

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

CASE NO. 94-22621

**Gail E. Garczynski and
Charles J. Garczynski,**

DECISION & ORDER

Debtor(s).

BACKGROUND

On December 6, 1994, Gail E. Garczynski and Charles J. Garczynski (the "Debtors") filed a petition initiating a Chapter 13 case. On their Schedule F, the Debtors listed Patricia A. Cannan ("Cannan") as a creditor holding an unsecured, nonpriority claim by reason of an October, 1994 judgment in the amount of \$16,130.00. On December 20, 1994, an Order for Meeting of Creditors, Combined With Notice Thereof And Of Automatic Stays (the "341 Notice") was mailed to all of the Debtors' creditors, including Cannan, which advised them that: (1) a first meeting of creditors and an initial hearing on confirmation would be conducted on January 23, 1995; (2) "In order to have his claim allowed so that he may share in any distribution from the estate, a creditor must file a claim, whether or not he is included in the list of creditors filed by the Debtor. Claims which are not filed on or before April 24, 1995 will not be allowed, except as otherwise provided by law. File claim with attachments, if any, in duplicate with the United States Bankruptcy Court, 100 State Street, Rochester, New York, 14614"; and (3) the Trustee appointed in the Debtors' case was George Reiber, 3136 South Winton Road, Rochester, New York, 14623 (the "Trustee").

On January 30, 1995, an Order Confirming the Debtors' Amended Plan (the "Plan") was entered. The Plan provided that the Debtors would pay the Trustee \$1,800.00 per month by wage

order for a period of three and one-half years, with unsecured creditors to receive a pro rata distribution.

On June 19, 1995, the Court entered an Order Approving Claims in response to a Motion to Allow Claims made by the Trustee. The Trustee's Motion indicated that although Cannan had a claim for \$16,130.00, she had not filed a claim. As a result, no claim on behalf of Cannan was specifically allowed by the Order.

On October 17, 1995, a proof of claim (the "Formal Cannan Proof of Claim") was filed on behalf of Cannan with the Bankruptcy Court which: (1) was dated September 29, 1995; (2) was filed as an unsecured claim in the amount of \$16,130.00; and (3) had attached to it a copy of an October 11, 1994 judgment entered by the Supreme Court of Monroe County in the amount of \$16,130.00 (the "Cannan Judgment").

On September 4, 1996, an objection (the "Claim Objection") to the Formal Cannan Proof of Claim was filed on behalf of the Debtor Gail Garczynski on the grounds that the Claim was not timely filed.

On October 2, 1996, a Response (the "Response") to the Claim Objection was filed on behalf of Cannan, which asserted that: (1) on December 22, 1994, the day after Cannan received a copy of the 341 Notice and contacted her attorney about the Notice, Cannan's attorney sent a letter to the Trustee (the "Attorney Letter") which advised him that: (a) Cannan had a judgment against Gail Garczynski for \$16,130.00 (the "Cannan Judgment"), which arose out of a personal injury case; and (b) "We have assured Ms. Cannan that you will protect her interest as a creditor along with all

others”; (2) on July 17, 1995, after the April 24, 1995 bar date, Cannan had contacted the Trustee’s office about the status of the case and was advised that a formal claim had to be filed, but that since several procedural matters were occurring in the case, the Trustee’s office would get back to her; (3) on July 25, 1995, after Cannan contacted her attorneys about her conversation with the Trustee’s Office, one of the attorneys contacted the Trustee’s office and was advised that the Attorney Letter would be treated as a proof of claim but that a formal proof of claim should be filed; (4) on September 29, 1995, a copy of the Formal Cannan Proof of Claim along with an additional copy of the Attorney Letter was sent to the Trustee’s office; (5) on October 17, 1995, a copy of the Formal Cannan Proof of Claim was filed with the Bankruptcy Court; and (6) Cannan had received distributions from the Trustee’s office totaling \$5,648.15, including an initial distribution made to her on November 28, 1995 of \$1,567.06.

The Response further asserted that the Claim Objection should not be sustained because: (1) the Formal Cannan Proof of Claim, filed after the April 24, 1995 bar date, should be deemed to be an amendment to the informal proof of claim filed with the Trustee in the form of the Attorney Letter; (2) there would be no prejudice to the Debtors if the Court allowed the Formal Cannan Proof of Claim filed after the April 24, 1995 bar date because the informal proof of claim in the form of the Attorney Letter had been filed with the Trustee before the creditors meeting, Confirmation Hearing and bar date; (3) the Trustee had accepted the Attorney Letter as an informal proof of claim and made distributions to Cannan; and (4) it would be inequitable and unfair not to allow Cannan to receive a pro rata distribution from the estate by reason of the Cannan Judgment.

