

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

IN RE:)
)
 ELISA THOMPSON) CASE NO. 00-11209(1)(13)
)
 Debtor(s))

MEMORANDUM-OPINION

This matter is before the Court on the Motion to Allow Claim of Creditors Jerry Crafton and Sandra Crafton (“Craftons”). The Court considered the Craftons’ Motion, the Response to Motion to Allow Claim of Debtor Elisa D. Thompson (“Debtor”) and the arguments of counsel at the hearing held April 20, 2006. For the following reasons, the Court **GRANTS** the Motion to Allow Claim of Creditors Jerry Crafton and Sandra Crafton.

PROCEDURAL BACKGROUND

On August 17, 2000, Debtor filed her Voluntary Petition seeking relief under Chapter 13 of the United States Bankruptcy Code.

On October 31, 2000, the Craftons filed their Motion to Amend the Order of Confirmation to provide that their claims be recognized as unliquidated and that they would be reviewed as to their status and character, including dischargeability, upon motion filed within sixty days of entry of a judgment in the civil action pending in the Logan Circuit Court.

On November 2, 2000, the Court entered an Order granting the Craftons’ Motion to Amend the Order of Confirmation and stated that the Craftons’ claims were recognized as unliquidated and “shall be reviewable and their status and character including dischargeability determinable by this Court upon motion of these claimants filed within sixty days of the entry of judgment by the Logan Circuit Court in its pending Civil Action No. 99-CI-503.”

On November 6, 2000, the Craftons moved the Court for relief from the stay to proceed with the civil action in the Logan Circuit Court. The Court held a hearing on that Motion on November 7, 2000 and entered an Order on December 5, 2000 modifying the stay and stating that 30 days after any judgment became final the Craftons “shall file a proof of claim in the bankruptcy matter or notify the Court if there is no claim.”

On April 19, 2002, the Craftons filed a document entitled “Report of Proceedings in Civil Action No. 99-CI-00503 in the Logan Circuit Court and Claim (hereinafter “Report”).” In that Report, Creditors indicated that Judgment had been entered against the Debtor in the Logan Circuit Court action and that the jury had determined that the Debtor’s actions were intentional. The Craftons requested that the Court consider their claim in the liquidated amount of \$5,502.00 and be declared nondischargeable.

On September 4, 2002, the Court entered an Order dismissing the Debtor’s case due to her failure to comply with Local Rule 13. The Court’s record shows that the Craftons’ attorney, Currie Milliken was served with the Order dismissing the case.

On September 13, 2002, the Debtor moved the Court to reconsider dismissal of the case. A hearing was held on that motion on October 24, 2002 and an Order entered on October 28, 2002 reinstating the Debtor’s case. The Court’s record does not show that Mr. Milliken or the Craftons were served with either the Motion to Reconsider or the Order reinstating the case.

On February 8, 2006, an Order granting the Debtor a discharge was entered by this Court. The Court’s records indicate that the Creditors’ attorney, Currie Mulliken was served with a copy of this Order.

On March 9, 2006, the Craftons filed their Motion to Reopen Case and Waive Reopening Fee. The Craftons also filed their Motion For Determination of Status of Claim seeking an order determining that they have a nondischargeable liquidated claim in the amount of \$5,502.00. Debtor filed her Response objecting to the claim. On May 3, 2006, Creditors' attorney, Currie Mulliken, filed an Affidavit stating that he received no further communication from this Court after receiving the Order of Discharge.

LEGAL ANALYSIS

The issue before the Court is whether the Report filed on April 19, 2002 can be considered a timely filed claim. The Court finds that the Craftons' filings in this case constituted a timely filed informal proof of claim that should be allowed.

A proper proof of claim must include: (1) the name and address of the creditors; (2) the basis of the claim; (3) the date the debt was incurred; (4) the classification of the claim; (5) the amount of the claim; and (6) copies of any documents supporting the claim. See, Official Form 10 of the Federal Rules of Bankruptcy Procedure. While the Craftons did not file a formal proof of claim, their filings contained all of the requisite information.

