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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-11-1059-BPaMk
)
 JOSEPH WILLIAM FISH, JR.) Bk. No. LA 10-34705 VZ
)
 Debtor.)
)
 PACIFIC RESOURCE CREDIT UNION,)
)
 Appellant,)
)
 v.) **O P I N I O N**
)
 JOSEPH WILLIAM FISH, JR.;)
 NANCY K. CURRY, Chapter 13)
 Trustee¹,)
)
 Appellees.)

Argued and submitted on July 21, 2011
at Pasadena, California

Filed - August 3, 2011

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Vincent P. Zurzolo, Bankruptcy Judge, Presiding

Appearances: A. Lysa Simon argued for appellant Pacific
Resource Credit Union. Thomas B. Ure, III, argued
for appellee Joseph William Fish, Jr.

Before: BRANDT², PAPPAS, and MARKELL, Bankruptcy Judges.

¹ The trustee neither briefed nor argued in this appeal.

² Hon. Philip H. Brandt, Bankruptcy Judge for the Western
District of Washington, sitting by designation.

1 BRANDT, Bankruptcy Judge:
2

3 The bankruptcy court sustained Debtor's objection to
4 appellant's proof of claim as untimely filed, rejecting
5 appellant's argument that its filings with the court prior to the
6 deadline were an informal proof of claim.

7 We REVERSE, and publish to highlight the continuing
8 viability of the informal proof of claim doctrine in the Ninth
9 Circuit.
10

11 I. FACTS

12 Debtor Joseph William Fish, Jr. filed a chapter 13³
13 bankruptcy petition on 17 June 2010. The claims bar date was set
14 for 1 November 2010.

15 Debtor had three loans from Pacific Resource Credit Union
16 ("PRCU"), secured by a 2007 Chevrolet Silverado, 2005 Carrera
17 boat and trailer, and a 1994 GMC truck. His schedules indicated
18 an intent to surrender the GMC truck and the boat and trailer.
19 The chapter 13 plan provided for payments on the Silverado but
20 not on the other collateral.

21 On 20 July 2010 PRCU filed two motions for relief from stay.
22 One motion was filed for the two (cross-collateralized) loans
23 secured by the GMC truck and the boat and trailer. The form
24 motion indicated a "total claim as of 7/19/10" of \$14,112.80 for
25

26 ³Unless otherwise indicated, all code, chapter, and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 the GMC truck loan, and \$76,207.57 for the boat and trailer loan.
2 The motion included a description of the loans, including
3 interest rates, and attached copies of the loan agreements and
4 titles to the collateral. The memorandum in support of the
5 motion included the following language: "The Credit Union is
6 entitled to relief from the automatic stay and to file a proof of
7 claim for the deficiency, once the vehicles are recovered and
8 liquidated."

9 The other motion for relief from stay on the loan secured by
10 the 2007 Silverado indicated a "total claim as of 7/19/10" of
11 \$34,468.99 and also included details of the loan and
12 documentation. The memorandum contained identical language
13 regarding PRCU's entitlement to file a proof of claim for the
14 deficiency.

15 The bankruptcy court granted both motions by orders entered
16 6 August 2010 and 12 August 2010. PRCU proceeded to pursue its
17 state law remedies, repossessing its collateral and beginning the
18 process of liquidating it.

19 On 22 July 2010 PRCU filed an objection to confirmation of
20 Debtor's chapter 13 plan, again providing details of all three
21 loans, including the amounts due. The section of the objection
22 entitled "Standing" contained the following language:

23 The Debtor's Schedule D indicates that each of the
24 three (3) loans is undersecured. According to the
25 Debtor's Schedule "D," the three (3) loans are
26 undersecured in excess of the sum of \$55,000. The
27 Credit Union is an unsecured creditor for the amounts
28 owed in excess of the liquidated value of the
collateral.

27 On 28 October 2010 PRCU filed a supplemental objection to
28 confirmation based on Debtor's lack of cooperation in the

1 discovery process. Paragraph 31 of that supplemental objection
2 reads in part: "The Debtor's Plan provides for virtually no
3 payments to the unsecured creditors, in which class the Credit
4 Union is a member."

5 PRCU also participated in the case by filing a request for
6 disclosure of Debtor's federal income tax returns and annual
7 statement of income and expenditures. PRCU thereafter deposed
8 Debtor and requested production of documents, which were not
9 provided; on 22 October 2010 PRCU moved to compel production. On
10 4 October 2010 PRCU moved to extend the deadline for filing a
11 complaint to determine nondischargeability.

