

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 13 Case
)	Number <u>97-60811</u>
JUANITA DEKLE)	
)	
Debtor)	
_____)	
JUANITA DEKLE)	FILED
)	At 10 o'clock & 30 min. A.M.
Movant)	Date: 5-12-98
)	
vs.)	
)	
TRANE FEDERAL CREDIT UNION)	
)	
Respondent)	

ORDER

Pursuant to notice hearing was held on the debtor Juanita Dekle's objection to the unsecured portion of the claim of Trane Federal Credit Union ("Credit Union") in the amount of \$9,425.00. The basis for the objection was the failure of the Credit Union to serve debtor's counsel with a copy of its proof of claim required pursuant to 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 Creditors Meeting convened pursuant to 11 U.S.C. §341. The filing of such a proof of claim shall constitute a certificate by said creditor and/or its counsel that this order has been complied with. Said creditors and/or their counsel are, however, directed not file any separate certificate of service in the Clerk's Office.

The Bankruptcy Noticing Center caused to be filed a certificate of service reflecting that the notice of the commencement of this case under Chapter 13, the debtor's proposed plan and proof of claim form provided by the clerk of this court were served upon Trane Federal Credit Union, P. O. Box 443, La Cross, Wisconsin, 54602. The proof of claim form provided set forth immediately to the right of the claimant's signature line the following language. "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 Credit Union timely filed a proof of claim in response to this notice yet failed to serve debtor's counsel with a copy. This

failure was willful.¹

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 court conduct hearings on a regular basis in all six divisions, Augusta,

¹Following the hearing and my findings on the record, a writing filed March 18, 1998 on the letterhead of Wisenbaker & Brooks, LLP but unsigned and addressed to me set forth the following:

After our hearing in Statesboro on Tuesday, March 10, regarding the above referenced matter [Trane Federal Credit Union v. Dekle] I reviewed the proof of claim as filed by Trane Federal Credit Union.

Like the Court, I was under the impression that the signature line of the proof of claim or, the language immediately above the signature line, gave direction as to who should be served. This does not appear to be the case on the form supplied by the clerks office to Trane Federal Credit Union. A copy is enclosed for your reference. The fact that such language is not on the proof of claim is certainly no excuse for the creditor not adhering to the local rules or the instructions given on the notice of bankruptcy. I only point this out to the Court in the event the form is supposed to contain this language which, if that is the case, then it does not.

The certificate of service filed by the Bankruptcy Noticing Center clearly indicates that the appropriate proof of claim form was provided. To the extent that this writing is an effort to amend the judgment pursuant to Federal Rule of Civil Procedure (FRCP) 59 made applicable to bankruptcy practice pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 9023, reconsideration of claim pursuant to FRBP 3008 or relief from judgment or order pursuant to FRCP 60 made applicable to bankruptcy practice pursuant to FRBP 9024, as it was not worth signing pursuant to FRBP 9011, it's not worth considering.

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. 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 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 objection is sustained and the unsecured claim of Trane Federal Credit Union in the amount of \$9,425.00 is disallowed.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

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