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ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Alabama State Missionary Baptist Convention, Inc., Rita D. Hood

CHAPTER: 11

ATTORNEYS:

DATE: 4/1/99

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

IN RE:

ALABAMA STATE MISSIONARY  
BAPTIST CONVENTION, INC.

Case No. 97-12946-MAM-11

Debtor.

**ORDER OVERRULING OBJECTION OF DEBTOR  
TO CLAIM OF ATTORNEY RITA D. HOOD**

This matter came before the Court for hearing on March 25, 1999 to consider the objection of Alabama State Missionary Baptist Convention, Inc. (“debtor”) to Claim No. 11 filed by Rita D. Hood. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the objection is overruled and the claim is allowed as an unsecured claim in the amount of \$33,000, subject to Rita D. Hood filing an amended proof of claim along with the employment contract upon which her claim is based.

**FACTS**

1. On August 18, 1997, debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Alabama, Northern Division.

2. Debtor had entered into an agreement with Betty M. Hood, Executrix of the Estate of David H. Hood, Jr., on May 31, 1991. The agreement provided that, “[a]s a result of a willful and deliberate [sic] breach of this agreement,” the Estate of David Hood “reserves the right to request any and all interest accrued and attorney’s fees necessary for compliance.”

3. On March 12, 1997, the estate of David Hood filed suit against debtor in the Circuit Court of Dallas County, Alabama based on the alleged breach of the agreement by debtor. Subsequent to filing this bankruptcy case, debtor removed the state court proceeding to the United States District Court for the Southern District of Alabama, Northern Division. The case was then referred to this Court.

4. On July 29, 1998, this Court issued a Judgment and Order by consent of the parties. The order provided that the total principal and interest owed to the Estate of David Hood by debtor was \$110,000. This debt is listed as Claim No. 3 in the Claims Register for this case. At the hearing on this matter, the parties agreed that Claim No. 3 is to be allowed as an unsecured claim in the amount of \$110,000. They disagreed as to whether Claim No. 3 includes the amount claimed as attorney's fees by Rita Hood.

5. On August 31, 1998, Rita Hood filed a motion for clarification that the July 29, 1998 judgment did not include attorney's fees incurred in her attempts to collect the debt owed to the Estate of David Hood. This Court denied the motion for clarification without prejudice on September 1, 1998.

6. The Court issued a "Memorandum Opinion in Support of Confirmation of Debtor's Plan of Reorganization" on November 17, 1998 ("Memorandum Opinion"). The Memorandum Opinion provided that:

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F. Claims must be filed pursuant to the Plan on or before 60 days from the date of entry of the contemporaneously filed Confirmation Order approving the Plan (the "Bar Date");

G. Pursuant to the Plan, any party in interest, including the Debtor, shall have 30 days from the Bar Date identified in the preceding paragraph to file an objection to a claim which shall be timely considered by the Court.

\* \* \* \* \*

7. The contemporaneous order confirming debtor's chapter 11 plan was issued by the Court on November 24, 1998 ("Order of Confirmation").

8. The Court issued a "Postconfirmation Order Fixing Time Limits" on December 17, 1998 (Order Fixing Time Limits). This order stated the following:

\* \* \* \* \*

2. **OBJECTIONS TO CLAIMS.** All objections to proofs of claims shall be made and shall be served and filed within 30 days after the date of this order, or 30 days after the claim was filed, whichever is later.

3. **OTHER PROCEEDINGS.** All other motions, applications or complaints shall be filed within 90 days after the date of this order, except as otherwise provided in Title 11. Any time limit provided in this order may be extended or waived by the court for cause after notice and a hearing.

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9. On February 18, 1999, Rita D. Hood filed a proof of claim form in this case for an unsecured claim in the amount of \$33,000 (Claim No. 11 in Claims Register). The form indicates that the debt was incurred in 1996 for legal services performed for Betty Hood, executrix of the Estate of David Hood. Rita Hood stated that a copy of her employment contract would be provided along with an amended proof of claim form. The Court has not received this employment contract yet.

