Final Draft – Local Rule 3007

Summary

Local Rules 3007 and 3007.1 encompass responses to objections to claims and hearings on objections to claims, respectively. Under the Federal Rules of Bankruptcy Procedure, claim objections fall under one rule, Rule 3007. The new version of Local Rule 3007 combines our previous two local rules into one rule, which furthers the directive of Federal Rule of Bankruptcy Procedure 9029(a)(1) that "Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States."

The comments attached to the redline version of the local rules following the January 28, 2016, rules committee meeting state that Local Rules 3007 and 3007.1 were subject to an on-going revision not yet finalized, and that the committee was contemplating a negative notice requirement. Following the April 13, 2016, meeting the committee verified its intent to move forward with a 30-day negative notice requirement. Negative notice allows the court to dispense with the need for a hearing where no response is received by the response deadline and the court is satisfied that there is a legal and factual basis to afford the relief requested. The negative notice requirement will alter the current procedures of each chambers regarding notice of objections to claims and hearings.

In addition to the negative notice requirement, provisions relating to the content of an objection to claim and service of an objection to claim have been added. The content provision borrows language from the chambers procedures of Judge Halfenger and Judge Hanan, which require affidavits and declarations to support the objections. The hope is that this provision will lead to fewer unsupported objections to claims. The service provision incorporates Local Rule 9013.1 and also states that service on the address provided in the proof of claim is sufficient. The hope is that this provision will reduce the number of objections to claims with defective service.

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LR 3007 Procedure for Objections to Claims

(a) **Caption.** The objection and all supporting memoranda, affidavits, declarations or similar papers must state the name of the creditor and the court-assigned claim number in the caption.

(b) **Content of Objection.** Unless an objection to claim is supported by facts about which the court can take judicial notice (e.g., the claim was filed late or based solely on application of law to the claim), the objection must be supported by one or more affidavits or declarations by individuals with personal knowledge supporting the objection.

(c) **Notice.** The objecting party must serve and file a notice of the claim objection with the claim objection. The notice must clearly state that the court may grant the relief requested without a hearing if the claimant does not file and serve a response within 30 days of the date of service of the notice or if the claimant's response fails adequately to oppose the objection.

(d) **Proof of Service.** The objecting party must file a declaration of service of both the objection and the notice. Service on the claimant at the notice address listed in the proof of claim is sufficient. The declaration of service must comply with Local Rule 9013.1.

(e) **Hearing.** The court ordinarily will schedule a hearing on an objection to claim only when an adequate response is timely filed. But the court may hold a hearing to inquire about the legal basis for the objection or whether the affidavits or declarations filed in support of the objection are sufficient to overcome the presumption of validity provided by Federal Rule of Bankruptcy Procedure 3001(f).

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re

Daniel Detter,	Chapter 13
Debtor.	Case No. 16-00000-GMH

ORDER APPROVING STAY RELIEF STIPULATION

The Court has reviewed the stipulation filed _____ between the Debtor and [Creditor] resolving the motion for relief from stay as to [property address].

IT IS THEREFORE ORDERED: the Stipulation, which is attached to this order, is approved and the parties are authorized to act in accordance with its terms. The motion for relief from stay is withdrawn subject to the conditions stated in the stipulation.

IT IS FURTHER ORDERED: the Court will not enforce a "doomsday provision" (but may enforce a letter renewal to which no objection was filed) for any post-petition payment defaults prior to the effective date of this Order. The effective date of this Order is 14 days after entry.

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

DATED: July 29, 2016

G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

Brittany Nicole King,	Case No. 16-24784-GMH
Debtor.	Chapter 13

DECISION AND ORDER ON DEBTOR'S MOTION TO INCUR DEBT

Soon after Brittany King filed this chapter 13 case, her car broke down. Reporting that her vehicle is unsafe and that she needs to drive to work, Ms. King asks the court to approve a loan for the purchase of a replacement vehicle.

Ms. King's motion encounters difficulty at the starting gate. Unlike debtors-in-possession under chapters 11 and 12, chapter 13 debtors do not enjoy all of the rights and powers of trustees. Compare 11 U.S.C. §§1107 & 1203 with 1303. Section 1303 grants all chapter 13 debtors certain rights to *use* estate property (like trustees under §363) but not to obtain credit (like trustees under §364). Section 1303 provides: "Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title." 11 U.S.C. §1303. Section 1304 authorizes some chapter 13 debtors to obtain credit "subject to any limitations on a trustee under sections 363(c) ***and 364*** of this title

and to such limitations or conditions as the court prescribes". 11 U.S.C. §1304(b) (emphasis added). But §1304 applies only to chapter 13 debtors engaged in business. 11 U.S.C. §1304(a) & (b). This structure suggests that only chapter 13 debtors engaged in business may obtain new financing through court authorization under §364.

Ms. King is not engaged in business. She thus has no rights or duties under §364. Ms. King concedes that the Bankruptcy Code does not "explicitly" require a chapter 13 debtor who is not engaged in business to obtain court approval to obtain financing. CM-ECF Doc. 21 at 1. She instead suggests that the requirement is "implied". *Id.* at 2 & n.2. Ms. King relies on *In re Clemons*, 358 B.R. 714, 715–16 (Bankr. W.D. Ky. 2007). In *Clemons*, unlike here, an order confirming the debtors' chapter 13 plan required the debtors to move the court for authority to obtain credit. *Id.* at 715. Other courts state that either the court or the trustee may authorize chapter 13 debtors to obtain credit. See, e.g., *Chaney v. Grant (In re Chaney)*, 308 B.R. 588, 590–91 (Bankr. N.D. Ga. 2004); *In re Perkins*, 304 B.R. 477, 484 (Bankr. N.D. Ala. 2004); *In re Bagby*, 218 B.R. 878, 887 (Bankr. W.D. Tenn. 1998); *Cooper v. Rogers Used Cars (In re Cooper)*, Adv. Case No. 95-0757, 1995 WL 495987, at *2 (Bankr. W.D. Tenn. Aug. 9, 1995).

Section 1305 provides structural support for an inference that chapter 13 debtors (even those who are not engaged in business) can obtain post-petition credit. It authorizes the filing of proofs of claim for consumer debts "that arise[] after the date of the order for relief under this chapter, and that [are] for property or services necessary for the debtor's performance under the plan." 11 U.S.C. §1305(a)(2). Section 1322(b)(6), in turn, authorizes payment of "any claim allowed under section 1305" through the chapter 13 plan. 11 U.S.C. §1322(b)(6). This suggests that a debtor like Ms. King may incur §1305 consumer-credit debt before plan confirmation. The Code conditions allowance of post-petition consumer debt claims on pre-approval by the chapter 13 trustee, rather than the court: "A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that *prior approval by the trustee* of the debtor's incurring the obligation was practicable and was not obtained." 11 U.S.C. §1305(c) (emphasis added).

Ms. King emphasizes the practical need for approval of consumer-credit transaction like the one she proposes: "Regardless of what is required by the Code, all

finance companies require the court ***or trustee's*** approval in order for the debtor to incur debt." CM-ECF Doc. 21 at 2 (emphasis added). The Code's text and structure suggest that the chapter 13 trustee, rather than the court, is the appropriate source of that approval.

This allocation of responsibility makes sense. Courts that consider approval of credit purchases like Ms. King's undertake "to ensure that decisions made by a debtor to obtain credit do not interfere with the debtor's ability to perform under a confirmed chapter 13 plan, and, to the degree possible, to ensure a debtor is not making an imprudent financial decision that could lead the debtor back into bankruptcy." *Clemons*, 358 B.R. at 716. This undertaking may require consideration of a multitude of factors, including, as *Clemons* suggests in the context of a vehicle purchase, "(1) the terms of the credit agreement; (2) what alternatives to the proposed credit agreement were considered; (3) a description of the automobile that the debtor seeks to purchase, detailing the make, model, mileage, condition, and value—taking into account its reasonable market value, *e.g.*, as assessed by Kelly Bluebook, Edmunds, N.A.D.A., to name only a few; and (4) a copy of a current budget that includes the proposed credit payments." *Id.* (citing *In re Brown*, 170 B.R. 362, 366 (Bankr. S.D. Ohio 1994)). The trustee may explore these factors with the debtor and make an informed judgment about the necessity of the credit purchase far more expeditiously and efficiently than the court.

For these reasons, Ms. King's motion to incur debt is **denied**, but the court expresses no view on whether the trustee should exercise her discretion to authorize Ms. King's proposed credit purchase.

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