

Late Claim Allowed - Corporate Debtor gave actual notice of Filing but no notice of claims bar date

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

In the matter of:

HMH MOTOR SERVICES, INC.

Debtor

ROSS A. QUIGLEY,
MARIA ELENA QUIGLEY,
ROSS A. QUIGLEY, JR.,
MISTIE QUIGLEY, and
THOMAS K. QUIGLEY, Minors,
by and through their
mother and next friend,
MARIA ELENA QUIGLEY

Movants

v.

HMH MOTOR SERVICES, INC.

Respondent

Chapter 11 Case

Number 89-20232

FILED
at 4 O'clock & 38 min. PM
Date 6/4/90
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

On Wednesday, April 18, 1990, a hearing was held upon a Motion to File a Late Claim by Ross A. Quigley, et al. Upon consideration of the evidence adduced at trial, the motions and

pleadings submitted by the parties, and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor, HMH Motor Services, Inc., filed its Chapter 11 proceeding in this Court on April 28, 1989. The Order and Notice of the Chapter 11 bankruptcy filing informed creditors of a claims bar date of September 5, 1989. The Quigleys' claim is based upon a pre-petition personal injury lawsuit arising from a motor vehicle accident in Arizona. On April 18, 1990, I granted a motion for relief from stay allowing Movants to pursue a personal injury action against Debtor.

The Quigley personal injury litigation in Arizona was listed in Item 12(a) of the Debtor's Statement of Financial Affairs filed with their Chapter 11 petition. The name and location of the Court in which the matter was pending was specifically listed as "Pima County, AZ Superior Court, Tucson, AZ". The style of the case was listed as "Ross Quigley, et al. v. HMH Motor Service, Inc., Carolina Cas. Ins. Co., et al.". The nature of the proceeding was listed as "Damages-Personal Injuries". However, the Quigleys were not scheduled as creditors and thus received no official notice from

this Court regarding the Debtor's filing. Nonetheless, the Quigleys did receive actual notice of the Debtor's pending case when Debtor's counsel filed "Notice of Filing of Bankruptcy and of Stay pursuant to 11 U.S.C. Section 362" in the Superior Court for the County of Pima, State of Arizona, and served Quigleys' counsel. However, the Quigleys received no notice of the claims bar date and now move this Court for allowance of their late claim.

CONCLUSIONS OF LAW

The issue squarely presented is whether a creditor of a Chapter 11 debtor who has actual notice of the debtor's filing but no formal notice of the claims bar date is precluded from filing a late claim.

Pursuant to Bankruptcy Rule 3003(c)(3), the Court is required to fix a time for the filing of a proof of claim or interest in Chapter 11 reorganization cases. "Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed contingent or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes

of voting and distribution." Rule 3003(c)(2). In accordance with Rule 2002(a)(8), notice of not less than twenty days of the bar date must be given to the debtor, the trustee, and all creditors and indenture trustees. Notice of pendency of the case itself is not sufficient to bar a claim in a corporate case. It has been held that due process requires that there be notice of the claims bar date as well. In re Spring Valley Farms, Inc., 85 B.R. 593 (N.D.Ala. 1988) aff'd. 863 F.2d 832 (11th Cir. 1989). In affirming the District Court in Spring Valley, the Eleventh Circuit held that Chapter 11 discharge provisions do "not discharge the debt of a creditor who was known to an individual corporate debtor and failed to receive notice under Bankruptcy Rule 2002(a)(8), even if the creditor had actual knowledge of the general existence of the bankruptcy proceeding." 863 F.2d at 835. The Court acknowledged that its ruling might have been different if the plaintiffs had actual knowledge of the bar date itself rather than merely a general knowledge of the initiation of bankruptcy proceedings. Id.

In the case at bar, the Movants were aware of the initiation of the bankruptcy proceeding but no evidence has been presented to show that they had actual knowledge of the claims bar date. Inasmuch as I am bound by Circuit authority, the late claim of the Movants will be allowed.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Motion to File a Late Claim by Ross A. Quigley, et al, is granted.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 4th day of June, 1990.