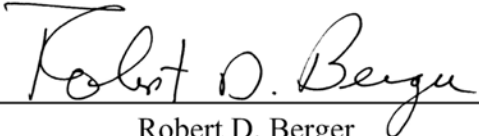




**The relief described hereinbelow is SO ORDERED.**

**SIGNED this 26th day of July, 2019.**

  
Robert D. Berger  
United States Bankruptcy Judge

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

**In re:**

**John Q. Hammons Fall 2006, LLC, *et al.*,**

**Debtors.**

**Case No. 16-21142  
Chapter 11**

**[Jointly Administered]**

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**Order Granting Joint Debtors' Motion to Disallow Proofs of Claim**

The Jointly Administered Debtors object to the proofs of claim filed by Creditors Larry and Barbara Shepherd, alleging any claims the Shepherds may have had were extinguished in a broad release signed by the Shepherds in settlement of a state court personal injury action brought by the Shepherds against one of the Joint Debtors' affiliates. The Court agrees and the Joint Debtors' motion to disallow Claim Nos. 423, 424, 425, and 794 is granted. The Shepherds' claims are disallowed in their entirety.

**I. Background**

In 2015, the Shepherds filed a personal injury action in Texas state court against one of the Joint Debtors' affiliate hotels. The Shepherds were represented by counsel throughout that

state court action. In June and July 2016, the Joint Debtors filed their Chapter 11 bankruptcy cases, causing the automatic stay of bankruptcy to cease action in the state court case. On July 13, 2016, the Shepherds, represented by local bankruptcy counsel, filed a motion for relief from the automatic stay.<sup>1</sup> On August 18, 2016, the parties entered into a Stipulated Order, granting limited relief from the stay so that the Shepherds could litigate pursuit and completion of any appeals in the state court action “for the purpose of establishing the amount, if any, of their claims.”<sup>2</sup> The Stipulated Order also stated:

Upon the entry of a Final Judgment, order, or agreed settlement determining the Claim Amount, if any, to the extent permitted under applicable non-bankruptcy law, [the Shepherds] may enforce and collect the Claim Amount directly from the insurance carriers as described in the Lift Stay Motion, or any other third party insurance carriers, without having to seek a further order of this Court. Collection from the Debtors shall be governed by the provisions of any plan to be filed and confirmed in these Bankruptcy Cases[.]<sup>3</sup>

The Stipulated Order also noted that the Shepherds were not relieved of timely filing a proof of claim and that a proof of claim would be deemed timely if it were filed on or before 30 days after settlement or judgment. The Shepherds filed Claim Nos. 423, 424, and 425 on December 20, 2016, asserting claims of \$1 million stemming from the state court action.

In September 2017, the Shepherds entered into a settlement agreement with the affiliate of the Joint Debtors involved in the state court litigation. On September 25, 2017, the Texas state court entered an Agreed Order of Dismissal with Prejudice, dismissing all claims asserted by the Shepherds in the state court action, with prejudice against refiling.<sup>4</sup> Shortly after that dismissal,

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<sup>1</sup> Doc. 139.

<sup>2</sup> Doc. 357.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> Doc. 2697-1, at 35-36.

on October 2, 2017, Barbara Shepherd filed Claim No. 794 in the amount of \$3 million for personal injury.

On May 7, 2018, Debtors filed a Sixth Omnibus Objection to Proofs of Claim,<sup>5</sup> pursuant to the Court's Claim Objection Procedures Order.<sup>6</sup> Notice of that objection was served on the Shepherds, and the Shepherds filed a pro se response to that objection.<sup>7</sup> The Court entered an Order on January 10, 2019, granting the objection to the proofs of claim for failure to timely file a response in accordance with the Claim Objection Procedures Order.<sup>8</sup> No objection to, or appeal from, the Court's Order was made. On May 21, 2019, however, the Court entered a subsequent Order on Debtors' Sixth Omnibus Objection to Proofs of Claim, not impacting the Shepherds' claims, but modifying treatment of other claims filed under the Sixth Omnibus Objection.<sup>9</sup> In apparent response to that Order, on May 23, 2019, Barbara Shepherd emailed counsel for the Joint Debtors, accusing counsel of misrepresenting facts to the Court and demanding correction under threat of report to the state disciplinary administrator. As a result, the Joint Debtors filed the current motion to disallow the Shepherds' claims.

## **II. Analysis**

Proceedings concerning the "allowance or disallowance of claims against the estate" are core proceedings under 28 U.S.C. § 157(b)(2)(B), over which this Court may exercise subject matter jurisdiction.<sup>10</sup>

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<sup>5</sup> Doc. 2167.

<sup>6</sup> Doc. 1198.

<sup>7</sup> Doc. 2276.

<sup>8</sup> Doc. 2598.

<sup>9</sup> Doc. 2680.

<sup>10</sup> 28 U.S.C. § 157(b)(1) and § 1334(b).

“Pursuant to 11 U.S.C. § 502(a), a claim, proof of which is filed under § 501, is deemed allowed, unless a party in interest objects.”<sup>11</sup> After an objection, the Court must determine the amount of the claim under § 502(b). Joint Debtors, as the objecting party to the proofs of claim, carry “the burden of going forward with evidence supporting the objection” to the Shepherds’ proofs of claim.<sup>12</sup> The Court treats pro se pleadings liberally, but it cannot advocate for pro se litigants.<sup>13</sup> A court cannot “construct arguments or theories for the [movant] in the absence of any discussion of those issues”<sup>14</sup> or “supply additional factual allegations to round out a . . . complaint or construct a legal theory on [a movant’s] behalf.”<sup>15</sup>

In the Shepherds’ written response to the Joint Debtors’ motion to disallow their proofs of claim, the Shepherds argue they did not receive notice of the Joint Debtors’ Sixth Omnibus Objection to Proofs of Claim, filed on May 7, 2008. The Shepherds contend that notice should have been given to them by mail to “8004 County Road 259, Cameron, TX 76520,” the address given on the October 2, 2017, claim filed by Barbara Shepherd. Under Federal Rule of Bankruptcy Procedure 3007, mailing a copy of an objection to a proof of claim with notice of the hearing thereon to the claimant at the address provided in the proof of claim is sufficient to provide due process to the claimant,<sup>16</sup> and the Court’s Claim Objection Procedures Order required the same.<sup>17</sup> The Joint Debtors’ Objection states it was sent to each of the persons

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<sup>11</sup> *In re Hensley*, 356 B.R. 68, 75 (Bankr. D. Kan. 2006).

<sup>12</sup> *In re Picacho Hills Util. Co., Inc.*, 515 B.R. 820, 824 (Bankr. D.N.M. 2014), quoting *Allen v. Geneva Steel Co. (In re Geneva Steel Co.)*, 260 B.R. 517, 524 (B.A.P. 10th Cir. 2001).

<sup>13</sup> *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). As noted above, the Shepherds have at various times been represented by counsel, but are currently proceeding pro se.

<sup>14</sup> *Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991).

<sup>15</sup> *Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997).

<sup>16</sup> *In re Hensley*, 356 B.R. 68, 75-76 (Bankr. D. Kan. 2006).

<sup>17</sup> Doc. 1198 ¶ 12(b).

identified in Exhibit A to that objection, and Barbara Shepherd is identified thereon.<sup>18</sup> In addition, the Shepherds filed a pro se response to that objection,<sup>19</sup> making their claimed lack of notice disingenuous. As a result, the Shepherds were afforded notice of the objection to their claims, and the Court's Order sustaining the Joint Debtors' Objection to those Proofs of Claim was final.

Regardless, the Shepherds pressed forward at the hearing on this matter that they understood the settlement of their state court case to apply only in the Texas court, not in bankruptcy court. The Shepherds claim they believed this Court's Stipulated Order granting limited stay relief gave them the opportunity to return to the bankruptcy court and file their claims here.

First, the state court entered an Agreed Order between the parties, dismissing all claims with prejudice.<sup>20</sup> That Agreed Order, signed by counsel for the Shepherds, stated that "all matters in controversy" between the parties were compromised and settled. The Agreed Order dismissed, with prejudice to refiling, all "claims, actions, and causes of action asserted by or which could have been asserted by" the Shepherds. The Agreed Order of dismissal stated that "no further dispute" existed between the parties.

In addition, the Court has analyzed the sealed settlement executed by the Shepherds in the state court litigation. Therein, the Shepherds "release" and "forever discharge" the affiliate of the Joint Debtors against whom they brought suit for "any and all claims, actions, causes of action, demands," *et cetera*.<sup>21</sup> The Shepherds had counsel throughout the settlement and

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<sup>18</sup> Doc. 2167, Exh. A.

<sup>19</sup> Doc. 2276.

<sup>20</sup> Doc. 2697-1, at 35-36.

<sup>21</sup> Doc. 2724 (Sealed).

dismissal with prejudice of their state court action and during the negotiation of the stay relief matter in the bankruptcy court that allowed them to return to the state court litigation. The release given by the Shepherds within the settlement is broad; there is no carve out for the Shepherds to pursue renewed claims in the bankruptcy court. Each page of the settlement was initialed by both of the Shepherds, and the settlement was signed by both the Shepherds as well. The Shepherds were paid a settlement of their state court personal injury suit. The settlement indicates both the Shepherds “completely read” and “fully understood” what they were signing.

Nothing in this Court’s Stipulated Order granting limited relief from stay changes this outcome. The Stipulated Order allowed the Shepherds to return to state court and litigate to completion the state court action. The Stipulated Order permitted the Shepherds to establish the amount of their claim and even permitted them to enforce and collect the claim amount against any insurance carrier. Yes, the Stipulated Order indicated the Shepherds were not relieved of timely filing a proof of claim, but that did not mean a claim would automatically be allowed just because they filed it. The Shepherds settled whatever claims they had and released the Joint Debtors from all liability in exchange for the payment of a sum to which they agreed. The release was broad, and express, and as a result, the Shepherds do not have a valid claim in the Joint Debtors’ bankruptcy cases.

### **III. Conclusion**

The Joint Debtors’ motion to disallow Claim Nos. 423, 424, 425, and 794 is granted.<sup>22</sup> The Shepherds’ proofs of claim are disallowed.

IT IS SO ORDERED.

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<sup>22</sup> Doc. 2690.

ROBERT D. BERGER  
U.S. BANKRUPTCY JUDGE