

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

BANTERRA BANK and ILLINOIS)	
ONE BANK, N.A.,)	
)	
Appellants,)	
)	
V.)	CIVIL NO. 00-4023-JPG
)	
LAWRENCE RICH, NORMA RICH,)	BANKRUPTCY NO. 98-40262
FORD MOTOR CREDIT COMPANY,)	
MICHELLE L. VIEIRA, Trustee, and))	
UNITED STATES TRUSTEE,)	
)	
Appellees.)	

ORDER

GILBERT, Chief Judge:

Before this Court is an appeal from Bankruptcy Court. Appellants Banterra Bank ("Banterra") and Illinois One Bank ("One Bank") are appealing two of Bankruptcy Judge Meyers' December 21, 1999 Orders (Bk. Docs. 185, 186). Banterra and One Bank have filed their appellants' brief, arguing that those decisions were erroneous (Doc. 3). Appellee Ford Motor Credit Company ("Ford") filed its appellee brief, arguing that those decisions were correct (Doc. 4). Banterra and One Bank have also filed a reply brief (Doc. 5). The Appeal is now ripe for decision.

I. BACKGROUND

On February 17, 1998, Debtors Lawrence and Norma Rich filed a voluntary Chapter 11 case for reorganization (Bk. Doc. 1). The Debtors owned and managed an automobile dealership, Rich Motor Company. According to agreements made between the Debtors and Ford, the Debtors were obligated to hold all proceeds of sale in trust for Ford. Prior to the Debtors filing the Chapter 11, they

made certain sales the proceeds of which were not remitted to Ford.

On February 19, 1998, Ford moved to have a trustee appointed (Bk. Doc. 3). On February 19, 1998, local counsel A. Courtney Cox filed a motion to allow another attorney to appear *pro hac vice* "on behalf of Creditor, Ford" (Bk. Doc. 4). The parties agreed to construe the motion for appointment of a trustee as a motion to convert the proceeding into a proceeding under Chapter 7 for liquidation (Bk. Doc. 16). On the Debtors' March 5, 1998 schedules, the Debtors listed Ford as a secured creditor. Specifically, Ford's claim of \$140,000 was secured by collateral the market value of which was estimated at \$260,000 (Bk. Doc. 18 at 18). Therefore, pursuant to the Debtor's schedules, there was no unsecured portion of the claim because the market value of the collateral (\$260,000) exceeded the amount of Ford's claim (\$140,000). As such, Ford was not listed as an unsecured creditor, but rather as a secured one. Ford's pending motion for appointment of a trustee was ultimately settled, and Ford's request to convert the proceedings to Chapter 7 proceedings was granted (Bk. Doc. 48).

After conversion, it became evident that the collateral was insufficient to meet Ford's claim (Bk. Doc. 66). Because the market value of the collateral was now less than Ford's secured claim, the Debtors, Ford, and the Trustee jointly stipulated that Ford's collateral was to be abandoned from the bankruptcy estate. Specifically, the parties stipulated to the following:

1. Ford Motor Credit Company is a secured creditor of debtors in this matter.
2. The value of the collateral pledged to this creditor is less than the debt owed to this creditor .
3. By reason thereof, the value of this property is of inconsequential value and benefit to the estate.

(Bk. Doc. 66.) Bankruptcy Judge Meyers later approved the stipulation, ordering that Ford's collateral was to be abandoned from the bankruptcy estate (Bk. Doc. 67). At this time, the Trustee had begun liquidating the unencumbered assets. A notice was sent out, informing all nongovernment unsecured creditors of the need to file a proof of claim by January 12, 1999 (Bk. Doc. 68).

In late November 1998, the Debtors moved to dismiss the case, and Ford lodged objections.

Specifically, Ford argued the following:

Liquidation of the assets of the Debtors through this bankruptcy will be more orderly, simple and less expensive for both the Debtors and the creditors than through various State Court actions. Both Debtors and the creditors have incurred expense and spent time getting this case to the point of an orderly liquidation so that dismissal of the case at this point would be prejudicial.

(Bk. Doc. 89.) The Debtor's motion to dismiss was denied on January 5, 1999, one week before the January 12, 1999 deadline for filing formal proofs of claim (Bk. Doc. 92). Ford did not file a formal proof of claim by the January 12, 1999 deadline.

