

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION

In re NAYAN K. BHATT,	)	Case No. 02-03239-WA4-7
	)	
Debtor,	)	
_____	)	
WILLIAM F. SCHNEIDER, Trustee,	)	
	)	
Movant,	)	
	)	
v.	)	
	)	
KALYANI N. BHATT,	)	
	)	
Respondent,	)	
_____	)	

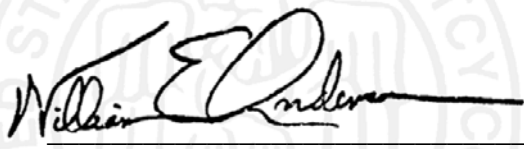
**ORDER**

For the reasons stated in the accompanying memorandum, the objection of the chapter 7 trustee to the claim #13 of Kalyani N. Bhatt is sustained. The claim is disallowed in full.

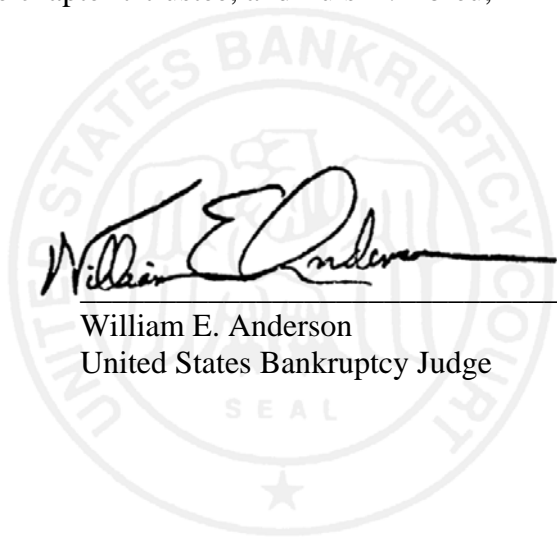
So ORDERED.

Upon entry of this order the Clerk shall forward copies to Andrew S. Goldstein, Esq., counsel for the debtor, William F. Schneider, Esq., the chapter 7 trustee, and Luis A. Abreu, Esq., counsel for the respondent.

Entered on this 10<sup>th</sup> day of June, 2005.



\_\_\_\_\_  
William E. Anderson  
United States Bankruptcy Judge



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Debtor,	)	
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WILLIAM F. SCHNEIDER, Trustee,	)	
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v.	)	
	)	
KALYANI N. BHATT,	)	
	)	
Respondent,	)	
_____	)	

**MEMORANDUM**

This matter comes before the court on an objection to the claim #13 of Kalyani N. Bhatt (“the Respondent”) by the Chapter 7 Trustee (“the Trustee”). This court has jurisdiction over this motion. 28 U.S.C. §§ 1334(a) & 157(a). This is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Accordingly, this court may render a final order.

*Facts*

Nayan K. Bhatt (“the Debtor”) and the Respondent were married in 1985. The marriage produced three children, now approximately 17, 15, and 13 years old. In 1992, the Debtor and the Respondent separated. They entered into a separation agreement (“the Separation Agreement”) that was filed with the Clerk of the Circuit Court for the City of Norfolk on May 22, 1996.<sup>1</sup> The Separation Agreement provided that the Debtor would pay all of the undergraduate tuition expenses for the dependent children. The applicable paragraph, headed “Education.”, provided:

The husband [the Debtor] shall be responsible for all tuition expenses incurred for the purpose of their children obtaining an undergraduate education. The husband further agrees to establish a Trust Fund naming the children as beneficiary. Said Trust fund shall have a minimal value of Five hundred Thousand Dollars per child. Said Trust fund is for the purpose of paying college tuition in the event each child desires to attend college. The custodian of the [sic] said fund shall be the Husband.<sup>2</sup>

The Trust Fund referenced above is referred to herein as “The Education Trust Fund”. The Separation Agreement also provided, among other things, that the Debtor would pay the Respondent \$2,500.00 per month per child (\$7,500.00 per month) in child support. A Final Decree of Divorce (“the Divorce Decree”) was entered with the Clerk of the Circuit Court for the City of Norfolk on May 22, 1996, terminating the marriage between the Debtor and the Respondent. The Divorce Decree incorporated the terms of the Separation Agreement into the Divorce Decree.

