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United States Bankruptcy Court, M.D. North Carolina.

IN RE: **NORTH CAROLINA NEW SCHOOLS** INC., Debtor.

CASE NO: 16-80411
|
SIGNED October 26, 2020.

CHAPTER 7

ORDER SUSTAINING OBJECTION TO CLAIM AND DENYING MOTION TO ALLOW CLAIM FILED AFTER DEADLINE

LENA MANSORI JAMES UNITED STATES BANKRUPTCY JUDGE

***1** This matter came before the Court for hearing on August 27, 2020 on the Trustee's Objection to Claim No. 125 (Docket No. 237, the "Objection") and the Motion of WorkSmart, Inc. for an Order Allowing its Proof of Claim filed after the deadline (Docket No. 262, the "Motion"). Stephanie Osborne appeared on behalf of John Paul H. Cournoyer (the "Trustee"), and James Vann appeared on behalf of WorkSmart, Inc. (the "Creditor"). For the reasons stated below, the Court will sustain the Trustee's Objection and deny the Motion.

Background Facts

North Carolina New Schools, Inc. (the "Debtor") filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on May 11, 2016, and John Paul H. Cournoyer was appointed as the chapter 7 trustee. The bankruptcy clerk's office sent notice of the chapter 7 filing to creditors indicating there appeared to be no property to distribute to creditors and therefore proofs of claim should not be filed. However, the Trustee quickly determined that assets were available to generate a distribution to creditors, and so on June 13, 2016, the bankruptcy clerk's office served a Notice to File Claims (Docket No. 36) to all creditors setting September 13, 2016 as the deadline for filing proofs of claim.[1] The Creditor completed and mailed Claim No. 125 to the bankruptcy court, which was received and file-stamped by the clerk of court on September 14, 2016, one day late.

On July 1, 2020, the Trustee filed an objection to the Creditor's Claim on the basis that the claim was filed after the deadline for filing proofs of claim. The Creditor filed a response to the Trustee's Objection (Docket No. 261) and also filed the Motion, requesting that its Claim be considered timely. The Creditor does not dispute that the clerk of court file-stamped the Claim on September 14, 2016; instead the Creditor argues that the "mailbox presumption" creates a rebuttable presumption that the Claim was received in the ordinary course. Specifically, the Creditor relies on the affidavit of Alexis Komondorea, the controller for the Creditor, in which Ms. Komondorea attests that she completed and mailed the Claim "on or about September 7, 2016" to the clerk of court. Komondorea's Aff. ¶¶4–5. As such, Creditor is not asking the Court to extend the deadline for filing claims, but that the Court deem the Claim timely filed.[2]

Discussion

***2** Federal Rule of Bankruptcy Procedure 3002 governs the timely filing of claims. As a general rule, in a chapter 7 case "a proof of claim is timely filed if it is filed not later than 70 days after the order of relief under that chapter," with some exceptions not applicable to this case. Fed. R. Bankr. P. 3002(c). However, in a no asset case, there is no deadline to file proofs of claim unless the clerk sets a deadline under Rule 3002(c)(5), which requires the clerk to give "at least 90 days' notice by mail to creditors [that a payment of a dividend appears possible] and of the date by which proofs of claim must be filed." Fed. R. Bankr. P. 3002(c)(5). Rule 9006(b)(3) limits the circumstances under which the court may enlarge the deadline for filing proofs of claim. Fed. R. Bankr. P. 9006(b)(3) ("The court may enlarge the time for taking action under Rule[ ]... 3002(c) ... only to the extent and under the conditions stated in [that] rule[ ]").

