

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Statesboro Division

IN RE:	)	Chapter 7 Case
	)	Number <u>01-60889</u>
John Larry Morgan	)	
Judy Morgan	)	
	)	
Debtors	)	
_____	)	
Anne R. Moore,	)	FILED
Chapter 7 Trustee	)	2003 MAR 14 P 3:02
	)	
Movant	)	
	)	
v.	)	
	)	
Dewayne Driggers,	)	
Dennis Driggers and	)	
Don Martin	)	
	)	
Respondents	)	

**ORDER**

The Chapter 7 Trustee objects to claims filed by the respondents Dewayne Driggers, Dennis Driggers and Don Martin (herein "Claimants"). The Trustee's objection is sustained

This Court has jurisdiction to determine this matter under 28 U.S.C. § 157(a) & (b)(2)(B).

The undisputed facts are as follows. The Claimants are former employees and shareholders of Trius, Inc., a Georgia Corporation formerly doing business in Bulloch County, Georgia.

Trius, Inc.'s principal shareholder and CEO, John Larry Morgan, (hereinafter "Debtor") is one of the Debtors in this case. In connection with the business operations of Trius, Inc., the Claimants and Debtor, were requested by various entities to execute documents guaranteeing the debts of the company. The Debtor filed for bankruptcy relief on September 5, 2001. The Claimants each filed proofs of claims for the full amounts of their joint obligations against the Debtor's bankruptcy estate. The Claimants admit that as of the day of the hearing they had not made any payments on the guarantees. The Trustee objects to these claims under 11 U.S.C. §501(b) and (c).

The Trustee argues that 11 U.S.C. §501(b) and (c) allow co-obligors or guarantors along with Debtor to file a proof of claim on behalf of any creditor to whom they and the Debtor are obligated but may not file a proof of claim on their own behalf. The Claimants argue that §501 does not prohibit creditors such as Claimants from filing a proof of claim based upon their contingent claims against the Debtor. Furthermore, the Claimants argue that state law gives them the rights of contribution and subrogation, and that these rights entitles them to a claim that should be recognized in bankruptcy.

In a claim objection, the objector, the Trustee in this case, bears the burden of producing evidence sufficient to place the validity of the proof of claim at issue. Lundell v. Anchor Const. Specialists, Inc., 223 F.3d 1035, 1040 (9<sup>th</sup> Cir., 2000). Once the

objector has met this burden, the burden shifts to the claimant to prove by a preponderance of the evidence the validity of the proof of claim. The ultimate burden of persuasion remains with the claimant. Id. The Trustee met her burden of producing sufficient evidence to place validity of the claim at issue. The Claimants failed to present evidence to establish the validity of the claim.

11 U.S.C. §501(b) allows an entity to file a proof of claim *on behalf of a creditor* to whom both the Debtor in bankruptcy and that entity are indebted.

If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

11 U.S. C. §501(b)

Here, the Claimants filed a proof of claim on their own behalf.<sup>1</sup> However, §501 only allows the Claimants to file a proof of claim on behalf of the creditor if such creditor has not so filed. Fed R. Bankr. P. 3005(b); In Re Fox, 64 B.R. 148 (Bankr. N.D. Ohio 1986) (The claim filed by the co-debtor must be in the name of the creditor unless the name of the creditor is unknown, thus eliminating double proof of a single claim.); Aetna Casualty & Surety Co. v. Georgia Tubing Corp., 1995 WL 429018 n.1(S.D.N.Y.),

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<sup>1</sup>Dewayne Driggers filed claim No. 21, Dennis Driggers filed claim No. 22 and Don Martin filed claim No. 24.

