NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. WW-05-1109-MaSJu
JOHN EARLY COOPER,	Bk. No. 04-10519
Debtor.	
JOHN EARLY COOPER,	
Appellant,	**M E M O R A N D U M**[1]
v.	
BARRY VANDENBRINK,	
Appellee.	

Argued and Submitted on July 22, 2005
at Seattle, Washington

Filed - October 7, 2005

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Samuel J. Steiner, Bankruptcy Judge, Presiding.

Before: Marlar, Smith and Jury,[2] Bankruptcy Judges.

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th cir. BAP Rule 8013-1.

[2] Hon. Meredith A. Jury, United States Bankruptcy Judge for the Central District of California, sitting by designation.

INTRODUCTION

A former employee of the chapter 11[3] debtor's corporation filed a proof of claim against him for the breach of an employment contract and the willful withholding of wages. The bankruptcy court allowed the claim over the debtor's objection.

The debtor has appealed the order, contending that this was a community claim that was barred by the doctrine of res judicata, or claim preclusion, because it had already been disallowed in his ex-wife's bankruptcy case. Alternatively, the debtor maintains that the bankruptcy court abused its discretion in denying his motion for reconsideration, and that the matter should be remanded for an evidentiary hearing.

We conclude that, even though essentially the same claim was filed in both bankruptcy cases, the spouses had separate liability under the state labor code and, therefore, they were not the identical parties or privies. In addition, we conclude that the prior disallowance was not on the merits of the claim, in any event. We AFFIRM, because the bankruptcy court did not err in allowing the claim when the debtor opposed it solely on legal grounds and the requisite elements for claim preclusion were not met.

FACTS

Prepetition, John Early Cooper ("Debtor") and his wife, Judy Cooper, owned and operated Union Industries, Inc., dba Union

[3] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and rule references are to the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P."), Rules 1001-9036.

Manufacturing Co. ("Union"). Debtor was the president and Judy Cooper was the bookkeeper.

On March 29, 2001, Appellee Barry Vandenbrink ("Vandenbrink") and Debtor signed a contract for Vandenbrink's employment as a salesman. Vandenbrink worked for Union for only one month--from April 9, 2001, until he was terminated on May 11, 2001.

In 2001, Vandenbrink filed a state court lawsuit against Union for "Unpaid Salary and Wages and Breach of Contract" damages, including double damages, which are available under Washington's labor statutes. On the eve of trial, Union filed a chapter 7 petition.[4]

In 2002, while the Union bankruptcy case was pending, Judy Cooper filed both a petition for dissolution of the marriage and an individual chapter 11 petition. Her bankruptcy estate was comprised solely of the couple's community property. Her chapter 11 plan was intended to deal with claims against the community or payable from community assets,[5] and it was confirmed in February, 2003.

Vandenbrink filed a proof of claim in Judy Cooper's bankruptcy case in the amount of $117,818.45 and designated, in

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[4] In the corporation's bankruptcy case, Vandenbrink filed an unsecured nonpriority proof of claim in the amount of $117,818.45 for unpaid compensation. Apparently, it was deemed allowed as an unsecured claim and, as such, did not receive any distribution. We take judicial notice of the docket and Trustee's Final Report (Dkt. no. 86) in Case No. 02-24241. The Union case was closed in May, 2005.

[5] Debtor stated that it was the couple's intention to deal with all of the community debts in Judy Cooper's bankruptcy case "and the resulting property, as divided, would be free and clear from the claims of the community creditors." Motion for Reconsideration (March 1, 2005), p. 5.

part, as an unsecured priority claim. He attached his affidavit, dated September 26, 2002, stating that he had been hired by "John Cooper for Union Manufacturing" as an outside salesman with a base salary of $42,000 per year. He stated that, pursuant to the employment contract, he was to receive a 1.9% commission on each account, a $350 per month car lease allowance, and reimbursement for gasoline and cell phone expenses. He further stated that he obtained, over his one month of employment, approximately $1,743,000 in "quotes" for jobs, a number of which were accepted and performed by Union. He also attached a copy of the employment contract, which he and Debtor had signed.

Judy Cooper filed a written objection to the proof of claim on two grounds: (1) the debt was not her obligation or liability; and (2) the proof of claim was untimely. Following an omnibus hearing, the bankruptcy court disallowed the Vandenbrink claim, along with several others, finding only that "certain claimants have either failed to substantiate the basis of their claim, or the basis for asserting liability against the estate of the Debtor . . . ." First Omnibus Order on Debtor's Objections to Claims (July 18, 2003), p. 2 ("First Omnibus Order"). The untimeliness issue was not addressed by the bankruptcy court, and therefore it was unclear whether Vandenbrink's claim had been disallowed on the merits or simply because it was untimely.

Meanwhile, Vandenbrink filed an amended complaint in state court substituting Debtor as the defendant. Trial on that complaint was stayed after Debtor filed an individual chapter 11 petition on January 16, 2004.

In Debtor's bankruptcy case, Judy Cooper sought and obtained

relief from the automatic stay in order to: (1) complete distributions under her chapter 11 plan and transfer the balance of community funds into a trust account to be distributed upon dissolution; and (2) complete the marital dissolution in superior court, which would divide the remainder of the community property.

On June 14, 2004, the couple agreed to findings of fact and conclusions of law in their dissolution proceeding. They agreed that neither Debtor nor Judy Cooper had separate property, but that their community property was liable for community debts as addressed in the parties' bankruptcies. A decree of dissolution was also entered at that time, which divided the remaining community property between the spouses pursuant to a mediated settlement.[6]

Vandenbrink then filed a proof of unsecured nonpriority claim against Debtor's estate in the amount of $192,059 for unpaid compensation for services performed from "April 2001 to May 2001." The only attachment was an itemization.[7]

Debtor filed a written objection to Vandenbrink's proof of claim based on res judicata (claim preclusion) or collateral

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[6] A copy of the dissolution decree is not in the excerpts of record, but is referenced in the "Agreed Findings of Fact and Conclusions of Law."

[7] The $192,059 claim was itemized as follows:

$38,500.00 in unpaid salary
$20,195.00 in unpaid commissions
$468.00 in unpaid employee expenses
$8,158.00 in unpaid automobile lease expenses
$200 in unpaid cellular phone expenses
$59,063.00 in double damages
$40,475.00 in interest
$25,000 in attorneys' fees

Proof of Claim (January 30, 2004).

estoppel (issue preclusion). He attached a copy of Vandenbrink's proof of claim which was filed in Judy Cooper's bankruptcy case, her objection thereto, and the bankruptcy court's First Omnibus Order disallowing that claim. Debtor maintained that Vandenbrink's claim in Judy Cooper's case had actually been asserted against the community assets. Since Debtor's bankruptcy estate consisted of the community property, he argued that his estate was "in privity" with Judy Cooper's and, therefore, the disallowance of Vandenbrink's claim in Judy Cooper's bankruptcy case was res judicata.

Vandenbrink responded to the objection by arguing that the instant proof of claim did not meet the requirements for collateral estoppel, or issue preclusion, because the issue of Debtor's individual liability had not been actually litigated in Judy Cooper's case. He also argued that it was unclear whether a final decision on the merits of the claim was ever rendered in Judy Cooper's bankruptcy case. He attached copies of the original and amended complaints.

At a February 18, 2005 hearing on the claim objection, the bankruptcy court orally overruled Debtor's objection and allowed Vandenbrink's claim. The court explained:

> Well, I don't think collateral estoppel applies here. First of all, we're talking about different parties in the Judy Cooper case. And in this case, certainly, the Judy Cooper case could have brought in the marital community, but this is the first time we've considered the individual liability of John Early Cooper. And he wasn't involved in that other case.
>
> Beyond that, it appears to me that another element of collateral estoppel hasn't been satisfied, namely, that

the claim had been fully litigated on the merits.[8] Tr. of Proceedings (Feb. 18, 2005), p. 9:2-13.

Debtor filed a motion for reconsideration of the court's oral ruling, pursuant to § 502(j) and Rule 3008. For the first time in the proceedings, he requested an evidentiary hearing on the merits of the claim.

Without holding further hearings on the matter, the bankruptcy court entered an order granting Vandenbrink's claim in its entirety in the amount of $184,747.[9] That order was timely appealed. A separate order was entered by the bankruptcy court denying the motion for reconsideration.[10]

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[8] Under the doctrine of collateral estoppel, or issue preclusion, a party that has once litigated a factual or legal issue and lost may be precluded from relitigating the same issue in a subsequent proceeding. See Montana v. United States, 440 U.S. 147, 153 (1979); Allen v. McCurry, 449 U.S. 90, 94 (1980).

In this appeal, Debtor has not challenged the court's ruling as to issue preclusion, and therefore its decision not to bar Vandenbrink's proof of claim on that basis has been waived. Law Offices of Neil Vincent Wake v. Sedona Inst. (In re Sedona Inst.), 220 B.R. 74, 76 (9th Cir. BAP 1998) (arguments not specifically and distinctly made in an appellant's opening brief are waived and will not ordinarily be considered).

Although the court used the term "collateral estoppel," in part because it focused on the issue of Debtor's liability, its ruling is equally applicable to res judicata, or claim preclusion. Indeed, the bankruptcy court noted the alternate usage of the terms by the parties, when it stated at the hearing: "Well, how can you have a collateral estoppel situation or an issue of preclusion, call it what you will, in effect with different parties?" Tr. of Proceedings (Feb. 18, 2005), p. 4:21-25 (emphasis added).

[9] It is not apparent from the record how the court arrived at this figure when the proof of claim was in the amount of $192,059.

[10] Although Debtor did not specifically appeal the reconsideration order, we may review it because both parties have made it an issue in this appeal. See Munoz v. Small Business Admin., 644 F.2d 1361, 1364 (9th Cir. 1981).

ISSUES

1. Whether the doctrine of res judicata, or claim preclusion, barred Vandenbrink's proof of claim in Debtor's case because an earlier proof of claim had been disallowed in Judy Cooper's bankruptcy case.

2. Whether the bankruptcy court erred in allowing the claim or in denying Debtor's motion for reconsideration of claim allowance without first conducting an evidentiary hearing.

STANDARDS OF REVIEW

The bankruptcy court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. Neilson v. United States (In re Olshan), 356 F.3d 1078, 1083 (9th Cir. 2004). A bankruptcy court's interpretation of state law is reviewed de novo. Birdsell v. Coumbe (In re Coumbe), 304 B.R. 378, 381 (9th Cir. BAP 2003). Whether a prior judgment has preclusive effect is a question of law subject to de novo review. Siegel v. Fed. Home Loan Mortg. Corp., 143 F.3d 525, 528 (9th Cir. 1998).

We review the denial of a motion for reconsideration of a claim under § 502(j) for an abuse of discretion. Ashford v. Consol. Pioneer Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 225 (9th Cir. BAP 1995), aff'd sub nom. Ashford v. Naimco, Inc. (In re Consol. Pioneer Mortg. Entities), 91 F.3d 151 (9th Cir. 1996) (table).

DISCUSSION

A duly filed proof of claim is presumptively valid and deemed allowed, unless a party in interest objects. See Garner v. Shier (In re Garner), 246 B.R. 617, 620 (9th Cir. BAP 2000); Fed. R. Bankr. P. 3001(f), 3007; 11 U.S.C. § 502(a). The filing of an objection to a proof of claim "creates a dispute which is a contested matter" within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing. See Adv. Comm. Notes to Fed. R. Bankr. P. 9014; Jorgenson v. State Line Hotel, Inc. (In re State Line Hotel, Inc.), 323 B.R. 703, 710 (9th Cir. BAP 2005).

The party objecting to the proof of claim must produce sufficient evidence to "show facts tending to defeat the claim by probative force equal to that of [its] allegations." Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell), 223 F.3d 1035, 1039 (9th Cir. 2000) (alteration added) (quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991)). If the objector produces sufficient evidence to negate the claim's validity, the burden of persuasion shifts back to the claimant, who then has the ultimate burden to demonstrate that the claim deserves to share in the distribution of the debtor's assets. See Spencer v. Pugh (In re Pugh), 157 B.R. 898, 901 (9th Cir. BAP 1993).

Here, Vandenbrink filed an unsecured proof of claim for $192,059 in unpaid compensation for services performed, attaching only an itemization of the claim. Debtor objected to Vandenbrink's proof of claim solely on legal grounds, i.e., that it was barred by the doctrine of claim preclusion. His argument

was that it was a "community claim" that had already been disallowed in Judy Cooper's bankruptcy case. Debtor attached the prior proof of claim, the complaint and amended complaint, and pertinent pleadings and orders from Judy Cooper's case.

A. Res Judicata (Claim Preclusion)

Res judicata, or claim preclusion, is a doctrine of finality of decisions. Brown v. Felsen, 442 U.S. 127, 131 (1979). It provides that a final judgment on the merits of an action precludes the parties from relitigating all issues connected with that action, and which were or could have been raised in the action. Rein v. Providian Fin. Corp., 270 F.3d 895, 898-99 (9th Cir. 2001). Claim preclusion is appropriate whenever:

(1) the parties are identical or in privity;

(2) the judgment in the prior action was rendered by a court of competent jurisdiction;

(3) there was a final judgment on the merits; and

(4) the same claim or cause of action was involved in both suits.

Id. at 899.

Factor No. 2: Prior Proceeding

The party asserting preclusion, in this case Debtor, has the "burden of establishing what was litigated in the prior action and determined by the prior judgment." Id. at 899 n.3.

Here, Debtor supplied the prior judgment--the bankruptcy court's First Omnibus Order sustaining Judy Cooper's objection to

Vandenbrink's proof of claim in her bankruptcy case. Thus, Factor No. 2 was satisfied. We now proceed to analyze the remaining factors.

Factor No. 1: Identical Parties or Privies

Debtor contends that the bankruptcy court erroneously determined that an identity of parties did not exist.

Claim preclusion requires that the parties to the prior and present action are either identical or in privity. It is well settled that under certain circumstances a judgment may bar a subsequent action by a person who was not a party to the original litigation but whose interests were adequately represented by a party. Such identity between the party and nonparty is known as "privity."

"'Privity' ... is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" Hasso v. Mozsgai (In re La Sierra Fin. Servs., Inc.), 290 B.R. 718, 729 (9th Cir. BAP 2002) (quoting United States v. Schimmels (In re Schimmels), 127 F.3d 875, 881 (9th Cir. 1997) (internal citation omitted)). A party in privity is bound in the same way the party is bound. See Rivet v. Regions Bank of La., 522 U.S. 470, 476 (1998) ("Under the doctrine of claim preclusion, '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'") (citation omitted). If the second action is on the same claim, preclusion

is an instance of direct estoppel as to that claim (claim preclusion); if it is on a different claim, preclusion is an instance of collateral estoppel. See RESTATEMENT (SECOND) OF JUDGMENTS, § 13, cmt. g; § 17, cmt. c. (1982).

Debtor argues that he is the successor-in-interest to Judy Cooper's estate because his bankruptcy estate consists of the remnants of the same community property. Therefore, he maintains that his estate is in privity with Judy Cooper's estate.

"[T]he community property of both spouses becomes property of the estate when one spouse files a bankruptcy petition." Highland Fed. Bank v. Maynard (In re Maynard), 264 B.R. 209, 214 (9th Cir. BAP 2001); 11 U.S.C. § 541(a)(2). Section 541(a)(2) provides that the bankruptcy estate shall consist of

> All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
>
> (A) under the sole, equal, or joint management and control of the debtor; or
>
> (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a)(2).

To the extent Debtor suggests that the "community estate" is the real "party" in interest in both proceedings, he confuses the debtor's individual liability with the property interest that is liable for the satisfaction of the debt. Under Washington law, a community estate is not a separate and distinct juristic entity apart from the spouses who compose the marital community. Bortle v. Osborne, 155 Wash. 585, 589-90, 285 P. 425 (1930); Household

Fin. Corp. v. Smith, 70 Wash. 2d 401, 403, 423 P.2d 621 (1967). Therefore, the community estate was not a party to the claim in either case, but rather it represented property interests that were accessible to Vandenbrink if he held a community claim. See Case v. Maready (In re Maready), 122 B.R. 378, 381 (9th Cir. BAP 1991).

