

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
PEGGY L. BALL,)	Case No. 00-13485
)	Chapter 13
Debtor.)	
_____)	

**ORDER GRANTING MOTION FOR LEAVE TO FILE
OBJECTION TO CONFIRMATION**

This matter comes before the Court on the motion of Michael Hunt, Sr. and Jeffrey Chaikin, duly appointed trustees of the Glaziers Local No. 558 Pension Fund and the Glaziers Local Union No. 558 Health and Welfare Trust Fund, and Gary Meyers, administrator and fiduciary of the International Brotherhood of Painters and Allied Trades Union and Industry Pension Fund (known cumulatively herein as “Creditor Funds”) for leave to file their objection to the confirmation of debtor’s plan out of time.

Debtor Peggy Ball filed her Chapter 13 petition on September 6, 2000. On September 7, 2000, the Clerk’s office issued a Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines, which provided that a plan had not been filed as of that date, but that a hearing on confirmation would be held November 9, 2000. The Notice established a deadline for filing objections to confirmation of the plan for 15 days before the hearing, or October 25, 2000. Ms. Ball filed her Chapter 13 plan on September 20, 2000, and the Bankruptcy Noticing Center mailed it to one of the Creditor Funds on September 23, 2000, without the accompanying notice of confirmation hearing as required by Fed. R. Bankr. P. 3015(d) and Local Bankruptcy Rule

3015(b).1.¹ There is no certificate of mailing of the plan or notice filed by debtor's counsel in the file. On November 1, 2000, the Trustee filed her objection. On November 3, 2000, the Creditor Funds filed their objection. The Creditor Funds' objection was incorrectly labeled an Objection To Discharge, but substantively it was an objection to confirmation and clearly states so in the pleading. The trustee objected to confirmation of the plan under a Chapter 7 liquidation analysis, one of the same reasons asserted by the Creditor Funds. The Creditor Funds also objected to confirmation asserting bad faith because of a pending suit in the United States District Court for the Western District of Missouri for breach of fiduciary duty under the Employee Retirement Income Security Act, 29 U.S.C. § 1024(a)(1). Ms. Ball's plan confirmation came before the Court for hearing on November 9, 2000 and the Court continued confirmation to a January 4, 2001 pretrial conference. On December 20, 2000, the Creditor Funds filed their Motion for Leave to File Objection to Confirmation. At the January 4, 2001 pretrial conference, this Court entered a Scheduling Minute Order pursuant to which the Creditor Funds and debtor were to submit simultaneous briefing on the issue of the permissibility of the Creditor Funds' filing their objection out of time.

In support of their motion, the Creditor Funds argue that Fed. R. Bankr. P. 9006(b)(1) allows the Court to enlarge the time for filing objections to confirmation where the failure to act was the result of excusable neglect. The Creditor Funds cite to Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993) as support for their position that their

¹Fed. R. Bankr. P. 3015(b) provides that if a Chapter 13 plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. L.B.R. 3015(b).1(b) provides that a plan filed after the petition must be served, together notice of the time for objections and the hearing to consider confirmation, by the debtor's attorney, or the debtor if not represented.

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failure to timely file their objection was due to excusable neglect. The Creditor Funds argue that they were negligent in not getting the objection filed by October 25, 2000, but that the neglect is excusable because it does not prejudice the debtor or delay the case, and because they acted in good faith.

Debtor argues that the Creditor Funds had ample notice of the objection deadline and their motion should be denied. Debtor also asserts that the Creditor Funds' failure to file their objection within the deadline should not be excused under the excusable neglect standard. Debtor points out that the Creditor Funds gave no excuse for missing the deadline except to say that the omission was inadvertent.

Because of a noticing defect, the Court need not decide whether the Creditor Funds' motion should be granted on grounds of excusable neglect. The Court finds that the Creditor Funds were not given proper notice of the plan and confirmation hearing as required by Fed. R. Bankr. P. 2002, 3015(d) and L.B.R. 3015(b).1. Rule 2002(b) requires the clerk, or some other person as the court may direct, to give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of the time fixed for filing objections and the hearing to consider confirmation of a Chapter 13 plan. Rule 3015(d) provides that "[t]he Chapter 13 plan or a summary of the plan shall be included with *each* notice of the hearing on confirmation mailed pursuant to Rule 2002(b)" (emphasis added).

Local Bankruptcy Rule 3015(b).1 provides that a notice of the time for objections and the hearing to consider confirmation must be filed with each Chapter 13 plan. Because the Creditor Funds were not served a copy of Ms. Ball's Chapter 13 plan with a notice of the confirmation

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hearing as required by both the federal rules and local court rules, the Creditor Funds were denied procedural due process. Due process is satisfied when the “notice is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950). Under the bankruptcy rules, due process is satisfied when each notice of the confirmation hearing is accompanied by a copy of the debtor’s Chapter 13 plan. The Creditor Funds were deprived of their procedural due process rights under Rule 3015(d) and L.B.R. 3015(b).1 and, as such, their Motion For Leave To File Objection To Confirmation is GRANTED. Additionally, pursuant to the currently governing Scheduling Minute Order dated January 4, 2001, debtor’s counsel shall prepare and submit the final pretrial conference order by May 4, 2001, with all Chapter 13 confirmation matters to be set for trial thereafter.

IT IS SO ORDERED.

Dated this 17th day of April, 2001.

ROBERT E. NUGENT, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF KANSAS
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The undersigned certifies that copies of the **Order Granting Motion For Leave To File Objection To Confirmation** were deposited in the United States mail, postage prepaid on this 17th day of April, 2001, to the following:

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