On August 16, 2002, the Debtor filed the above-styled chapter 7 petition. On December 23, 2002, the Respondent filed a proof of claim (#8), which she amended by claim #12. On

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<sup>1</sup> See Separation Agreement, dated February 1, 1996, attached to the Respondent’s Proof of Claim #12 in support thereof.

<sup>2</sup> See Separation Agreement, dated February 1, 1996, attached to the Respondent’s Proof of Claim #12 in support thereof, second page entered into evidence.

January 27, 2005, the Trustee filed an objection to claim #8 as amended by claim #12 on the grounds that the claim appeared to include amounts not yet due, amounts that may have been paid, and unwarranted claims for priority status. The Trustee and the Respondent settled all disputes regarding the claim except for the Respondent's claim for priority status for her claim for reimbursement of primary and secondary school tuition for the dependent children. She filed another amended proof of claim, claim #13<sup>3</sup>, in the amount of \$225,589.40, based on the pre-petition payment of primary and secondary school tuition by the Respondent for the Debtor's three dependent children<sup>4</sup>. The Respondent asserts that the claim is entitled to priority status under 11 U.S.C. § 507(a)(7).

The Trustee does not object to the amount of the claim #13. The Trustee does, however, object to the priority character of the claim #13.

At the hearing, the Trustee noted that all of the Debtor's non-exempt assets have been marshaled and converted to cash and that the estate now contains \$33,500.00. The trustee further noted that the Internal Revenue Service has an allowed priority claim under 11 U.S.C. § 507(a)(8) in the approximate amount of \$41,000.00.

### *Discussion*

The Debtor's estate contains about \$33,500.00. The Respondent asserts a priority claim under 11 U.S.C. § 507(a)(7) in the amount of \$225,589.40. The Internal Revenue Service has an allowed priority claim under 11 U.S.C. § 508(a)(8) in an amount greater than \$40,000.00. If the Respondent's claim is allowed as a priority claim under section 507(a)(7), then it will be senior in

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<sup>3</sup> Documentation supporting proof of claim #13 is attached to proof of claim #12.

<sup>4</sup> Statement of William F. Schneider, Chapter 7 Trustee, at hearing on May 4, 2005, Transcript, p. 5.

priority to the claim of the Internal Revenue Service and the trustee will distribute the entire amount in the estate, less any unpaid administrative claims, to the Respondent.<sup>5</sup> If the Respondent's claim is not allowed as a priority claim under section 507(a)(7), then the trustee will distribute the entire amount of the estate, less any unpaid administrative claims, to the Internal Revenue Service.

The issue, then, is whether the Respondent's asserted claim for tuition should be allowed as a priority claim under 11 U.S.C. § 507(a)(7). That section provides:

(a) The following expenses and claims have priority in the following order:

...

(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

A proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a). The presumption may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal. In re Hold, 931 F.2d 620, 623 (9th Cir. 1991); In re Fuller, 962 F.2d 1463, 1466 (10th Cir. 1992); In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objections and establishing the claim. In re Knife, 210 BR. 773, 779 (Bank. N.D. Ill. 1997). That is, the claimant must meet the burden of going forward.

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<sup>5</sup> Priority claim under section 507(a)(7) are paid in full before priority claims under section 507(a)(8) receive any distribution.

In this case, the Respondent filed a proof of claim supported by tuition schedules, a list of tuition payments made to the school, the Separation Agreement and the Divorce Decree. The Trustee has responded by objecting to the claim asserting that the documentation does not support the proof of claim. The Court agrees with the Trustee.

A claim is a seventh priority claim only if the underlying debt was incurred in connection with a separation agreement, divorce decree or other order of a court of record determined in accordance with state or territorial law by a governmental unit, or property settlement agreement. 4 Collier on Bankruptcy, “Priorities”, ¶ 507.09, p. 507-53 (15th ed. rev.). The problem from the Respondent’s perspective is that neither the Separation Agreement nor the Divorce Decree provide for the payment of the dependent children’s primary and secondary school tuition.

The Separation Agreement provides only for the payment of the children’s “tuition expenses incurred for the purpose of . . . obtaining an undergraduate education.” “Undergraduate” is defined as “of, relating to, or engaged in college or university studies prior to the first decree”. Webster’s Third New International Dictionary (Unabridged), p. 2488 (1976 ). The documents supporting the Respondent’s proof of claim indicate that the tuition on which the claim is based was for grades four through eleven. None of these grades related to college or university studies. Consequently, the Education Trust Fund provision in the Separation Agreement does not include pre-petition tuition payments made by the Respondent for the education of the dependent children.

At the hearing, counsel for the Respondent asserted that a consent order (“the Consent

Order”)<sup>6</sup> was entered in this case that “resolved basically 1.5 million dollars of a claim, of the claim. And the claim at the time was 1.5 million plus \$225,000 for these tuition expenses . . .” The Consent Order does provide that the funds from the Education Trust Fund “are eligible to be used to pay or reimburse private high school tuition, and education expenses . . .”<sup>7</sup> This avails the Respondent nothing. First, the consent order is a post-petition agreement between the Debtor and the Respondent. Such an agreement cannot give rise to a general unsecured or priority unsecured claim. Claims for alimony, maintenance or support are not allowed unless than have matured as of the date of petition. 11 U.S.C. § 502(b)(5).<sup>8</sup> Second, the paragraph 7 of the Consent Order does not provide for claim in addition to the claim for the funding of the Education Trust Fund. Rather it provides that the funds may be used to pay for high school (secondary) tuition. Because the claim arising from the Debtor’s obligation to fund the Education Trust Fund has already been allowed, it cannot give rise to another claim. Indeed, even though the trustee stated at the hearing that he did not oppose the allowance of the claim as an unsecured claim, the court must disallow the claim for tuition in full.<sup>9</sup>

### *Conclusion*

Neither the Separation Agreement nor the Divorce Decree support the Respondent’s proof

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<sup>6</sup> Counsel did not provide the court with a reference that would allow the consent order to be identified. A review of the record leads the court to believe that the consent order in question was entered on docket in this case as docket #56.

<sup>7</sup> See Docket #56, p. 3-4, ¶ 7.

<sup>8</sup> Section 502(b)(5) states that a claim shall be allowed “except to the extent that . . . such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) . . .” The language of section 507(a)(7) is, with one exception not applicable here, identical to the wording of section 523(a)(5), which provides that claims for alimony, maintenance or support or non-dischargeable. See 4 Collier on Bankruptcy, “Priorities”, ¶ 507.09[1], p. 507-53 (15th ed. rev.).


<sup>9</sup> It appears that the Trustee does not oppose the allowance of the Respondent’s claim based on tuition because the allowance of the claim will have no effect on the distribution of the assets of the estate.

of claim for primary and secondary education tuition. The Respondent's proof of claim #13 is disallowed in full.

The court will issue an appropriate order.

Upon entry of this memorandum the Clerk shall forward copies to Andrew S. Goldstein, Esq., counsel for the debtor, William F. Schneider, Esq., the chapter 7 trustee, and Luis A. Abreu, Esq., counsel for the respondent.

Entered on this 10th day of June, 2005.



A handwritten signature in black ink, appearing to read "William E. Anderson", is written over a horizontal line. The signature is fluid and cursive.

William E. Anderson  
United States Bankruptcy Judge

