

11 USC § 501  
11 USC § 502  
11 USC § 1302(b) (4)  
Negligent Misrepresentation  
Unjust Enrichment

In re Vinzant, Case No. 388-32747-H13  
Vinzant v. Knupp, Adv. No. 93-3433; 9th Cir. No. 95-36225

4/18/97

Memorandum

Unpublished

Ninth Circuit affirmed without opinion the District Court's 10/24/95 order (see P95-24(39)). The district court had held that a Chapter 13 trustee is not required to pay a secured claim that is listed in the confirmed plan but for which no proof of claim was filed. The filing of a proof of claim is a prerequisite to being deemed allowed under section 502; therefore a secured creditor must file a proof of claim and have that claim allowed in order to receive any distribution in a Chapter 13 proceeding.

Summary judgment was properly given on plaintiff debtor's claim against the Chapter 13 trustee for negligent misrepresentation in failing to follow his usual practice of noting in red ink on the Notice of Intent that the secured creditor had failed to file a proof of claim. The trustee has no duty under § 1302(b) (4) to notify debtors that creditors have not filed claims.

Summary judgment was properly given on debtor's claim against the secured creditor for negligently failing to follow its custom of informing the debtor's attorney that it had not filed a timely proof of claim. The debtor and creditor are in an adversarial relationship, and the creditor has no duty to the debtor.

Summary judgment was properly granted on debtor's unjust enrichment claim against the unsecured creditor that received a distribution that it would not have received had the secured claim of a secured creditor been paid. Debtor could have filed a proof of claim on behalf of the secured creditor, thereby protecting her rights. Her failure to do so resulted in the trustee's failure to pay the secured claim and the payment of the balance of the plan payments to the unsecured creditor.

P97-10(2)

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LAW OFFICES

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**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

In re:	JEANNIE M. VINZANT,	)	No. 95-36225
	Debtor.	)	
<hr/>		)	
	JEANNIE M. VINZANT,	)	D.C. No. CV-95-00564 (JAR)
	Appellant,	)	
	v.	)	
	EMILY KNUPP; ROBERT MYERS;	)	MEMORANDUM <sup>1</sup>
	MULTNOMAH COUNTY, and the	)	
	Clerk of the Court,	)	
	Appellees.	)	
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Appeal from the United States District Court  
District of Oregon  
James A. Redden, District Judge, Presiding

Argued and Submitted March 5, 1997  
Portland, Oregon

Before: FLETCHER and TASHIMA, Circuit Judges, and SCHWARZER,<sup>2</sup>  
Senior District Judge

We affirm the judgment for the reasons stated in the district court's order of October 24, 1995, amending and adopting the magistrate judge's findings and recommendations as they relate to parties other than the trustee who is no longer a party to the

<sup>1</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>2</sup> Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

action.

AFFIRMED.