

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division**

**IN RE:**

**ALFRED T. KERSHNER  
PETRA M. KERSHNER,**

**Case No. 04-00749-13**

**Debtors**

**DECISION AND ORDER**

At Harrisonburg in said District this 29<sup>th</sup> day of November, 2006:

The matter before the court arises out of an objection by Herbert L. Beskin, Trustee (herein the Trustee), to a proof of claim filed by Larry Mick (herein the Creditor). The issue for decision is whether the Creditor's untimely filed proof of claim should be allowed when the Creditor had actual knowledge of the bankruptcy a month before the deadline for filing proofs of claims. For the reasons stated in this decision and order, the court holds that the Creditor's claim is barred by the Federal Rules of Bankruptcy Procedure. Accordingly, the Trustee's objection will be sustained and the proof of claim disallowed because it was not timely filed.

**Facts:**

On April 12, 2004, Alfred and Petra Kershner (herein the Debtors) filed a joint petition for relief under Chapter 13 of the Bankruptcy Code.<sup>1</sup> An order for relief was entered and Herbert L. Beskin qualified as Trustee. The notice of the filing of the petition and the section

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<sup>1</sup> The male debtor passed away in January of 2006.

341 meeting established the deadline for filing proofs of claim as September 13, 2004. The Creditor was not included on the creditor mailing matrix and, at filing, did not receive notice of the bankruptcy from the Debtors, the Trustee, or the court.

The Creditor obtained a judgment against the Debtor, Petra Kershner, for \$1,000.00 in 2002, but did not file a proof of claim, as required of unsecured creditors by Bankruptcy Rule 3002(a)<sup>2</sup>, until February 11, 2005, nearly five months after the deadline set in the order for relief issued upon filing. The Chapter 13 trustee objected to the Creditor's claim. The Creditor responded that he had not been listed as a creditor on the Debtors' mailing matrix at the time of the filing of their petition in April of 2004; however, the Creditor admitted that he had actual knowledge of the case before the claims filing period expired.

The Creditor became aware of the Chapter 13 because he obtained a garnishment summons and it was served on Mr. Kershner's employer. The employer responded to the court that the Debtors had filed. The court reported this to the Creditor approximately four (4) weeks prior to expiration of the claims filing deadline in the case. The Creditor contacted the bankruptcy clerk's office and was mailed a proof of claim form. The Creditor filed his proof of claim on February 11, 2005, almost five months after the filing deadline passed.

#### **Law and Discussion:**

This court has jurisdiction over the parties and subject matter of this proceeding under 28 U.S.C. §§ 151, 157, and 1334. This is a case filed under Title 11, and the court may hear and determine this core proceeding under 28 U.S.C. § 1409(a).

11 U.S.C. § 501(a) provides that creditors may file proofs of claim. Absent

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<sup>2</sup> Bankruptcy Rule 3002(a) requires that "a[n] unsecured creditor . . . must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005."

objection they are allowed. *See*, 11 U.S.C. § 502(a). 11 U.S.C. § 502(b)(9) disallows a claim “. . . to the extent that . . . proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a)<sup>3</sup> of this title or under the Federal Rules of Bankruptcy Procedure.” Because the Debtors filed a Chapter 13 proceeding, section 726(a) does not apply.

Bankruptcy Rule 9006(b)(1) provides specific instances when filing deadlines can be enlarged. However, Bankruptcy Rule 9006(b)(3) limits enlargement with respect to claims. Enlargement is permitted only to the extent allowed by Rule 3002(c). Bankruptcy Rule 3002(c) provides five exceptions to the time requirements for filing a proof of claim.<sup>4</sup> The Creditor in this case does not qualify for any of these exceptions to the proof of claim filing deadline.<sup>5</sup>

The Creditor argues that his late proof of claim should be allowed because the Debtors excluded him from the initial mailing matrix and he never received proper notice of the bankruptcy or a proof of claim filing deadline. However, the Creditor had actual knowledge of the case before the filing deadline and called the clerk’s office to obtain a proof of claim form. The Bankruptcy Code does not provide a remedy for a creditor who has actual knowledge of the case in time to timely file a proof of claim.<sup>6</sup>

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<sup>3</sup> 11 U.S.C. § 726(a)(2)(C)(i) only allows tardily filed claims when “the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filed a proof of such claim under section 501(a) of this title.”

<sup>4</sup> Creditors have 90 days after the initial section 341 meeting to file a claim.

<sup>5</sup> The Bankruptcy Rules do not give courts discretion to extend time for filing proofs of claim in Chapter 13, as it has in Chapter 11. *See*, Bankruptcy Rule 3003(c)(3).

<sup>6</sup> *See, In re Ryan*, 78 B.R. 175, 182 (Bankr. E.D. Tenn, 1987); *In re Jensen*, 333 B.R. 906, 910 (Bankr. M.D. Fla., 2005).

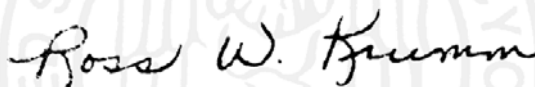
**Conclusion:**

This court holds that the Creditor's proof of claim was not timely filed, and because the Creditor had actual notice of it prior to the expiration of the time for filing claims, his claim is not allowable. Accordingly, it is

**ORDERED:**

That the Trustee's objection to the filing of the Creditor's proof of claim be, and it hereby is **SUSTAINED** and the proof of claim is **DISALLOWED** .

Copies of this decision and order are directed to be sent to Herbert L. Beskin, Trustee; Roland S. Carlton, Esquire, counsel for the Debtors; and to Larry Mick, the Creditor.



Ross W. Krumm

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Ross W. Krumm  
U. S. Bankruptcy Judge