

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
JAMES CECIL FULLWOOD, JR.) Chapter 13 Case
)
) Number 94-40005
)
Debtor)

MEMORANDUM AND ORDER
ON MOTION TO ALLOW FILING AND PAYMENT
OF PROOF OF CLAIM

This matter comes before the Court on Centerbank Mortgage Company's Motion to Allow Filing and Payment of Proof of Claim. For the reasons set forth below the Motion will be denied.

FINDINGS OF FACT

Debtor filed a petition under Chapter 13 of the Bankruptcy Code on January 3, 1994. The Section 341(a) meeting of creditors was held on February 7, 1994. The notice sent by the Clerk of the Court to all creditors set the deadline for filing a proof of claim in Debtor's Chapter 13 case as May 9, 1994.

Movant, Centerbank Mortgage Company, is the holder of a first priority deed to secure debt on certain real property that serves as the Debtor's residence. There is an \$18,015.16 pre-petition arrearage owing to Movant on the property. Movant did not, however, file a proof of claim for this arrearage within the deadline of May 9, 1994. Movant now seeks the allowance of said claim.

CONCLUSIONS OF LAW

The question of whether a tardily filed proof of claim must be allowed in a Chapter 13 case is the subject of significant controversy among the courts that have considered the question. Congress resolved this controversy with the Bankruptcy Reform Act of 1994 by which it amended Section 502 of the Bankruptcy Code by adding a subparagraph (9) to Section 502(b). This new provision provides:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and shall allow such claim in lawful currency of the United States in such a amount, except to the extent that-

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(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy

Procedure may provide.

This provision thus makes it clear that a tardily filed proof of claim is not to be allowed in a Chapter 13 case. While this provision is not directly applicable to this case because Debtor filed his Chapter 13 petition prior to the Act's effective date of October 22, 1994, this Court believes that the result dictated by Section 502(b)(9) was the proper result prior to that provision's enactment. Accordingly, Movant's Motion must be denied and their proof of claim disallowed.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Motion to Allow Filing and Payment of Proof of Claim filed by Centerbank Mortgage Company is denied.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ___ day of April, 1995.