

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
MICHAEL CAREY BUTLER and) CASE NO. 02-61308 JPK
ROSEMARY BUTLER,) Chapter 13
)
Debtors.)

ORDER SCHEDULING HEARING

On November 16, 2005, the debtors, by counsel, filed an Objection to Claim No. 21 of Capital One Bank. Proper notice of the objection was provided to the creditor, and no response or request for hearing was filed.

The objection fails to state grounds upon which the requested relief of denying claim #21 can be granted. Claim #21 was filed on July 22, 2002 as a unsecured claim in the amount of \$6,226.19. The claim filing deadline was July 31, 2002 and thus the claim was timely. Claim #25, filed by the debtors on behalf of Capital One Bank, was filed as a secured claim in the amount of \$7,340.00 on August 3, 2005. In their objection to claim #21, the debtors in essence seek to substitute the amount and stated secured status of claim #25 in place of the amount and general unsecured status of claim #21, apparently in an attempt to provide for payment of a judgment lien held by that creditor. To make matters somewhat more complicated, the Chapter 13 Trustee's records indicate that the last payment was made on claim #21 on November 23, 2005, and that some payment was made on both claims #21 and #25 for what appears to be several months, and that then all payment was suspended on claim #21 and payments were made on claim #25. In other words, the Trustee's records appear to indicate that the Trustee has allowed claim #25 to supersede claim #21.

The manner in which claim #21 interfaces with claim #25 is established by Fed.R.Bankr.P. 3004, which states:

Filing of Claims by Debtor or Trustee

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor, within 30 days after expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. A proof of claim filed by a creditor pursuant to Rule 3002 or Rule 3003(c) shall supersede the proof filed by the debtor or trustee.

There are two problems with the approach taken by the debtors. First, although the creditor did not file its proof of claim on or before the first date set for the meeting of creditors, it did file a timely claim, and the last sentence of Rule 3004 specifically states that any proof of claim filed by a creditor supersedes any proof of claim filed by the debtor or trustee. Secondly, the debtors' claim was filed after the deadline provided by Rule 3004, and thus the claim is untimely and cannot be allowed at any rate.

It appears to the Court that the debtors are seeking to provide for payment on a judgment lien which clouds the title to real estate in a circumstance in which the lien cannot be avoided under 11 U.S.C. § 522(f). There are also discrepancies in the Trustee's records which need to be addressed.

IT IS ORDERED that the debtors' objection to claim #21 is denied.

IT IS FURTHER ORDERED that a hearing will be held on **February 27, 2006, at 1:00 P.M.** to determine matters in relation to correction of the Trustee's records, and further matters in relation to effecting the treatment provided to Capital One Bank by the debtors' confirmed plan.

Dated at Hammond, Indiana on January 27, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee