



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

SIGNED this 3rd day of December, 2021.


Robert D. Berger
United States Bankruptcy Judge

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

In re:

AMBER KAY SHANK,

Debtor,

Case No. 21-20605

Chapter 13

INSTANT ONE MEDIA, INC.,

Creditor,

ORDER DENYING CREDITOR'S MOTION TO ALLOW LATE-FILED PROOF OF CLAIM

In this case, creditor Instant One Media, Inc. ("Instant One Media") seeks to avoid the results of missing the deadline to file a formal proof of claim. The Debtor filed for Chapter 13 Bankruptcy on May 28, 2021,¹ and shortly thereafter, a Notice of Chapter 13 Bankruptcy was

¹ [ECF 1](#).

mailed to Instant One Media.² The Notice provided that the deadline for creditors who are not governmental units to file a proof of claim was set for August 6, 2021.³ Instant One Media filed an objection to confirmation on July 21, 2021.⁴ However, Instant One Media did not file a formal proof of claim with this Court until August 16, 2021.⁵ In its late-filed proof of claim, Instant One Media asks this Court to allow its claim resulting from a judgment against Debtor's LLC in the amount of \$1,035,000.00.⁶ To support its Motion to Allow Late-Filed Proof of Claim, Instant One Media advances two arguments: (1) its objection to confirmation served as an informal proof of claim,⁷ and (2) in the alternative, the missed deadline should be held as excusable neglect under Bankruptcy Rule 9006.⁸

In order to receive distributions under a Chapter 13 plan, the holder of an unsecured claim is required to file a timely proof of claim.⁹ A proof of claim for a non-governmental unit in a Chapter 13 case must be filed within 70 days after the order for relief.¹⁰ This provision acts as a statute of limitations, such that a claim filed after the bar date will not be entitled to distributions from the estate.¹¹

² [ECF 9](#).

³ *Id.* at ¶ 2.

⁴ [ECF 35](#).

⁵ [ECF 37](#), Ex. B.

⁶ *Id.* at ¶ 2, Ex. B.

⁷ *Id.* at ¶ 5.

⁸ *Id.* at ¶ 7.

⁹ The governing code provision [11 U.S.C. § 502\(b\)\(9\)](#) prevents, upon objection, the allowance of a late-filed claim except as permitted by [11 U.S.C. § 726\(a\)\(1\), \(2\), or \(3\)](#). However, § 726(a) cannot be used as a reason to allow a late-filed claim in a Chapter 13 Bankruptcy, because the provision is limited to liquidation under Chapter 7. *See* 16 Collier on Bankruptcy ¶ 3002.03[1] (Richard Levin & Henry J. Sommer eds., 16th ed.). In determining such protection does not extend to Chapter 13 creditors, courts look to the strong statutory evidence that Congress failed to adopt a similar rule to § 726(a)(2) for Chapter 13. *In re Sykes*, [451 B.R. 852, 858](#) (Bankr. S.D. Ill. 2011) (citing *In re Jensen*, [333 B.R. 906](#) (Bankr. M.D. Fla. 2000); *Jones v. Arross*, [9 F.3d 79, 81](#) (10th Cir. 1993)).

¹⁰ [Fed. R. Bankr. P. 3002\(c\)](#).

¹¹ *In re Reliance Equities*, [966 F.2d 1338, 1345](#) (10th Cir. 1992); 16 Collier on Bankruptcy ¶ 3002.03[1] (Richard Levin & Henry J. Sommer eds., 16th ed.).

Creditor, Instant One Media, failed to file a timely proof of claim. Since Debtor filed for bankruptcy on May 28, 2021, the proper deadline was 70 days later on August 6, 2021. Creditor did not file a formal proof of claim until August 16, 2021. It is not contested that Creditor failed to meet the proper deadline.

Kansas bankruptcy courts have repeatedly held that a properly noticed creditor cannot file its proof of claim after the bar date unless the creditor can establish the stringent requirements for an informal proof of claim.¹² The informal proof of claim doctrine allows a late-filed proof of claim to “relate back” to a timely filed document that acted as an “informal” proof of claim.¹³ That is to say, the doctrine allows a late-filed proof of claim where a creditor filed a document with the court prior to the bar date that put the debtor on notice of the creditor’s claim.¹⁴ The seminal case in the Tenth Circuit, *In re Reliance Equities, Inc.* (“*Reliance*”), established a five-prong test to determine what constitutes an informal proof of claim.¹⁵ The test requires:

1. the informal proof of claim must be in writing,
2. the writing must contain a demand by the creditor on the debtor’s estate,
3. the writing must express an intent to hold the debtor liable for the debt,
4. the informal proof of claim must be filed with the Bankruptcy Court, *and*
5. based on the facts, it would be equitable to allow the amendment.¹⁶

¹² *In re Hrabe*, No. 19-41366-15, [2021 WL 961069](#), at *3 (Bankr. D. Kan. March 10, 2021) (Somers, C.J.) (citing *In re Swenson*, No. 14-40173-12, [2015 WL 3745307](#), at *2 (Bankr. D. Kan. June 12, 2015) (Somers, C.J.)). In applying the informal proof of claim doctrine, the Court may consider cases filed under Chapter 7, Chapter 12, or Chapter 13. This is a logical result because the informal proof of claim doctrine acts as an exception to Rule 3002(c) which contemplates the timely filing of “a voluntary chapter 7 case, chapter 12 case, or chapter 13 case.”

¹³ *In re Integrity Directional Servs., LLC*, [613 B.R. 361, 366](#) (Bankr. W.D. Okla. 2020).

¹⁴ *See id.*

¹⁵ [966 F.2d at 1345](#).

¹⁶ *Id.* (emphasis added).

To satisfy the test, the creditor must establish every element, because the use of “and” indicates that the elements were created in the conjunctive.¹⁷

Instant One Media’s objection to confirmation meets only two of the *Reliance* requirements, i.e., it is a writing, and it was filed with the bankruptcy court. However, the objection is insufficient to qualify as an informal proof of claim, because it fails to make a demand against the estate or express an intent to hold the debtors liable for a debt. It does not specify an amount or a basis for its claim; rather, it focuses on the Debtor undervaluing business assets and miscalculating the means test, along with a request for documentation of the Debtor’s income and expenses. None of these assertions are a demand expressing intent to hold the debtor liable.

Still, Instant One Media argues that it would be equitable to allow the late-filed claim, because it only missed the bar date by slightly more than a week and the judgment amount of \$1,035,000.00 is significant.¹⁸ But, equity alone cannot establish an informal proof of claim, and this Court will only consider equity if the document meets the first four requirements.¹⁹

Although it is unnecessary in this case, because the creditor failed to establish two of the first four elements above, this Court will examine equity to elucidate its analysis. In examining equity, the court should consider (1) whether the claimant is sophisticated, (2) whether the claimant had actual notice of the bar date, and (3) whether the claimant was intimately involved in the debtor’s case. This version of the test provides a clear formulation of courts’ general reluctance to recognize an informal proof of claim where the creditor had numerous

¹⁷ *In re Integrity Directional Servs., LLC*, [613 B.R. at 372](#).

¹⁸ [ECF 38 ¶6](#).

¹⁹ *In re Integrity Directional Servs., LLC*, [613 B.R. at 372](#).

opportunities to protect itself, especially in cases where the creditor was involved in the bankruptcy proceeding and represented by counsel.²⁰ Applying that test, Instant One Media is represented by counsel, received sufficient notice of the bar date, and participated in the case by filing its Objection. In light of such facts, it would not be equitable to allow Instant One Media's claim. Unable to meet all of the *Reliance* elements, Instant One Media's Objection cannot act as an informal proof of claim.

Alternatively, Instant One Media asks this Court to consider its error as excusable neglect under Bankruptcy Rule 9006. Rule 9006(b) is quite generous with extending time limits, including permitting a court to retroactively enlarge time limits for excusable neglect.²¹ Specifically, Rule 9006(b)(1) provides that "the court for cause shown may . . . order the period enlarged . . . after the expiration of the specified period . . . where the failure to act was the result of excusable neglect." The Supreme Court laid out the standard for excusable neglect under Rule 9006(b)(1) in *Pioneer Investment Services Co. v. Brunswick Associates*.²² *Pioneer* explained that excusable neglect requires a balancing of the equities "taking account of all relevant circumstances surrounding the party's omission."²³

Although the Court applies excusable neglect generously in accord with *Pioneer*, Rule 9006(b) cannot extend the period for filing a proof of claim in a Chapter 13 case due to the operation of subsection (3).²⁴ Rule 9006(b)(3) provides that "[t]he court may enlarge the time for taking action . . . *only to the extent and under the conditions stated*" (emphasis added) in Rule

²⁰ *Id.* at 373; *In re Reliance Equities*, 966 F.2d at 1345; *In re Antonich*, 251 B.R. 441 (B.A.P. 10th Cir. 1999); *In re Spresser*, No. 11-4052-CM, 2012 WL 124855, at *4 (D. Kan. Jan. 17, 2012).

