UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
TODD DELRAE ZIMMERMAN	)	CASE NO. 10-34224 HCD
	)	CHAPTER 13
	)	
DEBTOR	)	

ORDER CLARIFYING AND SUSTAINING
OBJECTION TO CLAIM 21 OF CHAD R. BALDWIN

At South Bend, Indiana, on June 25, 2015.

Now before the court is Creditor Baldwin's Motion to Clarify [ECF No. 160], filed by Chad Baldwin (Baldwin). This Motion requests a clarification of Court Minute order from the hearing concluded June 11, 2015 [ECF No. 155]. On that date the court held a hearing on the Debtor's Objection to Claim No. 21 of Chad Baldwin [ECF No. 139], and Creditor Baldwin's Motion to Strike Debtor's Objection to Claim [ECF No. 143]. The record in this matter also includes the following: Response of Creditor, Chad R. Baldwin, in Objection to Debtor's 3/16/15 "Objection to Claim" [ECF No. 141]; Creditor Baldwin's: 1) Waiver of Appearance, or 2) Motion for Continuance, and 3) Motion to Transfer to Middle District of Florida (with Exhibit) [ECF No. 150]; and the May 14, 2015 Order of this court granting Baldwin's Motion for a Continuance [ECF No. 151]. The court notes Baldwin has

expressly waived his appearance at the June 11 hearing and has asked the court to rely on his two written filings.[1]

Baldwin moves that this Court "*Clarify* on its 6/15/15 ruling, giving *specific* and *independent* findings of fact in *'sustaining the debtor's objection and disallowing claim no. 21'* and also in *'in denying Creditor's motion to strike'* (#143). Creditor further prays this Court to *Clarify* on Creditor's *Objection (#141).".*[Emphasis in original.]

Pro se litigant

Baldwin asks for specific and independent findings sustaining the debtor's objection to his claim and denying his motion to strike. As he has in his many other pleadings in this case, Baldwin calls attention to the fact that he is acting pro se, without the assistance of legal counsel.

A document filed pro se is "to be liberally construed," and a pro se complaint, "'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1995) (internal citation omitted). "The purpose of this more solicitous review is to insure that pro se pleadings are given 'fair and meaningful' consideration." *Ricketts v. Midwest Nat. Bk.*, 874 F.2d 1177, 1183 (7th Cir. 1989).

[1]These written filings are Baldwin's April 2, 2015 response to the debtor's objection to his claim, ECF No. 141, and his April 3, 2015 motion to strike the debtor's objection to his claim, ECF No. 143.

This court follows the guidance of the Supreme Court that "we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. United States*, 508 U.S. 106, 113 (1993). The rules of procedure "apply equally to pro se litigants and litigants represented by counsel." *Wilson v. Park Center, Inc.*, 2011 WL 614091, *4 (N.D. Ind. Feb. 11, 2011). Allowing a pro se litigant complete freedom from compliance with the rules of procedure effectively imposes a dual standard for conducting litigation when pro se and represented litigants are involved. Complete freedom from compliance with rules of procedure does not promote substantial justice between the parties. This court will not permit a pro se party to prosecute his or her case completely unrestrained by the requirements of the rules of procedure.

The court gave Baldwin ample notice of the hearing on the objection to his claim and his motion to strike the objection. The court originally scheduled the hearing for May 14, 2015. On Baldwin's request, the court continued that hearing to June 11. Rather than appearing in order to offer rebuttal to the Debtor's objection to his proof of claim, Baldwin chose to rely on his previously filed response to the debtor's objection and his motion to strike the objection to his claim. Since Baldwin chose not to attend the hearing he cannot now complain that the court prohibited him from attempting to establish the validity of his proof of claim. In this circuit a party waives an insufficiently developed argument. *U.S. v. Dunkel*, 927 F2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument', really nothing more than an assertion,

does not preserve a claim."); *Campbell v. Hall*, 624 F.Supp.2d 991, 1008-09 (N.D. Ind. 2009). (It is not the job of the court to do the work of a party in organizing or formulating arguments, or to scour the record in search of evidence.)

Proof of claim requirements

As relevant here, Federal Rule of Bankruptcy Procedure 3001 states:

> Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

Fed. R. Bankr. P. 3001(c)(1).

An unsecured creditor must file a proof of claim to participate in any distribution. Fed. R. Bankr. P. 3002(a). The Bankruptcy Code deems a proof of claim to be allowed unless a party in interest objects. 11 U.S.C. §502(a). "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). To be entitled to the weight afforded by Rule 3001(f), the proof of claim must comply with the rules. The claim must set out facts necessary to support the claim. 9 *Collier on Bankruptcy* ¶3001.09[1] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.); *see also In re Osborne*, 2005 WL 6425053, *2 (Bankr. D. Kan. April 25, 2005) ("A claimant filing a proof of claim must allege facts sufficient to support a legal basis for the claim, and if the claim satisfies this standard of sufficiency, the claim is prima facie valid."). An objector defeats the prima facie weight of a proof of claim where the objector comes forward to question the amount or facts supporting the

claim. Once an objector rebuts the presumption of validity of the underlying facts supporting the claim, the claimant has the ultimate burden of proof to prove the claim is proper by a preponderance of the evidence. *Lundell v. Anchor Construction Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039 (9th Cir. 2000).

Objection to claim 21

Baldwin filed his proof of claim, number 21, on February 6, 2015.[2] Official Form 10 includes the following directions in block 7 on the proof of claim form:

> Documents. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim.

B10 (Official Form 10).

The supporting documentation that Baldwin attached to his claim consists of the following:

- a copy of his complaint, without exhibits, in an adversary proceeding filed in this court, that seeks to except the Debtor's debt to him from discharge;

[2]The court notes that Baldwin's proof of claim includes a declaration under penalty of perjury that the information provided in the claim is correct to the best of the knowledge, information, and reasonable belief of the claimant.

- a copy of a complaint filed in Florida state court case 2014-CA-4365 naming as defendants the Debtor and a limited liability corporation that is not part of this bankruptcy case;

- the October 2006 agreement between Baldwin and the Debtor to open a travel club business together[3];

- state of Florida business organization documents relating to Florida Travel Group, LLC;

- a copy of Baldwin's Florida driver license;

- a 2005 W-2 statement issued to Baldwin by Florida Leisure Products, Inc., an entity that is not a party to this bankruptcy case;

- copies of communications between various individuals;

- the first page of the Debtor's Voluntary Petition in this chapter 13 case;

- an Affidavit of Service of Summons by the Saint Joseph County Police of a subpoena from a proceeding before the United States Tax Court involving Baldwin;

- documents from the Tax Court proceeding;

- a page from the Florida state court docket in Baldwin v. Zimmerman et al, case number 2014-CA-004365-O; and

- the April 2007 bank statement for Florida Travel Group LLC, an entity that is not a party to this bankruptcy case.

At the June 11 hearing, both the Debtor and the chapter 13 trustee argued that Baldwin's documentation for his proof of claim is insufficient. Of the supporting documents attached to his proof of claim, only the joint business agreement supplies any arguable support for Baldwin's claim. This joint agreement

[3]The court notes this agreement includes a handwritten notation, initialed by both the Debtor and Baldwin, stating "This contract can be amended as we go."

is found at page 28 of 54 pages that comprise the attachments to his claim. As noted on the face of the agreement, it was subject to revision. This agreement does not speak to the question of whether the Debtor owes anything to Baldwin, or Baldwin to the Debtor. The agreement merely states the Debtor and Baldwin will "pay all start up fee's [*sic*] on an equal basis" and split business profits "50/50." This agreement does not provide any information about the amount of any indebtedness the Debtor may owe to Baldwin.

At the June 11 hearing, the court found the documentation attached to Baldwin's claim to be no more than unsupported allegations. Baldwin's proof of claim states the Debtor owes him $525,176.34. The proof of claim states the debt is for "services performed." Parts of the attached documents suggest the debt involves unpaid sales commissions, business expenses that the Debtor should reimburse, unpaid profit sharing, and pain, suffering, and mental anguish. Baldwin has presented nothing to establish the Debtor owes him the amount stated on his proof of claim.

The documentation supporting this claim does not convince this court the debt exists. Baldwin bases his claim against the Debtor on their joint business venture. They memorialize this venture in the October 2006 agreement Baldwin attached to his proof of claim. The agreement states, "Chad Baldwin will act as General Manager." The business location is "to be determined." Although the agreement shows the date of signature, it does not reference a starting date for the

business. This agreement fails to establish the existence of any indebtedness of the Debtor to Baldwin. Baldwin has not met his burden of proof.

Having considered the other materials provided by Baldwin, the court notes he has not provided any itemization of sales that could lead to unpaid commissions he claims. This is the type of business information that Baldwin, as general manager of the business, could have accessed. Further, a reasonable and prudent salesperson, as the court presumes Baldwin to be, would keep track of his own sales until he received his sales commissions. None of the documentation supplied as support of the proof of claim contains this type of information. Although Baldwin had the opportunity to present such information at the June 11 hearing, he waived his appearance and asked the court "to rely on his written filings of 4/2/15 and 4/3/15 to support his position." The court considered those filings and found them insufficient.

