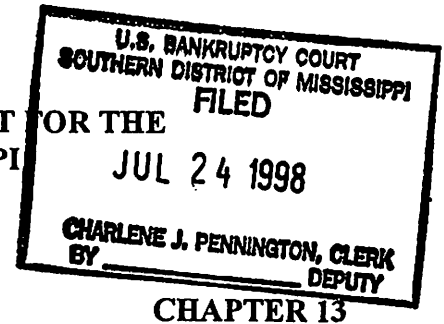


IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE:

JOHN A. SALTER

CASE NO. 9702752JEE

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW ON THE *MOTION FOR JURY TRIAL***

**THIS MATTER** came before the Court on the *pro se* Debtor's *Motion for Jury Trial* and the *Objection to Motion for Jury Trial* filed by the United States of America, Internal Revenue Service (IRS). After considering the motion and the objection, the Court finds that the motion should be denied.

**FINDINGS OF FACT**

On May 23, 1997, John A. Salter filed his second *pro se* petition in bankruptcy under Chapter 13 of the United States Bankruptcy Code. The Debtor's previous Chapter 13 petition, case number 9303892JEE, was dismissed for the Debtor's failure to fund his Chapter 13 plan. Prior to the dismissal of his case, on July 16, 1994, this Court entered its *Findings of Fact and Conclusions of Law* and a *Final Judgment* overruling the Debtor's objection to the IRS's proof of claim and sustaining the Chapter 13 Trustee's objection to confirmation. The Debtor unsuccessfully appealed this Court's rulings to the United States District Court for the Southern District of Mississippi and to the Fifth Circuit Court of Appeals. The order dismissing the Debtor's case for nonpayment to the Chapter 13 Trustee became final on May 16, 1997.<sup>1</sup> On May 23, 1997, the Debtor filed his current

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<sup>1</sup>The order dismissing the Debtor's case was entered on April 11, 1997. However, the Debtor filed a motion to alter or amend the judgment. An order was entered on May 16, 1997, denying the motion to alter or amend.

Chapter 13 petition. On or about December 5, 1997, the IRS filed its proof of claim with the Trustee.<sup>2</sup>

In the Debtor's current case, the Trustee has again filed an objection to confirmation based upon the Debtor's failure to comply with 11 U.S.C. § 1325(a)(1), and the Debtor has again filed an objection to the proof of claim of the IRS.<sup>3</sup> These pleadings have been set for trial on September 24, 1998. The objection to confirmation and the objection to the IRS's proof of claim (collectively, the objections) are the subject of the Debtor's request for a jury trial.

## CONCLUSIONS OF LAW

### I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(B),(L), and (O).

### II.

The Seventh Amendment to the Constitution of the United States of America preserves a right to a trial by jury

(I)n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact

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<sup>2</sup>Pursuant to Uniform Local Rule S13-4, "(a)ll original chapter 13 proofs of claim shall be filed in the office of the standing trustee to whom the case is assigned."

<sup>3</sup>The Debtor has actually styled his pleading as a *Motion to Disallow Claims from the Internal Revenue Service for Alleged "Income Taxes"* rather than an objection to the IRS' proof of claim. Since the IRS filed a proof of claim with the Trustee on or about December 5, 1997, this matter will be treated as an objection to the IRS' proof of claim, therefore, the Debtor's motion will be called an objection to the IRS' proof of claim in this opinion.

tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

“Thus, under this provision of the Constitution, the right to a jury trial is preserved for actions at law, but actions in equity are not triable by jury.” Hutchins v. Fordyce Bank and Trust Company (In re Hutchins), 211 B.R. 322, 324 (Bankr. E.D. Ark. 1997).

The United States Supreme Court in Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989) developed a two-part test for determining whether a claim is legal or equitable for purposes of the Seventh Amendment. However, based upon the ruling by the Fifth Circuit Court of Appeals in In re Jensen, 946 F.2d 369 (5th Cir. 1991), this Court need not address the issue of whether the objection to the IRS’s proof of claim is of a legal or an equitable nature.

