UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

BONNIE LOU KELLER,

Debtor.
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Case No. DK 13-01144
Chapter 13
Hon. Scott W. Dales

ORDER REGARDING DEBTOR'S OBJECTION TO CLAIM

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Chapter 13 debtor Bonnie Lou Keller ("Debtor") filed a protective proof of claim in a nominal amount after her aunt-turned-creditor, Helen LePage ("Ms. LePage"), failed to file her own proof of claim. Later, and without permission from either the Debtor or the court, Ms. LePage purported to file an amendment to the Debtor's protective claim, increasing the amount. The Debtor objected to Ms. LePage's putative amendment, and the court held a hearing on January 8, 2014 in Kalamazoo, Michigan to consider the controversy.

The Debtor and Ms. LePage were reportedly involved in real estate development projects together that soured as the economy slowed in 2007 and 2008. These business disappointments led to litigation in the Wayne County Circuit Court, prompting the Debtor to seek protection under the Bankruptcy Code. She filed a chapter 13 petition on February 18, 2013, and the court set June 26, 2013 as the deadline for non-government creditors to file proofs of claim. The court also set May 27, 2013 as the deadline for filing a complaint for objecting to the dischargeability of certain debts under § 523(c). There is no dispute that Ms. LePage received notice of the bankruptcy proceedings in time to file a timely claim, and no dispute that she did not timely file an original proof of claim.

After the claims bar date, the Debtor filed a proof of Ms. LePage's claim, under § 501(c), in the amount of $1.00.[1] Perhaps the Debtor believed that by filing the nominal protective claim she foreclosed Ms. LePage from sharing in a meaningful distribution under the plan, or perhaps she assumed that the protective claim somehow affected the dischargeability of Ms. LePage's debt.[2] Regardless of motive, the Debtor's filing of a protective claim did not accomplish either of these goals. Ms. LePage's own failure to file a proof of claim assured that she would not share in any distribution under the plan, and her failure to file a timely adversary complaint likely precluded her from challenging the dischargeability of her debt. 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c). Moreover, a chapter 13 discharge depends upon whether a successfully completed plan provides for a claim, not on whether somebody files one. *See* 11 U.S.C. § 1328(a).

Nevertheless, in response, Ms. LePage filed an amendment to the Debtor's protective claim (Claim No. 4), increasing the amount from $1.00 to $140,000.00. This amendment drew the present objection from the Debtor, who evidently feared that filing the protective claim might backfire unless the court disallowed the amendment.

The Debtor challenges Ms. LePage's authority to file an amendment to the protective claim on the ground that amending the claim is tantamount to filing a new claim that supersedes the original claim, contrary to § 501(c) and Bankruptcy Rule 3004. *See* 11 U.S.C. § 501(c); Fed.

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[1] Although the Debtor did not file her protective claim within Bankruptcy Rule 3004's 30 day window—she filed it two days late—the claim is nevertheless "deemed allowed" because no one has objected. 11 U.S.C. § 502(a).

[2] Most debtors who file protective claims do so to ensure that creditors share in the distribution of estate assets, not to prevent them from doing so. Indeed, the Bankruptcy Code authorizes protective filings generally to assist a debtor who would prefer that a creditor holding a non-dischargeable debt share in any distribution of estate property in order to reduce the portion of the debt that the debtor will be required to pay after the proceeding. In such circumstances, a debtor would not file a nominal claim, such as the Debtor did in this case. *See generally* Senate Report No. 95–989 ("The purpose of [§ 501(c)] is mainly to protect the debtor if the creditor's claim is non-dischargeable. If the creditor does not file, there would be no distribution on the claim, and the debtor would have a greater debt to repay after the case is closed than if the claim were paid in part or in full in the case or under the plan.").

R. Bankr. P. 3004. She cites no case law in support of her position, but instead relies on the Advisory Committee Notes to Bankruptcy Rule 3004, specifically those explaining the rule amendment that became effective on December 1, 2005.

Until 2005, Bankruptcy Rule 3004 provided that "[a] proof of claim filed by a creditor pursuant to Bankruptcy Rule 3002 or Bankruptcy Rule 3003(c), shall supersede the proof filed by the debtor or trustee." *See* Fed. R. Bankr. P. 3004 (in effect until Dec. 1, 2005). This version of the rule permitted a debtor or trustee to file a protective proof of claim even before the creditor's filing deadline had passed. Therefore, because it was possible (under the prior version of the rule) for a creditor to file a timely claim *after* a debtor or trustee had filed a protective claim, the rule allowed the creditor's proof of claim to supersede the protective claim. This form of Bankruptcy Rule 3004, however, was not consistent with § 501(c) which does not authorize a debtor or trustee to file a protective claim before the general bar date. *See* 11 U.S.C. § 501(c) ("If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim."). In 2005, the Supreme Court amended Bankruptcy Rule 3004 to track § 501(c). The Advisory Committee Notes accompanying the 2005 rule amendment explain, therefore, that a creditor may no longer file an independent claim superseding the debtor's or trustee's protective claim. *See* Fed. R. Bankr. P. 3004, Advisory Committee Note (2005).

