

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>88-11330</u>
BESSIE LOU MACK)	
)	
Debtor)	
)	
CENTERBANK MORTGAGE COMPANY)	F I L E D
)	at 11 O'clock & 10 min A.M.
Movant)	Date: 7-25-91
)	
vs.)	
)	
BESSIE LOU MACK)	
)	
Respondent)	

ORDER

Centerbank Mortgage Company ("Centerbank") by motion seeks the allowance of a late claim which the debtor opposes. This Chapter 13 proceeding was filed October 21, 1988. By notice issued October 26, 1988 the 341 meeting of creditors was set for December 14, 1988 and the deadline to file a proof of claim was set for March 14, 1989. Centerbank was a listed creditor and received notice of the bankruptcy filing. The proposed and confirmed plan (confirmed by order dated April 21, 1989) relative to the debt due Centerbank provided:

3. Unless otherwise provided in the space below, debtor shall make regular post-petition

payments as they become due to creditor (named below) holding a security interest in debtor's residence. Any claim filed for prepetition arrearage on such obligation shall be paid by distribution from the Chapter 13 Trustee.

Centerbank (emphasis original).

Centerbank failed to file a timely claim for prepetition arrearages.

Now, more than two years after the bar date, Centerbank seek's leave to file its prepetition arrearage claim in the amount of One Thousand Eight Hundred Sixty and 02/100 (\$1,860.02) Dollars.

Bankruptcy Rule 3002(c) provides in pertinent part:

(c) Time for Filing. In a . . . chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to §341(a) of the Code [Title 11 U.S.C.], except as follows:

(1) On motion of the United States, a state, or subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the United States, a state, or subdivision thereof.

(2) In the interest of justice and it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or comes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claims shall not be allowed.

(4) A claim arising from the rejection of an executory contract of the debtor may be filed within such time as the court may direct.

None of the exceptions set forth in Bankruptcy Rule 3002(c) (1-4) apply to the claim of Centerbank. Bankruptcy Rule 9006 further provides:

(b)(3) Enlargement Limited. The court may enlarge the time for taking action under Rules . . . 3002(c) . . . only to the extent and under the conditions stated in those rules.

Bankruptcy Rule 9006(b) (3) clearly establishes that the time limits under Bankruptcy Rule 3002(c) are absolute.

I may not permit the filing and allowance of a late claim over the objection of any party in interest. In this case, the debtor objects. However, the failure of Centerbank to file a proof of claim does not extinguish its secured claim. In re: Thomas, 883 F.2d 991 (11th Cir. 1989). As the debt due Centerbank represents a

secured claim on which the last payment is due after the date on which the final payment under the plan is due [11 U.S.C. §1322(b)(5)] the debt is excepted from the discharge of 1328.

11 U.S.C. §1328(a)(1) & (c)(1).

It is therefore ORDERED that the motion of Centerbank Mortgage Company for allowance of late filed claim is denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 22nd day of July, 1991.