

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>88-11440</u>
JAMES CLIFFORD HARRIS	)	
	)	
Debtor	)	
	)	
FIRST STATE BANK, WRENS, GEORGIA	)	FILED
	)	at 4 O'clock & 56 min. P.M.
Movant	)	Date 1-5-90
	)	
vs.	)	
	)	
JAMES CLIFFORD HARRIS	)	
	)	
Respondent	)	

**ORDER**

First State Bank, Wrens, Georgia (hereinafter "First State Bank") seeks the allowance of its claim in the amount of Three Thousand Six Hundred Eighty and 50/100 (\$3,680.50) Dollars received and filed by the clerk of this court April 11, 1989, but denied allowance as late filed. The debtor strenuously objects to the allowance of this claim. The facts are not in dispute. The debtor sought relief under Chapter 13 of Title 11 United States Code on November 16, 1988 and proposed a plan to pay all allowed claims in full. Regarding the position of First State Bank, the plan provided "debtor objects to any claim by First State Bank of Wrens or assignee." First State Bank received notice of the filing, and the proposed plan which notice set forth a deadline for the filing of proofs of claim as April 10, 1989. Proof of claim was received and filed by the clerk April 11, 1989 in the amount of Three Thousand Six Hundred Eighty and 50/100 (\$3,680.50) Dollars, asserting secured status. The claim was not allowed as having been filed after the bar date established pursuant to Bankruptcy Rule 3002(c). First State Bank now seeks allowance of this claim asserting first that the claim was in fact

timely filed, and secondly, even if late filed, the late filing was a result of excusable neglect and should be allowed.

As to the first contention, First State Bank relies upon the provisions of Federal Rule of Civil Procedure 6(e), hereinafter F.R.C.P., which rule provides:

(e) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

According to movant, as the order for relief, notice of filing, and proposed plan which contained the bar date of April 10, 1989, was served upon it by mail, according to F.R.C.P. 6(e) the deadline for requiring movant to file its proof of claim, a requirement to do some act under F.R.C.P. 6(e), extended the period through April 13. As the proof of claim was filed April 11, it was timely. This contention is without merit. F.R.C.P. 6 does not apply to bankruptcy proceedings. There is no corollary Bankruptcy Rule 7006 adopting and incorporating F.R.C.P. 6 within bankruptcy practice. The corollary under the bankruptcy rules is Bankruptcy Rule 9006. As F.R.C.P. does not apply to bankruptcy practice, the additional three-day time period established pursuant to F.R.C.P. 6(e) does not apply and therefore, the proof of claim of First State Bank was late filed.

First State Bank's second contention relies on the provisions of Federal Rule of Civil Procedure 60(b)<sup>1</sup> for authorization for this court to enlarge the time in order to allow the filing of its proof of claim. Again, there

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<sup>1</sup>Federal Rule of Civil Procedure 60(b) provides in pertinent part:

"(b) Mistakes; inadvertence, excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a part or a party's legal representative from a final judgment, order of proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect; . . . "

is no Bankruptcy Rule 7060 to incorporate F.R.C.P. 60 within bankruptcy practice. A modified version of F.R.C.P. 60 is incorporated within Bankruptcy Rule 9024 which in pertinent part provides:

Rule 9024. Relief from judgment or order.

Rule 60 F.R.C.P. applies in cases under this case except that (1) a motion . . . for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), . . . "

In the present case movant did not seek reconsideration of an order disallowing the claim pursuant to Bankruptcy Rule 3008. Movant sought an enlargement of the time authorized for the filing of a claim. Under Bankruptcy Rule 3002(c) in a Chapter 13 proceeding such as this, a proof of claim must be filed within the bar date except under certain specific circumstances, none of which are applicable here. The provisions of Bankruptcy Rule 9024 cannot be invoked as a basis for extending the time for the allowance of a proof of claim where Bankruptcy Rule 3002(c) specifies six narrow categories for such extension.

Although not expressed by movant, the motion actually seeks reconsideration of the claim pursuant to Bankruptcy Rule 3008. In this case, movant, through counsel, filed its proof of claim and the order of confirmation disallowed the claim as late filed. The claim having been filed and disallowed, the appropriate remedy is pursuant to Bankruptcy Rule 3008 to seek reconsideration of the order disallowing the claim and allow the claim under the mistake or excusable neglect standard of Bankruptcy Rule 9024. Even considering the motion as one to reconsider the order of confirmation disallowing the claim, granting the relief requested is inappropriate. First State Bank received notice of this Chapter 13 filing shortly after the issuance of the order for relief and notice of the Chapter 13 bankruptcy filing which set the meeting of I creditors, fixed April 10, 1989 as the deadline for the filing of

proofs of claims, and incorporated a copy of the proposed Chapter 13 plan of the debtor which objected to any claim of First State Bank. Movant forwarded the notice

and its documentation for its claim to its counsel who died in the later part of December, 1988. At some time prior to the bar date of April 10, 1989, movant and movant's newly retained counsel in this proceeding became aware of the failure of previous counsel to file a proof of claim in this proceeding and became aware of the applicable bar date. Faced with this information, movant, through counsel, mailed its proof of claim to the clerk's office on the bar date rather than filing the matter in person with the clerk. Movant's counsel's mistaken belief that the bar date was extended by three days pursuant to F.R.C.P. 6(e) is not a sufficient basis to establish mistake, inadvertence or excusable neglect. See, Wright & Miller, Federal Practice and Procedure: Civil 2858. Movant having failed to establish sufficient cause for reconsideration of the order disallowing its proof of claim, its motion to allow late claim is ORDERED denied.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 5th day of January, 1990.