptcy (the equivalent of the present day "order for relief"). Bankruptcy Act of 1898, ch. 541, § 57(n), 30 Stat. 544, 561 (1898). Unlike today's Bankruptcy Code, the 1898 Act was primarily a liquidation statute.

A debate arose as to whether the bar date in § 57(n) applied to composition agreements, a type of reorganization provided for in the 1898 Act. The Supreme Court ultimately held that it did not. *Nassau Smelting & Refining Works v. Brightwood Bronze Foundry Co.*, 265 U.S. 269, 272 (1924). The Court's holding was based, in large part, on its view that composition agreements, although provided for in the 1898 Act, were "outside of" or a substitute for "ordinary" bankruptcy, which at the time was viewed purely as a liquidation proceeding. *Id*. at 271. The Court emphasized the voluntary nature of a composition case, in that a debtor admitted to the debts in his schedules and made a voluntary offer to pay a percentage of those debts. Assuming court approval of the composition, the reorganized debtor made distributions according to that agreement. Both the debtor and creditors were incentivized to ensure that all debts got paid quickly, so that the debtor could resume his business. According to the Court, a typical composition case happened quickly, with confirmation, distributions, and dismissal of the case usually happening prior to the one-year mark, thus making the bar date in § 57(n) unnecessary. *Id*. at 272.

The Supreme Court also focused on the different roles that claims play in liquidation versus composition cases. In liquidation cases, because creditors received a pro rata distribution, they held an interest in whether other claims were allowed. A deadline for the filing of such claims was necessary in order to determine what the pro rata distribution would be. In contrast, distributions in a composition case were set by the agreement and, therefore, neither the debtor nor creditors had any "legitimate"

interest in "the time of proof of claims." *Id*. at 273. "No reason is suggested why Congress should have wished to bar creditors from participation in the benefits of a composition merely because their claims were not proved within a year of the adjudication. Failure to prove within the year does not harm the bankrupt. Why should he gain thereby? And why should the creditor be penalized by a total loss of his claim?" *Id*. Whether this answer is satisfactory or not, it formed the basis of the Supreme Court's ruling.

The 1898 Act was substantially revised by the Chandler Act in 1938, which added separate chapters for large corporate reorganizations (chapter X), "arrangement" plans aimed at smaller businesses (chapter XI), real property "arrangement" plans (chapter XII) and wage earners' plans (chapter XIII). Chandler Act, ch. 575, 52 Stat. 840 (1938). Chapter X, XI and XII would later be consolidated in the Bankruptcy Code into chapter 11. Chapter XIII became modern day chapter 13. At this point in bankruptcy history, there were no rules of bankruptcy procedure. Lawrence P. King, *The History and Development of the Bankruptcy Rules*, 70 Am. Bankr. L.J. 217, 217 (1996). Instead, most procedures were set forth in the Bankruptcy Act itself. *Id*. at 218.

The bar date in § 57(n) remained in the Chandler Act but Congress revised it to require claims to be filed within six months after the meeting of creditors. Chandler Act, § 57(n), 52 Stat. at 867. Once again, there was some initial confusion as to whether the § 57(n) bar date applied to proceedings under all the newly established chapters. Each of the new chapters contained a section that provided that the provisions of chapters I to VII, which set forth the requirements for liquidation cases and included § 57(n), applied to the other chapters "insofar as they are not inconsistent or in conflict with the provisions of [the other chapters]." *Id*. § 102, 302, 402, 602, 52 Stat. at 883, 905, 916, 930.

Only the provisions of chapter X contained explicit language that § 57(n) bar date did not apply to corporate reorganizations under that chapter. *Id*. § 102, 52 Stat. at 883. Instead, the judge was given discretion to fix a deadline for filing proofs of claim. *Id*. § 196, 52 Stat. at 893. Creditors and stockholders could share in distributions under a chapter X plan even though they filed no proof of claim, provided such claim or stock interest was scheduled by the trustee or debtor in possession as fixed, liquidated, and undisputed. *Id*. § 224(4), 52 Stat. at 898. Congress later incorporated this same approach to proofs of claim in the rules of procedure adopted for chapter X. *See* King, *supra*, at 229. This approach was well suited to chapter X, which was designed primarily for the reorganization of large publicly traded corporations. *See* Chad P. Pugatch, et al., *The Lost Art of Chapter 11 Reorganization*, 19 U. Fla. J.L. & Pub. Pol'y 39, 44 (2008). As explained by one commentator: "Equity holders were not required to file a proof of stock interest [in chapter X] because the stock records would suffice for that purpose. These [chapter X] provisions were meant to reduce unnecessary paperwork and relieve parties of unnecessary burdens; in addition they took cognizance of stock transfers during the case." King, *supra*, at 229.