Baldwin has posited gross sales figures (but no itemization of those sales, either individually, or by period), yet he has not furnished any cost of sales information that the court, trustee, or Debtor could use to figure out net profit and profit-sharing amounts. He claims to have incurred business expenses that the Debtor did not reimburse, but he did not provide any details about when he incurred these expenses, their purpose, and amounts of the expenditures. Again he has failed to provide any evidence of indebtedness.

One of the supporting documents Baldwin attached to his proof of claim is a copy of the adversary proceeding he filed in this court against the Debtor.

That complaint alleges a debt for unpaid profit sharing for "net sales provided from 5/19/07 thru 2009." At the June 11 hearing the Debtor asserted that the joint business venture between the Debtor and Baldwin lasted only eight weeks. The Debtor also advised that he made refunds to all customers for memberships sold, and the business made no money. The court notes that the period for which Baldwin claims the Debtor owes him profit-sharing runs much longer than the eight weeks the Debtor said the business was in operation. Apart from the assertions in the complaint in the adversary proceeding, Baldwin has given no specific information to the court, the Debtor, or the trustee to substantiate the amount he claims the Debtor owes him. At best, the proof of claim might arguably raise the existence of a claim against Florida Travel Group, LLC or a Florida Leisure Products. Neither of these entities are debtors this bankruptcy case. The court finds that creditor Chad Baldwin has failed to provide any evidence to show the amount he asserts the Debtor owes him is a proper claim in this case.

In his response to the Debtor's objection to his claim, Baldwin argues that his October 2006 agreement with the Debtor is subject to the Ohio 15-year statute of limitations. The agreement does not show where the parties signed it nor does it specify the governing law. Baldwin has failed to direct the court to any authority that Ohio law, rather than Florida or Indiana law, applies to this agreement. At the June 11 hearing the chapter 13 trustee maintained that any claim that Baldwin may have is time barred. By not attending the hearing, Baldwin has waived his opportunity to rebut the trustee's argument.

Baldwin attached much of the same documentation to his proof of claim that he had attached to his objection to being added as a creditor in this case.[4] See ECF No. 130. The court conducted a hearing on that objection on January 8, 2015. Baldwin appeared by counsel at that hearing. After considering the arguments of counsel and record in the case, the court granted the Debtor's motion to add Baldwin as a creditor. The court allowed Baldwin time to file a proof of claim and any actions to contest nondischargeability. Baldwin has not appealed or challenged that order.

Motion to strike objection to claim

Baldwin has asked for findings of fact relating to this court's denial of his motion to strike the Debtor's objection to his claim. His motion to strike states the Debtor's objection to his claim was made "in *bad faith* to simply *delay* these proceedings and cause *damages* [*sic*] to Creditor Baldwin." [Emphasis in original] Baldwin points to his complaint in adversary proceeding 15-3006 pending in this court as providing the documentation to support his proof of claim. Allegations in a complaint are not evidence of a debt, nor do allegations establish bad faith.

[4]The court notes the repetitive nature of Baldwin's filings. Copies of the Florida state court complaint are attached to his proof of claim (see claim 21), his adversary proceeding contesting the dischargeability of his debt (see adversary proceeding 15-3006), and to his response to being added as a creditor in this case (see ECF No. 130). At the hearing on June 11, 2015, counsel for the Debtor argued that Baldwin has unsuccessfully made the same allegations in proceedings before the U.S. Tax Court and the Supreme Court of Ohio.

The court finds that Baldwin has not presented proper documentation or proof to substantiate his claim. All that Baldwin has presented are bald, unsubstantiated assertions that the Debtor owes him something. Nothing in the documentation provided by Baldwin establishes a debt owed by the Debtor. Baldwin says the Debtor owes him a substantial sum, but he only provides a copy of an agreement memorializing a joint business venture with the Debtor. A document showing Baldwin was in business with the Debtor does not establish that the Debtor owes a debt to Baldwin. Nothing in the supporting documentation begins to provide a basis for the $525,176.34 debt that Baldwin lists on his proof of claim.

Conclusion

After a review of the totality of the circumstances in this chapter 13 case and an adversary proceeding involving Baldwin and the Debtor that Baldwin provided to prove his claim, the court found at the June 11, 2015 hearing that creditor Chad Baldwin had failed to provide any support for the proof of claim he filed in this case. The documentation provided by Baldwin failed to convince the court that the Debtor owes him any amount. The court sustained the Debtor's Objection to Claim Number 21. The court denied Baldwin's Motion to Strike Debtor's 3/15/15 Objection to Claim.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT