

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
DOROTHY BLACK,) CASE NO. 02-30767 HCD
) CHAPTER 13
)
DEBTOR.)

Appearances:

Teresa W. Morguson, Esq., attorney for debtor, Law Office of Debra Voltz-Miller, 108 North Main Street, Suite 328, South Bend, Indiana 46601;

Mark J. Piasecki, Esq., attorney for creditor, 522 South St. Joseph Street, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 31, 2003.

Before the court is the Objection to Claim filed by the debtor Dorothy Black on July 30, 2002. She has objected to claim number 8 filed by the creditor Princella Green in the amount of \$415,000. Trial on the matter was held on January 28, 2003. For the reasons that follow, the court disallows the claim.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(B) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 9014. Any

conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

Dorothy Black filed her chapter 13 petition in bankruptcy on February 19, 2002. On June 11, 2002, Princella Green filed a claim in the amount of \$415,000.00 in the debtor's bankruptcy. Attached to the claim were copies of two cashier's checks from the California Federal Bank, in the amounts of \$92,792.53 and \$17,000.00, made payable to Dorothy Black from Princella Green. On July 30, 2002, the debtor objected to the claim. She asked that it be disallowed in its entirety on the ground that there was no other documentation attached to support the claim that a debt in the amount of \$415,000.00 was owed.

The claimant filed her "Response of Princella Green to Objection to Claim Filed by Debtor" on August 26, 2002. She submitted an affidavit in support of her claim. In the affidavit she stated that, while living in Los Angeles, she transferred approximately \$415,000.00 to her niece Dorothy Black, along with her tangible personal property. According to her affidavit, "The money was sent to Dorothy Black to purchase a house for me." She reported filing a lawsuit in St. Joseph Superior Court against Black. She also attached a portion of a deposition given by Green's friend LaJuana Budwine, in which Budwine stated that she recalled helping Green send the \$92,792.53 check and make out the withdrawal slip for \$17,000.00. Budwine also testified in her deposition that Green had sent more money to Black to arrange for Green's housing. Green stated that she had only the two back checks and the bank withdrawal slip to back up her claim. She explained that "[i]t has been difficult to find records of my other money transfers to Dorothy Black because my old banks in Los Angeles have been bought by other banks."

A hearing on the objection to Green's claim was held on January 28, 2003. The first witness to testify was the debtor, Dorothy Black, a 62 year-old woman with a business administration degree who presently is the Director of Career Placement at Michiana College. She knew her aunt from her growing-up years, she said,

when Green would come from Louisiana to visit her family in Mississippi. Black moved to South Bend in 1963. In 1990, Green came for the wedding of Black's son. In the summer of 1991, she came again for a two-week visit and stayed with Black several nights. After that, they had telephone contact once or twice a year.

In September 1994, Black testified, she received a certified letter that she picked up at the post office. In it was a cashier's check from Green for over \$92,700. Nothing else was in the envelope, she said, except a little slip of paper saying, "Take care of this." Black, shocked at this unexpected mail, put the check in a safe deposit box at the bank and called Green that evening. She testified that, when she asked her aunt what she wanted her to do with the money, Green said, "It is yours, do what you want with it."

Black testified that she received a second check two weeks later, in the amount of \$17,000. Again she was surprised; again she placed it in the safe deposit box. When she called her aunt and asked what this was all about, Green repeated, "It's yours, do what you want, don't ask me again." She left the checks in the safe deposit box until December 1994. At that time, she deposited the larger check into NBD Bank and the smaller one into Teacher's Credit Union ("TCU"). She had further contact with Green throughout 1995, but they never discussed the checks. She testified that her aunt had told her that money was for her and that she knew her grandchildren could use it. She used the funds when she flew to California in February, 1996, to see Princella Green in the hospital.

Black had received a telephone call that Green, now a single amputee, could not live alone when she got out of the hospital. Black was in California for three weeks. She arranged to have her aunt transferred to South Bend to be treated. She explained that, although there were other family members here in South Bend, it was in her nature to take care of her aunt. Black stayed with her aunt in her apartment and took care of the packing, cleaning, moving and medical arrangements for her aunt, who was physically unable to help. Although Black expected to bring her aunt back with her to South Bend, Green decided to come three weeks later, before Thanksgiving. So Black set up her aunt's nephrology treatments and prepared her house for Green, moving

Green's belongings into her home and removing the carpets so that Green could get about with her walker more easily. Black testified that it did not surprise Green that she would live in Black's house; there was no discussion of buying a house.

According to Black, Green lived in her house until April 1997, when she went into the hospital for two weeks with circulation problems in the other leg. From the hospital she went to a nursing home to get dialysis treatments. Black picked a nursing home close to her house and went to see her every day. She made the room homey and comfortable for her aunt, she reported. Green was in the nursing home until August 1997; at that time, the nursing home called Black and told her that her aunt was ready to move into her apartment. Black was told that the aunt's decision was firm, that Black lived too far out of town, that it was too quiet there, and that Black was too clean and meticulous. Green had told the nursing home she wanted to live around people her own age. Black testified that she was unemployed from January until August 1997. She therefore concentrated on getting a full-time job and moved Green's furniture and belongings into storage and into her apartment at Karl King Towers. Black kept a little metal box, a quilt and comforter out of storage, however. In 1998, she returned all her aunt's personal possessions to her. Black testified that she visited her aunt two or three times a week at her apartment, taking groceries, vacuuming and cleaning. She thought they had a good relationship. She said she was shocked when Green filed a civil suit against her for \$415,000. She testified that Green sent her only the two checks, totaling about \$110,000, and that they were a gift to her.

On cross examination, Black testified that Green looked at one or two houses during her 1991 visit but was not interested. She then examined the two checks, for \$92,792.53 and \$17,000, from Green to Black. Black acknowledged that, in previous interrogatories and a deposition, she stated that she had received only one check, the \$92,000 one. However, she had received the \$17,000 check in September 1994 and had deposited it in her TCU account on December 5 of that year. The debtor also stated that she went with her aunt to her bank in Los Angeles when she closed out her account, but that Green made no transfers to her. However, she was

shown a TCU sight draft, dated January 8, 1997, that transferred funds from California Federal Bank to Black's account in TCU. *See* Cr. Ex. 5. She testified that, although she recognized her account number, she did not remember receiving any funds from that bank. She admitted that she opened a joint account with her aunt and that Green's social security check was direct deposited into the account. She also stated that her aunt wrote a monthly check to her from that account, to pay her aunt's bills and to give her aunt cash, but not for Black's own use. Although Black characterized the NBD bank account as her aunt's account, the account is in both their names, she acknowledged. The debtor was shown copies of checks, written from Green to Black, for \$310.00 (dated November 12, 1997), \$275.00 (dated December 4, 1997), and \$450.00 (dated February 10, 1998).

Black testified that, in 1998, before Green went to the prosecutor's office, her aunt asked her for the money she had transferred to Black. Black told Green that she did not have the money. Green kept asking, and so Black said she would put \$25,000 into her account because her aunt kept harassing her. However, Green told her not to put it into her account because she wanted it all in cash. Black did not give her aunt cash, she testified. Green asked her again, and then went to the prosecutor's office.

Black was shown deposits into her account of \$7,748.13 (dated April 2, 1996) and \$4,500 (dated July 15, 1996). She did not recall whether Green gave her the money. She stated that she was not aware that Green had much money when she came to live with Black. However, she denied applying for food stamps for her aunt. She did renew Green's certification for Medicaid, she said, and was listed as the "responsible party." Black also testified that she did not have her aunt's power of attorney, but admitted that the box for "power of attorney" was checked "yes." *See* Cr. Ex. 11.

Black was shown her 1996 federal tax return. On it, Black stated that Green had lived in her house for eight months. She took Green as a tax exemption and claimed "head of household" status. However, she admitted, Green had arrived shortly before Thanksgiving and therefore had lived in her house only one month or so in 1996. Black had no answer when asked about the \$4,725 in medical expenses listed on her return; she

supposed they were hers, she stated. In addition, Black admitted that she bought a new house in 1995, after she received the two checks from Green.

On redirect, Black testified that the two checks from Green did not have any notation indicating their use or purpose. Concerning the checks written by Black on Green's account, Black explained that she routinely wrote checks for Green's bills out of their joint account; she never wrote anything for her own use. She said that Green never did her own banking. She also stated that, when Green was applying for aid, she wanted her account cleared out to show no balance. So Black paid her bills and wrote a check for the balance of her account to Green. In early 1998, the bank account was changed and Black's name was removed.

