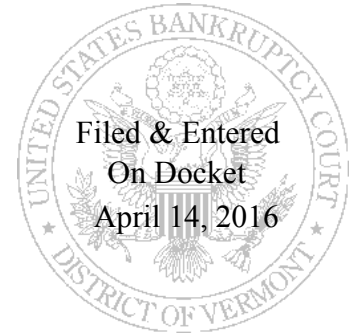


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Kirk E. Pearson and
Jayne B. Pearson,
Debtors.**

**Case # 15-11045
Chapter 13**

ORDER

GRANTING SECURED CREDITOR'S MOTION TO FILE PROOF OF CLAIM AFTER BAR DATE

On March 17, 2016, the bar date for filing proofs of claim in this case, secured creditor Nationstar Mortgage, LLC ("Nationstar") filed a Motion to File Claim After Bar Date (doc. # 48, the "Motion"). The Motion requested an additional 60 days, until May 23, 2016, to file its secured claim "to fully comply with Bankruptcy Rule 3001," and as support for this relief pointed out that (i) the Debtors scheduled Nationstar's claim in their petition; (ii) there was no pre-petition arrearage due in connection with its claim (of approximately \$276,640); and (iii) allowing Nationstar to file its claim after the originally set deadline would not prejudice any party.

The Motion raises three issues: (1) whether a secured creditor must file a proof of claim in a Chapter 13 case; (2) by what date a secured creditor must file a proof of claim to have that claim treated as timely; and (3) what standard governs secured creditors' motions to enlarge the time to file a proof of claim. These issues are matters of first impression in this District. After considering the Motion, the controlling federal statutes and rules, and the case law in this Circuit, this Court will rule upon these issues applying the holding and rationale articulated by the Bankruptcy Court of the Southern District of New York in In re Dumain, 492 B.R. 140 (Bankr. S.D.N.Y. 2013).

Based upon the Dumain rationale, this Court finds, first, that a secured creditor is not required to file a proof of claim in a Chapter 13 case. Its lien will remain intact throughout (and flow through) the bankruptcy case. A secured creditor need only file a proof of claim if it seeks to be paid through the plan. Moreover, under § 1327(a), a secured creditor may receive distributions through a Chapter 13 Trustee to the extent the plan provides for such distributions, even if the secured creditor does not file a proof of claim.

Second, the Court finds that Bankruptcy Rule 3002(c) applies to secured creditors and a secured creditor who wishes to file a proof of claim in a Chapter 13 case must do so according to the time frame set forth in that Rule. While this is not entirely obvious from the test of that Rule, this conclusion is compelled by the provisions governing claims in the Bankruptcy Code. As Judge Morris explained:

Section 502(b)(9) imposes a timeliness requirement on every “claim” with no qualification as to whether the claim is secured or unsecured, and section 101(5) defines “claim” as “secured or unsecured.” A reading of Bankruptcy Rule 3002(a) and (c) that would result in no bar date for secured creditors would impermissibly circumvent the broad application of section 509(b)(9)...The omission of secured creditor from Bankruptcy Rule 3002(a) should not be imputed to Bankruptcy Rule 3002(c). Bankruptcy Rule 3002(c) contains five enumerated exceptions, none of which relate to secured claims...

Policy considerations further support this result. Without a claims bar date, secured creditors could file a proof of claim at any time, which would disrupt distribution and lead to uncertainty of administration... The Court sees no practical reason why the bar date for secured creditors should be any different from the bar date imposed in Bankruptcy Rule 3002(c).

492 B.R. 140, 148 (Bankr. S.D.N.Y. 2013)(citations omitted).

Having found the same filing rules apply to both unsecured and secured creditors who file proofs of claim, this Court turns to the final question raised herein and finds the showing required for enlarging the time to file a proof of claim is also the same for secured creditors. A creditor must show cause for an extension of time under Bankruptcy Rule 9001(b)(1).¹ In discussing this rule, the Supreme Court in Pioneer Inv. Servs Co. v. Brunswick Associates Ltd. P’ship, 507 U.S. 380 (1993), held that the determination whether a late filed proof of claim should be allowed under Rule 9001(b)(1) is an equitable one, instructed that courts should take into account all relevant circumstances, and discussed four factors that are of particular import in this analysis. Transferring those factors over into the context of a motion to enlarge the time to file a proof of claim, this Court holds that a creditor – whether secured or unsecured – which seeks an enlargement of time beyond the bar date must show “cause,” and must consider the following factors: (1) the danger of prejudice to the debtor; (2) the length of enlargement sought and its potential impact on the proceedings in the case; (3) the facts underlying the request, including whether the movant has acted diligently and/or been delayed in filing the proof of claim, prior to the bar date, for reasons beyond its control; and (4) whether the movant has acted in good faith prior to, and in, its motion for an enlargement of time. See Pioneer at 395.

¹ That rule provides, in relevant part: “[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.”

The Motion did not specifically identify the facts leading to Nationstar's need for an enlargement of time. At the hearing held on April 13, 2016, the Court pursued this inquiry and Nationstar explained that it was seeking an enlargement of time because at the outset of this case it did not appear there was any need for it to file a proof of claim, but subsequent developments in the case persuaded it that it would be prudent to file a proof of claim, and by the time those developments came to light, there was not enough time for it to file its claim before the bar date.

Based upon this record, THE COURT FINDS Nationstar has shown cause for an enlargement of time to file a proof of claim. In reaching this conclusion, the Court relies in particular upon the following considerations: (1) Nationstar is seeking only a 60-day extension of time and this is not an unreasonable time period; (2) neither the Debtor nor the Trustee has objected to the Motion and there is no indication this enlargement of time will delay the Chapter 13 case in any way; (3) it does not appear the granting of the Motion would prejudice the Debtor or estate since Nationstar's claim was listed in the Debtor's schedules, and (4) nothing in the record suggests Nationstar failed to act diligently or without good faith.

Based upon the record in this case, the controlling statutes, rules and case law, IT IS HEREBY ORDERED that Nationstar's Motion to File Claim After Bar Date is **GRANTED**.

SO ORDERED.

Burlington, Vermont
April 13, 2016



Colleen A. Brown
United States Bankruptcy Judge