IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE:	**MIKE AND ARDIE TRIPLETT,**	**CASE NO.: 4:01-bk-45907 E**
	Debtors	**CHAPTER 13**

ORDER OVERRULING OBJECTION TO NOTICE OF TRANSFER

On May 13, 2004, the Court heard an **"Objection to Notice of Transfer"** (the "**Objection**") filed by Kathy A. Cruz on behalf of Debtors, Mike and Ardie Triplett, on March 25, 2004. Appearing on behalf of the Debtors were Cruz and Robert Lowry. Jeffery Ellis appeared on behalf of the Chapter 13 Trustee, Joyce B. Babin. Following oral argument and presentation of evidence, the Court took the matter under advisement.

The Debtors filed a voluntary Chapter 13 bankruptcy petition on October 18, 2001. Their Chapter 13 plan (the "**Plan**") was confirmed by order entered March 25, 2002. In their schedules, the Debtors list an unsecured debt to First Premier Bank (account number xxxxxxxxxxxx4794) in the amount of $347. The Plan provides that unsecured creditors will receive a pro rata dividend from any funds remaining after payment of other claims provided for by the Plan (specifically, the Debtors' home mortgage and two other secured debts).

On January 3, 2002, Premier Bankcard filed a proof of claim in the Debtors' case for an unsecured debt of $389.26 on the same account number as reflected in the Debtors' schedules (the "**Claim**"). On May 29, 2002, a Motion Combined With an Order Allowing Claims was entered allowing Premier's unsecured claim in the amount of $389.26. Pursuant to this combined motion and order, the Debtors had thirty days to object, or the listed claims would be allowed. This combined motion and order was sent to the Debtors' attorney, Cruz. No objections to the Claim were filed.

In their Objection, the Debtors object to a **"Notice of Transfer of Claim Pursuant to FRBP Rule 3001(e)(2), Waiver of Opportunity to Object, and Request for Notice Pursuant to FRBP 2002"** filed jointly by First Premier Bank and Sherman Acquisition LP on March 24, 2004 (the "**Claim Transfer Notice**"), in which Sherman Acquisition LP requests that it be substituted for First Premier Bank as the creditor on the Claim.[1] The Debtors also ask the Court to reconsider the Claim for cause pursuant to 11 U.S.C. § 502(j). At trial, Lowry explained that the Debtors' position was twofold: (1) Premier's Proof of Claim is invalid because it does not comply with Official Bankruptcy Form 10, and therefore, the claim could not have been transferred; and (2) the Debtors do not know if the claim was even transferred. For both of these reasons, Lowry asserts that the Claim should be reconsidered and disallowed pursuant to § 502(j). The Court will address each of the Debtors' arguments separately.

Compliance with Rule 3001[2] and Official Form 10

The Debtors allege that Premier failed to attach any documentation to its proof of claim as required by Rule 3001(c), and that accordingly, the Claim is invalid. Rule 3001(c) provides:

> When a claim ... is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

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[1]The Court notes that Debtors' counsel "negative noticed" the Objection by sending out a notice stating that the Objection had been filed, and that creditor had 30 days to file a response. The notice then stated that if a response were filed, a hearing would be set, and that if a response were not filed, the Court would sustain the Objection. In this case, no responses were filed, but the Court set the matter for hearing. The Court decides which matters may be "negative noticed" and which may not – what will be set for hearing is not a matter to be decided by counsel. Under these facts, the Court did not believe that a negative notice provided adequate notice and opportunity to be heard as required by 11 U.S.C. § 102(1).

[2]All references to rules in this order refer to the Federal Rules of Bankruptcy Procedure unless otherwise indicated.

Official Form 10 incorporates this requirement. However, where a creditor fails to comply with Rule 3001(c), courts have held that this is harmless error which the creditor should be allowed to remedy. *See Immerfall*, 216 B.R. at 272 (*citing In re Stoecker*, 5 F.3d 1022, 1028 (7th Cir. 1993). The opportunity to remedy arises once the Debtor objects to the claim under 11 U.S.C. § 502 and Rule 3007. *See Immerfall*, 216 B.R. at 272. At a hearing on a claim objection, there will normally be an evidentiary presumption in favor of the proof of claim's validity under Rule 3001(f). That rule provides: "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Where a creditor fails to provide the supporting writing, its proof of claim is deprived of the evidentiary status afforded it under Rule 3001(f). *See In re Immerfall*, 216 B.R. 269, 272 (Bankr. D. Minn. 1998); *In re Lindell Drop Forge Co.*, 111B.R. 137, 142-143 (Bankr. W.D. Mich. 1990). *See also In re Britt*, 199 B.R. 1000 (Bankr. N.D. Ala. 1996) (setting forth the applicable burdens of proof and production where a timely objection is made to a properly filed claim).

The original proof of claim at issue was accepted into evidence at the hearing on Debtors' Objection. A "Statement Summary" was attached to it indicating Debtor Ardie Triplett's name, her social security number, the account number, the amount due, and the date the account was opened. Although no one specifically addressed the sufficiency of the Summary Statement as proper documentation for the Claim, the Court infers that the Debtors believe the Summary Statement did not constitute a writing on which the Claim was based under Rule 3001(c) because Debtors contend there was no proper documentation attached to the Claim. Assuming (without deciding) that the Summary Statement does not constitute a writing on which the claim is based, the creditor failed to comply with Rule 3001(c). However, a failure to comply with Rule 3001(c) does not render the

Claim invalid. Rather, if the Debtors had timely objected to the Claim, the Claim would not establish *prima facie* evidence of its validity. The Debtors failed to object to the Claim despite receiving notice that they had 30 days to do so on or about May 29, 2002, almost two years before filing the Objection. Lowry argued that the transfer of the claim brought to the Debtors' attention the invalidity of the claim, and they could not have objected to the proof of claim sooner because they were not sent a copy of the proof of claim, and therefore, the claim should be reconsidered pursuant to 11 U.S.C. § 502(j).[3]

Pursuant to § 502(j), an allowed claim may be reconsidered for cause and according to the equities of the case. The Eighth Circuit Court of Appeals has held that in exercising its discretion to reconsider a claim under § 502(j), a bankruptcy court may consider "whether delay would prejudice the debtors or other creditors, the reason for the delay and its length and impact on efficient court administration, whether the creditors acted in good faith, whether clients should be penalized for counsel's mistake or neglect, and whether claimants have a meritorious claim." *Kirwan v. Vanderwerf (In re Kirwan),* 164 F.3d 1175, 1177-1178 (8th Cir. 1999) (citations omitted). The party requesting reconsideration bears the burden of proof. *See In re Gomez,* 250 B.R. 397, 400 (Bankr. M.D. Fla. 1999)

Lowry indicated that it was the Trustee's responsibility to determine if the claim should be allowed, and if the Trustee proposes to allow the claim, a debtor should be allowed to rely on that

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[3]The Debtors mentioned § 502(j) in their Objection but failed to properly notice this objection. The title of their pleading and the notice they mailed out said nothing about reconsidering the claim; accordingly, the Court's hearing notice did not specify that the Court was considering reconsideration of a claim under § 502(j). Rule 3008 specifically requires a hearing on notice when a claim is to be reconsidered. Accordingly, if the Debtors could show cause for reconsideration, the Court could not rule on their request. However, because the Court rules in the creditor's favor, the creditor is not harmed by lack of notice.

determination without further investigation. However, the Code does not allow this kind of reliance. Pursuant to 11 U.S.C. § 1302(b) (incorporating 11 U.S.C. § 704(5)), it is the chapter 13 trustee's duty to "*if a purpose would be served,* examine proofs of claims and object to the allowance of any claim that is improper." Given that the Claim matched a debt listed in the Debtors' schedules, it was not unreasonable for the Trustee to conclude that no purpose would be served by objecting to the Claim. It is the Debtors' responsibility to investigate and object to any claim it believes may be invalid. If the Debtors questioned the Claim, they could have filed an objection or requested a copy of the proof of claim and any supporting documentation. The Debtors' attorneys' reliance on the Trustee to protect their interests does not justify the Debtors' delay in moving to reconsider the Claim under these facts.

Furthermore, the Debtors presented no evidence to dispute the merits or validity of the Claim, and the Court finds no cause to reconsider the Claim. Debtor Mike Triplett[4] testified that he "just guessed" at the amount he owed when he completed his schedules. He testified that he had never seen a written contract regarding his credit card, that he did not know the applicable interest rate on his credit card, and that he had no way of knowing whether the claim as filed was valid or invalid as to the specifics. This testimony does not refute the validity of the Claim. The Debtors' schedules reflected a debt to Premier on the same account in the amount of $347, just over $40 less than the amount reflected on the proof of claim. The Debtor's guessing and general lack of knowledge about the credit card account may explain the difference. The Debtor's testimony in no way demonstrates cause under § 502(j).

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[4]The Court notes that based on the proof of claim, the credit card appears to have been in the name of Debtor Ardie Triplett, not Mike Triplett. This is a fact that only serves to further undermine the Debtors' Objection.