Congress implemented different requirements for chapter XI cases. Unlike chapter X, chapter XI was geared towards small, privately owned businesses. Chapter

X and chapter XI were considered mutually exclusive remedies. Pugatch, *supra*, at 45. "Chapter XI was appropriate to allow an extension of time to pay debt to unsecured creditors or a scaling down of the amount of debts . . ." whereas chapter X was used for "major restructuring of the corporation such as eliminating classes of equity holders or some large unsecured creditor.'" *Id*. Initially, chapter XI did not provide a specific claims bar date. Instead it provided that only those creditors who had filed a proof of claim prior to confirmation, or whose debt was listed in the debtor's schedules as undisputed and liquidated, could participate in a debtor's confirmed arrangement plan. *In re Goodrich Mfg. Co*., 168 F. Supp. 940, 943 (N.D. Calif. 1956) (citing § 367 of the Bankruptcy Act). This provision was deemed inconsistent with the claims bar date in § 57(n), making that section inapplicable to chapter XI cases. *Id*.

In 1963, Congress amended chapter XI to explicitly require creditors to file claims within six months after the first meeting of creditors. *In re Zeckendorf*, 353 F. Supp. 543, 547 (S.D.N.Y. 1973). Congress made this change to address fears that debtors would schedule inflated or fictitious debts to favor certain creditors or family members and concerns that debtors might schedule inaccurate debts due to lax accounting methods. S. Rep. No. 88-605, at 1102 (1963). In 1967, Congress eliminated the six-month bar date, which had proved confusing, and substituted a requirement that claims be filed before confirmation. *In re Zeckendorf*, 353 F. Supp. at 547. The purpose of this change was to "protect creditors listed on the debtor's schedule[s] who failed to file their claims within the specified period and thus prevent the debtor from obtaining an undeserved windfall." H.R. Rep. No. 90-122, at 2 (1967). This bar date was later incorporated into the rules of procedure adopted for chapter XI. *See* Allan G. Sweig & Gerald F. Munitz, *Bankruptcy Rules - Practice and Procedure in Chapter XI*, 51 Chi.-Kent L. Rev. 304, 312-13 (1974) (discussing former Bankruptcy Rule 11-33).

Chapters X and XI were aimed at business reorganizations. Chapter XIII, in contrast, was the first chapter designed to allow reorganization plans for "wage earners," at the time defined as "an individual who works for wages, salary, or hire, at a rate of compensation not exceeding $1,500 per year." Chandler Act, § 1(32), 52 Stat. at 842. The initial version of chapter XIII lacked a specific bar date for the filing of claims. This led to a dispute as to whether the bar date in § 57(n) should apply to chapter XIII cases. *In re Heger*, 180 F. Supp. 147, 148 (D. Minn. 1959) (citing various books and articles in conflict on this issue). Eventually, the majority of courts concluded that § 57(n) did apply, in large part for practical reasons. *See id*.; Frederick Woodbridge, *Must Creditors File Proofs of Claim in Wage-Earners' Proceedings before They Can Share in Dividends*, 17 J. Nat'l Ass'n Ref. Bankr. 93 (1943).

