

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

HEIDI C. ORGANEK, fka Heidi C. Holmes,

Debtor.

Case No. DG 15-05749

Hon. Scott W. Dales

Chapter 13

ORDER DENYING MOTION TO EXTEND CLAIMS BAR DATE

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

On February 16, 2016 (one day before the “Claims Bar Date”) the Bank of New York Mellon fka the Bank Of New York, Successor Indenture Trustee to JPMorgan Chase Bank, N.A., Successor By Merger to Bank One, N.A., as Indenture Trustee for CWABS Master Trust, Revolving Home Equity Loan Asset Backed Notes, Series 2002-G (the “Bank”) filed its Motion for Entry of Order Extending Proof of Claim Bar Date (the “Motion,” ECF No. 47). From the Bank’s simultaneous uploading of a proposed order through the court’s order signing program, and from the absence of any proof of service on creditors,¹ the court infers that the Bank effectively seeks an *ex parte* order granting the Motion. For several reasons, the court is unwilling to grant the Motion.

First, there is no basis for granting the Motion without giving notice to other interested parties, such as creditors who have timely filed proofs of claim. Without the enlargement that the Bank requests, these other creditors would probably not have to share with the Bank any distribution under the plan; with the enlargement, those who complied with the deadline would likely have to share their distribution with the Bank. Because the

¹ The proof of service shows service by mail on the chapter 13 trustee and the Debtor’s counsel.

enlargement affects others, the court is unwilling to consider the Motion without affording them meaningful notice or an opportunity to be heard.

Second, the Motion cites Rules 9006(b)(1) and 3003(c)(3) as authority for the enlargement, but neither supports the relief requested. Rule 9006 only authorizes enlargement of the claims bar date in a chapter 13 case in accordance with Rule 3002(c), and Rule 3003 applies only in cases under chapter 9 and 11, not 13. *See Fed. R. Bankr. P. 9006(b)(3)* (enlargement in some instances governed by other rules, including Rule 3002(c)); *Fed. R. Bankr. P. 3003(a)* (making Rule 3003 applicable only in cases under chapters 9 and 11). Rule 3002(c) provides no basis to extend the Claims Bar Date because the Bank is not a governmental creditor, nor is it an infant or incompetent, and the Motion makes no showing under any of the other limited provisions authorizing the court to enlarge the deadline for filing claims in a chapter 13 case.

It is conceivable, of course, that the chapter 13 trustee or the Debtor would support the Bank's Motion, but that fact, even if established, would not change the text of the applicable rules and their relatively unforgiving deadlines for filing claims in chapter 13 cases. The rules governing claims in chapter 13 cases are evidently designed to give all parties early notice of the claims to be addressed in the case, with very limited grounds for delaying that notice function. *See Fed. R. Bankr. P. 3002(c)* (requiring most entities to file claims within 90 days after the first date set for the meeting of creditors). The court notes that if either the trustee or the Debtor wishes to assist the Bank in avoiding the consequences of its supposed inability to meet the deadline prescribed in Rule 3002(c), nothing in this Order precludes either of them from filing a protective claim in accordance with Rule 3004.

Finally, the court expects more from counsel, especially those who regularly practice in bankruptcy court, than last minute, effectively *ex parte* motions premised on rules that either forbid the relief requested or simply do not apply.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion is DENIED.


IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Kim Morden Rattet, Esq., Heidi C. Organek, Brett N. Rodgers, Esq., Timothy F. Johnson, Esq., and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated February 18, 2016





Scott W. Dales
United States Bankruptcy Judge