The question before the Court is whether the mailbox presumption applies to the filing of a proof of claim under Federal Rule of Bankruptcy Procedure 3002(c). The mailbox presumption is a common law evidentiary principle that permits a party to prove receipt of a document that has been mailed. *Hagner v. United States*, 285 U.S. 427, 430 (1932) (finding, in the context of an indictment for using mail to defraud, a presumption that a properly directed letter placed

in a post office reached its destination in usual time and was actually received by the addressee). However, there is a split in authority as to whether the mailbox presumption applies to the mailing of a proof of claim to the clerk of court. The Fourth Circuit has not decided this issue.[3]

Some courts have held that the mailbox presumption applies to the mailing of a proof of claim—that a timely and accurate mailing of a proof of claim establishes a rebuttable presumption that the proof of claim was received and filed by the clerk of court. *In re Nimz Trans, Inc.*, 505 F.2d 177, 179 (7th Cir. 1974) (finding evidence of timely and proper mailing created a presumption of receipt that was not rebutted by the proof of claim's absence from the clerk's file); *Graham v. Hudson (In re Graham)*, 290 B.R. 424, 441 (Bankr. N.D. Ga. 2003) (relying on mailbox presumption to deem claim not received by clerk's office to be timely filed in a chapter 13 case where debtor had inherited funds sufficient to pay all creditors in full); *In re Pyle*, 201 B.R. 547, 551 (Bank. E.D. Cal. 1996) (applying mailbox presumption to find a missing proof of claim in a chapter 13 case where the plan provided for payment in full to all unsecured creditors, specifically including the claim at issue). In each of these cases, unlike the present case, the clerk of court never filed the proof of claim in question; rather, the claim was absent from the official file.

Other courts have ruled that the mailbox presumption does not apply to the mailing of a proof of claim. In holding that the mailbox presumption rule does not apply, some courts have found that a mailing is not a filing; rather, when a proof of claim is mailed, "the filing date is the date the clerk receives the document, not the date on which it is mailed." *In re Wallace*, 277 B.R. 351, 352 (Bankr. N.D. Ohio 2001) (holding that the mailbox presumption as set forth in Rule 9006(e) is limited to those documents which are served and that service of a document cannot be equated with the "filing" of a document such as a proof of claim); *see also Chrysler Motors Corp. v. Schneiderman (In re Chrysler Motors Corp.)* 940 F.2d 911, 914-15 (3d Cir. 1991); *Oppenheim, Appel, Dixon & Co. v. Bullock (Matter of Robintech)*, 863 F.2d 393, 398 (5th Cir. 1989); *In re 50-Off Stores, Inc.*, 220 B.R. 897, 906 (Bankr. W.D. Tex. 1998). As explained by the Third Circuit:

> ***3** A mailing in itself is not a filing. If we adopted the rebuttable presumption rule[,] we would greatly complicate bankruptcy administration, as it would be uncertain in many cases whether a scheduled creditor failed to file a proof of claim because of an oversight or because it was abandoning its claim. We also point out that a creditor can protect itself with minimal expense through the use of certified mail with a return receipt requested when filing a proof of claim or, if convenient, can provide for manual filing across the counter in the clerk's office. Furthermore, a rebuttable presumption rule would easily permit a creditor which failed to file a proof of claim to fabricate evidence, not easily disprovable, that it had been properly mailed.

Schneiderman, 940 F.2d at 914-15.

This Court agrees with the analysis in *Schneiderman* that applying the mailbox presumption to the mailing of a proof of claim would complicate, bring uncertainty, and cause undue delay to the bankruptcy claims process. Setting a bright-line rule for the filing of claims is vital to the timely administration of a chapter 7 case. Creditors, with minimal expense or inconvenience, can ensure that a proof of claim is received by the clerk's office before the deadline by filing their claims electronically or directly at the clerk's office counter, using some form of priority or overnight mail, or calling the clerk's office to verify the receipt of the claim. In the instant case, there is no dispute that the Claim was filed by the clerk of court on September 14, 2016, a day after the September 13, 2016 deadline set by this Court for filing proofs of claim. Thus, the Claim cannot be considered timely filed.