A debt is defined as "liability on a claim." Johnson v. Home State Bank, 501 U.S. 78, 85 n.5 (1991); 11 U.S.C. § 101(12). A claim is a "right to payment, whether or not such right is reduced to judgment . . . ." 11 U.S.C. § 101(5)(A). A "community claim" is defined in § 101(7) as a

> claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case;

11 U.S.C. § 101(7) (emphasis added).

"Unlike a claim, a 'community claim' is a debt owed by the debtor *or the debtor's spouse*, which under state law could have been satisfied from community property that would have passed to the debtor's bankruptcy estate, whether or not such property existed at the commencement of the case." F.D.I.C. v. Soderling (In re Soderling), 998 F.2d 730, 733 (9th Cir. 1993) (quoting Alan Pedlar, Community Property and the Bankruptcy Reform Act of 1978, 11 St. Mary's L.J. 349, 351-52 (1979) (emphasis in original)).

Thus, a creditor with a community claim may be a creditor of either spouse's bankruptcy estate which includes community property. See 11 U.S.C. § 101(10)(C). See also In re Monroe, 282 B.R. 219, 222 (Bankr. D. Ariz. 2002) (debtor spouse becomes liable for debt, regardless of any personal liability, to the extent that

such obligation is payable out of her property, i.e., her interest in community property).

Individual spousal liability for the debt is determined under state law. Maready, 122 B.R. at 381 n.2. In this case, the relevant state law is Washington's contract law and Washington Revised Code ("RCW") § 49.52.050(2), which makes it a misdemeanor for "any employer or officer, vice principal or agent of any employer" who "[w]ilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract . . . ."

This statute is construed liberally "to see that the employee shall realize the full amount of the wages which by statute, ordinance, or contract he is entitled to receive from his employer, and which the employer is obligated to pay, and, further, to see that the employee is not deprived of such right, nor the employer permitted to evade his obligation, by a withholding of a part of the wages . . . ." Ellerman v. Centerpoint Prepress, Inc., 143 Wash. 2d 514, 520, 22 P.3d 795 (2001) (citation omitted).

As a civil penalty for such a violation, RCW § 49.52.070 makes such "employer or officer, vice principal or agent of any employer" liable for "twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees . . . ."

Thus, actions may lie under these labor provisions against an employer and/or one acting for or on behalf of the employer in order to determine their joint and several liability. See, e.g.,

Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1028 (9th Cir. 2003) (a case where a jury had found both corporate president and corporation jointly and severally liable for breach of employment contract and for double damages under RCW §§ 49.52.050(2) and 49.52.070), cert. denied, 541 U.S. 902 (2004). In fact, Vandenbrink asserted separate claims and actions against Union, Judy Cooper and Debtor, in each of their bankruptcy cases.

In Judy Cooper's bankruptcy case, Vandenbrink did not allege that she was personally liable as a party to the contract or as an employer, officer, vice principal or agent of Union. Rather, he alleged that Debtor had signed the employment contract on behalf of Union, which was the subject of his wage and breach of contract claim. Therefore, he essentially asserted a contingent community claim against Judy Cooper based on Debtor's alleged liability. At that time, however, Debtor's liability had not been litigated, there was no pending action to determine Debtor's liability either in state court or bankruptcy court, nor was Debtor made a party to the claim in the Judy Cooper case. Therefore, there was no procedural vehicle whereby the Judy Cooper bankruptcy court could determine Debtor's liability.

Judy Cooper objected to Vandenbrink's claim on the grounds that she was not personally liable for the claim. Therefore, the bankruptcy court's order on the claim could only have been final and on the merits in regards to Judy Cooper's personal liability or the community's based on her liability. Under Washington law, Judy Cooper could not be held personally liable for community obligations contracted solely by her husband. McLean v. Burginger, 100 Wash. 570, 571, 171 P. 518 (1918). Moreover, under

§ 541, each spouse's bankruptcy estate is a separate and distinct entity, see Havelock v. Taxel (In re Pace), 67 F.3d 187, 192 (9th Cir. 1995) and Farmer v. Crocker Nat'l Bank (In re Swift Aire Lines, Inc.), 30 B.R. 490, 495 (9th Cir. BAP 1983), and both Judy Cooper and Debtor were eligible to receive separate discharges of their personal liability.

On the other hand, due to Debtor's subsequent bankruptcy filing, a claim, whether separate or community, and based on his conduct or personal liability, could still be asserted in his case. Therefore, the bankruptcy court did not err in determining that the same parties or their privies were not involved in both proof of claim proceedings.