On February 24, 1999, the Debtors filed a motion to allow late-filed claims on behalf of other unsecured creditors, listing administrative claims incurred during the Chapter 11 proceedings along with personal claims incurred during the Chapter 11 proceedings. Bankruptcy Judge Meyers found that Ford took an active role as the only creditor to require information from the debtors when they sought to have the several late-filed claims allowed (Bk. Doc. 185 at 3).¹

¹Bankruptcy Judge Meyers held a hearing on this motion (Bk. Doc. 136). Banterra and One Bank have not challenged that this factual finding by Bankruptcy Judge Meyers in his December 21, 1999 Order. In the absence of a transcript of the proceeding and an argument to the contrary, this Court accepts Bankruptcy Judge Meyer's factual finding.

On September 20, 1999, the Trustee filed her Final Report and Proposed Distribution (Bk. Doc. 161). Objections were due on October 28, 1999, and a November 2, 1999 hearing was scheduled to hear any such objections. At the November 2, 1999 hearing, Ford was granted leave to file a motion to file a claim out of time (Bk. Doc. 170). That same day, Ford filed a motion for leave to file a late filed claim as a timely claim, stating:

1. Ford . . . is the owner and holder of an unsecured debt against Debtors by virtue of a[n] . . . agreement between Debtors and Ford. . . .
2. Said debt was secured by various collateral which was liquidated over a period of time, so that at the time of the claim bar date in this matter, the exact amount of a deficiency was not determined, nor was it determined whether there would in fact be a deficiency.
3. This creditor has now determined that there is a deficiency in the sum of \$146,000 and therefore asks leave of Court to file an unsecured claim in that amount for inclusion in the distribution as a timely filed claim for distribution along with the other unsecured debts filed in this case.

(Bk. Doc. 171). On November 5, 1999, Bankruptcy Judge Meyers allowed Ford to file a formal proof of claim out of time (Bk. Doc. 174), and that same day, the Trustee filed an Amended Final Report Notice (Bk. Doc. 175). In it, Ford would now share in the distribution along with Banterra and One Bank. Banterra and One Bank filed timely objections (Bk. Docs. 180, 181).

After the hearing on the objections, Bankruptcy Judge Meyers issued two December 21, 1999 Orders. In the first, he determined that Ford's filings and conduct during the course of this case constituted an informal claim (Bk. Doc. 185). Despite his reservations about the "informal proof of claim" doctrine and his belief that it should be applied sparingly, Bankruptcy Judge Meyers concluded that there was no doubt that Ford was pursuing the unsecured portion of its claim to the fullest extent, and that

precluding Ford from asserting the deficiency amount as an unsecured claim would be extremely inequitable under the facts of this case. After determining that Ford's filings and conduct in the Bankruptcy Court constituted an amendable informal proof of claim, he construed Ford's motion to file a late claim as a motion to amend an informal claim. In the second order, he granted Ford's motion to amend its informal claim, allowing objections to Ford's amended claim to be filed within 20 days of the order (Bk. Doc. 186).²

II. STANDARD OF REVIEW

In its appellate function, this Court upholds the bankruptcy court's findings of fact unless they are clearly erroneous and reviews pure questions of law *de novo*. See *In re Matter of UNR Indus., Inc.*, 986 F.2d 207, 208 (7th Cir. 1993). If a question is a mixed question of law and fact, this Court must break the question down into its constituent parts and apply the appropriate standard of review for each part.

III. DISCUSSION

Three issues are presented for review in this appeal: (1) whether the bankruptcy court erred in construing Ford's pleadings and filings as an "informal claim"; (2) whether the bankruptcy court erred in construing Ford's motion for leave to file a late claim as timely as a motion to amend an informal claim; and (3) whether the bankruptcy court erred in allowing Ford to amend its informal claim where Ford received two notices of the formal proof of claim requirements and failed to indicate the exact amount or basis of the claim or clearly indicate its intent to pursue an unsecured claim until 10 months after the

²Banterra and One Bank filed objections to Ford's Amended Claim, but those objections are not part of this instant Appeal (Bk. Docs. 190, 191).

claims bar date. (Doc. 3 at 4.) Each issue will be addressed in turn.

1. **The Bankruptcy Court Did Not Err In Construing Ford's Pleadings An Filings As An Informal Proof Of Claim.**

Banterra and One Bank argue that the bankruptcy court erred in construing Ford's pleadings and filings throughout this litigation as an informal claim.

