

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
 )  
HENRY PERRY, ) Case No. 18-00773  
 )  
Debtor. )

ORDER REGARDING WITHDRAWAL OF CLAIM (DOC. 35)

This case is before the court *sua sponte*. The debtor filed a proof of claim (claim no. 6) for Harrison Finance pursuant to Federal Rule of Bankruptcy Procedure 3004 after the creditor failed to do so. The chapter 13 trustee filed an objection to the claim (doc. 24) based on lack of documentation. The debtor then filed a withdrawal of the claim (doc. 35) and the trustee withdrew its objection (doc. 36).

The problem is that only a creditor, not a debtor, may withdraw a claim, even if the debtor filed the claim under Rule 3004. *See* Fed. R. Bankr. P. 3006; *In re Johnson*, No. 08-41177-JJR-13, 2008 WL 5120114, at \*5 (Bankr. N.D. Ala. 2008). Accordingly, the debtor's withdrawal of claim (doc. 35) is void. The claim stands as filed pending further action by the trustee. If the creditor wants to file a proof of claim as stated in the debtor's withdrawal of claim, the creditor should amend claim no. 6 rather than file a new claim.

Dated: December 18, 2018

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE