

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

| | | |
|------------------------------|---|------------------------------|
| IN RE: |) | Chapter 13 Case |
| |) | Number <u>89-11783</u> |
| PAUL MARSHALL SCOTT |) | |
| |) | |
| Debtor |) | |
| _____) |) | |
| |) | |
| CITIZENS & SOUTHERN |) | FILED |
| NATIONAL BANK |) | at 10 O'clock & 42 min. P.M. |
| |) | Date 7-6-90 |
| Movant |) | |
| |) | |
| vs. |) | |
| |) | |
| PAUL MARSHALL SCOTT AND |) | |
| SYLVIA FORD DRAYTON, TRUSTEE |) | |
| |) | |
| Respondent |) | |

ORDER

The Citizens & Southern National Bank (hereinafter "C & S") seeks the allowance of its unsecured claim in the amount of Four Thousand Six Hundred Thirteen and 74/100 (\$4,613.74) Dollars. The debtor strenuously objects to the allowance of this claim. The debtor sought relief under Chapter 13 of Title 11 United States Code on November 14, 1988 and proposed a plan to pay Three Hundred and No/100 (\$300.00) Dollars monthly to the Chapter 13 Trustee. The plan further provided in pertinent part:

2(c) Subsequent to secured creditors, dividends to unsecured creditors who file claims and whose

claims are allowed, including the unsecured balance of any partially secured debt) shall be paid . . . pro rata from remaining funds in an amount to be estimated at confirmation.

7. The collateral securing the debts of the following creditors will be surrendered in satisfaction of those debts upon confirmation of the Plan as set forth here. (Show creditor & value of property surrendered): C and S Bank 1989 Camry automobile \$18,643.00.

As evidenced by a document entitled "Voluntary Surrender" dated November 24, 1989, which document is attached to C & S's motion as an exhibit, the debtor surrendered to C & S the 1989 Toyota Camry automobile upon which C & S held a first security interest. The notice of filing issued by the Clerk of this Court which was received by C & S established the last date to file a proof of claim as March 15, 1990. A representative of C & S attended the §341 meeting on December 15, 1989. By amendment dated January 4, 1990 the proposed plan was amended to reflect a change in the value of the Toyota Camry automobile to Eleven Thousand Nine Hundred Seventy Five and No/100 (\$11,975.00) Dollars. On February 9, 1990 C & S filed its written objection to confirmation. At confirmation on March 27, 1990 this court overruled the objection to confirmation of C & S because C & S had failed to file a proof of claim prior to the bar date and C & S had failed therefore to assert a claim in the case. At confirmation the debtor proposed to increase payments to Four Hundred and No/100 (\$400.00) Dollars per month for a period of sixty (60) months with a resulting 22.92 dividend to the unsecured

creditors which modified plan was confirmed by order dated March 27, 1990.

C & S contends that it has liquidated its collateral with the resulting deficiency claim now asserted and seeks the allowance of this unsecured claim. The debtors assert that C & S had every opportunity to file a claim in this case within the specified bar date. C & S contends that a proof of claim was not filed in this matter through its inadvertence and should now be allowed apparently relying upon the provisions of Federal Rule of Civil Procedure (F.R.C.P.) 60(b).¹ There is no corollary 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 9024.²

¹Federal 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 party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

²Bankruptcy Rule 9024 provides:

Relief from Judgment or Orders.

Rule 60 Federal Rule of Civil Procedure applies in cases under the Code except that (1) a motion to reopen a case under the Code or 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), (2) a complaint to revoke a discharge in a Chapter 7 liquidation case may be filed within the time allowed by §727 of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144 or §1330.

In the present case movant does not seek reconsideration of an order disallowing a claim under Bankruptcy Rule 3008(a). In essence, movant seeks an enlargement of the time authorized for the filing of a claim under Bankruptcy Rule 3002(c).³ In a

³Bankruptcy Rule 3002(c) provides:

(c) Time for filing. In a Chapter 7 liquidation or 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, 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 if it will not unduly delay the administration of the case, the court may extent the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arise in favor of an entity or becomes 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

Chapter 13

proceeding such as this case, 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 when Bankruptcy Rule 3002(c) specifies six (6) narrow categories for such extension. First State Bank, Wrens Georgia v. James Clifford Harris (In re: Harris) Chapter 13 case No. 88-11440 (Bankr. S.D. Ga., January 5, 1990) aff'd. First State Bank, Wrens Georgia v. James Clifford Harris (In re: Harris) Civil Action MS190-02 (S.D. Ga. March 5, 1990). "The time for filing a proof of claim in a bankruptcy case

court may permit, the claim 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.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

(6) In a Chapter 7 liquidation case, if a surplus remains after all claims allowed had been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time hereinabove prescribed.

is indeed a 'bar date'. Bankruptcy Rule 3002(c) has the force of law . . . The rule means just what it says." First State Bank Wrens, Georgia v. James Clifford Harris (In re: Harris) District Court decision supra p. 1-2.

C & S having failed to establish any basis for the extension of the time to file a claim under Bankruptcy Rule 3002(c), the motion to allow late claim is ORDERED denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 6th day of July, 1990.