

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re FRANK HARRY GIRGENTI and) Case No. 10-62312-LYN
SANDRA ZACCHINO,)
)
 Debtors.)
_____)

**ORDER OVERRULING OBJECTION
TO CLAIM #37 OF CATHERINE A. GRESS**

This matter comes before the court on the Debtors’ objection to the claim no. 37 of Catherine A. Gress (“the Creditor”) in the amount of \$76,000.00. The proof of claim indicates that the claim is a priority claim for child support. The Debtors scheduled the claim at \$00.00. The claim is not listed as contingent, unliquidated, or disputed in the Debtors schedules. The Debtors’ third amended plan estimates the claim at \$00.00.

The objection to claim provides.

The child support issue between Frank Girgenti and Claimant is on appeal in the New York courts. This amount is therefore contingent, unliquidated, and disputed. Debtors claim there is 0 due to Ms. Gress.

The fact that a claim is contingent or unliquidated is not a basis for disallowing the claim. Section 502(c)(1) requires estimation of a contingent or unliquidated claim when failure to do so would unduly delay the administration of a case. The language of section 502(c) is mandatory and places upon the court an affirmative duty to estimate unliquidated claims in the property circumstances. 4 Collier on Bankruptcy, “Allowance of Claims or Interest”, ¶ 502.04[2] (16th

ed. rev.) (Citing In re Nova Real Estate Inv. Trust, 23 B.R. 62 (Bankr. E.D.Va. 1982) and In Re Continental Airlines, 981 F.2d. 1450 (5th Cir. 1993) among others.). This case is more than seven months old. The plan has not been confirmed. Failure to estimate the amount of claim no. 37 would unduly delay the administration of this case. If the Debtors believe that the claim should be estimated under 11 U.S.C. § 502(c)(1), then they may file a motion to do so. In any event, disallowance of the entire claim is not appropriate under the circumstances.

The Debtors also assert that the claim is disputed. This is nothing more than a restatement that the Debtors object to the claim. It is not one of the bases for objection enumerated under Section 502(b). It cannot form the basis for an objection to claim.

Accordingly, the objection to claim no. 37 of Catherine A. Gress shall be, and hereby is, overruled.

So ORDERED.

Upon entry of this order, the Clerk shall forward a copy to Marshall M. Slayton, Esq., counsel for the debtors, the Chapter 13 trustee, and Catherine A. Gress.

Entered on this 11th day of April, 2011.



William E. Anderson
United States Bankruptcy Judge

The seal of the United States Bankruptcy Court is visible in the background, featuring the text "UNITED STATES BANKRUPTCY COURT" around the perimeter and "SEAL" at the bottom, with a star in the center.