On October 1, 1996, the Trustee filed an Affidavit in Opposition to the Objection to Claim (the "Affidavit"), along with a letter memorandum (the "Memorandum"), which together asserted that: (1) the Debtors' schedules indicated that the Debtor Gail Garczynski was indebted to Cannan in the amount of \$16,130.00 by reason of an October, 1994 judgment, and that the debt was not disputed; (2) the 341 Notice indicated that claims which were not filed by the bar date, April 24, 1995, would not be allowed "except as otherwise provided by law."; (3) on or about December 27, 1994, the Trustee's office had received the Attorney Letter, which advised him of the Cannan Judgment and the expectation that he, as Trustee, would protect Cannan's interests as a creditor along with other creditors; (4) at the 341 meeting of creditors, there were specific discussions as to whether the Cannan Judgment should be treated as secured by the Debtor Gail Garczynski's interest in her residence, and it was determined that the Judgment was not supported by non-exempt equity and therefore should be treated as unsecured under the Plan, which was how the Plan was presented to the Bankruptcy Court at the time of the Confirmation Hearing; (5) in July, 1995, in response to Cannan contacting his office, and after reviewing the Debtors' case file and the Attorney Letter, the Trustee determined that the Letter clearly advised him of the amount of Cannan's claim and its basis, and clearly expressed an intent to hold the estate liable, so that he concluded that it would constitute and should be deemed to be an informal proof of claim, susceptible to amendment after the bar date by the filing of a formal proof of claim; (6) as a result, the Trustee advised Cannan's attorney to file a formal proof of claim; and (7) upon the filing of the Formal Cannan Proof of Claim, which the Trustee considered to be an amendment to the informal proof of claim, he began to make

distributions to Cannan in November, 1995.

After an October 9, 1996 hearing on the Claim Objection, the Court received additional submissions from the attorneys for the Debtors and Cannan. The attorney for the Debtors asserted that: (1) pursuant to Section 704(5), the only duty of a Trustee with regard to the allowance of proofs of claim was to object to allowance where appropriate; and (2) filing a proof of claim with the Trustee was not the equivalent of filing a proof of claim with the Court, which was required under cases finding that an informal proof of claim had been filed. The attorney for Cannan provided the Court with the results of his research which indicated that there was substantial authority for the proposition that filing a writing with a trustee, rather than with the Bankruptcy Court, in appropriate circumstances, did not prevent a finding that such a writing constituted an informal proof of claim.

DISCUSSION

“To constitute an informal proof of claim, there must be some informal writing or pleading in the bankruptcy case which is a timely assertion by the creditor of his claim against the debtor’s estate, and the timely written assertion or pleading must apprise the court of the existence, nature and amount of the claim as well as evidence an intent on the part of the claimant to hold the debtor liable for that claim. **In re Joseph C. George**, No. 93-21658 (Bankr. W.D.N.Y. Feb. 21, 1996). **In re W.T. Grant Co.**, 55 B.R. 417, 420 (Bankr. S.D.N.Y. 1985).”

For the following reasons, I find that the Attorney Letter received by the Trustee on or about December 27, 1994, prior to the April 24, 1995 claims bar date and the Confirmation Hearing, constituted an informal proof of claim which could be, and was, amended by the Formal Cannan Proof of Claim filed with the Bankruptcy Court on October 17, 1995:

- (1) As correctly pointed out by Chief Bankruptcy Judge Stephen D. Gerling, courts in the Second Circuit have long recognized the validity of informal proofs of claim. *See In re The Float, Inc.* 163 B.R. 18 (Bankr. N.D.N.Y. 1993);
- (2) Numerous courts have held that the requirement that the timely writing be filed with the court is satisfied if the writing is filed with a different entity properly acting in the bankruptcy case. *See In re Franciscan Vineyards, Inc.*, 597 F.2d 181 (9th Cir. 1979) (letter to trustee); *In re Hauger Construction Services, Inc.*, 876 F.2d 681 (8th Cir. 1989) (letter to Office of the U.S. Trustee); *In re Dialysis Service Co., Inc.*, 119 B.R. 940 (Bankr. D.C. 1982) (letter to Trustee's attorney); and *In re Neisner Bros. Inc.* 2 B.R. 474 (Bankr. S.D.N.Y. 1980) (claims delivered to accountants for the debtors);
- (3) The Attorney Letter, a writing, clearly set forth the existence, nature and amount of Cannan's claim. It stated that Cannan had a claim by reason of a State Court judgment in the amount of \$16,130.00 against the Debtor Gail E. Garczynski which arose out of a personal injury case;
- (4) By indicating a specific expectation that the Trustee would protect Cannan's interest as a creditor along with all other creditors, the Attorney Letter evidenced an intent on the part of Cannan to: (a) hold the Debtor liable for the claim; (b) participate in the bankruptcy case; and (c) receive payment from the estate equivalent to the payment to be received by similarly situated creditors.
- (5) The Trustee and the Debtors were aware of Cannan's claim in that a \$16,130.00 judgment in favor of Cannan was listed in the Debtors' Schedule F as undisputed, and in his Affidavit the Trustee indicated that there were specific and detailed discussions with respect to the claim at the Section 341 first meeting of creditors;
- (6) The Trustee, an experienced Chapter 13 Trustee, knowledgeable in applicable law, accepted the Attorney Letter as an informal proof of claim and began to make distributions to Cannan;
- (7) There is no prejudice to the Debtors from the Court allowing the Attorney Letter as an informal proof of claim properly amended by