To understand why the courts applied the § 57(n) bar date in chapter XIII cases, it is helpful to have some additional historical background. Prior to passage of Chapter XIII, several studies had shown that bankruptcy cases filed by wage earners were largely unsuccessful because few of them had assets above allowed exemptions. *In re Perry*, 272 F. Supp. 73, 79 (D. Me. 1967). The studies further revealed that most wage earners were anxious to pay their debts and avoid bankruptcy but were forced into filing as a last resort to avoid a wage garnishment or other collection efforts. *Id*. Oftentimes, wage earners borrowed enormous sums of money from small loan companies charging

very high interest rates or engaged private amortization programs in a last ditch, and unusually unsuccessful, attempt to avoid filing bankruptcy. The problem with these bankruptcy alternatives was that they gave "small creditors, including loan sharks, the power to extract disproportionate value." David A. Moss & Gibbs A. Johnson, *The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?*, 73 Am. Bankr. L.J. 311, 318 (1999). Congress endeavored to provide a court-sanctioned alternative for wage earners so that they could "avoid harassment and oppression from 'loan sharks' in paying their debts through periodical installments out of future earnings under the protection of the court." *In re Perry*, 272 F. Supp. at 90. To address the problem of "loan shark" creditors, chapter XIII contained a provision that required proof from each creditor filing a claim that its claim was free from usury. *Id*. at 89 (citing § 656(b) of the Bankruptcy Act). The creditor carried the burden of proof on the issue of usury because "it would be hopeless to expect a debtor, afflicted by abject poverty, distress and misery, retarded by ignorance of his legal rights and, worse still, often inadequately represented by counsel, to bear the formidable burden of detecting and proving the existence of usury." *Id*. at 82-83.

The basic procedure of chapter XIII was similar to modern day chapter 13 except that many functions were performed by a bankruptcy "referee," the precursor to bankruptcy judges. The referee would oversee the meeting of creditors, receive proofs of claim and allow or disallow them (including determining whether the claims were free from usury), collect acceptances of the proposed plan, and oversee confirmation. Woodbridge, *supra*, at 94 (1943). Most referees believed that creditors in chapter XIII cases were required to file proofs of claim by the deadline set forth in § 57(n). *See id*. at 93; Henry W. Parker, *Distributions to Creditors in Wage Earners' Plans--Must Proof of Claim Be Filed*, 19 J. Nat'l Ass'n Ref. Bankr. 123, Editor's Note, at 125 (1945). They reasoned that filing a proof of claim was necessary so that they could carry out the statutory duties assigned to them under chapter XIII, including the allowing and disallowing claims and determining whether allowed claims were free from usury. Woodbridge, *supra* at 94 ("The duties imposed upon officers of the court in wage-earner plans are based on the premise that proofs of claim must be filed."). In addition, the filing of claims allowed referees to get a clear picture of a debtor's debts and thereby enabled them to determine whether the proposed plan was "fair, equitable and feasible" and, therefore, confirmable. Merely relying on the debtor to accurately schedule his or her debts was not reliable because "[e]xperience has shown that many debtors do not know how much they owe their creditors and that they rely to a great extent upon the book-keeping of their creditors to set the exact amount of each claim." *Id*. at 94.

Courts later adopted the referees' conclusion that § 57(n) bar date applied to chapter XIII cases. *E.g*., *In re Maye*, 180 F. Supp. 43, 44 (E.D. Va. 1958) ("It is abundantly clear that the provisions of Chapter VI of the Bankruptcy Act, and specifically § 57, sub. n, . . . are applicable to Wage Earner's Plans."). They cited similar "practical reasons" for applying the bar date:

> Any other procedure would tend to defeat the orderly administration of a wage earner plan. It is common knowledge that in many instances debtors depend upon the creditors' records for an accurate account of the

> transactions between them. Claims listed by a debtor in his schedules may unwittingly include debts that are outlawed, that are usurious, or otherwise vulnerable to an absolute defense. Carelessly kept records of the debtor may neglect to reflect credits due on a particular account. It would not be fair and equitable to the other creditors to have the payment of their claims unduly deferred in a wage earner proceeding primarily because the debtor has included creditors who have no standing in a Bankruptcy Court. . . . No undue hardship is invoked on a creditor requiring him to file and prove his claim in a wage earner proceeding. Scheduled and unscheduled creditors would be treated alike in this regard, and thereby the Trustee who distributes the fund would have before him claims that have been proven and allowed with the resulting verity that is attached to claims under such circumstances. Nuisance and trivial claims will be largely eliminated by the requirement that each creditor file and prove his claim.