The second witness called by the debtor was Greg Pasman, a Federated Insurance auditor who prepared Black's tax returns in 1996. The information on the tax return came from the client Dorothy Black, he stated. In order to be a "head of household," he testified, a dependent must live in the home at least six months and the taxpayer must supply more than half the support. Pasman testified that Black told him that Green had lived in her home 8 months. The witness also explained that, in order to take an exemption, that exempted person must make less than \$2,500. Black told him she qualified for the exemption, he stated.

Rita Dargis, the debtor's third witness, was the former Director of Adult Protective Services of St. Joseph County and an investigator in that office for twelve years. She also worked in the welfare department as an investigator in the Child Protective Services for eight years. Adult Protective Services investigates charges of abuse, neglect, and exploitation of adults with an incapacity to protect themselves, she explained. Dargis stated that her office tried to resolve issues with the least intrusive intervention; however, they could enter a protective order or notify the prosecutor if there were criminal allegations.

Dargis stated that her office received a report in the late 1990s from Green. She and Captain Ed Friend, a police officer, went to Green's apartment in King Towers. Green told them that a relative, Dorothy Black, had money of hers, a substantial amount. She mentioned checks of various amounts and said that she had

sent money to Black, over time, while Green still lived in California. Green named a woman in California who assisted her by writing checks for her and by taking Green to the bank. According to Dargis, Green had no paperwork to support her allegations. Dargis telephoned the woman in California and had a second home visit with Green, she believed. Based on her meetings with Green, Dargis said, she asked Black to come to her office. Black's demeanor and reactions showed that she was very concerned, upset, and fearful that she might lose her job. She told Dargis that she had been making an effort to assist her aunt.

In light of the high dollar amounts alleged, Dargis testified, the investigation continued. She was concerned about Green's enrollment in Medicaid in Indiana and Medical in California. She became suspicious of Green and contacted the welfare department, because she thought that Green might have transferred the money to become eligible for the aid, which was based on income eligibility of only \$1,200 of assets at that time. Dargis filed her "closing form," which was the final report of her investigation. The case was opened on March 31, 1998, and closed on July 27, 1999. She reported that money had been sent to Dorothy Black, that Black did not expect it, and that the checks were in Black's name. Black admitted cashing the checks, she said; in fact, Black tried to turn over some money to Dargis, in an offer to return the funds, but Dargis refused it. Dargis found that there was no coercion and no effort to take Green's money from her. She also found that Black benefitted from Green's social security checks for the cost of maintaining Green. Dargis testified that she had no way of knowing whether the money was in Black's possession lawfully, but that Black had attempted to return some of it through Dargis's office. No other charges were filed through the prosecutor's office, either, she reported.

On cross examination, Dargis stated that Green had no records or documents concerning the money allegations. Dargis did not see bank records, tax returns, or other financial records of either Green or Black. She believed that the money Black tried to turn over to her was a cashier's check for perhaps \$34,000. Dargis explained that Black was completely surprised to receive the checks from Green with a note to "do what you want with it." Dargis said she had no real evidence that Green transferred two large checks to Black in order

to qualify for Medicaid. It was just a suspicion, she testified. She also was not sure whether Black knew of Green's scheme to get Medicaid, if there was such a scheme.

At that point, the debtor rested.

The court admitted the creditor's proffered deposition testimony of LaJuana Budwine in evidence. It then heard the testimony of the creditor Princella Green. Green stated that she was born in February 1921. She is a retired housekeeper from Los Angeles. She said she lived in people's homes keeping their houses for 35 years, and was paid well. She saved every nickel, she said, and the people gave her clothes and such. She kept an apartment of her own, as well.

Green said she had lots of contact with Black. She recalled coming to visit in 1990, when someone got married, and again in 1991, when she stayed with Black for two nights. When they went out to eat, though, she stated, she had to buy the meals. Green testified that Black swore to buy her a house. In 1991, she looked at three houses with Black and a realtor. They talked about buying a house for about seven years, she said. Black told her that houses were cheaper here in South Bend. Green insisted that she knew why her aunt was sending her money. Black acknowledged the two checks for \$92,000 and \$17,000, but Green testified that she also sent checks for \$40,000; \$65,000; \$35,000; and \$60,000. Green said she sent the first check, for \$92,000, by registered mail, and Black received it in September 1994. Green also sent the \$17,000 check in September 1994. When she closed her bank account in L.A., all those funds were made payable to Black as well — \$65,000, she thought. Green denied that she ever told Black that the checks were gifts.

Green kept working, even though she had diabetes and had lost one leg. She testified that she received no welfare benefits in California. Here, she stayed with Black. She stated that Black did nothing for her. She did not prepare food for her or transport her anywhere. Her niece would not let her leave her room, would not let her have visitors, would not go to the bank for her, and would not even let Green's preacher come by. According to Green, the preacher and his wife were going to drive her to her appointments, but Black said

she would sue them if they came to her house. Green also said she has not seen a nickel of her social security checks.

Green said she fell and went into the hospital. They fed me there, she said. She then spent five months in a nursing home before moving to her own apartment in Karl King Towers. Black moved her furniture into the Towers apartment, but did not give her many of her things. Also, Green claimed that Black visited her only once. At this point in her testimony, Green stated that she sent checks to Black in the amounts of \$5,000; \$65,000; \$40,000; and \$35,000. She also testified that, when Ms. Dargis and Captain Friend came to call, she could not show them any records because Black had taken everything she owned.

On cross examination, Green testified that she was making \$12 or \$12.50 an hour for twenty years as a housekeeper in Los Angeles. She also stated that she sent Black a lot of money over a four or five year period. The first check to her was for \$92,000, perhaps in 1991 or 1992. The second, she was certain, was for \$17,000. Then she sent \$65,000; \$40,000; and \$35,000. Finally, when Black came to California, Green withdrew \$65,000 from her account to close it. That is all she sent her niece, she testified. LaJuana Budwine sent them for Green by certified mail. She had no doubt that Budwine took care of the checks. Green explained that Jackie Hubbard wrote checks for her bills, too, and was listed on Green's checking account with her. Jackie and LaJuana were honest, she stated. Green's niece was supposed to write her checks, the way her neighbors in Los Angeles did.

Green asserted that she had bank records when she came to South Bend but that Black took all her receipts. Moreover, she did not give Green any food and did not let her go outside. Black didn't like food in the house, she said, so there was not any. Green had to pay for their food when she first arrived. She had \$3,000 from the sale of her car in Los Angeles, and she had saved \$500. That's how she got by, she said.

The creditor rested and the parties presented closing arguments. The court then took the debtor's objection to Green's claim under advisement.

Discussion

The issue before the court is the treatment to be accorded to Princella Green's claim. Green is a creditor who has presented her claim to the court by filing a proof of claim. *See* 11 U.S.C. § 501(a). In general, proofs of claim filed by creditors in a bankruptcy case are deemed allowed unless a party in interest raises an objection. *See* 11 U.S.C. § 502(a); *Adair v. Sherman*, 230 F.3d 890, 894 (7th Cir. 2000). As long as they are properly executed and filed, the claims constitute "prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f); *see id.* (citing cases). "A properly executed proof of claim includes: the creditor's name and address; the basis for the claim; the date the debt was incurred; the classification of the claim; the amount of the claim; and supporting documentation." *In re Dow Corning Corp.*, 250 B.R. 298, 321 (Bankr. E.D. Mich. 2000). The debtor has the burden of producing sufficient evidence to negate one or more of the sworn facts in the proof of claim. *See id.* When the debtor has met her responsibility, the burden of proof reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Carlson*, 126 F.3d 915, 921-22 (7th Cir. 1997), *cert. denied*, 523 U.S. 1060 (1998); *see also In re Weidel*, 208 B.R. 848, 854 (Bankr. M.D.N.C. 1997) (stating that "the burden of proof with respect to claims . . . rests initially, and ultimately, with the claimant").

Green's claim is for \$415,000.00. The claim form requires supporting documentation. Attached are copies of the checks for \$92,792.53 and \$17,000.00. There is no documentation for the remaining amount of the claim, \$305,027.47, and no explanation. Rule 3001(c) requires a claimant to provide supporting documentation when the claim "is based on a writing." It further mandates that, "[i]f 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).

No explanation was attached to the claim. The Seventh Circuit has set forth the consequences of missing documentation.

[T]he filing of a proof of claim with the required documentation is prima facie evidence that the claim is valid. Fed. R. Bankr. P. 3001 (c), (d), (f). If the documentation is missing, the creditor cannot rest on the proof of claim.

In re Stoecker, 5 F.3d 1022, 1028 (7th Cir. 1993). Because Green's proof of claim was deficient when originally filed, it was not entitled to be considered as establishing a *prima facie* case. See *In re Dow Corning Corp.*, 250 B.R. at 321. Without sufficient documentation to support her claim, she "is not entitled to the presumption of prima facie validity, and [she] bears the burdens of going forward, as well as that of proving [her] claim by a preponderance of the evidence." *In re Chain*, 255 B.R. 278, 281 (Bankr. D. Conn. 2000).

The \$415,000 claim can be divided into the \$109,792.53 amount that is supported by copies of two checks, and the \$305,027.47 amount unsupported by any documentation. The court considers first the claim for which there is no written evidence presented. The parties did present testimony on this matter. Green testified that she sent Black numerous checks for the purpose of purchasing a house; Budwine's deposition agreed with that testimony. Green also testified that Black had complete joint access to her South Bend bank account. Black responded to Green's allegations by denying that she received any checks other than the two she has acknowledged. Black also stated that she wrote checks on Green's behalf, to pay Green's bills, from their joint account and that she took nothing for herself. The court finds that Green, by her own testimony, clearly established the joint checking account precisely so that Black could pay Green's bills. She presented no evidence that Black wrote checks for any other purpose. She also presented no documentation for the other checks she claimed. The claimant is required to prove the validity of her claim by a preponderance of the evidence. The deposition testimony of LaJuana Budwine, who never was cross-examined by the debtor's bankruptcy attorney, does not tip the balance in Green's favor. Green's claim is denied with respect to the \$305,027.47 amount. See *In re Consolidated Pioneer Mortgage*, 178 B.R. 222, 227 (9th Cir. B.A.P. 1995) (finding that the creditors failed to comply with Rule 3001(c) and failed to prove the existence of their claim by producing evidence of the contract on which they relied), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

With respect to the two checks transferred to the debtor, totaling \$109,792.53, the court finds that neither the checks nor any independent documentation makes clear the reason for the transfer of money from Green to Black. Green insisted the checks were sent for the purpose of purchasing a house for her. Black contended that they were sent as a gift to her. With no written evidence of explanation, the court again turns to the testimony of the witnesses at trial.

The court was truly tested in this credibility determination. It heard the testimony and observed the demeanor of all the witnesses. It finds that Black lied on her 1996 tax returns, both by taking Green as an exemption too early and by claiming "head of household" status undeservedly. She also claimed to have power of attorney on a welfare department questionnaire, but testified that she did not actually have that power. The court finds that Green was even less credible as a witness. Green was confused in parts of her testimony, and she produced different figures at different times when listing the amounts of the checks she claimed to have sent to Black. Green's testimony that she sent numerous checks in large monetary amounts to her niece, without any explanation of their purpose and without any protection of her own interest by providing a written note or contract, is simply not credible. Green testified that she was accustomed to retaining all her bank records and receipts; she said that she had them in South Bend but that Black had taken all of them. In the view of the court, Green would have preserved her reason for sending Black numerous large checks by recording that they were for the purpose of buying a house. The court determines that the lack of written documentation causes Green's claim to lose its credibility. The court considers it not unlikely that she attempted to transfer moneys in order to qualify for Medicaid. In conclusion, the court finds that neither witness was particularly credible, although Black was slightly more credible, particularly in light of the independent credibility determination by Ms. Dargis, who investigated Green's allegations against Black through Adult Protective Services.

The burden in this case was on the creditor to establish the validity of the claim. Without any explanation for the missing documentation concerning \$305,027.47 of her claim, Green failed completely with

respect to those amounts. With respect to the two checks attached to the claim, the court finds them ambiguous because there was no evidence as to their purpose. Self-serving testimonial evidence, without more, does not suffice to carry Green's burden of showing, by a preponderance of the evidence, that she sent the checks for Black to buy her a house. The court finds that Green failed to prove her claim.

Conclusion

For the reasons presented above, the court finds that the creditor Princesa Green has not satisfied her burden of proving the validity of her claim. Claim Number 8 filed by Green in the bankruptcy of Dorothy Black is hereby denied. The court sustains the debtor's Objection to Claim and disallows the claim in its entirety.

SO ORDERED.



HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT