

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

In Re:

**BILLY L. WADE &
LOIS E. BERNARD,**

Debtors.

BK. NO. 91-20164

DECISION AND ORDER

BACKGROUND

On January 22, 1991 the debtors, husband and wife, Billy L. Wade and Lois E. Bernard (the "Debtors"), filed a voluntary petition initiating a Chapter 7 case. On Schedule A-3, the Debtors set forth three separate listings for Kaufmann's as an unsecured creditor with unliquidated joint claims: 1) Account No. 136-394-98 for merchandise and/or payment of other credit cards, 1985 -- \$465.82) 2) Account No. 895-454-19 for merchandise and/or payment of other credit cards, 1989 -- \$317.05; and 3) Account No. 898-917-83 for merchandise and/or payment of other credit cards, 1989 -- \$1663.05. The total indebtedness for the three (3) Kaufmann's accounts listed on the Debtors' schedules as a joint obligation was \$2,445.95.

On January 24, 1991 a Trustee was appointed and on February 5, 1991 a notice of the Section 341 meeting of creditors was sent by the Court to all creditors. The Section 341 meeting notice, which listed the Debtors as Billy L. Wade and Lois E. Bernard, indicated that there were no assets at this time and instructed creditors not to file claims unless later notified to do so. The Trustee's minute report of the Section 341 meeting held on March 1, 1991 indicated that there were possible assets and that the Section 341 meeting had been closed.

On October 1, 1991 an Order and Notice Regarding Filing of Proofs of Claims which captioned the Debtors as Billy L. Wade and Lois E. Bernard was entered by the Court and forwarded to creditors advising them that the Debtors' case had become an asset case and that creditors had until December 31, 1991 to file proofs of claim. On November 25, 1991 Kaufmann's filed an unsecured non-priority proof of claim in the amount of \$1,971.51 which was executed by one of its credit

executives (the "Kaufmann's Proof of Claim"). Three separate computer statements of account were attached as supporting documentation to the Kaufmann's Proof of Claim. Each statement of account set forth a name, address, account number, balance due on the account and other information such as the Debtors' bankruptcy number, the name of the Debtors' attorney and the date of the first meeting. The pertinent information on the three attached statements of account were as follows: 1) Bill Wade, 41 Tilegate Glen, Fairport, New York, Account No. 089545419 with a past due balance of \$133.06; 2) Billy L. wade, 41 Tilegate Glen, Fairport, New York, Account No. 089891783 with a past due balance of \$1,412.95; and 3) Lois E. Bernard, 41 Tilegate Glen, Fairport, New York, Account No. 013639498 with a past due balance of \$425.00. The total of the three outstanding balances is the \$1,971.51 balance set forth in the Kaufmann's Proof of Claim. The three account numbers were identical to the three account numbers listed for Kaufmann's on the Debtors' schedules as joint obligations.

On March 23, 1992 the Trustee filed a Trustee's Report of No Distribution, which was captioned only Lois E. Bernard as the debtor in Case No. 91-20164. This report stated that the Trustee had neither received any property nor paid any money on account of this estate, except exempt property; that he had made diligent inquiry into the financial affairs of the debtor and the location of property belonging to the estate; and there was no property available for distribution from the estate over and above that exempted by law. The Trustee certified that the estate of the named debtor had been fully administered, requested that the report be approved and asked that he be discharged from any further duties as trustee. A review of the Court's file does not indicate that this Trustee's report was ever served on any entity. There is no order contained in the Court's file allowing this joint case to be separately administered or otherwise authorizing the assets of Billy L. Wade and Lois E. Bernard to be separately administered or for notices or pleadings to be captioned in the name of Billy L. Wade only.

On April 3, 1992 the Trustee filed a Notice of Hearing and Objection to the Kaufmann's

Proof of Claim which was captioned in the name of Billy L. Wade, debtor, only, and which was mailed by the Court to Kaufmann's at the address set forth on the Kaufmann's Proof of Claim. The hearing and objection was scheduled for May 18, 1992. The Notice of Hearing and Objection to Claim was: "On grounds that the claim is listed in part as a debt of the non-debtor spouse and the proof is not sufficient."

On May 18, 1992 Kaufmann's failed to appear and the Trustee advised the Court that he had received no communications from Kaufmann's in connection with the Notice of Hearing and Objection to Claim. The Trustee did not produce any witnesses or other evidence in connection with his objection but requested that the Court sustain his objection if not to the entire claim at least to the amount due Kaufmann's on Account No. 013639498 (\$425) since the statement attached to the Kaufmann's Proof of Claim was in the name of Lois E. Bernard only.

DISCUSSION

Rule 3001(f) of the Rules of Bankruptcy Procedure states that "A proof of claim executed and filed in accordance with these rules shall constitute **prima facie** evidence of the validity and amount of the claim" (emphasis added). Therefore, if a proof of claim properly filed according to 11 U.S.C. §501(a) is objected to, the initial burden of producing evidence to rebut the **prima facie** effect of the proof of claim is on the objectant. In re Frederes, 98 B.R. 165, 166 (Bankr. W.D.N.Y. 1989); In re Wells, 51 B.R. 563, 566 (Bankr. D.Colo. 1985). The burden of production shifts when the objectant has produced facts sufficient to demonstrate that an actual dispute exists. It is only when that burden is met does the claimant have to prove the validity and amount of the claim by a preponderance of the evidence. Frederes, 98 B.R. at 166-167; In re Equipment Service Ltd., 36 B.R. 241, 243 (Bankr. D.Alaska 1983).

In this case, the joint case of Billy L. Wade and Lois E. Bernard, Kaufmann's filed a proof of claim with attached statements of account in the amount of \$1,971.51 which represented the

outstanding balance due on three separate charge account numbers. For each account number, the amount claimed by Kaufmann's was less than the amount listed by the Debtors as their joint indebtedness in their sworn schedules filed with the Court. Since the Debtors scheduled the debt for a greater amount and the creditor filed a proof of claim which complies with the Rules of Bankruptcy Procedure, the evidentiary effect is to place the burden on the Trustee to go forward with evidence to show that the Kaufmann's Proof of Claim is not valid as filed. However, the Trustee provided no such evidence, but simply argued to the Court that Kaufmann's had failed to appear in opposition to the objection; supporting documentation to the Kaufmann's claim indicated that Account No. 013639498 may only be in the name of Lois E. Bernard; and when trustees have concerns about the validity of a filed proof of claim and they make an objection as a means to obtain additional information from a creditor their position should be endorsed by the Court sustained their objections when creditors fail to respond.

In this particular case, the Trustee admits that the underlying purpose of his objection was to determine whether the debtor Billy L. Wade had any liability on Kaufmann's Account No. 013639498, since it was the Trustee's ultimate intention to separately administer the estate of the Debtors.

If this was the information which the Trustee was attempting to obtain, the Court is hard-pressed to understand why his office simply did not contact the creditor and/or the Debtors to determine this without the need for making a formal objection to claim. Notwithstanding that, if the Trustee elected to make a formal objection to the claim as a means of obtaining the desired information, the Court does not understand why the grounds for the objection set forth did not clearly set out the exact intentions of the Trustee and the information he was desirous of obtaining. The Notice of Hearing and Objection to Claim could have indicated that it was the Trustee's ultimate intention after notice to the creditors and proper Court authority to separately administer the estates of the Debtors and that the Trustee was attempting to determine whether Billy L. Wade was