²¹ 16 Collier on Bankruptcy ¶ 9006.01 (Richard Levin & Henry J. Sommer eds., 16th ed.).

²² 507 U.S. 380, 389 (1993).

²³ *Id.* at 395.

²⁴ *See id.* *See also In re Lopez*, 629 B.R. 322, 328 (B.A.P. 1st Cir. 2021).

3002(c) for filing a proof of claim in Chapter 13 cases. When Rule 9006(b)(3) provides for enlargement to be governed by another rule, such as Rule 3002, an extension for excusable neglect may not be granted under Rule 9006(b)(1).²⁵ In other words, Rule 3002 governs the period for filing a proof of claim in a Chapter 13 case, and the time to file cannot be extended under Rule 9006(b).²⁶ Thus, the excusable neglect exception under Rule 9006(b)(1) cannot extend to filing a proof of claim in a Chapter 13 case.²⁷

In declining to extend the excusable neglect exception to filing a proof of claim in a Chapter 13 case, this Court applies Rule 9006(b) consistently with its purpose. The purpose of Rule 9006(b)(3) is to limit or outright preclude the enlargement of time for rules whose purpose would be frustrated by “long extensions of time or, in some instances, by any extension at all.”²⁸ In doing so, Rule 9006(b)(3) limits the time frame for filing a proof of claim in a Chapter 13 case to 70 days.²⁹ This limitation is consistent with the long-standing precedent that the claims bar date under Rule 3002 is final.³⁰ So, limiting the time frame for filing a proof of claim and not allowing for retroactive extension of the deadline is consistent with the purpose of Rule 9006(b).

Here, the Court cannot allow Instant One Media’s proof of claim out of time for excusable neglect. This is a Chapter 13 case governed by the 70-day deadline stated in Rule 3002(c), which cannot be retroactively enlarged for excusable neglect.³¹ Despite proper notice, movant failed to file its proof of claim within the 70-day time period. Although movant cites *Pioneer* for allowance of a late-filed claim due to excusable neglect, this argument fails. The

²⁵ See 16 Collier on Bankruptcy ¶ 9006.08[1] (Richard Levin & Henry J. Sommer eds., 16th ed.) (citing 1983 Advisory Committee Note to Rule 9006).

²⁶ *In re Cisneros*, No. 17-33497, 2018 Bankr. LEXIS 2859 at *8–9 (Bankr. N.D. Ohio Sept. 17, 2018).

²⁷ See *Jones*, 9 F.3d at 81.

²⁸ 16 Collier on Bankruptcy ¶ 9006.01 (Richard Levin & Henry J. Sommer eds., 16th ed.).

²⁹ See Fed. R. Bankr. P. 3002(c).

³⁰ See *In re Rhabe*, 2021 WL 961069 at *3.

³¹ See Fed. R. Bankr. P. 9006(b)(3).

Pioneer case was filed under Chapter 11, where the time for filing claims is governed by Rule 3003(c)(3). Rule 3003(c)(3) is not mentioned in Rule 9006(b)(3), and thus, retroactive enlargement under Rule 9006(b)(1) for excusable neglect is proper in Chapter 11 cases. Unlike Chapter 11 cases, the deadline for Chapter 13 proofs of claim are governed by Rule 3002(c) which cannot be extended for excusable neglect under Rule 9006(b)(1). Since this is a Chapter 13 case, the excusable neglect exception under Rule 9006(b)(1) cannot retroactively extend the deadline to file a proof of claim.

In conclusion, Instant One Media's Objection cannot serve as an informal proof of claim, and the missed deadline cannot be extended for excusable neglect under Bankruptcy Rule 9006. The Motion to Allow Late-Filed Proof of Claim is denied.

It is so Ordered.