*aff'd*, 93 F.3d 56 (2d Cir. 1996) ("Section 501(b) permits a co-debtor to execute and file a proof of claim in the name of the assured creditor if "the creditor does not timely file a proof of such creditor's claim"). If the creditor files its own proof of claim then, the co-debtor's proof of claim is superceded by the creditor's claim. id.; Fed. R. Bankr. P. 3005(b). For every debt there can be only one satisfaction. 47 Am. Jur. 2d Judgments §1008 (2002) (Plaintiff is entitled to a single satisfaction of its debt.); Cooper v. Firestone Tire & Rubber Co., 599 F. Supp. 172 (S.D. Ga. 1984). Under §501(b) a co-guarantor of the Debtor may not file a proof of claim on his own behalf, eliminating the possibility of double proof of a single debt. See Fox, 64 B.R. at 150. The objection brought by the Trustee in this case is correct because instead of filing a proof of claim on behalf of the creditors, the Claimants filed a proof of claim in their own names. 11 U.S.C. §501 clearly provides that entities such as the Claimants here may file a proof of claim, but such proof of claim must be in the name of the creditor to whom they too are indebted.

Furthermore, even if the Claimants have a valid claim for contribution under state law<sup>2</sup>, to allow the Claimants proof of

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<sup>2</sup>Official Code of Georgia ("OCGA") §10-7-50 and §10-7-56 gives the Claimants a right of contribution and a right of subrogation to the extent they paid more than their "equal share" of the debt.

claims here would violate §502(e)(1) of the Bankruptcy Code. Section 502(e)(1) states that "the court *shall* disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor to the extent that... (B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim...". The Claimants admit that they have not paid anything with respect to these guarantees. Therefore, at this time their claims are contingent. id. (Because Aetna had not paid on the bonds, their claim was a contingent claim for reimbursement); Fox, 64 B.R. at 150 (A co-debtor's claim for contribution or reimbursement is disallowed to the extent it is contingent at the time of allowance under section 502(e)); see also In Re Buckingham, 197 B.R. 97, 104 (Bankr. D. Mt. 1996) (holding that subrogation (or contribution) does not result if co-debtor has made no payment on behalf of the debtor). The rationale for §502(e)(1)(B) is first to prevent the competition between a creditor and his guarantor for the limited proceeds of the estate, and second it promotes the expeditious resolution of issues so as not to burden the estate by claims which have not come to fruition. See Aetna, 1195 WL 429018 (*citations omitted*).

However, this does not mean that if the Claimants do in

fact later pay more than their "equal share" of the debt they will be without recourse. Section 502(e)(2) provides that to the extent a claim for reimbursement or contribution becomes fixed after the commencement of the case, it is to be considered a pre-petition claim for purposes of allowance and such claim will be allowed to the extent the co-debtor or surety has paid the assured party. See Fox, 64 B.R. at 151. If Claimants in fact pay more than their "equal share" then Claimants may seek reconsideration of their claim to the extent of such unequal payment. See Fox, 64 B.R. at 151-152. However, now, the Claimants are bound by §501(b) and may file a proof of claim on behalf of the creditor. See In re International Horizons, Inc., 751 F.2d 1213, 1216 (11<sup>th</sup> Cir., 1985) ([I]n a bankruptcy case, an amendment to a claim is fully allowed where the purpose is to cure a defect in the claim as originally filed.)

Lastly, the Claimants argue that their claims may also be allowed under 11 U.S.C. §509 as claims of subrogation. Section 509 would only allow such claim if Claimants had in fact paid the debt of the Debtor. If the Claimants have not paid any money on behalf of the Debtor, then there is no right of subrogation for purposes of §509.<sup>3</sup> Furthermore, §502(e)(1) mandates me to disallow such claim.

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<sup>3</sup>11 U.S.C. §509 states that "...[A]n entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment." (Emphasis added).

Aetna 93 F.3d at 57 (holding that §502(e)(1) barred Aetna's claim because it was contingent. Aetna's claim was a "prospective" claim for subrogation. A guarantor is subrogated to the rights of the creditor only if the co-debtor pays the claim and only to the extent of the payment.); Fox, 64 B.R. at 151.

The Trustee's objection is ORDERED sustained. The claims of Dewayne Driggers, claim No. 21, Dennis Driggers, claim No. 22 and Don Martin, claim No. 24 are disallowed.

JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 14th Day of March, 2003.