12 On 10 November 2010, ten days after the deadline for filing
13 proofs of claim set out in the notice of the bankruptcy case, as
14 required by Rule 3003(c)(3)⁴, PRCU filed a formal "amended" proof
15 of claim for \$85,701.11, indicating that the document was
16 intended to amend its informal proof of claim consisting of the
17 motions for relief from stay and objections to Debtor's plan.
18 PRCU attached a memorandum of points and authorities explaining
19 why those documents qualified as informal proofs of claim. The
20 memorandum also indicated that all three items of collateral had
21 either been liquidated or were in the process of being
22 liquidated, and that the amended claim was for the deficiency
23 balances on each loan.

24 ⁴ Which provides in pertinent part:

25 (3) Time for filing.

26 The court shall fix and for cause shown may extend the
27 time within which proofs of claim or interest may be
28 filed.

1 Debtor filed an objection to claim under Rule 3007⁵,
2 objecting to PRCU's claim as late-filed. PRCU responded that its
3 prior filings were an informal proof of claim which its formal
4 claim was amending. After a hearing, the bankruptcy court
5 sustained Debtor's objection, ruling without further findings or
6 elaboration:

7 It's the burden on [PRCU] to establish that these
8 informal proofs of claim gave adequate notice to the
9 moving party of the existence of the claim and the
10 amount of the claim so they could adequately take into
11 account that a claim indeed is being asserted. That
12 burden hasn't been carried.

13
14 Transcript, 10 January 2011, page 5, lines 8-13.

15 PRCU timely appealed.

16 **II. JURISDICTION**

17 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334
18 and § 157(b)(1) and (b)(2)(B), and we do under 28 U.S.C.
19 § 158(c).
20
21
22

23 ⁵ Which provides:

24 (a) Objections to Claims

25 An objection to the allowance of a claim shall be in
26 writing and filed. A copy of the objection with notice
27 of the hearing thereon shall be mailed or otherwise
28 delivered to the claimant, the debtor or debtor in
possession, and the trustee at least 30 days prior to
the hearing.

1 In the absence of prejudice to an opposing party, the
2 bankruptcy courts, as courts of equity, should freely
3 allow amendments to proofs of claim that relate back to
4 the filing date of the informal claim when the purpose
5 is to cure a defect in the claim as filed or to
6 describe the claim with greater particularity.

7 Sambo's Restaurants, 754 F.2d at 816-17 (citation omitted).

8 Under the doctrine, a timely informal proof of claim may be
9 amended after the bar date by the filing of a formal proof of
10 claim. Edelman, 237 B.R. at 154. "For a document to constitute
11 an informal proof of claim, it must state an explicit demand
12 showing the nature and amount of the claim against the estate,
13 and evidence an intent to hold the debtor liable." Holm, 931
14 F.2d at 622 (citation omitted). We have articulated the
15 requirements:

- 16 (1) presentment of a writing;
- 17 (2) within the time for the filing of claims;
- 18 (3) by or on behalf of the creditor;
- 19 (4) bringing to the attention of the court;
- 20 (5) the nature and amount of a claim asserted against the
21 estate.

22 Edelman, 237 B.R. at 155.

23 Various documents have been held to be informal proofs of
24 claim, including a disclosure statement, Holm, 931 F.2d at 622-
25 23; a complaint for relief from the automatic stay with
26 attachments, Pizza of Hawaii, 761 F.2d at 1381-82; a district
27 court complaint combined with the creditor's correspondence with
28 debtor's counsel, and her joint motion with the debtor to
transfer the case to the bankruptcy court, Sambo's Restaurants,
754 F.2d at 815-16; and a letter to the bankruptcy trustee, even

1 though it had not been filed with the bankruptcy court.

2 Franciscan Vineyards, 597 F.2d at 182-83.

3 In all these cases the courts focused not on the type of
4 document, but on its contents and the creditor's conduct. For
5 example, in Holm, the disclosure statement (1) was filed with the
6 court, (2) made an explicit demand against the estate and
7 indicated the creditor intended to hold the debtor liable for the
8 debt, and (3) stated that the nature of the claim was a state
9 court judgment in the amount of \$232,960. The Ninth Circuit held
10 this sufficient for an informal proof of claim. Holm, 931 F.2d
11 at 623.

12 In Pizza of Hawaii, the complaint for relief from stay
13 stated the creditor's desire to join the debtor as a defendant in
14 the civil case, which the court held evidenced intent to hold the
15 estate liable. The exhibits attached to the complaint detailed
16 the nature and contingent amount of the claim. Further, the
17 Circuit held that the complaint satisfied the requirements for an
18 informal proof of claim even though it did not quantify all of
19 the amounts sought, because the nature of the claims were such
20 that damages could not be fully ascertained without extensive
21 evidence. 761 F.2d at 1381. The court also noted that the
22 creditor's objections to debtor's disclosure statement and plan
23 evidenced the intent to hold debtor liable. Id. at 1381 n.12.