In re Heger, 180 F. Supp. 147, 151 (D. Minn. 1959).

Congress later made the applicability of the § 57(n) bar date to chapter XIII cases explicit in the rules of procedure adopted for chapter XIII in the early 1970s. *In re Dennis*, 230 B.R. 244, 250 (Bankr. D.N.J. 1999); *see also* King, *supra*, at 226. Rule 13-302 went so far as to specify different bar dates for secured and unsecured creditors in chapter XIII cases. *In re Dennis*, 230 B.R. at 250. Courts viewed these bar dates as rigid deadlines that could not be extended for equitable reasons. *In re Brown*, 14 B.R. 233, 235 (Bankr. C.D. Ill. 1981). This was due in part to the greater emphasis place on "expedition and economy" in chapter XIII cases so that assets were collected and distributed as soon as possible. *Id*. at 236. Congress applied the same strictness to the bankruptcy rule setting the bar date in chapter XI cases. *Id.*

Of course, all of this changed with the passage of the Bankruptcy Code in 1978 and the adoption of the new Federal Rules of Bankruptcy Procedure in 1983. The new Code eliminated § 57(n) and Congress moved most bar date provisions to the Federal Rules of Bankruptcy Procedure. *See* King, *supra*, at 237 ("[T]here was a decided effort to exclude from the Code as much procedural matter as possible in order for procedure to fall within the scope of the Bankruptcy Rules."). The Advisory Committee drafting the rules determined it was no longer necessary to have different sets of rules for the different chapters "since there was only one reorganization chapter, Chapter 11" and "any necessary differences could be expressed for the various debtor relief Chapters, 7, 9, 11, 12 (subsequently added), and 13, but the Rules could flow as one set." *Id*. at 238.

For the new chapter 11, Congress adopted the former chapter X approach to the filing of creditor claims. Under Fed. R. Bankr. P. 3003 and § 1111(a), the bankruptcy court sets the bar date for filing proofs of claim and creditors are not required to file a proof of claim if their debt is listed in the debtor's schedules as undisputed, non-contingent and liquidated. Once the bar date is set, the court has discretion to extend it pursuant to Fed. R. Bankr. P. 9006(b). The reason for this discretion, according to the

Supreme Court, is to assist courts in promoting the underlying goals of chapter 11 cases: ensuring the success of the reorganization, rehabilitating the debtor, and avoiding forfeitures by creditors. *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 389 (1993).

For chapter 7 and chapter 13 (chapter 12 was not yet in existence), the initial version of Rule 3002 set the deadline for filing proofs of claim at ninety days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002, 1983 advisory committee note. The Committee Notes do not reflect why Congress set the same bar date for chapter 7 and chapter 13 cases. However, the new Rule 3002 was in line with the prior practice under the Bankruptcy Act of applying the § 57(n) bar date to both regular liquidation cases and chapter XIII wage earner cases.

Courts applying Rule 3002 have construed it as an absolute bar subject only to the exceptions listed in the Rule. *E.g., In re Turner*, 157 B.R. 904, 906 (Bankr. N.D. Ala. 1993). Courts have no discretion in chapters 7 and 13 to extend the bar date under Rule 9006. *Id*. at 909 n.8. According to some courts, the reason for this difference is the different nature of the relief provided under those chapters. Chapters 7 and 13 are considered "essentially distributional in nature" and "are structured to foster prompt resolution of claims and equally prompt satisfaction of those claims." *In re Duarte*, 146 B.R. 958, 960 (Bankr. W.D. Tex. 1992). In contrast, the goal in chapter 11 is "not distributional but reorganizational." *Id*. at 960 n.3.

Like the referees that oversaw chapter XIII cases, courts applying Rule 3002 cite practical reasons for the strictness of the bar date in chapter 13, including the need for finality and the need for swift distributions. Late filed claims could wreak havoc on a trustee's administration of a plan because a late-filed claim could upset the distributions agreed upon in the plan. As one court put it:

> If creditors of any stripe were permitted to file claims at their discretion, sloppy and inconsistent responses by creditors would ensue. Many estates would be impossible to administer. A successful reorganization under Chapter 13 requires effort from both the debtor and creditors. The Trustee relies on the claims on file at the end of the claims period in determining the distribution of dividends that ultimately affects the length and feasibility of the debtor's plan.

