U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUL 06 1994
CHARLENE J. PENNINGTON, CLERK
BY _____ DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

IN RE: **CHAPTER 13**

JOHN A. SALTER **CASE NO. 9303892JEE**

ORDER DENYING *MOTION TO AMEND FINDINGS BY THE COURT UNDER RULE 7052*

This matter came before the Court on the Debtor's *Motion to Amend Findings By the Court Under Rule 7052*, and having considered same and being otherwise fully advised in the premises, the Court finds that the motion should be denied.

DISCUSSION

The Court entered its *Findings of Fact and Conclusions of Law* and the *Final Judgment* on June 16, 1994. In its opinion, the Court overruled the *pro se* Debtor's objection to the *Proof of Claim* of the IRS and sustained the Chapter 13 Trustee's objection to confirmation of the Debtor's plan.

On June 27, 1994, the Debtor filed his *Motion to Amend Findings By the Court Under Rule 7052*. In his motion, the Debtor states that the "court's Final Judgment contained numerous errors that must be corrected." (Motion To Amend, ¶ 1, p. 1). The Debtor then goes on to state that the Court did not consider the "facts as shown in the debtor's pleadings" (Motion To Amend, ¶ 2, p. 1) and

that the Court should "review that document (the Objection to the Proof of Claim) and make a ruling based on the law and amend the judgment accordingly. When the court apprises itself of the facts and law, it will certainly agree that the debtor has submitted evidence to rebut the IRS' claim . . . ." (Motion To Amend, ¶ 5, p. 3) (explanation added).

Federal Rules of Bankruptcy Procedure[1] 7052 and 9014 make Federal Rule of Civil Procedure 52 applicable in adversary proceedings and contested matters. Fed. R. Civ. P. 52(b) states:

> **(b) Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly.

In the case of Fontenot v. Mesa Petroleum Co., 791 F.2d 1207 (5th Cir. 1986), the Fifth Circuit Court of Appeals established the criteria to be followed when considering a motion to amend under Fed. R. Civ. P. 52(b) . The Fifth Circuit stated:

> The purpose of motions to amend is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence. Under the better view, a party may move to amend the findings of fact even if the modified or additional findings in effect reverse the judgment. "If the trial court has entered an erroneous judgment, it should correct it."
>
> This is not to say, however, that a motion to amend should be employed to introduce evidence that was available at trial but was not proffered, to relitigate old issues, to advance new theories, or to secure a rehearing on the merits. Except for motions to amend based on newly discovered evidence, the trial court is only required to amend its findings

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[1]Hereinafter, all Rules refer to the Federal Rules of Bankruptcy Procedure unless specifically noted otherwise.

> of fact based on evidence contained in the record. To do otherwise would defeat the compelling interest in the finality of litigation.

Fontenot, 791 F.2d at 1219. (citations omitted). *See also* Matter of Caravan Refrigerated Cargo, Inc., 864 F. 2d 388, 393 (5th Cir. 1989); Herby's Food, Inc. v. Summit Coffee Co., Inc. (In re Herby's Food, Inc.), 134 B.R. 207, 214 (Bankr. N.D. Tex. 1991); Central Fidelity Bank v. Cooper (In re Cooper), 116 B.R. 469, 471 (Bankr. E.D. Va. 1990).

The Fifth Circuit compared the filing of an objection to a proof of claim with the filing of a civil action stating that "the filing of a proof of claim is tantamount to the filing of a complaint in a civil action, and the . . . formal objection to the claim, the answer." In re Simmons, 765 F.2d 547, 552 (5th Cir. 1985) (citations omitted). Pursuant to Rule 3001(f), the filing of a proof of claim constitutes prima facie evidence of the validity and amount of the claim. Therefore, the debtor must rebut this presumption in order to prevail on his or her objection. In order to rebut this presumption, the Debtor must "produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim." Id. (citation omitted).

At the trial, the Debtor did not submit any documentation or case authority which supported his argument that he did not owe the amount claimed by the IRS in its *Proof of Claim*. Nor did the Debtor offer any case authority to support his second argument that the IRS' *Proof of Claim* should not be allowed because the IRS was required to submit its *Proof of Claim* on a form that conformed

exactly to the Official Bankruptcy Form. Consequentially, the Court found that the Debtor had not produced sufficient evidence to rebut the prima facie validity of the IRS' claim. See In re Salter, Case No. 9303892JEE, slip op. (Bankr. S.D. Miss. June 16, 1994).

In his motion to amend, the Debtor is not attempting to have the Court "correct manifest errors of law or fact" as required by Fontenot. Rather, the Debtor is attempting to relitigate old issues and to secure another hearing on the merits of his objection, both of which are prohibited by the Fifth Circuit.

The Debtor also argues in his motion to amend that the Court incorrectly viewed his *Motion to Strike "Proof of Claim" Entered by IRS Under Sec. 7012(F) Due to Insufficient and Immaterial Defense* as proposed findings of fact and conclusions of law. The Court acknowledges that for several reasons it was not completely sure how to view this pleading which was filed by the *pro se* Debtor.

Pursuant to Rule 7001, the rules in Part VII of the Federal Rules of Bankruptcy Procedure apply to adversary proceedings. Rule 7012(b) incorporates Rule 12 of the Federal Rules of Civil Procedure, and a motion to strike is governed by Fed. R. Civ. P. 12(f).

An objection to a proof of claim is a contested matter. In re Simmons, 765 F.2d 547, 552 (5th Cir. 1985). Rule 9014 lists the rules in Part VII of the Federal Rules of Bankruptcy Procedure which apply to contested matters. Rule 7012 is not one of the rules which is enumerated in Rule 9014. Therefore, a motion to

strike pursuant to Rule 7012(b) cannot be utilized in the contested matter which was before the Court.

Additionally, even if Rule 7012(b) applied to contested matters, the Debtor did not utilize it timely. A motion to strike a pleading is required to be filed within a limited period of time after the pleading is filed. It is normally utilized to test the sufficiency of a pleading **prior** to trial and not as some type of post-trial remedy.

At the conclusion of the trial, the Court gave both parties the opportunity to submit proposed findings of fact and conclusions of law. A proposed findings of fact and conclusions of law is not a pleading. Rather, it is submitted to the Court as a suggested form of an opinion. The Debtor's motion to strike could be read as an attempt to strike the IRS' proposed findings of fact and conclusions of law. However, since the IRS' proposed findings of fact and conclusions of law is not a pleading, it is incapable of being stricken. Consequentially, in an effort to view the motion most charitably for the Debtor, the Court accepted the Debtor's motion to strike as his attempt to submit proposed findings of fact and conclusions of law.

CONCLUSION

At the trial held on the Debtor's objection to the IRS' *Proof of Claim*, each of the parties was given a full opportunity to submit to the Court any and all evidence which it believed to be

relevant to the Court's ruling. Based upon the evidence submitted at trial, the Court overruled the Debtor's objection.

Applying the standards established by the Fifth Circuit in Fontenot v. Mesa Petroleum Co., 791 F.2d 1207 (5th Cir. 1986), the Court finds that the *Motion to Amend Findings By The Court Under Rule 7052* should be denied.

IT IS THEREFORE ORDERED that the *Motion to Amend Findings By The Court Under Rule 7052* filed by the *pro se* Debtor is denied.

SO ORDERED this the 6th day of July, 1994.

UNITED STATES BANKRUPTCY JUDGE