United States Bankruptcy Court
Western District of Wisconsin

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[aff'd, No. 92-C-582-S (W.D. Wis. Oct. 9, 1992)]

In re Russell J. Bringe and Carol M. Bringe, Debtors
Bankruptcy Case No. 90-02186-12

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

May 15, 1992

Melvyn L. Hoffman, for the debtors.
Daniel R. Freund, for the trustee.
Raymond Mulera, for the Internal Revenue Service.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

This matter comes before the Court on the Chapter 12 trustee's objection to, or request for, determination of the secured status of a claim filed by the Internal Revenue Service (I.R.S.). The debtors are Russell J. and Carol M. Bringe, and they are represented by Melvyn Hoffman. The Chapter 12 trustee is Daniel Freund, and he is representing himself. The I.R.S. is represented by Raymond Mulera. The I.R.S. filed a memorandum in support of its motion to disallow the debtors' objection to its claim on February 24, 1992. The trustee filed a brief in support of his objection to the I.R.S. claim on March 10, 1992.

The relevant facts can be briefly recited. The debtors filed their Chapter 12 bankruptcy on August 7, 1990. The petition contained a one-digit error in Russell Bringe's social security number; the petition listed the number 391-43-3087 instead of the correct number 391-42-3087. Carol Bringe's social security number was correctly given. In addition, the petition did not contain the debtors' employee identification number. The I.R.S., along with all other parties in interest, was served an order and notice for final meeting of creditors on August 8, 1990. This notice set the bar date for claims at December 17, 1990.

Several claims were filed before the deadline; two claims filed within a month after the deadline were disallowed. The debtors' plan of reorganization was confirmed on August 29, 1991. Under the terms of the plan, timely filed claims of unsecured creditors will not be paid in full, and payments to the trustee were to begin on October 5, 1991.

On December 4, 1991, nearly a year after the deadline for filing claims, the I.R.S. filed its priority claim for unpaid civil penalties and taxes on wages for agricultural

employees. The I.R.S. proof of claim listed an unsecured priority claim totaling $4,763.30 and an unsecured general claim for pre-petition penalties totaling $808.15. The trustee objected to the I.R.S. claim on the basis of its untimely filing and asserted that it should be disallowed. The I.R.S. responded by alleging that the notice of the debtors' bankruptcy it received was inadequate and the claim should therefore be allowed.

Turning to the applicable law, the relevant bankruptcy rule states:

FILING PROOF OF CLAIM OR INTEREST

> (a) Necessity for Filing. An unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 1019(4), 3003, 3004 and 3005.
> . . .
>
> (c) Time for Filing. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to Sec. 341(a) of the Code, except as follows . . .

Bankruptcy Rule 3003, 11 U.S.C.A. (West 1992). This rule provides for six exceptions to the ninety-day bar for filing claims, none of which is applicable here.

The I.R.S. in its brief correctly notes that the ninety-day limit of Bankruptcy Rule 3003(c) is generally treated as a statute of limitations, barring late-filed claims. See In re Roberts, 98 B.R. 664, 665-66 (Bankr. D. Vt. 1989); In re S.A. Morris Paving Co., 92 B.R. 161, 163 (Bankr. W.D. Va. 1988). The I.R.S. cites additional case law, however, for the proposition that "[i]nherent in the strict time requirements of the Bankruptcy Rules is the assumption that a creditor has received notice of the bankruptcy petition." Merrill Lynch, Pierce, Farmer & Smith v. Dodd, 82 B.R. 924, 928 (N.D. Ill. 1987). See also In re Roberts, 98 B.R. 664, 666 (Bankr. D. Vt. 1989). The Seventh Circuit case of In re Unroe is also proffered by the I.R.S. for the proposition that

> [a] bankruptcy court's power to extend the bar date implies a corresponding power to permit late claims. A statute of limitation cannot be adjusted either before or after it expires. Here Congress's approval of an extendable deadline, see Bankr. R. 3002(c), distinguishes the bar date from a statute of limitation, indicating that the court's equitable power includes authorization of late-filed claims.

In re Unroe, 937 F.2d 346, 350 (7th Cir. 1991).

