

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

GREGORY SPRINKLE, JR.,

CASE NO. 00-12094-WSS

Debtor.

Chapter 13

ORDER ON DEBTOR'S OBJECTION TO CLAIM #3- WELLS FARGO FINANCIAL, INC., WELLS FARGO'S MOTION TO ALLOW LATE FILED CLAIM AND TRUSTEE'S MOTION TO INCREASE PLAN PAYMENTS

Denise Littleton, Attorney for the Debtor
William Poole, Attorney for Wells Fargo Financial, Inc.

This matter came on for hearing on the Debtor's objection to Claim #3- Wells Fargo Financial Inc. ("Wells Fargo"), the motion of Wells Fargo to allow a late filed claim, the Trustee's motion to increase plan payments, and the Debtor's objection to said motion. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334, and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

The Debtor filed his Chapter 13 petition on May 20, 2000. Wells Fargo was listed as a creditor in the Debtor's schedules. Wells Fargo filed a motion for relief from stay regarding the Debtor's wife's automobile on June 22, 2000. On June 28, 2000, Wells Fargo objected to confirmation of the Debtor's original chapter 13 plan, but the objection was orally withdrawn at the confirmation hearing, and the plan was confirmed. The Debtor's plan called for a preference payment to Wells Fargo. Wells Fargo's objection did not state the amount of its claim; however, the amount of the claim and the value of the Debtor's automobile were stated in the Chapter 13 Trustee's bench sheet.

The bar date for filing proofs of claim was October 4, 2000. Wells Fargo filed its claim on March 1, 2001, and amended its claim on April 5, 2001. Wells Fargo filed another motion for relief from stay in January 2001, which was conditionally denied. After he learned that Wells Fargo did not file a timely proof of claim, the Debtor amended his chapter 13 plan on June 5, 2001 to omit the preference payment to Wells Fargo. Wells Fargo did not object to the amended plan, and the Court confirmed the plan on July 17, 2001. Wells Fargo then filed a motion to reconsider confirming the amended plan, and the Court denied the motion to reconsider.

The Chapter 13 Trustee filed a motion to increase the Debtor's plan payments based on Wells Fargo's late filed claim. The Debtor filed the present objection to the claim and motion to disallow the claim because it was filed after the bar date. Wells Fargo responded with a motion to allow a late filed claim.

As the Debtor points out, there are two basic issues before the Court. First, does Wells Fargo's objection to the chapter 13 plan constitute an informal proof of claim? Secondly, even if the objection is a timely informal proof of claim, is Wells Fargo bound by the confirmation of the Debtor's amended plan that omitted the preference payment to Wells Fargo?

The Eleventh Circuit Court of Appeals recognizes informal proofs of claim that "apprise the Court of the existence, nature and amount of the claim (if ascertainable) and make clear the claimant's intention to hold the debtor liable for the claim." *In re Charter Co.*, 876 F.2d 861, 863 (11th Cir. 1989). Wells Fargo's objection clearly informed the Debtor and the Court of the existence and nature of its claim. It also showed Wells Fargo's intent to hold the Debtor liable for the debt and its desire to be paid under the chapter 13 plan. It is true that the objection does not state the amount of the claim; however, the Chapter 13 Trustee's bench sheet does state the

amount of the claim. Also, courts can consider other documents and actions by the claimant when determining the existence of an informal proof of claim, even those that occur after the bar date. *Charter*, 876 F.2d at 864. Wells Fargo filed a formal proof of claim in March 2001, and an amended claim in April 2001 that included the amount of its claim. The April 2001 amended claim gave the Debtor ample notice of the nature and amount of Well Fargo's claim before the June 5, 2001 amended plan. The Court concludes that Wells Fargo's objection to the Debtor's original chapter 13 plan is an informal proof of claim.

Now the Court must consider whether Wells Fargo is bound by the confirmation of the Debtor's amended plan that omitted the preference payment to Wells Fargo. Orders of confirmation are *res judicata* as to the issue of allowing a claim. The bankruptcy court in *In re Westbrook*, 246 B.R. 412 (Bankr. N.D. Ala. 1999) sustained the debtor's objection to a creditor's amended proof of claim and disallowed the amended claim filed after entry of the confirmation order based on the *res judicata* effect of the confirmation order. In reaching its decision, the court considered four factors from *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990): (1) whether the judgment was rendered by a court of competent jurisdiction and in accordance with the requirements of due process; (2) the judgment was final and on the merits of the case; (3) the same parties were involved in the prior proceeding; and (4) the subsequent proceeding involves the same cause of action or claim as was involved in the prior proceeding. *Westbrook*, 246 B.R. at 417.

Wells Fargo has not raised any issues as to this Court's jurisdiction, or due process. Wells Fargo admits receiving the notice of the amended plan in time to file an objection to it. Wells Fargo has been active in the Debtor's case from its inception, having filed an objection to a

previous plan and two motions for relief from stay. The confirmation order was a final order on the merits. There is no question that the same parties were involved in both proceedings and the same cause of action was at issue. The Debtor's amended plan clearly omits the preference payment to Wells Fargo. Wells Fargo had a duty to object to the plan that did not make provisions for its claim. The doctrine of *res judicata* includes claims that were actually litigated in a prior proceeding and those that could have been litigated in a prior proceeding. Wells Fargo's missing objection falls into the latter category. As such, Wells Fargo cannot now expect to receive a preference payment under the Debtor's chapter 13 plan, which is why the Court previously denied Wells Fargo's motion to reconsider the confirmation order. Based on the foregoing, the Court finds that the Debtor's objection to Claim #3- Wells Fargo is due to be overruled. Wells Fargo's motion to allow a late filed claim is due to be granted, and the Trustee's motion to increase plan payments should be granted. The Court will set a valuation hearing on Wednesday, August 7, 2002 at 10:30 a.m. to determine the secured and unsecured amounts of Wells Fargo's claim, unless the parties submit a written stipulation as to the secured and unsecured value of the automobile. It is hereby

ORDERED that the Debtor's objection to Claim #3- Wells Fargo is **OVERRULED**; and it is further

ORDERED that the motion of Wells Fargo to allow a late filed claim is **GRANTED**; and it is further

ORDERED that the Trustee's motion to increase plan payments is **GRANTED**; and it is further

ORDERED that a valuation hearing shall be held on **Wednesday, August 7, 2002 at**

10:30 a.m. to determine the secured and unsecured amounts of Wells Fargo's claim, unless the parties submit a written stipulation as to the secured and unsecured value of the automobile.

Dated: July 16, 2002

/s/ William S. Shulman
WILLIAM S. SHULMAN
UNITED STATES BANKRUPTCY JUDGE