Banterra and One Bank completely fail to argue what standard of review this Court should apply to the bankruptcy judge's findings. It appears that their argument is not one-fold, as they suggest, but rather two-fold. In their argument, they first challenge Bankruptcy Judge Meyer's legal conclusion with respect to what the appropriate rule is under current Seventh Circuit case law for determining whether Ford's pleadings and conduct constituted an "informal claim." This aspect is legal in nature, and therefore, this Court will undertake a *de novo* review of Bankruptcy Judge Meyers' legal determination.

The other challenge is factual in nature. Banterra and One Bank challenge Bankruptcy Judge Meyer's factual finding that Ford informed the trustee, the debtors, and other creditors that its claim against the debtors was partially unsecured and that it intended to pursue this deficiency through the process of orderly liquidation of the debtor's estate. Because this challenge is factual in nature, this Court's standard of review is whether the factual finding is clearly erroneous. *See Matter of Yonikus*, 996 F.2d 866, 872 (7th Cir. 1993) ("The issue of a debtor's intent is a question of fact, or of inference to be drawn from facts, for the bankruptcy court to determine. . . . This court will overturn the bankruptcy court's factual determinations only if they are clearly erroneous."); *cf. Wilkens v. Simon Brothers, Inc.*, 731 F.2d 462, 465 (7th Cir. 1984). In any event, Bankruptcy Judge Meyer's decision

was correct under any standard.

a. **Bankruptcy Judge Meyers Correctly Determined the Applicable Standard In The Seventh Circuit On Informal Claims.**

Banterra and One Bank argue that "[s]everal courts" have required the creditor to satisfy a multi-factored test before a court can consider a creditor's filings and conduct as an informal claim (Doc. 3 at 10). Those "several courts" upon which they rely are district court cases from California, Texas, Rhode Island, Ohio, and one bankruptcy court from the Northern District of Illinois. What Banterra and Bank One however failed to do in their initial brief (Doc. 3) is to cite any Seventh Circuit cases as authority for this approach to informal claims. In fact, in their initial brief, Banterra and One Bank do not even attempt to distinguish the two Seventh Circuit cases, *Wilkins v. Simon Brothers, Inc.*, 731 F.2d 462 (7th Cir. 1984) and *Matter of Unroe*, 937 F.2d 346 (7th Cir. 1991), explicitly relied on by Bankruptcy Judge Meyers in forming his opinion. It appears that they are attempting to graft on a "written demand" requirement coupled with an "exact demand amount" requirement to the Seventh Circuit's *Wilkins* test which generally requires only that the creditor's conduct be sufficient to "evidence[] an intent to assert its claim."

Ford responds. Ford argues that Bankruptcy Judge Meyers' decision to rely in particular on the Seventh Circuit's *Wilkins* case was correct. It was not error, according to Ford, for Bankruptcy Judge Meyers to refuse to graft on numerous additional requirements (*e.g.*, a formal written demand against the estate, expressing the exact amount of the claim, etc.) that have not been required by Seventh Circuit cases. Ford argues that *Wilkins* provides the best guidance on the informal claim issue and is still applicable under the present Bankruptcy Rules. Therefore, according to Ford, Bankruptcy

Judge Meyers was entirely correct to apply it in this case.

This Court agrees with Ford, finding that Bankruptcy Judge Meyers' decision to rely on the general rule in *Wilkins* was entirely correct. The Seventh Circuit has addressed the "informal claim" issue in only a handful of cases. First, in *Wilkins*, the Seventh Circuit stated:

If appellee made an informal claim [before the claim bar date], the late filing can be treated as a perfecting amendment. . . . The question becomes what actions are sufficient to constitute an informal proof amenable to later amendment and perfection. The general rule is that a claim arises where the creditor evidences an intent to assert its claim against the debtor. Mere knowledge of the existence of the claim by the debtor, trustee, or bankruptcy court is insufficient. . . . A creditor can manifest its intent to hold a debtor liable in many ways, and the particular facts of a case will determine whether such a de facto claim has been made.

Wilkins v. Simon Brothers, Inc., 731 F.2d 462, 464 (7th Cir. 1984) (remanding case "to the bankruptcy court for further findings on whether actions taken by appellee evidence an intent to hold debtor liable sufficient to constitute a de facto informal filing"). *Wilkins* set the stage, recognizing the existence of the "informal claim" doctrine and setting forth the general rule.

Next, in *Matter of Evanston Motor Co., Inc.*, 735 F.2d 1029 (7th Cir. 1984), the Seventh Circuit accepted the bankruptcy judge's finding that a letter sent by the creditor to the trustee constituted an informal proof of claim.³ The bankruptcy judge found that the letter was indicative of the creditor's intention on holding the estate liable for the amount remaining on the note. *See In re Evanston Motor Co., Inc.*, 20 B.R. 550, 551 (Bankr. N.D. Ill. 1982). He also found that the letter evidenced the existence, nature and amount of debt due and owing to a creditor, requirements that the bankruptcy judge thought were also required. Convinced with what appears to be more than the

³The bankruptcy judge did not use the terminology "informal proof of claim."

necessary showing, the Seventh Circuit accepted the bankruptcy judge's determination that the letter was an informal proof of claim.⁴ On the one hand, this could be interpreted as a ratification of the bankruptcy's "informal proof of claim" test. This would be a stretch. On the other hand, another interpretation -- and a more likely interpretation -- is that the Seventh Circuit simply found that the bankruptcy judge's determination was correct under *Wilkins*. This later interpretation is also supported by the fact that the Seventh Circuit only explicitly adopted the result, while failing to mention that it agreed with the bankruptcy judge's specific reasoning. Because this case did not specifically ground its holding in any one test, this Court cannot say it abrogated *Wilkins*.

The Seventh Circuit next dealt with the issue in *Matter of Unroe*, 937 F.2d 346 (7th Cir. 1991). The *Unroe* court reaffirmed *Wilkins*, adding that the "key component of a permissible equitable amendment [under the *Wilkins* test] is ... the debtor's knowledge [of the claim]." *Id.* at 350. The *Unroe* court noted that, to be an informal claim, there must be "notice of the [creditor's] intent to collect for" the claim at issue, which must demonstrate that it was "anticipated" that the creditor would fully pursue the claim for which it did not file a timely formal proof of claim. *Id.*

Recent Seventh Circuit cases have not abrogated *Wilkins*, nor tacked on any additional requirements needed to show an "informal claim." *Matter of Stoecker*, 5 F. 3d 1022 (7th Cir. 1993), simply reaffirmed *Wilkins* and *Unroe*, noting that "[a] creditor should therefore be allowed to amend his incomplete proof of claim (what is often called an 'informal proof of claim') to comply with the

⁴The bankruptcy court was reversed by the District Court, 26 B.R. 998 (N.D. Ill. 1983), and the Seventh Circuit affirmed the District Court's reversal, *see* 735 F.2d 1029 (7th Cir. 1984). The Seventh Circuit disagreed with the bankruptcy judge on other grounds.

requirements of Rule 3001, provided that other creditors are not harmed by the belated completion of the filing." The closest the Seventh Circuit came to appending another requirement on the *Wilkins* test was in *Matter of Plunkett*, 82 F.3d 738 (7th Cir. 1996). But in *Plunkett*, the Seventh Circuit explicitly refused to consider whether additional information must be contained in an informal proof of claim for it to be sufficient.⁵

This Court does not see how the Seventh Circuit has abrogated its general rule set forth in *Wilkins*, in which it noted that "the general rule is that a claim arises where the creditor evidences an intent to assert its claim against the debtor." 731 F.2d at 464. In their reply, Banterra and One Bank agree:

The Seventh Circuit recognized the concept of informal proofs of claim stating that "the general rule is that a claim arises where the creditor evidences an intent to assert its claim against the debtor. "

(Doc. 5 at 1.) But they go on, attempting to minimize the explicit general rule enunciated in *Wilkins*, claiming that the import of *Wilkins* does not include this general rule. Not so.

