

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>97-11975</u>
CLYDE STEELE)	
)	
Debtor)	
_____)	
)	
CLYDE STEELE)	FILED
)	at 10 o'clock & 50 min. A.M.
Movant)	Date: 5-12-98
)	
vs.)	
)	
BRANCH BANKING & TRUST CO.)	
)	
Respondent)	

ORDER

Pursuant to notice hearing was held on the objection of the debtor Clyde Steele to claims of Branch Banking & Trust Co. ("Bank"). The debtor objects to claim No. 8 in the amount of \$501.25 and claim No. 10 of \$2,316.97 both filed as general unsecured. The debtor does not object to claim No. 9 of the Bank representing a real estate secured debt in the amount of \$27,591.19 with a prepetition arrearage of \$1,721.20. The debtor denies owing the Bank any money under claims 8 and 10 and also contends that the Bank failed to serve his counsel with a copy of the proofs of claim as required under Local Bankruptcy Rule LBR 3001(1)(c) of the United States District Court for the Southern

District of Georgia. The objection is sustained.

At hearing, the debtor testified that he was not indebted to the Bank for any sums other than the mortgage loan on his home represented by claim No. 9. The Bank offered no evidence in support of its claim and conceded a failure to serve debtor's counsel. Under Federal Rule of Bankruptcy Procedure (FRBP) 3001(f), a timely filed proof of claim constitutes prima facie evidence of the validity of the claim. Bankruptcy Code §502 provides that a proof of claim is deemed allowed if not objected to. Once an objection to claim is filed, the initial burden of going forward with sufficient evidence to place the claim at issue rests with the objector. Once the objector puts forth sufficient evidence to place the claim at issue, the ultimate burden of proof by a preponderance of the evidence rests with the claim proponent to establish the allowance of the claim. In this case, Mr. Steele has testified sufficiently to dispute the amount and nature of the liability claimed under claims 8 and 10 to place the claims at issue. The Bank has failed to put forth any evidence in support of its claim other than the proof of claim itself and has therefore failed to establish by a preponderance of the evidence that Mr. Steele is indebted to the Bank on claims 8 and 10 in any amount.

Additionally, the Bank failed to serve debtor's counsel with a copy of the proof of claim as required under Local Bankruptcy Rule LBR 3001-1(c) of the United States District Court

for the Southern District of Georgia which provides:

Service. All creditors and their counsel who file a proof of claim in this Court are hereby directed to serve by First Class Mail a true copy of said proof of claim and all attachments thereto upon the debtors' counsel of record at the address of said debtors' counsel shown on the Notice of the Creditor's Meeting convened pursuant to 11 U.S.C. §341. The filing of such a proof of claim shall constitute a certificate by the creditor and/or its counsel that this order has been complied with. Said creditor and/or his counsel are, however, directed not to file any separate certificate of service in the Clerk's Office.

The Bankruptcy Noticing Center caused to be filed in this case a certificate of service asserting service upon this creditor at P. O. Box 2322, Lumberton, North Carolina 28359 of the notice of commencement of this case under Chapter 13, proposed plan of the debtor and proof of claim form to be used in filing any claim. The proof of claim form provided sets forth immediately to the right of the signature line on the proof of claim the following:

All creditors and their counsel who file a proof of claim are required to serve by first class mail, a true copy of such proof of claim and all attachments thereto upon the Debtor's counsel of Record whose address is shown on the Notice of the Creditor's Meeting.

The Bank had notice of the requirements under the local rule and ignored this requirement. The Bank's conduct was willful.

The Southern District of Georgia consists of the southeastern 43 counties of the State of Georgia covering approximately one-third of the State's area. Judges of this

conduct hearings on a regular basis in all six divisions, Augusta, Savannah, Brunswick, Statesboro, Waycross and Dublin, and the court maintains clerk's offices in Savannah and Augusta. In most instances, it is neither convenient nor cost effective for debtors and debtor's counsel to travel to the appropriate clerk's office and/or Chapter 13 trustee's office to review claims prior to the confirmation hearing in the appropriate division. The requirement for service of the proof of claim facilitates the claims review and allowance process speeding confirmation and distribution of payments to all creditors. The willful failure of a creditor to comply with the local rule adversely affects the debtor's ability to review the claims prior to confirmation delaying the confirmation process and payment. Bankruptcy Code §105(a) empowers to this court to "issue any order . . . or judgment that is necessary or appropriate to carry out the provisions of this title [11]. . . . [or] taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." Sustaining the debtor's objection to the unsecured claim of the creditor in this instance is an appropriate sanction for the willful disregard of this court's rules.

It is therefore ORDERED that the debtor's objection to the claims of Branch Banking & Trust Co. in the amount of \$501.25 and \$2,316.97 filed as general unsecured is sustained and the claims are disallowed.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 11th day of May, 1998.