



SO ORDERED,

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: December 21, 2022**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JOHNNY A. ROWLAND, SR.,

CASE NO. 05-06194-JAW

DEBTOR.

CHAPTER 7

**ORDER OVERRULING OBJECTION
TO SUMMARY OF TRUSTEE'S FINAL REPORT**

This matter came before the Court for hearing on December 5, 2022 (the "Hearing"), on the Trustee's Final Report and Applications for Compensation ("TFR") (Dkt. #47) filed by J. Stephen Smith, the chapter 7 trustee (the "Trustee"); the Objection to Summary of Trustee's Final Report (the "Objection") (Dkt. #49) filed by the debtor, Johnny A. Rowland, Sr. (the "Debtor"); and the Trustee's Response to Debtor's Objection to Summary of Trustee's Final Report (the "Response") (Dkt. #50) filed by the Trustee in the above-referenced bankruptcy case (the "Bankruptcy Case"). At the Hearing, G. Adam Sanford represented the Debtor, and Eileen N. Shaffer represented the Trustee.

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Notice of the Hearing was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief (the “Petition”) (Dkt. #1) under chapter 7 of the U.S. Bankruptcy Code on October 13, 2005. In Schedule F: Creditors Holding Unsecured Nonpriority Claims (Dkt. #6 at 9-17), the Debtor disclosed claims owed to Yellow Book USA (“Yellow Book”) in the amount of \$1,370.00 (Dkt. #6 at 17) and to American Express (“AmEx”) in the total amount of \$12,574. (Dkt. #6 at 9). He did not list the claims as disputed. In Schedule B: Personal Property (Dkt. #6 at 3-5), he did not disclose a product liability claim.

2. On November 20, 2005, a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines (the “Chapter 7 Notice to Creditors”) (Dkt. #7) was issued to creditors and parties in interest. In bold face, the Chapter 7 Notice to Creditors informed creditors: **“Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.”**” No deadline to file a proof of claim was set.

3. The Trustee conducted the meeting of creditors and on December 28, 2005 reported that he had performed the duties required of him under 11 U.S.C. § 704 and concluded that there were no assets to administer for the benefit of creditors of the estate.

4. The Debtor amended his schedules on February 18, 2006 to include additional creditors but again did not disclose a product liability claim. (Dkt. #10).

5. Notwithstanding the Notice to Chapter 7 Creditors, Yellow Book filed a proof of claim (Cl. #1-1) in the amount of \$1,269.72 on March 23, 2006. The Debtor’s Objection to the TFR

incorrectly reports this date as March 23, 2016. Attached to Yellow Book's claim are two documents that appear to be images from a computer screen showing that the account had been written off as uncollectible on August 23, 2004.

6. The Debtor received a discharge on July 17, 2006 (Dkt. #14), and the Bankruptcy Case was closed that same day (Dkt. #15).

7. On October 14, 2021, fifteen years later, the Trustee became aware of an undisclosed product liability claim belonging to the bankruptcy estate. (Dkt. #45 at 3). The next day, the Trustee filed a motion to reopen the Bankruptcy Case to administer an undisclosed asset of the bankruptcy estate. (Dkt. #18). The Debtor did not object to the motion, and the Court entered an order reopening the Bankruptcy Case on October 18, 2021. (Dkt. #19).

8. On January 12, 2022, the Trustee filed a notice in the Bankruptcy Case that he had discovered assets that could result in a distribution to creditors of the estate and requested that the Bankruptcy Clerk provide notice to creditors to file claims. (Dkt. #27). On January 13, 2022, the Bankruptcy Clerk issued a notice informing creditors that they must file a proof of claim by April 13, 2022 to share in any distribution of funds of the estate. (Dkt. #28).

9. On March 7, 2022, AmEx filed a proof of claim (Cl. #2-1) for credit card debt in the amount of \$12,887.89. A credit card statement attached to AmEx's claim shows a closing date of November 14, 2004. An itemization indicates that the date of the last payment was July 2004.

10. The claims register indicates that Yellow Book and AmEx are the only two creditors that filed a proof of claim in the Bankruptcy Case. Combined, their claims total \$14,157.61. No objection to either of these claims has been filed.

11. The Trustee obtained the Court's approval to settle the product liability claim for \$39,618.08. (Dkt. #36).

12. The Trustee filed the TFR on October 28, 2022. The TFR indicates that there is \$35,325.27 available for payment of chapter 7 fees and administrative expenses and for distribution to creditors. From this amount, the Trustee proposes to pay administrative expenses of \$21,438.01 and the balance of \$13,887.26, pro rata, to Yellow Book and AmEx. (Dkt. #45 at 11-12). If the claims are allowed, no funds will be available to return to the Debtor.

13. In his Objection to the TFR, the Debtor contends that the claims of Yellow Book and AmEx are now more than fifteen years old and, therefore, are barred by Mississippi's three-year statute of limitations. The applicable limitations period for an action on an open account is three years after the cause of action accrues:

Except as otherwise provided in the Uniform Commercial Code, actions on an open account or account stated not acknowledged in writing, signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three (3) years next after the cause of such action accrued, and not after, except that an action on an unwritten contract of employment shall be commenced within one (1) year after the cause of such action accrued, and not after.

MISS. CODE ANN. § 15-1-29. The Debtor argues that their claims should be disallowed because they are "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1)

14. In his Response, the Trustee points out that Yellow Book filed its proof of claim before the expiration of the statute of limitations. Regardless, the Trustee contends that the operative date as to whether the claims of Yellow Book and AmEx are time-barred is the date of the Petition, October 13, 2005, not the date of the motion to reopen, October 13, 2021. He contends that their claims are not time-barred, and they are entitled to receive a distribution as set forth in the TFR.

15. At the Hearing, the Debtor argued that the Bankruptcy Case had been closed for over fifteen years with no automatic stay in effect that would have tolled the three-year statute of limitations.

Discussion

When a bankruptcy petition is filed, a bankruptcy estate is created that includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). The orderly distribution of the non-exempt assets of a debtor’s bankruptcy estate is known as the claims allowance process and is essential to the operation of the Bankruptcy Code. 4 COLLIER ON BANKRUPTCY ¶ 502.01 (16th ed. 2022). The claims process starts with § 501, which allows a creditor to participate in the distribution of estate assets by filing a proof of claim. Section 502 controls the allowance of claims. Under § 502(a), a proof of claim that “is filed under section 501 . . . is deemed allowed unless a party in interest objects.” 11 U.S.C. § 502(a). Then, if an objection to a proof of claim is made, “the court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition.” 11 U.S.C. § 502(b)(emphasis added). Thus, the date that is relevant in determining whether a creditor has a right to payment is “the date of the filing of the petition.”

Generally, the bar date for filing a proof of claim in a chapter 7 case is ninety days after the first date set for the meeting of creditors. In a no-asset chapter 7 case there will be no distribution from the estate in which to participate, so the filing of a proof of claim serves no practical purpose. 4 COLLIER ON BANKRUPTCY ¶ 501.01[3][b] (16th ed. 2022); *Simmons v. Savell (In re Simmons)*, 765 F.2d 547, 551 (5th Cir. 1985) (holding that a proof of claim “should be filed only when some purpose would be served”). In such no-asset cases, Rule 2002(e) of the Federal Rules of Bankruptcy Procedure permits bankruptcy courts to dispense with the filing of proofs of claim.

Specifically, Rule 2002(e) provides that the notice of the meeting of creditors may include a statement that there are no assets from which a dividend can be paid, that it is unnecessary to file a proof of claim, and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of a claim.¹ Rule 2002(e) thus relieves a creditor from having to file a proof of claim where the lack of assets to distribute in a chapter 7 case renders the requirement “meaningless.” *N. River Ins. Co. v. Baskowitz (In re Baskowitz)*, 194 B.R. 839, 845 (Bankr. E.D. Mo. 1996). Rule 2002(e) “has saved substantial time and storage space for bankruptcy clerks throughout the country.” *In re Corgiat*, 123 B.R. 388, 389 (Bankr. E.D. Cal. 1991).

Rule 2002(e) is supplemented by Rule 3002(c)(5) of the Federal Rules of Bankruptcy Procedure.² Rule 3002(c)(5) provides that if creditors were previously informed that there were insufficient assets to pay a dividend and that no proof of claim should be filed and if the trustee later notifies the court that a dividend payment is possible, “the clerk shall notify the creditors of that fact and they may file proofs of claim within 90 days after the mailing of the notice.” FED. R. BANKR. P. 3002(c)(5).