The Seventh Circuit clearly enunciated the general rule in *Wilkins*. It does not appear that the

⁵This Court does not read *Plunkett* as standing for the proposition that a bankruptcy court must find all the formal proof of claim requirements (Rule 3001) were satisfied before recognizing that a creditor's conduct and filings before the claim bar date constituted an "informal claim." *Plunkett*, 82 F.3d at 740. That determination is best saved when deciding whether or not to allow any amendment to that informal claim. Such a Rule 3001 compliance requirement for informal claims would almost eliminate the "informal claim" doctrine, abrogating, if not overruling, *Wilkins*, which the *Plunkett* court cited approvingly in the same paragraph as "sound enough principle." This Court again notes that the whole purpose of the "informal claim" doctrine is provide the basis for allowing amendments to claims that always fail the formal proof of claim requirements of Rule 3001, and therefore necessitate the need for this equitable doctrine. See *Stoecker*, 5 F.3d 1022 (noting that a "creditor should . . . be allowed to amend his incomplete proof of claim . . . to comply with the requirements of Rule 3001").

Seventh Circuit has abrogated the general rule in *Wilkins*. Therefore, Bankruptcy Judge Meyers was entire correct in applying it as he did.

b. **Bankruptcy Judge Meyers Correctly Applied The Seventh Circuit Standard To The Facts Of This Case.**

Banterra and One Bank essentially argue that, even if Bankruptcy Judge Meyers determined the applicable standard in the Seventh Circuit, he nonetheless made an erroneous factual finding. Namely, Banterra and One Bank challenge Bankruptcy Judge Meyer's factual finding that Ford informed the trustee, the debtors, and other creditors that its claim against the debtors was partially unsecured and that it intended to pursue this deficiency through the process of orderly liquidation of the debtor's estate.

Ford responds . Ford argues that Bankruptcy Judge Meyers was correct in finding that Ford, through its filings and conduct throughout the litigation, clearly evidenced an intent to assert and prove its unsecured claim. Ford essentially defers to Bankruptcy Judge Meyers' finding of fact supported by the record.

This Court finds that Bankruptcy Judge Meyers' finding that Ford evidenced an intent to assert the unsecured portion of its claim was not erroneous. In fact, it was entirely correct. Bankruptcy Judge Meyers first determined that Ford played an active role in every phase of the proceedings from the beginning. He also found that while Ford originally appeared as a secured creditor, it became apparent shortly after conversion of the Chapter 11 case to a Chapter 7 case that Ford's collateral was insufficient to meet its secured claim. Banterra and One Bank do not contest these findings, nor could they (Bk. Doc. 66).

Bankruptcy Judge Meyers noted that the claim bar date was set for January 12, 1999. He then noted that documents filed before that time, when taken together, clearly evidenced an intent on the part of Ford to pursue the unsecured portion of its claim. For example, Bankruptcy Judge Meyers first cites the October 9, 1998 "Stipulation for Abandonment of Property," jointly signed by the Trustee, Debtors and Ford, which stated that the "value of the collateral pledged to [Ford] is less than the debt owed to this creditor" (Bk. Doc. 66). This clearly indicates that the remaining portion of its claim would not have been secured by the collateral. Then, on December 8, 1998, Ford objected to the Debtor's motion to dismiss, arguing that "liquidation of the assets of the debtors through this bankruptcy will be more orderly, simple and less expensive for . . . the creditors than liquidation through various state court actions" (Bk. Doc. 89). Ford further stated that "the creditors have incurred expense and spent time getting this case to the point of orderly liquidation so that dismissal of the case would be prejudicial" (Bk. Doc. 89).

Bankruptcy Judge Meyers found that these filings, when taken together, evidenced Ford's intent on asserting an unsecured claim for the deficiency. This Court does not find error in that finding. In fact, this Court agrees that this is the only reasonable interpretation of Ford's filings after the "Stipulation for Abandonment of Property." If Ford was not still pursuing the remaining unsecured portion of its claim against the estate, it simply would not have fought to protect the liquidation of the assets of that estate through various state courts. This finding was entirely correct under the facts of this case.

Wilkins requires that the creditor's conduct and filings evidence an intent to assert its claim against the debtor before a bankruptcy judge can find that an informal claim has been made. In this case, Bankruptcy Judge Meyers correctly found that Ford's conduct and filings evidenced the requisite

intent. Therefore, Bankruptcy Judge Meyers' decision finding that Ford made an informal claim for the deficiency amount was entirely correct.