10. Debtor filed an objection to the claim of Rita Hood for attorney's fees on March 5, 1999.

LAW

At the hearing on this objection, debtor provided the following bases for its objection:  
(1) the claim of Rita Hood was not timely filed; (2) the claim of Rita Hood arose after

commencement of this case and she therefore does not have a right to share in payments made pursuant to debtor's chapter 11 plan; and (3) the claim of Rita Hood is covered by Claim No. 3 of the Estate of David Hood for \$110,000. In the following discussion, the Court will address each of debtor's contentions in turn.

A.

Federal Rule of Bankruptcy Procedure 3003(c) sets forth the procedure for filing a proof of claim in a chapter 11 bankruptcy case. Rule 3003(c)(3) provides that the "court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." Fed. R. Bankr. P. 3003(c)(3). In general, a claim is to be disallowed if it is not timely filed. 11 U.S.C. § 502(b)(9). Was the claim of Rita Hood filed timely?

The November 17, 1998 Memorandum Opinion of this Court set the claims Bar Date at 60 days from November 24, 1998, the date of entry of the Order of Confirmation. Rita Hood filed her claim on February 18, 1999, after this 60-day time period had expired. Accordingly, her claim was not filed timely. However, Rita Hood apparently contends that the bar date was not 60 days from November 24, 1998, but instead, 90 days from December 17, 1998, as was established by the Court in its Order Fixing Time Limits. If correct, then her claim was timely filed.

The Court intended to establish the Bar Date for filing claims in its Memorandum Opinion and Order of Confirmation, not in its Order Fixing Time Limits. The Memorandum Opinion clearly indicates that the 60-day time period is the "Bar Date." The 90-day time period in the Order Fixing Time Limits refers to "other motions, applications or complaints," not the filing of claims. Nonetheless, the Court understands Rita Hood's confusion. Although the Bar

Date was explicitly established in the Memorandum Opinion, the Memorandum Opinion and the Order Fixing Time Limits do contradict each other with regards to the time to object to a claim. The Memorandum Order set the cut-off date to object to claims at 90 days from November 24, 1998. In contrast, the Order Fixing Time Limits provides that objections must be filed within 30 days from December 17, 1998 or 30 days from when the claim is filed, whichever is later. Thus, the time each order provides to object may differ, depending on when the claim is filed. Debtor's counsel, who is an experienced bankruptcy practitioner, was also confused by the contradictory orders regarding the filing and contesting of claims.<sup>1</sup>

Based on this contradiction and the fact that Rita Hood does not regularly practice in bankruptcy courts, Rita Hood's confusion regarding the Bar Date is understandable. It would be unfair to deny her the opportunity to prove her claim since her confusion arguably resulted from the inconsistent orders issued this Court. *See, Rowe International, Inc. v. Herd (In re Herd)*, 840 F.2d 757 (10th Cir.1988) (written notice of bar date should be clear and definite; creditor not charged with interpreting ambiguous or incomprehensible notice). Therefore, the Bar Date is deemed to have been set at 90 days from December 17, 1998.

Even assuming Rita Hood did not file her claim timely, her late filed claim will be permitted because its tardiness was the result of excusable neglect. Pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1), this Court has the authority to permit a late filed claim for cause shown if "the failure to act was the result of excusable neglect." "Excusable neglect" is an "elastic concept" intended to permit late filings caused by "inadvertence, mistake, or

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<sup>1</sup> See debtor's March 1, 1999 "Motion for Clarification and to Allow Initial Distribution of Funds Pursuant to Plan of Reorganization."

carelessness, as well as by intervening circumstances beyond the party's control." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 113 S. Ct. 1489, 1495-96, 123 L. Ed. 2d 74, 507 U.S. 380 (1992).