Even if the Court were to find the mailbox presumption applies to the mailing of a proof of claim, the Creditor here would not prevail. First, courts that have utilized the mailbox presumption in the context of the filing of a proof of claim have found the creditor must introduce something more than the self-serving testimony of the mailer. *See In re Sunland, Inc.*, 536 B.R. 920, 928 (Bankr. D.N.M. August 27, 2015) (citing *Sorrentino v. IRS*, 383 F.3d 1187 (10th Cir. 2004)) (finding "[a]llegations of mailing are easy to make and hard to disprove" and therefore some "corroborating evidence in support of any self-serving testimony about mailing" is required); *see also Graham v. Hudson (In re Graham)*, 290 B.R. at 428 (noting that the evidence in support of mailing included a copy of a dated cover letter to the clerk, clearly indicating transmittal of proof of claim for filing); *In re Pyle*, 201 B.R. at 548 (noting counsel's billing statement reflected charges for filing the claim and a copy of the cover letter for the claim reflected the correct address). In this case, the only evidence the Creditor offers as proof of the date of mailing is the affidavit, dated almost four years after the purported mailing, stating the Claim was completed and mailed on or about September 7, 2016. Komondorea's Aff. ¶5. The record is devoid of any corroborating evidence to support the

Creditor's statement that it mailed its proof of claim on or about September 7, 2016, and there is no evidence, not even a statement in the affidavit, to support a finding that the mailing was properly addressed.

Additionally, the mailbox presumption is just that—a presumption. And a presumption will be overcome by clear and convincing evidence to the contrary. Here, the Court has the clerk's time stamp on the Creditor's Claim, which the Court finds provides clear and convincing evidence that the Claim was filed after the bar date. Creditor has not pointed to a single case where the mailbox presumption was utilized to deem an untimely file-stamped proof of claim to be timely filed. Thus, even if the Court were to find the mailbox presumption applied to the mailing of a proof of claim, the Trustee has overcome the presumption in this case.

Conclusion

***4** Accordingly, IT IS HEREBY ORDERED that the Trustee's objection to the Creditor's late-filed Claim No. 125 is SUSTAINED and the Creditor's Motion for an Order Allowing its Proof of Claim of $169,569.00 filed after the deadline is DENIED. Thus, the Creditor's claim is not entitled to distribution under 11 U.S.C. § 726(a)(3).

PARTIES TO BE SERVED

North Carolina New Schools, Inc. (Ch.7)

16-80411

WorkSmart, Inc.

Attn: Officer or Managing Agent

100 Meredith Drive, Suite 200

Durham, NC 27713

James Robertson Vann

via cm/ecf

John H. Small

via cm/ecf

Stephanie Osborne

via cm/ecf

John Paul H. Cournoyer, Trustee

via cm/ecf

William P. Miller, BA

via cm/ecf

All Citations

Slip Copy, 2020 WL 6891915

Footnotes

1 While not listed as a creditor on the Debtor's schedules, the Creditor filed a response to the Trustee's Objection to its Claim (Docket No. 261) and attached the affidavit attesting to the Creditor's knowledge of the Debtor's bankruptcy and awareness of the deadline to file its proof of claim. Docket No. 261, Exhibit A, Komondorea's Aff. ¶4.

2 At the August 27, 2020 hearing, the Trustee contended the Court should follow *In re the Benefit Corner, LLC*, Case No. 16-11027, 2019 WL 7498664 (Bankr. M.D.N.C. Dec. 31, 2019), which held that a proof of claim deadline cannot be extended under excusable neglect grounds because "Rule 9006(b)(3) expressly limits the court's authority to extend the period to file a claim under Rule 3002(c)." However, the instant case before the Court presents a different issue than the issue presented in the *Benefit Corner* case, where the court held that it "cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists" and that the "claims bar date may not be extended under the court's general power to extend deadlines" for reasons not specifically provided in Rule 3002(c). *Id.* at 10. Here, Creditor is not asking the Court to extend the deadline under excusable neglect grounds, but is asking the Court to deem the Claim timely filed.

3 The Fourth Circuit has applied the mailbox presumption in the context of appeals from the bankruptcy court to the district court, which determines the "timeliness of a bankruptcy appeal to be computed from the date the notice is mailed to the bankruptcy court, not the date the notice is actually received by the clerk." *See Hovermale v. Pigge (In re Pigge)*, 539

F.2d 369, 371 (4th Cir. 1976). However, the Fourth Circuit has not addressed the issue in the present case, which deals with the applicability of the mailbox presumption to the bankruptcy proof of claim deadline.

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