

In re Safeguard Security Systems, Inc. no. 390-32608-S7

10/22/91

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unpublished

A creditor with actual knowledge of the bankruptcy from its inception filed a proof of claim one week after the deadline expired. The creditor's argument that it had filed an informal proof of claim was rejected. The post petition draft agreement between the creditor and the trustee did not indicate that the creditor intended to hold the estate liable for a particular sum, and therefore did not meet the requirements of an informal proof of claim as articulated by the Ninth Circuit Court of Appeals.

The trustee's objection to the claim was sustained.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 390-32608-S7
SAFEGUARD SECURITY)
SYSTEMS, INC.,) MEMORANDUM GRANTING TRUSTEE'S
) MOTION FOR SUMMARY JUDGMENT
Debtor.) CONCERNING LARRABEE VENTURE,
) INC. CLAIM

The trustee's motion for summary judgment should be granted and Larrabee Venture Inc.'s ("LVI") cross motion for summary judgment should be denied. LVI did not file a timely proof of claim and the actions taken by Larrabee in this case were not sufficient to constitute an informal proof of claim.

The relevant facts are undisputed. LVI was not listed on the schedules, but Mr. Larrabee was aware of the chapter 7 case shortly after the order for relief was entered, and in sufficient time to file a proof of claim. The deadline to file claims was fixed at December 12, 1990. LVI filed Claim No. 135 on December 19, 1990. The chapter 7 trustee was aware that LVI

had a suit pending in California against the debtor and other related entities shortly after his appointment in this case.

Mr. Larrabee assumed that the trustee had seen the pending complaint because the trustee had told him that the trustee had "seen the lawsuit". Based on this assumption, Mr. Larrabee did not send the trustee a copy of the complaint. LVI caused a proposed form of Advisory Services Agreement to be sent to the trustee, which read in part:

"20. Dismissal of Lawsuit. Upon court approval of this agreement, LVI will dismiss Safeguard Security Systems, Inc. from the action LVI has filed in Los Angeles Superior Court for the State of California, Larrabee Ventures, Inc. vs. Prestige Securities, Inc., et al., No. NWC 54305. Upon the consummation of any transaction for the acquisition of the business and the payment to LVI of all of its fees provided in this Agreement, LVI will dismiss the action against the (Income) Fund, and shall execute the appropriate mutual releases in connection therewith."

LVI does not claim to have sent any other timely written materials to the trustee or the court in support of its proof of claim, although it did amend it's California complaint during the claims bar period.

An unsecured creditor must file a proof of claim in accordance with Bankr. R. 3002 for the claim to be allowed. A formal claim filed with the court is the rule, and the allowance of an informal claim is the exception. The Ninth Circuit applies a liberal rule in allowing informal proofs of claim. To constitute a claim, a document must contain a demand against the estate stating the nature and amount of the claim, and must show the creditor's intention to hold the estate liable. Anderson-Walker Industries, Inc. v. Lafayette Metals, Inc., (In re Anderson-Walker Industries, Inc.), 798 F.2d 1285, 1287 (9th Cir. 1986), County of Napa v. Franciscan Vineyards Inc., (In re Franciscan Vineyards, Inc.), 597 F.2d 181, 183 (9th Cir. 1979).

The passage from the proposed Advisory Services Agreement is too ambiguous to be construed as an intent to hold the estate liable for the prepetition claim. The proposed agreement says that LVI will dismiss the lawsuit if the agreement is approved. It does not necessarily follow that LVI intended to pursue its prepetition claim against the estate if the agreement was not approved.

The limited writing sent by LVI to the trustee is too tenuous to fulfill the minimal requirements established by the Ninth Circuit for a creditor to rely on an informal proof of claim. The creditor must send something to the trustee which indicates the amount and basis of the claim, and the creditor's intent to hold the estate liable for the claim. Mr. Larrabee's assumption that the trustee had a copy of the complaint coupled with the passage

regarding dismissal in the Advisory Services Agreement do not meet the test. If they did, the claims bar date would lose it's purpose and arguments concerning the trustee's conversations with creditors would create satellite litigation over oral proofs of claim supported by prepetition writings. The facts of this case are outside the test enunciated by the Ninth Circuit, and the limits should not be expanded to this extent.

Based on the standard supplied by the Supreme Court in Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), Celotex v. Catrett, 477 U.S. 317, 323 (1986) and Matsushita Electric Industrial Co. V. Zenith Radio Corp., 475 U.S. 574, 586 (1986), there is no genuine issue of fact to decide at trial. It is appropriate to grant the trustee's motion for summary judgment, and determine that LVI did not file a timely claim, did not submit a sufficient writing to constitute a timely informal proof of claim, and that its claim should be treated as a subordinated claim in accordance with 11 U.S.C. § 726(a)(3). Mr Foraker may submit an order to that effect.

DATED this _____ day of October, 1991.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: David A. Foraker
James Ray Streinz
U. S. Trustee
Donald Hartvig