In *Pioneer*, the Supreme Court included an assessment of the culpability of counsel for the creditor in determining if creditor's neglect in filing its claim was excusable. The court permitted the late filed claim partly because the bar date was not "prominently announced and accompanied by an explanation of its significance." *Id.* at 1499-1500. The 60-day time period in the Memorandum Order was explicitly defined as the "Bar Date." However, the significance of the Bar Date was not explained.

Analogous to the finding of the Supreme Court in *Pioneer*, this Court believes that Rita Hood was neglectful in her failure to apprehend the proper bar date. *Id.* at 1500. The Memorandum Order accompanying the Confirmation Order is the only order that refers to a "Bar Date." Rita Hood should have understood this to be the date by which claims must be filed. However, there was not a hint of bad faith on Rita Hood's part. Based on the confusion regarding the orders issued and the inexperience of Rita Hood in bankruptcy matters, the Court finds her neglect was excusable. *Id.* (neglect of counsel for creditor was "excusable"). Accordingly, Rita Hood's claim will be permitted as filed even assuming that it was filed late.

## B.

Under the Bankruptcy Code, only parties that hold prepetition claims have a legal right to share in payments made pursuant to a chapter 11 plan. 11 U.S.C. §§ 101(10), 501, 502; *Epstein v. Official Committee of Unsecured Creditors (In re Piper Aircraft Corp.)*, 58 F.3d 1573, 1576 (11th Cir. 1995) (future product liability claimants could not share in chapter 11 distributions

because they did not have preconfirmation claims). If the claim of Rita Hood for attorney's fees arose postpetition, then her claim must be disallowed.

*Kirkpatrick v. Kogan (In re Kirkpatrick)*, 216 B.R. 663 (Bankr. M.D. Fla. 1997) involved a debtor that had filed suit for injunctive relief in the U.S. District Court for the Middle District of Florida in 1990. While the suit was pending, debtor filed for bankruptcy. He received a discharge in 1992. In October 1993, the District Court granted summary judgment for the defendants and dismissed debtor's suit for injunctive relief. The defendants applied to the District Court for attorney's fees pursuant to 42 U.S.C. §§ 1983 and 1988. In 1994, defendants were awarded attorney's fees for their successful defense of the District Court suit. They were awarded additional fees in 1996 for their successful defense of debtor's appeal. In March 1996, debtor reopened his chapter 7 case to discharge his liability for the attorney's fees. Defendants argued that the fees arose postpetition and were therefore not subject to the discharge granted debtor.

A prerequisite to the award of attorney's fees to defendants was that they "prevailed" in defending the suit brought against them by debtor. Defendants "prevailed" and were awarded fees in 1994 and 1996 after debtor filed his bankruptcy petition in 1991 and received a discharge in 1992. Nonetheless, the bankruptcy court found that prior to debtor filing his petition for bankruptcy the claim for attorney's fees was "clearly within the definition of the term claim as defined by § 101(5)." *Id.* at 666. The claim would not have arisen but for the debtor filing the suit, which occurred prepetition. *Id.* Analogously, the claim of Rita Hood for attorney's fees would not have arisen but for debtor's breach of the promissory note. The breach and the suit based on the breach occurred prior to the commencement of debtor's chapter 11 case. The



attorney's fees in *Kirkpatrick* and the fees sought by Rita Hood were contingent on an event that was not determined until after debtor's bankruptcy petition was filed. Notwithstanding this fact, Rita Hood and the defendants in *Kirkpatrick* had a "contingent claim" for attorney's fees prior to commencement of the debtors' bankruptcy cases. 11 U.S.C. § 101(5) ("claim" includes a "right to payment, whether or not such right is . . . contingent. . .").

The legislative history of the Bankruptcy Code supports the foregoing analysis. In its discussion of the definition of "claim," Congress explained that:

By this broadest possible definition, and by the use of the term throughout title 11, especially in subchapter I of chapter 5, the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.

House Report No. 95-595, 95th Cong. 1st Sess. 108, 309 (1977); Senate Report No. 95-989, 95th Cong. 2d Sess. 21 (1978). Prior to filing this case, debtor's legal obligation to pay the attorney's fees incurred by the Estate of David Hood was not too remote or contingent to be considered a claim. The right to request such fees arose as a result of the breach of the agreement between the Estate and debtor, which occurred prepetition. At such time, the right to request these fees was a "claim." The fact that Rita Hood's fees were contingent on collecting from debtor, an event that had not occurred prepetition, does not change the determination of this Court that the fees constitute a prepetition claim.<sup>2</sup>

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<sup>2</sup> The right to attorney's fees was contingent on "a willful and deliberate (sic) breach" of the agreement (emphasis added). Debtor did not contest whether its breach was willful and deliberate or the amount of the claim of Rita Hood. Thus, assuming Rita Hood provides a copy of her attorney employment contract, the court will presume that the amount of her claim is correct and that the breach was willful and deliberate. If the breach was not willful and deliberate, debtor must file a motion for the Court to reconsider this order.

Based on the foregoing, this Court finds that the claim of Betty Hood for attorney's fees clearly existed pursuant to 11 U.S.C. § 101(5) prior to debtor filing its bankruptcy petition.

C.

On July 20, 1998, this Court signed a consent Judgment and Order in which the total principal and interest owed by the debtor to the Estate of David Hood was said to be \$110,000. Debtor now argues that this amount covered the attorney's fees of Rita Hood, attorney for the Estate of David Hood.

Debtor did not specify the legal basis of this claim, other than his contention that the order "covered" any attorney's fees claimed by the Estate of David Hood. Debtor's emphasis on what is "covered" implies that the Court should determine the intent of the parties as evidenced by the stipulated judgment. This Court agrees. Stipulated judgments are essentially contractual agreements between the parties and interpretation of these judgments should be governed by the intent of the parties. 18 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE JURISDICTION AND RELATED MATTERS § 4443 (West 1981). The consent order does not mention attorney's fees. By its express terms, it only covers the principal and interest owed by debtor. Therefore, the Court concludes that the parties did not intend for the July 20, 1998 Judgment and Order to cover the attorney's fees of Rita Hood.

Even assuming the parties intended the stipulated judgment to cover attorney's fees, the Court finds that Rita Hood is not precluded from filing her claim for attorney's fees because the judgment does not have res judicata effect.<sup>3</sup> A prerequisite to a finding that an order or judgment

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<sup>3</sup> "Res judicata" refers to the distinctive effects of a judgment characterized as "claim preclusion" and "issue preclusion." 18 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE JURISDICTION AND RELATED MATTERS § 4402 (West 1981). The differences

has a preclusive or res judicata effect on future litigation is that the order or judgment was a final decision on the merits. *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990). “A bankruptcy court’s order authorizing settlement of a claim cannot constitute a final judgment on the merits for purposes of former adjudication.” *Id.* Thus, the stipulated Judgment and Order issued by this Court on July 20, 1998 regarding the claim of the Estate of David Hood was not a final judgment on the merits. Res judicata does not preclude Rita Hood from filing a claim for attorney’s fees, even assuming that her claim was or should have been dealt with in the July 20, 1998 order issued by this Court.

THEREFORE IT IS ORDERED that the objection of Alabama State Missionary Baptist Convention, Inc. is OVERRULED and Claim No. 11 of Rita D. Hood is allowed as an unsecured claim in the amount of \$33,000 if Rita Hood files an amended proof of claim form along with the documentation evidencing her employment for the Estate of David Hood.

Dated: April 1, 1999

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE

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between the two is not always clear. The result in this case is the same whether the claim for attorney’s fees is deemed to be a matter that should have been raised in the proceeding that resulted in the stipulated judgment (claim preclusion) or an issue that was decided in that proceeding (issue preclusion). *Id.* Therefore, the Court will use the broad term “res judicata” in this opinion.