The Debtor argues that at the time the Trustee filed the motion to reopen, Yellow Book and AmEx did not have valid and enforceable rights to payment as required by § 502(b)(1), (2). The

¹ Rule 2002(e) provides:

In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

² Rule 3002(c)(5) provides:

In a voluntary chapter 7 case . . . a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter. . . But in [a chapter 7 case], the following exceptions apply:

* * *

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e) and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days’ notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

statute of limitations issue raised by the Debtor arises from the length of time that passed before the Trustee discovered the unadministered asset. In that regard, the Debtor's counsel explained at the Hearing that the Debtor's injury arose from his long-term exposure to Roundup, an herbicide that kills weeds. Because of the nature of his injury, he did not discover his claim against Roundup until after the Bankruptcy Case was closed. There was no testimony as to when the Debtor knew about the claim. Debtor, however, does not dispute that his claim constitutes property of the bankruptcy estate, which indicates that the cause of action accrued pre-petition.

The Debtor relies on the Mississippi Supreme Court's decision in *Trustmark National Bank v. Pike County National Bank*, 716 So. 2d 618 (Miss. 1998), for the proposition that no stay was in effect that would have tolled the statute of limitations after the Bankruptcy Case was closed. The Mississippi Supreme Court in *Pike County* held that § 108(c) suspended the seven-year statute of limitations beginning from the date the debtor filed his bankruptcy petition and that the suspension remained in effect until the debtor received his discharge. Thereafter, the creditor still had the remainder of the seven-year time period before its judgment lien expired. The facts are not analogous. *Pike County* involved a priority issue raised in state court between a judgment lien creditor and the holder of a deed of trust; it did not involve the administration of a newly discovered asset in a reopened bankruptcy case.

When the Petition was filed on October 13, 2005, Yellow Book's and AmEx's claims against the bankruptcy estate were valid and enforceable. The Debtor argues that their claims may not be allowed because the statute of limitations expired before the Bankruptcy Case was reopened. The Debtor does not distinguish between the claims of Yellow Book and AmEx, but they are not in the same posture. Although the Notice to Chapter 7 Creditors instructed creditors not to file a proof of claim, Yellow Book filed a proof of claim during the pendency of the Bankruptcy Case before the

statute of limitations had expired. An attachment to Yellow Book's proof of claim shows that the last balance on the account is dated August 23, 2004, and Yellow Book filed its proof of claim less than three years later on March 23, 2006. *See Chimento v. Fuller*, 965 So. 2d 668, 675 (Miss. 2007) (holding that an action on an open account accrues when the debtor defaults on the debt). The Debtor mistakenly stated in his Objection that Yellow Book filed its proof of claim on March 23, 2016. AmEx, on the other hand, filed its proof of claim on March 7, 2022, after the three-year statute of limitations had expired. At the Hearing, the Debtor did not address his mistake in the Objection as to the date of Yellow Book's proof of claim and did not change his argument that neither claim may be paid. He maintained that the statute of limitations expired as to both claims before the motion to reopen was filed.

The Court agrees with the Trustee that the date of the petition is the operative date for determining whether the claims of Yellow Book and AmEx are enforceable against the bankruptcy estate. 11 U.S.C. § 502(b). The petition date is the "watershed date of a bankruptcy proceeding." *Johnson v. G.M.A.C. (In re Johnson)*, 165 B.R. 524, 528 (S.D. Ga. 1994). As of the petition date, "creditors' rights are fixed (as much as possible), the bankruptcy estate is created, and the value of the debtor's exemptions is determined." *Id.* During the pendency of the Bankruptcy Case, the automatic stay under § 362(a) prevented Yellow Book and AmEx from commencing any action. They received the Notice to Chapter 7 Creditors instructing them not to file a proof of claim and another notice informing them that the estate lacked assets. After the Debtor received his discharge and the Bankruptcy Case was closed, the discharge injunction under § 542(a)(2) went into effect to prevent any collection actions against the Debtor by Yellow Book and AmEx.

The post-petition running of the statute of limitations cannot be the basis for disallowing valid prepetition claims against the estate when the reopened Bankruptcy Case was designated a no-

asset case, and Yellow Book and AmEx were instructed by the Clerk's Office not to file proofs of claim pursuant to Rule 2002(e) and later instructed to do so after the Trustee's discovery of the undisclosed asset of the estate. Creditors must be able to rely on notices given in a bankruptcy case. To require creditors to ignore notices from the Clerk's office and take post-discharge actions against the debtors to prevent their claims from becoming stale in the unlikely event that assets of the estate are later discovered is inconsistent with the Bankruptcy Code and Bankruptcy Rules and would violate the discharge injunction. Undisclosed assets of the bankruptcy estate must remain available for distribution to creditors of the estate.

The Court recognizes that its ruling allows Yellow Book and AmEx to participate in the distribution of estate assets when they no longer have an enforceable right to payment against a debtor outside of bankruptcy court. But no objection to their proofs of claim was filed, and their only source of recovery was, and remains, the bankruptcy estate. Because the Debtor did not disclose the asset, he received a discharge and the Bankruptcy Case was closed. Debtor's discharge prevented these creditors from undertaking any effort to preserve the viability of their claims and stop the running of the statute of limitations. More importantly, any other result would allow a debtor who fails to schedule an asset to be rewarded when assets of the bankruptcy estate are later discovered but cannot be distributed to creditors because of the passage of time. To disallow Yellow Book's and AmEx's claims under these facts would invite mischief in the reporting of undisclosed assets by debtors.

At the Hearing, the Debtor cited *In re J&S Conveyors, Inc.*, 409 B.R. 635 (Bankr. W.D.N.Y. 2009), as a case "very similar"³ but that case appears to support the Trustee's position and this Court's ruling. There, the debtor, J&S Conveyors, Inc., filed a chapter 11 case in 1995 that was

³ (Hr'g at 1:33-1:34) (Dec. 5, 2022). The Hearing was not recorded. The citation is to the timestamp of the audio recording.

later converted to chapter 7. The chapter 7 trustee filed a report of no assets, and the case was closed in 1998. In 2006, the chapter 7 trustee learned that the sole shareholder of J&S Conveyors, Inc. had died before the case had been closed and that J&S Conveyors, Inc. was entitled to proceeds from a life insurance policy.

The trustee moved to reopen the case to administer the insurance proceeds. After the case was reopened, the trustee filed a notice of assets and a request for notice to creditors. The bankruptcy clerk issued a notice requiring creditors to file proofs of claim in the reopened chapter 7 case by a date certain. Eleven claims were filed before the bar date. The trustee filed objections to the reopened chapter 7 claims. He argued that at the time the proofs of claim were filed, the creditors no longer had a valid enforceable right to payment because the six-year statute of limitations had expired between the time the chapter 7 case was closed and reopened. After a hearing on the objections, the bankruptcy court ruled from the bench disallowing the claims under § 502(b) based on its belief that a creditor must have a valid and enforceable right to payment at the time it files a proof of claim. The Court noted in its bench ruling that nothing prevented these claimants from taking action after the chapter 7 case had been closed to insure that their right to payment did not become time barred in the event the chapter 7 case was reopened. The automatic stay under § 362(a) terminated when the case was closed, and no discharge injunction went into effect after the case was closed because J&S Conveyors, Inc. did not receive a discharge.

Counsel for the Debtor cited the oral ruling in *J&S Conveyors, Inc.* as legal authority supporting his position that the claims of AmEx and Yellow Book should be disallowed. But the Court's reading of the opinion supports the Trustee's position. The bankruptcy court in *J&S Conveyors, Inc.* ultimately concluded that "creditors must be able to rely on Clerk's Office notices given in a bankruptcy case." *Id.* at 647-48. That conclusion is the same one the Court reaches here.

Conclusion

For the above reasons, the Court finds that the Objection should be overruled and the TFR should be approved. If the Debtor had disclosed his pre-petition product liability claim in his schedules as he was required to do in 2005, the Clerk's Office would have issued a notice instructing creditors to file their proofs of claim by the bar date, and the statute of limitations would not have been an issue. There is no dispute that both claims were enforceable on the date the Petition was filed. The Debtor's statute of limitations' argument exists only because he did not timely disclose the asset.

IT IS, THEREFORE, ORDERED that the Objection is hereby overruled and the Trustee's TFR is hereby approved.

##END OF ORDER##