Factor No. 3: Final Judgment on the Merits

Only a judgment that is final and decided on the merits may have res judicata effect. Here, the bankruptcy court ruled that Vandenbrink's claim had not been "fully litigated on the merits" in the Judy Cooper bankruptcy case.

The parties agree that the First Omnibus Order was ambiguous as to the grounds for denying the Vandenbrink claim. Judy Cooper had objected to the proof of claim on two grounds: that she was not liable and that it was untimely. In disallowing the claim, the order merely stated that "certain claims" were either unsubstantiated or did not prove the debtor's liability.

Debtor has the burden of providing a record to support claim preclusion. Debtor maintains that any disallowance was on the merits, citing Siegel, 143 F.3d at 530 (holding that the court's

allowance and disallowance of proofs of claim are final judgments). Indeed, § 502(b)(9), with some nonapplicable exceptions, provides that the untimely filing of a proof of claim is alone a sufficient basis for disallowing that claim.

When an objection is filed, a hearing must be held in which the court formally acts on the claim. If the court then allows or disallows the claim, the Ninth Circuit held that "there can be little doubt about the ultimate res judicata effect" of that allowance or disallowance. Siegel, 143 F.3d at 530. See also Poonja v. Alleghany Props. (In re Los Gatos Lodge Inc.), 278 F.3d 890, 892-93 (9th Cir. 2002) (disallowance of claim after hearing on objection that it had already been released by stipulation was final order).

Siegel did not address a disallowance for untimeliness. Siegel held that a proof of claim that was merely "deemed allowed," under § 502(a), was final, giving rise to res judicata principles. Siegel, 148 F.3d at 529-30.

Even if the disallowance, here, was for untimeliness, and such order was entitled to preclusive effect, its finality would only apply to the merits of Judy Cooper's personal nonliability and the nonliability of her interest in the community property. This is different from the central issue of Vandenbrink's claim in Debtor's case, which was whether Debtor was liable to Vandenbrink, and that issue could not have been resolved in Judy Cooper's case based on the claim's procedural posture.

Secondly, assuming arguendo that the bankruptcy court intended to include Vandenbrink's claim among those "certain claims" that were either unsubstantiated or did not prove Judy

Cooper's liability, such judgment could not have been on the merits of a community claim based on Debtor's liability.

An unsubstantiated claim means that the claimant failed to produce sufficient evidence to overcome the objection. See Pugh, 157 B.R. at 901. Here, Vandenbrink did not provide any evidence to prove the liability of Judy Cooper or of her interest in the community property. While his claim hinged on Debtor's liability under Washington law, Debtor's liability was independent of Judy Cooper's, and Debtor had never been a joint debtor nor a named defendant in any prior pending action concerning the claim in her case.[11]

Therefore, even if the bankruptcy court disallowed Vandenbrink's proof of claim in the Judy Cooper case on the merits, it was only disallowed as to Judy Cooper's personal liability. In that sense, Vandenbrink's claim in Debtor's bankruptcy case had not been fully litigated on the merits, and the element of claim preclusion which requires a final judgment on the merits was not satisfied.

Factor No. 4: Same Claim or Cause of Action

Vandenbrink asserted a proof of claim in both bankruptcy cases for damages based on unpaid wages and expenses. Whether the same cause of action was involved for purposes of claim preclusion requires the application of a four-factor test:

[11] Debtor cites to case law which holds that even a default judgment can be res judicata. These cases are not on point, because Debtor, who was not a party to the action, was not in default.

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action;
>
> (2) whether substantially the same evidence is presented in the two actions;
>
> (3) whether the two suits involve infringement of the same right; and
>
> (4) whether the two suits arise out of the same transactional nucleus of facts.

Siegel, 143 F.3d at 529.

In Judy Cooper's and Debtor's bankruptcy cases, Vandenbrink filed different types of claims (partially unsecured priority and unsecured), for different amounts ($117,818.45 and $192,059), with different supporting documents. Even though the claims were not identical, they were both asserted against the community property interest of the respective spouse, the allegations supporting the claims arose from the same transactional nucleus of facts, they involved infringement of the same contractual and statutory rights held by Vandenbrink, and the same evidence would likely be presented.

Therefore, we hold that this factor was met.

In summary, although the same claim was asserted in both bankruptcy cases and a court of competent jurisdiction had entered an order, such order was not proven to be final and on the merits, nor were the same parties or their privies involved in determining liability for the underlying debt in both cases. Therefore, we conclude that claim preclusion did not bar Vandenbrink's claim against Debtor's estate.

B. Evidentiary Hearing and § 502(j) Motion

Debtor contends that the bankruptcy court should not have allowed Vandenbrink's claim without first conducting an evidentiary hearing.

Under the Bankruptcy Code and Rules, a properly filed claim is prima facie valid. Fed. R. Bankr. P. 3001(f). If the claim objector produces sufficient evidence to negate the claim's validity, the burden of persuasion shifts back to the claimant, who then has the ultimate burden to demonstrate that the claim deserves to share in the distribution of Debtor's assets. See Pugh, 157 B.R. at 901.

Here, Debtor's only objection was a legal one--that the claim was barred by the doctrine of res judicata. Therefore, the bankruptcy court was not required to set an evidentiary or adversarial hearing but could rule strictly on the legal issue presented. See Rule 9014(d) ("Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.")

It was not until the hearing on the contested motion that Debtor maintains that his attorney announced that Debtor also opposed the claim on the merits. The exchange to which he refers appears to be[12] as follows:

> THE COURT: Okay. Now, the debtor's not objecting to any of the monetary components of the

[12] Debtor refers us to A.A., p. 255, 1.9, which is a page from Vandenbrink's response to the claim objection. See Appellant's Opening Brief, p. 16. Apparently, he meant to refer to the hearing transcript, instead. The excerpt, above, is from page 225 of the excerpts.

claim.

[ATTORNEY]: We are with regard to Mr. VandenBrink in the sense that we have contested the claim in state court and brought this objection believing that, in essence, the claim was precluded based on the actions in Judy Cooper's —

Tr. of Proceedings (Feb. 18, 2005), p. 6:6-13.

This excerpt, however, supports the proposition that the legal objection in bankruptcy court was the sole objection raised by Debtor. Debtor's attorney did not make an oral request for discovery or for an evidentiary hearing on the claim.

It was not until after the court made its oral ruling at the hearing, allowing Vandenbrink's proof of claim in its entirety, that Debtor then filed his declaration and motion for reconsideration in which he disputed the amount of Vandenbrink's claim. Thus, Debtor's request for an evidentiary hearing on the merits of the claim came too late--after he had already waived his right to an evidentiary hearing.

Section 502(j) provides in pertinent part, that, "[a] claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case." 11 U.S.C. § 502(j).

A court does not abuse its discretion in denying such motion when the party's sole reason for failing to raise an issue at the proper time was his failure to appreciate the procedural consequences of his action. Here, it was incumbent upon Debtor to investigate and assert all of his available objections at the time of the claim objection hearing. See Halverson v. Estate of Cameron (In re Mathiason), 16 F.3d 234, 239 (8th Cir. 1994). It

was his own choice to limit his objection to the legal issue. Therefore there was no "cause" for granting the § 502(j) motion.

Notwithstanding the lack of "cause," a court may review the equities of the case. Here, Vandenbrink worked for Debtor's corporation for only three weeks and asserted a claim for over $190,000. Debtor denied that Vandenbrink obtained purchase orders or contract bids for which he was entitled to the claimed commissions. Importantly, Debtor contended that he could not confirm a chapter 11 plan if he had to absorb this debt.

And yet, Debtor had ample opportunity to object on these grounds in a timely manner, and to request an evidentiary hearing, but did not do so. Moreover, he did not present any corroborating evidence to support any factual objections concerning Vandenbrink's claim.

Therefore, we conclude that the bankruptcy court did not abuse its discretion in denying Debtor's motion for reconsideration.

CONCLUSION

Vandenbrink's proof of claim was presumptively valid. In objecting to the proof of claim, Debtor did not establish the elements of claim preclusion in order to bar the claim by virtue of its disallowance in his ex-wife's individual bankruptcy case. Nor did he present any rebuttal evidence, but instead he waived his right to an evidentiary hearing. Therefore, the bankruptcy court did not err in overruling Debtor's objection and allowing the claim. Moreover, where Debtor had made such procedural

choices, the bankruptcy court did not abuse its discretion in denying the motion for reconsideration of the claim allowance, for cause. The bankruptcy court's order is therefore **AFFIRMED**.