Aside from its cited case law, the I.R.S. argues that it was not provided with adequate notice. It included with its brief an affidavit by Ursula Kordasiewicz Wastian, Chief of the Special Procedures Staff for the Milwaukee District I.R.S. office. Ms. Wastian declared that a taxpayer's social security number and/or his employer identification number are the "[i]dentifying numbers that the I.R.S. uses when researching a debtor's file to determine if there are any delinquent taxes to be listed on a proof of claim." She then states it was because of the incorrectness or absence of those two numbers on the debtors' petition that the I.R.S. was unable to timely locate the delinquent taxes at issue. It was not until nearly a year later when an I.R.S. revenue officer had been assigned the debtors' account for administrative collection that the I.R.S. learned of their bankruptcy. Counsel for the I.R.S. argues that, since

the I.R.S. does not operate on a system which identifies taxpayers by name, it cannot be expected to cross-reference a social security number against a name on a § 341 notice. Requiring the I.R.S. to do so, the argument continues, "[w]ould create a tremendous if not impossible administrative burden."

Finally, the I.R.S. asserts that no harm would result to the debtors by requiring them to provide for its claim, whereas harm to the United States would result if its claim were disallowed.

The Court has considered the aforementioned case law and factual considerations presented by the I.R.S., as well as the trustee's response to them. Having done so, the Court finds in favor of the trustee and holds that the I.R.S. was indeed provided with reasonable and adequate notice of their bankruptcy for purposes of the bankruptcy code and rules.

As noted by the trustee, the § 341 notice sent to the I.R.S. contained the correct names and addresses of the debtors and their counsel. Carol Bringe's social security number was also correctly given. This information, correctly and timely supplied to the I.R.S., was sufficient to give it adequate notice of the debtors' bankruptcy.

Although individuals in modern society are increasingly identified by a dizzying array of number codes and combinations, this Court is not prepared to rule against a debtor [or the trustee here] who inadvertently omits one such code or combination or erroneously lists another on his bankruptcy petition. There was no evidence presented here that the debtors intended to mislead the I.R.S. or other creditors through the error or omission on their petition. The Court does not believe it is placing an "impossible burden" on the I.R.S. to require it to cross-reference a social security number with a debtor's name on the § 341 notice provided to it. Doing so would immediately identify a discrepancy and signal that further investigation is warranted. Here, when the erroneous social security number was entered into the computer, the fact that a name other than Russell Bringe turned up should have indicated an error. The I.R.S. could have then conducted further checks using the debtor's name, his wife's name, or his wife's social security number -- all of which were correctly supplied in the § 341 notice.

Nor does the case law cited by the I.R.S. save its claim from disallowance. Since the Court finds the notice provided to have been adequate, it need not resolve the split in authority noted by the I.R.S. as to whether the ninety-day bar in Bankruptcy Rule 3002(c) is absolute. Nor is the Seventh Circuit precedent of In re Unroe cited by the I.R.S. dispositive here. That case involved an allowed late-filed claim which was treated as an amendment to a claim filed for the previous tax year. See In re Unroe, 937 F.2d 346, 389 (7th Cir. 1991). The Seventh Circuit specifically noted, moreover, that "[w]e leave for another case the question whether a judge in equity could permit an entirely new claim filed out of time." 937 F.2d at 350. That is the case currently before this Court and, given its finding of adequate notice, the Court need not decide this issue.

Finally, the Court disagrees with the I.R.S.'s assertion that the debtors will not be harmed by allowance of the I.R.S. claim. The debtors' plan was confirmed on August 29, 1991, and it did not provide for priority treatment of any I.R.S. claim. The trustee has already made distributions under the plan. Allowing the I.R.S. claim at this late date would adversely affect unsecured creditors holding allowed claims; dividends paid to them would decrease. The Seventh Circuit in Unroe explicitly recognized the importance of such factors in determining whether to allow a late claim. In affirming the lower court's ruling in favor of allowing the I.R.S.'s late claim, the Court noted that

the debtors had scheduled in their plan more than the amount required to pay the late claim. 937 F.2d at 351. The Court then stated that "[t]he result may have been different had the late claim been unscheduled or exceeded the amount in the plan, in which case the prejudice to the debtor and other creditors would have been more severe." Id. (emphasis added). Here, as noted, the I.R.S.'s claim was unscheduled and the result to the debtors and other creditors would therefore be severe.

For these reasons, then, the Court finds that the I.R.S. received adequate notice of the debtors' bankruptcy. The trustee's objection to the I.R.S. claim is therefore granted and the claim is accordingly disallowed.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.