In re Schaffer, 173 B.R. 393, 398 (Bankr. N.D. Ill. 1994).

Of course, this is not to say that these practical concerns are absent in chapter 11 cases. Certainly, the parties in a chapter 11 case also desire finality and certainty with regard to plan distributions. But these concerns are heightened in chapter 13, where cases play out on a much more expedited basis, with the proposed plan being filed within fourteen days of the petition date and confirmation usually happening within the first few months of the case. *See* Fed. R. Bankr. P. 3015(b). Confirmation in chapter 11 is a much longer process, with more negotiations and the casting of votes by creditors.

Perhaps more importantly, the chapter 11 debtor-in-possession is typically responsible for managing claims and administering the plan. In chapter 13, there is always an independent trustee in charge of these tasks, and that individual has no direct knowledge of the debtor's finances (other than as presented in the schedules). Thus, the trustee must depend on filed claims to complete his or her duties. And, as previously noted, Congress and the courts have taken a much more paternalistic approach to chapter 13 debtors, who historically have been viewed as less able to accurately report their debts and deal with claim objections. All these factors led to a much stricter bar date in chapter 13 cases.

When chapter 12 was adopted in 1986, Congress modeled it largely on chapter 13. 8 *Collier on Bankruptcy* ¶ 1200.01[2] (Richard Levin & Henry J. Sommer eds., 16th ed.). This was in part due to the fact that farmers had previously been unsuccessful in attempting to reorganize under chapter 11 because of that chapter's adequate protection requirement and absolute priority rule. J. David Aiken, *Chapter 12 Family Farmer Bankruptcy*, 66 Neb. L. Rev. 632, 632, 638 (1987). While chapter 13 was potentially available to farm debtors, most could not meet that chapter's debt ceilings and entity limitations. *Id*. at 663. Thus, Congress adopted chapter 12 to fill the gap. Chapter 12, like chapter 13, has a more expedited plan confirmation process than chapter 11, with no voting requirements. Like chapter 13, a trustee is appointed for all chapter 12 cases, who is responsible for objecting to claims and administering the plan. Given these similarities, it is not surprising that the strict bar date in Rule 3002 was made applicable to chapter 12 cases. *See In re Nohle*, 93 B.R. 13, 15 (Bankr. N.D.N.Y. 1988) (noting that chapter 12 has abbreviated timelines, thus necessitating a strict bar date). Consequently, courts have concluded that they lack the discretion to extend that bar date in chapter 12 cases, other than for the specific reasons listed in Rule 3002(c). *Jones v. Arross*, 9 F.3d 79, 81 (10th Cir. 1993).

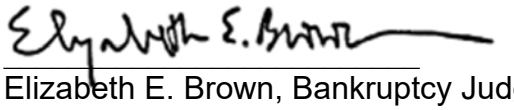
In summary, Congress has weighed and determined that, in chapters 7, 12, and 13, a strict bar date for filing claims fosters a system that benefits debtors and creditors alike. Consumer debtors often do not know themselves how much they owe their creditors, trustees lack the necessary personal knowledge to fill this gap, and the sooner the claims are filed the sooner the debtor emerges from bankruptcy and the sooner the creditors receive their distributions. One could argue that chapter 12 cases are more akin to chapter 11 cases in that they are focused on a more complex reorganization of debts. But Congress in its wisdom has chosen to align them with chapter 13 cases, undoubtedly, to streamline them and thereby to make them less costly. Advancing these goals achieves an equitable result overall, despite harsh consequences in a particular case.

III. CONCLUSION

For the reasons stated above, Nutrien's Motion for Allowance of Claim is DENIED. Nutrien has an allowed proof of claim in the case of Ryan and Stacie Niebur but not in the case of Niebur Farms, LLC.

DATED this 1st day of March, 2022.

BY THE COURT:



Elizabeth E. Brown, Bankruptcy Judge