Banterra's and One Bank's other arguments do not mandate a different result. First, their argument that they were caught "unawares" is meritless. As previously stated, Ford's filings and conduct evidenced its obvious intent to assert the unsecured portion of its claim. Second, Banterra and One Bank argue that the exact amount of the informal claim must be stated in a formal written demand for it to be considered an informal claim. But there is no express requirement in *Wilkins* that, to be an informal claim, there must be a formal written demand stating the exact amount of the claim. *Compare Wilkins*, 731 F.2d at 465; *In re Harper*, 138 B.R. 229, 248 (Bankr. N.D. Ind. 1991); *In re Joiner*, 93 B.R. 130, 134 (Bankr. N.D. Ohio 1988) with *In re Wigoda*, 234 B.R. 413, 415 (Bankr. N.D. Ill. 1999) (applying rigid four-factored informal claim test by relying on non-Seventh Circuit case law). Finally, Banterra and One Bank argue that this is an entirely new claim. The informal claim doctrine works on the assumption that the late filed proof of claim is related to the informal claim which the court deemed timely filed based on a creditor's filings and conduct prior to the claim bar date. Obviously, if there is no relation between the informal claim and the late proof of claim, the creditor cannot treat the late filed proof of claim as being an amendment to the earlier informal claim. Here, this issue does not present a problem. From the beginning, Ford asserted the secured claim. Simply because a portion of that claim turned out to be unsecured does not mean that Ford is asserting an entirely new claim. At best, Ford is recharacterizing the secured status of the same claim that had already been asserted against the estate from the beginning.

2. The Bankruptcy Court Did Not Err In Considering Ford's Motion For Leave

To File A Late Claim As A Motion To Amend An Informal Proof Of Claim.

The second argument Banterra and One Bank make is that Bankruptcy Judge Meyers erred in construing Ford's "motion for leave to file a late claim as a timely claim" as a motion to amend an informal proof of claim. Their argument is two-fold. First, they argue that, by filing a "motion for leave to file a late claim as a timely claim," Ford made a "judicial admission" that its prior filings did not constitute an informal claim. They argue that Ford cannot now contradict that "judicial admission," citing *R.M. Schultz & Associates, Inc. v. Nynex Computer Services Co.*, 1994 WL 124884 (N.D. Ill. Apr. 11, 1994) (dealing with the judicial admission exception to the statute of frauds). Second, Banterra and One Bank argues that Bankruptcy Judge Meyers' granting of Ford's motion to file a formal proof of claim out of time was tantamount to an implicit judicial finding that Ford's filings and conduct did not constitute an informal claim. They argue that this so-called implicit judicial finding became the "law of the case," citing *Bates v. United States*, 2000 WL 134715, *4 (N.D. Ill. Feb. 03, 2000) (holding that generally where the district finds prosecutorial misconduct did not constitute grounds for vacating the jury's verdict, and the Seventh Circuit affirmed, that decision was the law of the case and generally could not be reexamined in a habeas corpus proceeding), which should not be reexamined now.

Ford's argues that it followed what it thought was the proper procedure to bring this issue before the Court because, before it could ask the Court to consider that late-filed formal proof of claim as an amendment to an informal claim, it first had to file the formal proof of claim.

This Court does not find Banterra's and One Bank's linguistic acrobatics convincing. Banterra's and One Bank's first argument is that Ford judicially admitted that it had not made an informal claim by

filing a motion to file a late claim as a timely claim. This Court does not read that as a judicial admission that Ford did not make an informal claim, especially where many courts have found that what Ford did was the proper way of bringing the issue of amending an informal claim to the Court. *See, e.g., In re Diet.*, 136 BR. 459 (Bank. E.D. Mich. 1992); *In re Scott*, 227 BR. 832 (Bank. S.D. Ind. 1998); *see also Matter of Unrove*, 937 F.2d. 346, 350 (7th Cir. 1991). This Court points out that Banterra's and One Bank's case deals with the judicial admission exception to the statute of frauds, and Banterra and One Bank have not cited any cases in which a court treated a "motion to file a late claim as a timely claim" as a judicial admission that would bar the creditor from attempting to amend its informal claim.

Banterra's and One Bank's second argument is that Bankruptcy Judge Meyers' decision allowing Ford leave to file its formal proof of claim out of time was a decision in which Bankruptcy Judge Meyers held on the merits that Ford had not made an informal claim. Where informal claims are involved, the formal proof of claim is always untimely or else the creditor would not have to resort to the informal claim doctrine. All that Bankruptcy Judge Meyers did was allow the proof of claim to be filed "out of time" (Bk. Doc. 174). Again, that is entirely consistent with what many courts treat as the proper procedure for amending an informal claim.