Courts have invoked the common law doctrine of "informal proof of claims" where a creditor fails to file an official proof of claim. This doctrine ameliorates the strict enforcement of the claims bar date where a creditor has taken measures to protect their interest in the estate. In re Wigoda, 234 B.R. 413, 415 (N.D. Ill. 1999); In re McCoy Management Services, Inc., 44 B.R. 215, 217 (Bankr. W.D. Ky. 1984). Four elements are required to meet the test of an informal proof of claim. They are: (1) it must be in writing; (2) the writing must contain a demand by the creditor on the debtor's estate; (3) the writing must express an intent to hold the debtor liable for the debt; and (4) the proof

of claim must be filed with the bankruptcy court. Id.; In re M.J. Waterman & Assoc., Inc., 227 F.3d 604, 608 (6th Cir. 2000). If the filing meets this test, the court must then decide whether it would be equitable to allow the claim or whether it would be prejudicial to other creditors. Id.

In the matter at bar, the Craftons' filings easily meet the four part test. In addition to the Report, the Craftons had earlier filed a Motion to Modify the Stay to allow them to proceed to liquidate their claim in the Logan Circuit Court. "A motion to lift stay, for example, may so clearly display a claim, and so obviously demonstrate an active intention by the creditor to realize upon its collateral, that it may be treated as an informal proof of claim." In re Vaughn Chevrolet, Inc., 160 B.R. 316 (Bankr. E.D. Tenn. 1993). The Craftons' Motion to Modify the Stay, Motion to Amend the Order of Confirmation and the Report clearly put the Debtor on notice of the claim. The nature of the claim, the amount and an intent to hold the Debtor's estate liable on the claim are evident in the writings filed by the Craftons in this case and constitute an informal proof of claim that should be allowed.

Debtor contends that it would be inequitable to allow the claim because she already paid on her Plan and received a discharge. Unsecured claimants received 15% of the allowed claims, but would only have received 10% had the Craftons' claim been allowed. The Court does not view this as prejudicial to other creditors because they, in effect, received a 5% windfall because of the exclusion of the Craftons' claim, which should have been an allowed claim.

The prejudice to the Craftons by disallowance of their claim is manifest. The Craftons complied with the Orders of this Court issued when the stay was modified to allow them to proceed in Logan Circuit Court. The record demonstrates that neither the Craftons nor their attorney received notice that the case had been reinstated after it had been dismissed for Debtor's failure to

make plan payments. This prohibited the Craftons from timely filing an action to determine the nondischargeability of the debt. Accordingly, the Court determines that the Craftons' claim should be allowed.

CONCLUSION

For all of the above reasons, the Court finds the Craftons' claim in the amount of \$5,502.00 is allowed as a general claim against the estate. For a period of 30 days following entry of this Order, the discharge awarded the Debtor shall be set aside to permit the Craftons the opportunity to file a formal proof of claim in the estate and an adversary proceeding as an objection to discharge against the Debtor to determine if the Craftons' claim is nondischargeable pursuant to 11 U.S.C. §523. Failing a timely proof of claim and adversary proceeding, the discharge shall be re-entered and shall be effective against the Craftons' claim pursuant to 11 U.S.C. §524 without further action by Debtor or this Court.

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ORDER

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Determination of Status of Claim of Creditors, Jerry Crafton, individually, Sandra Crafton, individually and Jerry Crafton and Sandra Crafton, as Natural Guardians and Next Friend of Jason Crafton, be and hereby is, **GRANTED**. The Craftons have a liquidated claim in the amount of \$5,502.00 with said claim being allowed as a general claim. The Craftons are granted leave to file an amendment, within 30 days of the date of this Order, which will conform with the formalities of a proof of claim required by Rule 3001(a) of the Federal Rules of Bankruptcy Procedure and 30 days to file an adversary proceeding contesting the dischargeability of said claim.