In Jensen, the debtor moved for a jury trial on prepetition state law claims which were involved in a lawsuit removed to the bankruptcy court. The creditor alleged that even if the debtor’s claims were legal claims which entitled the debtor to a jury trial, the debtor waived that right when the debtor chose to file bankruptcy. The Fifth Circuit examined Granfinanciera and In re Hallahan, 936 F.2d 1496 (7th Cir. 1991) in answering the question of “whether a debtor effectively subjects his pre-petition claims to the bankruptcy court’s equitable power when he files a petition for bankruptcy.” Jensen, 946 F.2d at 373. The Fifth Circuit agreed with the result the Seventh Circuit reached in Hallahan, but not with the reasoning.<sup>4</sup> The Fifth Circuit stated that the Supreme Court in Granfinanciera held that “by filing a claim against a bankruptcy estate, a creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court’s

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<sup>4</sup>The Seventh Circuit held that if a creditor loses its right to a jury trial by filing a claim against the estate, then a debtor who voluntarily chooses to invoke the bankruptcy court’s jurisdiction by filing a petition in bankruptcy “cannot be endowed with any stronger right.” Hallahan, 936 F.2d at 1506.

equitable power.” Jensen, 946 F.2d at 373, (citing Granfinanciera, 492 U.S. at 58, 109 S.Ct. at 2799 (citing Katchen v. Landy, 382 U.S. 323, 336, 86 S.Ct. 467, 476, 15 L.Ed.2d 391 (1966))). Therefore, the Fifth Circuit reasoned that it was not the filing of a petition in bankruptcy by a debtor which will deny a debtor the right to a jury trial, but rather it is the filing of a proof of claim by the creditor. “Filing a proof of claim denied both the (creditor) and the . . . debtor any right to jury trial that they otherwise might have had on that claim. Debtor’s petition in bankruptcy could have no legal effect on plaintiff’s claim other than to stay it.” Jensen, 946 F.2d at 374.

In the case at bar, the IRS filed a proof of claim with the Trustee on or about December 5, 1997. Therefore, “any right to (a) jury trial that (the Debtor and the IRS) otherwise might have had on (the IRS’s) claim” is no longer available to either party. Jensen, 946 F.2d at 374. For that reason, the Debtor’s *Motion for Jury Trial* should be denied as to the objection to the IRS’s proof of claim.

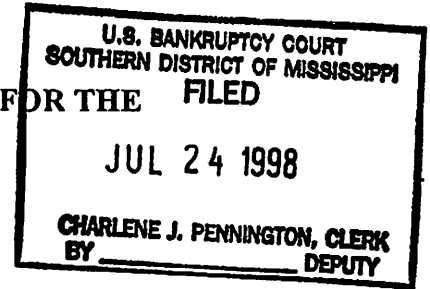
Likewise, the request for a jury trial as to the Chapter 13 Trustee’s objection to confirmation should also be denied. An objection to confirmation is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and is of an equitable nature, therefore, it is not triable by a jury. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed 26 (1989).

A separate judgment consistent with this opinion will be entered.

This the 24<sup>th</sup> day of July, 1998.

  
UNITED STATES BANKRUPTCY JUDGE

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



IN RE:

CHAPTER 13

JOHN A. SALTER

CASE NO. 9702752JEE

**JUDGMENT ON THE MOTION FOR JURY TRIAL**

Consistent with the *Findings of Fact and Conclusions of Law* dated contemporaneously herewith, it is hereby ordered that the *Objection to Motion for Jury Trial* filed by the United States of America, Internal Revenue Service, is hereby sustained and that the *Motion for Jury Trial* filed by the Debtor is denied.

SO ORDERED this the 24<sup>th</sup> day of July, 1998.

  
UNITED STATES BANKRUPTCY JUDGE