Banterra's and One Bank's arguments are an attempt to elevate form over substance. This Court rejects both arguments.

3. A Remand Is Necessary For The Bankruptcy Court To Enunciate Its Reasoning For Granting The Motion To Amend.

Banterra's and One Bank's last argument is directed at why the amendment to an informal proof of claim should be disallowed. Many of the arguments against allowing an amendment that Banterra

and One Bank now raise do not appear to have been developed in the Bankruptcy Court. Generally, that would be an independent ground for not considering them in this Court. *See Matter of Kroner*, 953 F.2d 317, 319-20 (7th Cir. 1992) (failure to raise an argument before the bankruptcy court waives it on de novo review in the district court absent exceptional circumstances); *see also United States v. Barques*, 927 F.2d 1376, 1384 (7th Cir. 1991) ("We repeatedly have made clear that perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived").

This case is a little unique, however. The same day that Bankruptcy Judge Meyers issued an order in which he construed a motion to file a late-filed claim as a timely claim as a motion to amend an informal claim, he also issued the opinion granting the amendment. Banterra's and One Bank's arguments appear to have been related to the issue of whether Ford could file a late claim, not as to whether Ford could make an amendment. Nonetheless, they did argue that Ford presented no excuse for not filing a formal proof of claim earlier. This can be likened to a "no excusable neglect" argument. These arguments were not thoroughly developed before Bankruptcy Judge Meyers, presumably because Banterra's and One Bank's objections were already filed before Bankruptcy Judge Meyers construed the motion as being one to amend an informal claim.

Also complicating things is the brevity of Bankruptcy Judge Meyers' opinion allowing the amendment (Bk. Doc. 186). It does not appear that he specifically addressed Banterra's and One Bank's argument that Ford failed to file its formal proof of claim earlier (Bk. Doc. 186). The fact that their argument was perfunctory might be because they did not know that Bankruptcy Judge Meyers was going to be treating this motion as a motion to amend. In any case, this Court finds that a remand is necessary for Bankruptcy Judge Meyers to clarify his reasoning as to why he granted the amendment.

See Matter of Shocker, 5 F.3d 1022, 1028 (7th Cir. 1993); *Matter of Planchet*, 82 F.3d 738, 740-42 (7th Cir. 1996).⁶

Ford argues that, because Bankruptcy Judge Meyers has allowed objections to be filed challenging the amended claim, this settles the dispute. Not exactly. Objections to the amount of the amended informal claim assume that the motion to amend has already been granted. But a decision must be made on whether or not the motion construed as a motion to amend should be allowed in the first place.

This Court is not finding that Bankruptcy Judge Meyers was wrong in result. In fact, the outcome may be totally correct. But this Court finds that a remand is necessary on this issue so that Bankruptcy Judge Meyers can enunciate his specific reasoning for granting the motion to amend. This Court leaves it up to Bankruptcy Judge Meyers as to whether or not to allow Ford to supplement its formal proof of claim, *see Shocker*, 5 F.3d at 1028 (“A creditor should . . . be allowed to amend his . . . “informal proof of claim” . . . to comply with the requirements of Rule 3001”), and whether or not to allow additional briefing to allow Banterra and One Bank to respond to the motion after it had construed as a motion to amend, *see Planchet*, 82 F.3d at 740-42 (“[T]he bankruptcy judge did not reach the question of whether [creditor’s] effort to amend its claim came too late. Ordinarily, a remand would follow”).

IV. CONCLUSION

For the foregoing reasons, the Appeal is **GRANTED in part** and **DENIED in part**.

⁶This Court notes that Banterra’s and One Bank’s claims of prejudice are likely not the type that preclude amendments. *See Shocker*, 5 F.3d at 1028.

Bankruptcy Judge Meyers' December 21, 1999 Order construing Ford's motion to file a late claim as a timely claim as a motion to amend an informal claim (Bk. Doc. 185) is **AFFIRMED**, and his December 21, 1999 Order granting Ford's motion to amend (Bk. Doc. 186) is **REMANDED** so that Bankruptcy Judge Meyers can clarify his reasoning for granting that motion.

IT IS SO ORDERED

DATED: July 12, 2000.

/s/ J. PHIL GILBERT
Chief Judge