24 Here, PRCU filed written motions for relief from stay
25 clearly setting forth the amounts due on each loan and PRCU's
26 intent to hold the Debtor liable for the deficiencies. They were
27 filed before the deadline, described the nature of the
28 obligations and attached the loan documentation and vehicle

1 titles, and stated the total amounts of the claims. The
2 documents contained the essential elements: writing(s) filed by
3 the creditor before the claims deadline with explicit demands,
4 showing the nature and amount of the claims against the estate,
5 and evidencing the intent to hold Debtor liable. Holm, 931 F.2d
6 at 622. Further, PRCU noted in its objection to confirmation,
7 also filed before the claims deadline, that according to the
8 Debtor's schedules there was a deficiency of \$55,000, rendering
9 it an unsecured creditor. PRCU also stated in the objection that
10 it considered itself a member of the class of unsecured
11 creditors.

12 Although PRCU's filings did not state the ultimate amount of
13 the unsecured claim, here, as in Pizza of Hawaii, that amount
14 could not be determined before the deadline for filing proofs of
15 claim. The bankruptcy court erred in ruling that the documents
16 were inadequate to put Debtor on notice of PRCU's unsecured
17 claim, and it is not clear from the record whether the bankruptcy
18 court considered PRCU's conduct.

19 Debtor misses the point in arguing that a bankruptcy court
20 has no discretion to allow a late filed claim, citing In re
21 Osborne, 76 F.3d 306 (9th Cir. 1996) and In re Tomlan, 102 B.R.
22 790 (E.D. Wash. 1989), aff'd per curiam, 907 F.2d 114 (9th Cir.
23 1990). PRCU does not contend otherwise; rather the issue here is
24 whether its filings and conduct before the bar date sufficed as
25 an informal proof of claim. Debtor also argues that PRCU slept
26 on its rights by not filing a formal claim prior to the bar date.
27 To the contrary, PRCU's active participation in the case and its
28 multiple filings evidence vigorous assertion of its rights, not

1 disregard of them or procrastination. In virtually all the cases
2 where documents were found to be informal proofs of claim, the
3 creditors had notice of the proceedings and, as here, actively
4 participated but failed to file formal proofs of claim before the
5 bar dates. That occurred here, and neither the bankruptcy
6 court's conclusory ruling nor Debtor's briefs specify in what
7 respect PRCU's filings and conduct fell short.

8 Debtor also argues that other creditors were prejudiced by
9 PRCU's delay. Debtor's counsel filed a declaration with the
10 objection to claim in which he stated that he had filed a second
11 amended plan proposing 100% payment of all claims filed by the
12 deadline, and that PRCU's proof of claim filed two days later
13 rendered the plan infeasible, delaying proposed payments to
14 creditors that timely filed claims. Notably, Debtor did not
15 allege any prejudice to an "opposing party." See Sambo's
16 Restaurants, 754 F.2d at 816-17. The bankruptcy court made no
17 finding on this issue, and Debtor's standing to raise such an
18 argument is suspect (although the Debtor does have standing to
19 bring this appeal: his counsel represented at argument, without
20 contradiction, that his projected disposable income over the life
21 of the plan exceeds the total of the other claims). The
22 assertion that other creditors were prejudiced is speculative,
23 and Debtor has not pointed to any evidence in the record showing
24 that he was prejudiced: "[P]rejudice requires more than simply
25 having to litigate the merits of, or to pay, a claim - there must
26 be some legal detriment to the party opposing." JSJE, 344 B.R.
27 at 102.

28 Beyond bare assertion in his brief that the bankruptcy court

1 did not abuse its discretion in finding PRCU had not established
2 an informal proof of claim, Debtor simply does not address the
3 legal standard. He does not even cite, much less distinguish,
4 Franciscan Vineyards, Sambo's Restaurants, Pizza of Hawaii, or
5 Edelman. He does not identify any missing information or
6 articulate how the circumstances would differ had PRCU filed
7 timely (and amendable) formal proofs of claim before realization
8 on its collateral.

9 Nor does Debtor make any pertinent argument except that
10 neither he nor other creditors could determine the total claims,
11 and thus the amount necessary for full payment, or percentage of
12 claims to be paid. The latter is a policy argument - that one
13 should be able to determine the universe of claims by checking
14 the claims register (separate from, but linked to, the docket)
15 the day after the claims deadline. That contention would have
16 more force if made by an unsecured creditor. Here, Debtor had
17 ample and timely notice of PRCU's unsecured claim, as did the
18 trustee (which may explain her not participating in this appeal).
19 In any event, it is not our prerogative to disregard controlling
20 Circuit authority on the basis of a policy argument.

21 We hold as a matter of law that PRCU's filings and conduct
22 met the requirements for informal proofs of claim.

23 24 **VI. CONCLUSION**

25 The bankruptcy court erred in its ruling that the documents
26 filed by PRCU and its conduct did not rise to the level of an
27 informal proof of claim. As this is an issue of law, we REVERSE.
28