Objection to Transfer of Claim

In their Objection, the Debtors allege that the "Bill of Sale and Assignment of Bankruptcy Accounts" attached to the Claim Transfer Notice ("**Bill of Sale**") does not comply with Rule 3001(e)(4). Although the Debtors cite Rule 3001(e)(4) which provides for the transfer of claims *for security*; the transfer of claim in this case was made pursuant to Rule 3001(e)(2) which is for transfers of claims *not for security*. The Bill of Sale states, "[t]he transfer hereunder is outright and not for purposes of security." The Court can only guess (because the Debtors do not explain their reference to Rule 3001(e)(4)) that Debtors believe the claim was in fact transferred for security. The Debtors allege that the claim was securitized,[5] and therefore, Sherman Acquisition LP is not the true owner of the account sought to be transferred. The Debtors provide no basis for this allegation or belief, do not explain how such an allegation could affect the transfer of a claim under Rule 3001, and did not argue this point at trial. Furthermore, as explained below, the Debtors have no standing to object to a transfer of claim, whether or not it is for security.

At trial, the Debtors' counsel argued that they did not believe that the claim had been transferred at all – they pointed to language in the Bill of Sale excepting from the transfer accounts provided for in a "Credit Card Account Purchase Agreement" dated November 26, 2003, which was not attached to the Claim Transfer Notice. Debtors provided no other explanation for their belief other than the reference to this other agreement; even if the Debtors had standing to object to such a transfer, such speculation is insufficient evidence that the claim was not transferred. However, regardless of whether or not the claim was in fact transferred, only the alleged transferor may object

[5]The Court recognizes that to "securitize" is to package loans or other financial instruments and sell to other investors in the form of securities.

to the transfer of a claim. Debtors have no standing to object to the transfer of a claim under Rule 3001(e). *See Viking Assocs. v. Drewes (In re Olson),* 120 F.3d 98, 103 (8th Cir. 1997) ("The text of the [Rule 3001(e)(2)] makes clear that the existence of a 'dispute' depends upon an objection *by the transferor*."); *In re Lynn*, 285 B.R. 858, 862 (Bankr. S.D.N.Y. 2003) (" . . . Bankruptcy Rule 3001(e), which governs the assignment of bankruptcy claims, does not confer standing on the Debtor to object to the assignment . . . ".). *See also In re Cecil and Peggy Staggers*, No. 4:03-bk-70049 (Bankr. W.D. Ark. June 25, 2004) (Mixon, J.). Like Rule 3001(e)(2), the text of 3001(e)(4) only provides for an objection by the alleged transferor. 9 Collier on Bankruptcy ¶ 3001.08[1][1] n 13 (15th ed. rev. 2004) ("Since the 1991 Amendments, Rule 3001(e)(2), (4) requires that the alleged transferor be the objecting party.").[6] Because the Debtors have no standing to object to the transfer of claim, such transfer cannot serve as the basis for reconsideration of an allowed claim under § 502(j).

CONCLUSION

Although the creditor in this case may have failed to provide documentary evidence supporting its claim when it filed its proof of claim, the claim was allowed and the Debtors failed to timely object. The claim is not invalid due to the lack of supporting documentation, and the Debtors failed to provide any cause as to why the claim should now be reconsidered. Furthermore, the Debtors do not have standing to object to the transfer of a claim under Rule 3001, and

[6]Where a claim is transferred for security and no agreement dividing rights concerning voting, dividends and participation in the case is filed, on motion of a party in interest, which might be the transferor, transferee, debtor, trustee or a committee, the court can enter an appropriate order dividing such rights." 9 Collier on Bankruptcy ¶ 3001.08[1][b] (15th ed. rev. 2004). This is the only instance in which a debtor would have standing to file a motion with respect to a transfer of claim.

accordingly, no alleged deficiency in the claim transfer can serve as cause for reconsideration of a claim under § 502(j). For these reasons, it is hereby

ORDERED that the Debtors' Objection is **OVERRULED**.

IT IS SO ORDERED.

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: July 15, 2004

cc: Ms. Kathy Cruz
Mr. Robert Lowry
Mike and Ardie Triplett, Debtors
Sherman Acquisition, LP c/o Resurgent Capital Services, P.O. Box 10587, Greenville, SC 29603-0587
First Premier Bank, 900 West Delaware Street, Sioux Falls, SD 57104
Ms. Joyce Bradley Babin, Chapter 13 Trustee
U.S. Trustee