The Advisory Committee Notes, however, leave open the possibility that the courts may allow a creditor to amend the debtor's protective claim. Indeed, the explanation to Official Form B10 (Proof of Claim Form) goes even further, declaring that amendments to protective proofs of claim will be permitted:

> The box for indicating whether the claim replaces a previously filed claim also has been deleted as no longer necessary in light of the 2005 amendments

> to Rules 3004 and 3005. The creditor simply will amend the claim filed by the other party.

See Official Form 10 – Cumulative Committee Note, 2005-2007 Committee Note (available at http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx). Advisory Committee Notes to court rules, however, though generally helpful and instructive, are not necessarily the law. *Cf.* 28 U.S.C. § 2075 (bankruptcy rules "shall not abridge, enlarge, or modify any substantive right").

The Debtor argues that since a trustee or debtor cannot file a protective claim until it is too late for the creditor to file one of her own, permitting a creditor to amend the Debtor's claim would expand the strict deadline provided by Bankruptcy Rule 3002(c) and bestow an unintended benefit on the creditor under § 501(c)—a subsection designed to benefit debtors.

In response, Ms. LePage cites numerous cases decided before the 2005 amendments to Bankruptcy Rule 3004. More to the point, none of these cases involves a protective proof of claim. They simply stand for the unremarkable proposition that the entity filing a proof of claim may amend it freely. Some courts, including some that authored the cases upon which Ms. LePage relies, assume that Civil Rule 15, incorporated into contested matters by Bankruptcy Rule 9014, supplies the legal basis for amending proofs of claim. *See In re Unroe*, 937 F.2d 346, 349 (7th Cir. 1991) ("The bankruptcy rules therefore provide that a creditor may amend a claim if it meets Fed. R. Civ. P. 15(c)'s standard of arising out of a timely filed claim's 'conduct, transaction or occurrence.'"); *In re Brown*, 159 B.R. 710, 714 (Bankr. D.N.J. 1993) (standards under Fed. R. Civ. P. 15 apply to amendments to proofs of claim). Even so, that rule only permits the original proponent of a pleading to amend his own pleading; it does not authorize one entity to amend the pleading of another. The cases, therefore, are not persuasive in the protective claim context.

Moreover, as a matter of policy, Congress permits debtors or trustees to file protective claims not for the benefit of a creditor but for the benefit of the debtor, generally with respect to claims that would, or could, survive discharge. In this way, the Bankruptcy Code permits the debtor, in effect, to compel the creditor to accept some payment during the pendency of the case from property of the estate, so that the creditor will apply the payment to reduce the nondischargeable portion of the creditor's claim. In other words, the protective claim process exists for the benefit of the debtor. Indeed, when a debtor uses § 501(c) to file an unsecured claim, the benefit to the debtor comes at the expense of other unsecured creditors who must share *pro rata* with a fellow-creditor who neglected or declined to file a timely proof of claim.

If Ms. LePage had filed an original proof of claim after the bar date, inevitably the Debtor or the trustee would have filed a successful claim objection. *See* 11 U.S.C. § 502(b)(9); Fed. R. Bankr. P. 3002(c). As Debtor's counsel suggested during oral argument, permitting Ms. LePage to amend Claim No. 4 would amount to an end run around the bar date, exalting form over substance.

To the extent Ms. LePage relies on equitable considerations, the court is not impressed by her argument. It appears that she had notice of the deadline, elected not to file a claim, and then perhaps at the behest of her daughter, changed her mind and sought to piggy-back onto the Debtor's protective claim by amending it. There is nothing inequitable about remitting a creditor with notice of the proceedings to the consequences of failing to observe the deadline prescribed in Bankruptcy Rule 3002(c). Ms. LePage is not entitled to benefit from the protective claim process, so she will suffer no legal prejudice from the court's rejection of her amendment and the

formalistic argument she offers.[3] Consequently, Claim No. 4 will stand as originally filed in the amount of $1.00.

Finally, Debtor's counsel suggested during oral argument that the chapter 13 trustee has been paying Ms. LePage on account of Claim No. 4 (as amended), but counsel did not specify for how long or to what extent. The court does not endeavor in this Order to address the consequences of any payments the trustee may have made to the creditor, leaving the remedy for any overpayment for another day.

NOW, THEREFORE, IT IS HEREBY ORDERED that the amendment is DISALLOWED and Claim No. 4 shall stand as originally filed in the amount of $1.00.

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 Bonnie Lou Keller, John A. Potter, Esq., Helen E. LePage, Teresa Hendricks, Esq., Timothy K. Debolski, Esq., and Barbara P. Foley, Esq.

[END OF ORDER]

IT IS SO ORDERED.

Dated January 15, 2014

Scott W. Dales
United States Bankruptcy Judge

[3] The parties' agreement that Ms. LePage had notice of the bankruptcy in time to file a timely claim avoids any controversy under § 523(a)(3) and probably under § 523(c). *See* Fed. R. Bankr. P. 4007(c) (deadline for filing complaint to except debt from discharge under § 523(c) is 60 days after first date set for meeting of creditors under § 341(a)).