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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ADM METAL FABRICATING, INC.

Case No. 88-11526 K

Debtor

Trustee William E. Lawson, Esq. has objected to the \$40,342.97 Proof of Claim filed by David J. Markowski on the basis of late filing. The Proof of Claim was filed with the Clerk on Tuesday, November 28, 1989, one day after the claims bar fell.

Citing the cases of *Wilkins v. Simon Brothers, Inc.*, 731 F.2d 462 (7th Cir. 1984) and *In re W.T. Grant Co.*, 53 B.R. 417 (Bkrtcy. S.D.N.Y. 1985), Markowski offers a copy of a letter from Mr. Lawson to Markowski's attorney dated March 6, 1989, as demonstrating Mr. Lawson's "knowledge that an unsecured claim was being asserted by Mr. Markowski."

Markowski had been President of the debtor corporation, and the letter addresses some information the Trustee required of Markowski. In the final paragraph of the letter, Mr. Lawson states (to Markowski's counsel): "It is my understanding that Paul Pielack and David J. Markowski, although having filed UCC-1's against the debtor's machinery and equipment, do not have a valid secured position and are not taking the position that they do. Please confirm." It is argued that this reflects the Trustee's awareness that Markowski was asserting a claim and his

understanding that the claim would be unsecured.

The Trustee affirms in response that "All the trustee knew at that time was that if there was a claim, it was not properly or timely secured. The [claimant] may have been paid in full or may not have had evidence of a claim or any number of reasons that the claimant may not or would not file a proof of claim.

"The only record of any obligations due the claimant that the trustee may have observed would have been the schedule filed by the debtor, and that form of notice is inadequate under the existing cases."

The Trustee is correct. "[K]nowledge that [the claimant] might assert a claim is not ... knowledge that a claim was, indeed, being asserted." *In re W.T. Grant Co.*, cited above, at p. 422.

"The general rule is that a claim arises where the creditor evidences an intent to assert its claim against the debtor. Mere knowledge of the existence of the claim by the debtor, trustee, or bankruptcy court is insufficient." *In re Wilkens*, cited above, at p. 465 (citations omitted).

At most, the March 6, 1989 letter demonstrates Mr. Lawson's awareness that Mr. Markowski might file an unsecured claim. Such awareness, even if proven, would not obviate the need for the claimant to assert a claim in a timely manner.

Claim #26 is allowed only as a late-filed claim.

Dated: Buffalo, New York
March 17, 1992


/S/ MICHAEL J. KAPLAN

U.S.B.J.