

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

CHARLES SIRIGIANO

Case No. 91-14689

Debtor  
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The State of New York Department of Taxation and Finance has filed a Proof of Claim against this Debtor for

over \$123,000.00. The State says that he owes that money because that is what the State's computer says he owes. It has almost no other evidence of a debt in that amount, at this time.

The Debtor does not deny that he had certain personal liability for some taxes owed by the long-defunct corporate car dealership he owned (Yankee Dodge, Inc.) and that has been administered as a bankrupt estate for many years in this Court. But his counsel claims evidence that some, perhaps all, of these taxes were paid by successive trustees in the corporate bankruptcy case, and no one can tell her at this moment whether that is so or not.

Apparently some records of the trustees or of the Court cannot be found. The State confesses that it has had difficulty finding complete records from which it might confirm or deny the receipt of payments from others (such as the trustees) upon this Debtor's controlling person liabilities. It agrees that maybe the taxes were paid. But maybe they were not.<sup>1</sup>

Rule 3001(f) places a heavy burden on one who objects to a properly filed claim under Rule 3007. This is not because persons who assert claims are intrinsically worthy of

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<sup>1</sup>Perhaps a check of the tax I.D. number of Yankee Dodge would be informative.

belief. It is because of the confluence of a number of other considerations and provisions of law. First and foremost, a Proof of Claim must be signed under penalty of the False Claims Act, and so a claimant places herself at risk of criminal sanctions. Secondly, the Official Form requires certain information regarding the claim, without which a claim may be attacked on form as well as merit. On the other hand, a creditor typically is an involuntary participant in a bankruptcy proceeding, who ought not have to appear and prove up an otherwise properly completed and supported claim form.

Mr. Sirigiano apparently has no personal knowledge of whether and what tax claims were paid by the bankruptcy trustees of his defunct, but not assetless, corporation. His counsel has found some evidence that tax claims of the priority level at issue were in fact paid in full, but she asserts that neither the trustees nor the State have been able so far to answer the question.

So, for now, Mr. Sirigiano's opponent is the State's computer. It is some byte of data that supposedly justifies the State's claim, but precious little more.

According to 8 Collier on Bankruptcy, ¶ 3001.05 (15th ed. 1996), the objector's burden is to present evidence "sufficient to evidence a true dispute and must have probative force equal to the contents of the claim."

Here, the probative force of the claim is so slight that it takes only slight evidence to rebut the Rule 3001(f) presumption and shift the burden of going forward back to the State.

Assuming that Debtor's counsel is correct in her belief that some prepetition claims were paid, at least in part, in the corporate Chapter 7 case, in this writer's view two mighty presumptions suffice to rebut the Rule 3001(f) presumption: (1) Chapter 7 trustees

presumably do not pay prepetition claims without satisfying administrative claims first; and (2) the State presumably asserted its claims against Yankee Dodge in appropriate fashion.<sup>2</sup>

Under other circumstances, using presumptions to overcome presumptions might be problematic, but not here where the probative value of the claim has been so weakened by the absence of supporting tax records and history of payments received.

The State will have until January 8, 1997, to submit evidence to sustain its burden of persuasion regarding the existence and the substance of its claims against Mr. Sirigiano.

The Objection is placed on the "conflict" calendar of January 22, 1997 at 10:00 a.m. for a report back regarding said evidence, and for scheduling of the Debtor's opportunity to be heard further regarding the State's supporting evidence.

SO ORDERED.

Dated: Buffalo, New York  
December 12, 1996

/s/Michael J. Kaplan

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Michael J. Kaplan, U.S.B.J., W.D.N.Y.  
Sitting by Designation in the  
Northern District of New York

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<sup>2</sup>In New York law "there is a very strong presumption . . . That public officers have properly discharged the duties of their office." 57 N.Y. Jur. 2d *Evidence & Witnesses* § 119 (1986). Only by "convincing evidence" is that presumption rebutted. *Id.* § 120.