

THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:



DATED: November 5, 2018


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

William Wester and
Diana Miletich-Wester,

Case No. 17-32315-GMH
Chapter 13

Debtors.

**DECISION AND ORDER SUSTAINING TRUSTEE'S OBJECTION TO CLAIM
NUMBER 17 FILED BY THE CITY OF KENOSHA CITY TREASURER**

The chapter 13 trustee objects to allowance of the City of Kenosha City Treasurer's claim (number 17) on the grounds that the City filed it after the bar deadline. CM-ECF Doc. No. 20. The City's response concedes that it filed the claim late but asks the court to allow the claim anyway. CM-ECF Doc. No. 21.

Federal Rule of Bankruptcy Procedure 3002(c) sets the time by which creditors may file proofs of claim. Rule 3002(c)(1) provides that, in a case under chapter 13, a claim filed by governmental unit, including the City here, "is timely filed if it is filed not later than 180 days after the date of the order for relief." Fed. R. Bankr. P. 3002(c)(1). See

also 11 U.S.C. §502(b)(9). In this case, the date of the order for relief is December 29, 2017, and 180 days later is June 27, 2018. See 11 U.S.C. §301.

The City filed its proof of claim on June 29, 2018—182 days after the date of the order for relief. And the Bankruptcy Code does not allow late-filed claims under chapter 13. §502(b)(9).

The City's response explains that, "in filing the Proof of Claim, [the City] equated 180 days with six calendar months, submitting the Proof of Claim on June 29, 2018, six calendar months after the Bankruptcy Filing Date of December 29, 2017", and that the City filed the claim "late due to the City's mistaken interpretation of the filing deadline." CM-ECF Doc. No. 21, ¶¶4 & 5. The City asks the court to allow its claim because "the delay attributable to the City's filing was minimal, unintentional and did not prejudice the debtor or other creditors". *Id.* ¶7.

The City's response offers no legal basis for expanding the claims-filing deadline. The City's assertion that it filed its claim late due to its "mistaken interpretation of the filing deadline" and that its late filing had no prejudicial effect suggests a plea of excusable neglect. *Id.* ¶¶5 & 7. Excusable neglect sometimes provides a basis for enlarging an expired deadline under Rule 9006(b).

Whether a litigant's mistaken conversion of a period of time described in days into months could ever be *excusable* neglect is a nice question. Rule 9006 "appl[ies] in computing any time period specified in [the bankruptcy] rules" and "in any statute that does not specify a method of computing time." Fed. R. Bankr. P. 9006(a). The rule is clear about how to calculate a period of 180 days: "When the period is stated in days . . . count every day". Fed. R. Bankr. P. 9006(a)(1)(B). And, while 180 days is *approximately* six months, 180 calendar *days* from any day of any month is *never* the same day of the month that is six months later. Only by happenstance and the counting rule provided in Rule 9006(a)(1)(C), which continues a period stated in days until the last day is one other than a Saturday, Sunday, or legal holiday, might "180 days" from the first day of

the period be the same day of the month six months later.

For today, this question can be left unresolved. Rule 9006(b) provides that “[t]he court may enlarge the time for taking action under Rule[] . . . 3002(c) . . . only to the extent and under the conditions stated in th[at] rule[].” Fed. R. Bankr. R. 9006(b)(3); see also *In re Phillips*, No. 14-29453, CM-ECF Doc. No. 37, at 2–5 (Bankr. E.D. Wis. Oct. 2, 2015). And Rule 3002(c) offers no basis that applies here for enlarging the filing period.

For these reasons, the trustee’s objection to claim number 17 filed by the City of Kenosha is sustained, and IT IS ORDERED that claim number 17 is disallowed.

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