

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
CARPENTERS FRINGE BENEFIT)
FUNDS OF ILLINOIS,)
)
Plaintiff,)
) Cause No. 96-CV-768-WDS
vs.)
)
RICHARD and CYNTHIA ANDERSON,) Appeal From:
) Bankruptcy No. 93-50882
Defendants.)

MEMORANDUM & ORDER

STIEHL, District Judge:

Before the Court is an appeal from a July 17, 1996 Order entered by United States Bankruptcy Judge Kenneth J. Meyers. Specifically, plaintiff, Carpenters Fringe Benefit Funds of Illinois seeks to have this Court determine whether plaintiff's claim filed on May 24, 1996 in the amount of \$7,521.45 relates back to the original claim filed on December 14, 1993, in the amount of \$2,922.90. Jurisdiction over the appeal is proper, pursuant to **Federal Rule of Bankruptcy Procedure 8001, 28 U.S.C. § 158(a) and 28 U.S.C. § 1334**. Because this appeal, to some extent, concerns actions that took place in a previously filed civil case, a brief recitation of the factual background is necessary.

BACKGROUND

On September 24, 1993, plaintiff, Carpenters Fringe Benefit Fund of Illinois, commenced a civil action seeking to recover money owed to it by Cynthia Anderson, d/b/a Anderson Construction. On

December 6, 1993, defendants filed for bankruptcy relief under Chapter 11 of the Bankruptcy Code. At that time, the defendants were protected by a stay that went into effect immediately and automatically upon the filing of their bankruptcy. **See 11 U.S.C. § 362.**

On December 14, 1993, plaintiff filed its notice of claim with the bankruptcy court in the amount of \$2,922.90. Shortly thereafter, on December 16, 1993, United States District Judge William L. Beatty stayed the civil proceeding, *Carpenters Fringe Benefit Funds of Illinois v. Cynthia Anderson d1b1a Anderson Construction*, Cause No. 93-CV-659-WLB pursuant to § 362. On October 21, 1994, the civil case was reassigned from Judge Beatty to United States District Judge Paul E. Riley. **See 93-CV-659-PER.**

On March 23, 1996, almost a year and half years after the case reassignment, Judge Riley, *sua sponte*, issued an Order in case number **93-CV-659-PER** which provided that the stay was to be lifted on April 1, 1996, and set a status conference for Friday, April 12, 1996. Plaintiff's attorney, Kevin Kaufhold, attended the April 12 status conference. At that time, he filed a motion for default judgment. However, Kaufhold neglected to make any reference to the fact that he had filed a proof of claim against these same defendants, who, at the time, were debtors protected by an automatic stay pursuant to **11 U.S.C. § 362.**

Neither the defendants nor counsel for the defendants were present at the status conference, and Judge Riley granted Kaufhold's motion for default judgment in the amount of \$7,521.45. On April 15, 1996, Judgment was entered accordingly. Subsequently, Kaufhold attempted to amend his proof of claim in the bankruptcy court from \$2,922.90 to the amount of the judgment obtained in the civil proceeding. Defendants objected to the claim, and Judge Meyers set the matter for a hearing to take place on July 17,

1996.

At the hearing, Judge Meyers expressed concern as to how the automatic stay could be lifted when the bankruptcy reference had not first been withdrawn. Also at the hearing, defendant's counsel asserted that neither he nor the defendants were notified of the hearing before Judge Riley. In fact, according to defendants' counsel, the first that he heard of the hearing was when plaintiff's counsel called to inform him that he had obtained the judgment.

Ultimately, Judge Meyers denied plaintiffs' request to amend its proof of claim on the ground that the amendment was untimely. Judge Meyers also informed plaintiff's counsel that pursuing a claim outside of the bankruptcy court, in clear violation of the automatic stay, is a very serious offense. On August 28, 1996, plaintiff filed a notice of appeal.

ANALYSIS

When reviewing a bankruptcy court's judgment or order on appeal, a district court is authorized to "affirm, modify or reverse . . . or remand with instructions for further proceedings." **Bankruptcy Rule 8013**. The disposition of a motion to amend a proof of claim falls within the sound discretion of the bankruptcy court. *See In the Matter of Unroe*, 937 F.2d 346, 350 (7th Cir. 1991); *Deasy v. Hill*, 833 F.2d 38, 40 (4th Cir. 1987), cert. denied, 485 U.S. 977; *In re International Horizons, Inc.*, 751 F.2d 1213, 1216 (11th Cir. 1985); *In re Lanman*, 24 B.R. 741, 743 (Bankr.N.D.111.1982). On appeal, this Court reviews that decision for abuse of discretion. Of course, review based on the abuse of discretion standard does not mean no appellate review. *In re Roncol, Inc.*, 838 F.2d 212, 217-218 (7th Cir.1988). Under that standard, an abuse of discretion will be found if 1) the decision was based on an erroneous conclusion of law, 2) the record contains no evidence on which the bankruptcy court could have

based its, decision, or 3) the factual findings are clearly erroneous. *Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556, 563-564 (7th Cir.1984). Under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, only "excusable neglect" permits a creditor to file or amend a claim after the bar date. *In re FBN Food Services, Inc.*, 82 F.3d 1387 (7th Cir. 1996); *Plunkett*, 82 F.3d at 742; *see also In re Stavriotis*, 977 F.2d 1202 (7th Cir.1992); *In re Unroe*, 937 F.2d 346 (7th Cir.1991).

In this case, plaintiff has failed to demonstrate any sort of excusable neglect for failing to file an amended proof of claim. Plaintiff asserts that it waited until the claim was reduced to a judgment. However, plaintiff was able to determine how much to ask for on default. Thus, plaintiff should have had no trouble in determining the amount of the amended claim had it properly sought to amend its claim, instead of improperly pursuing relief outside of the bankruptcy court. Moreover, noticeably absent from plaintiff's civil court pleadings before Judge Riley were any references to the fact that its claim was pending in a bankruptcy proceeding. Thus, Judge Meyers' decision was to deny plaintiff leave to amend its claim was within his sound discretion.

CONCLUSION

Accordingly, the Court **AFFIRMS** the decision of the bankruptcy court and **DENIES** plaintiff's appeal. The Court **REMANDS** this case to the bankruptcy court for consideration as to what, if any, sanctions should be imposed.

IT IS SO ORDERED.

DATED: April 10, 1997

/s/ William D. Stiehl
District Court Judge