

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Elizabeth E. Brown

In re:

JONATHAN A. VANDERPOL,

Debtor.

Bankruptcy Case No. 19-10072 EEB

Chapter 13

ORDER DEEMING PROOF OF CLAIM TIMELY

THIS MATTER comes before the Court on the Motion to Extend Claims Deadline and Allow Claim Number 14 as a Timely Filed Proof of Claim, filed by creditor American Express National Bank. The Debtor has joined in this request. The Chapter 13 trustee opposes it on the basis that Bankruptcy Rule 3002(c) sets forth the limited circumstances under which a court may exercise its discretion to allow a late-filed claim as timely, but it asserts that none apply to the circumstances of this case.

In this case, the Debtor timely filed schedules and the “list of creditors,” required by Fed. R. Bankr. P. 1007(a)(1). Unfortunately, the Debtor inadvertently omitted American Express from both. The “list of creditors” is commonly referred to as the “Creditor Matrix.” See L.B.R. 9001-1(2) (defining “Creditor Address Mailing Matrix” to be the list provided by the debtor pursuant to Fed. R. Bankr. P. 1007(a)). This filing is distinct from a debtor’s schedules. The Matrix is simply an address list that contains the name and address of each of the creditors listed on the schedules.¹ The Creditor Matrix is critically important in any bankruptcy case because it is used by the debtor, the Clerk of Court, and other parties in interest as the service list when either the Code² or Rules³ require service of a pleading on “all creditors.” See L.B.R. 9013-1(a)(2)(C) (“For notice to all creditors and parties in interest, the movant must use, at a minimum, all of the addresses contained on the most current version of the Creditor Address Mailing Matrix.”). This includes service of the “Notice of Chapter 13 Bankruptcy Case” (the “Initial Notice”) by the Clerk of Court at the beginning of the case that notifies creditors of the filing of the petition, the imposition of the automatic stay, and several key dates and deadlines, including the deadline for filing a proof of claim.

¹ If an attorney files an entry of appearance in a case, that attorney’s name is also automatically added to the Creditor Matrix. L.B.R. 9010-1(f).

² All references to “Code,” “§,” or “section” shall refer to Title 11, United States Code, unless expressly stated otherwise.

³ All references to “Rule” shall refer to the Federal Rules of Bankruptcy Procedure, unless expressly stated otherwise.

Here, the Initial Notice told creditors that the last day for filing a proof of claim would be March 18, 2019. But the Clerk did not transmit the Initial Notice to American Express due to the Debtor's inadvertent omission. American Express first learned of this bankruptcy case on April 12, 2019, about one month after the claims bar date.

Although Rule 3002(c) sets forth several circumstances under which a court may grant an extension of the claims bar date, the only potentially relevant provision is Rule 3002(c)(6)(A). This provision was recently added when Congress amended the Bankruptcy Rules as of December 1, 2017. In relevant part, it states:

On motion filed by a creditor before or after the expiration of the time to file a proof of claim, the court may extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds that: (A) the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)⁴

The Rule's reference to a "list of creditors" is to the Creditor Matrix.

By its express terms, Rule 3002(6)(c)(A) only applies when the debtor fails to file the Creditor Matrix on a timely basis, a circumstance that does not apply here. Ordinarily, where the language of a statute is plain, "the sole function of the courts is to enforce it according to its terms." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). This canon of statutory construction applies to rules of procedure as well. *Pavelic & LeFlore v. Marvel Entm't Group*, 493 U.S. 120, 123 (1989). In particular, any other interpretation would violate the rule of statutory construction known as *expressio unius est exclusio alterius*. Under this maxim, when the "persons and things to which [a statute] refers are designated, there is an inference that all omissions should be understood as exclusions." 2A Norman J. Singer, J.D. Shambie Singer, *Statutes and Statutory Construction* § 47:23 (7th ed. 2007). By referring only to the failure to file the Creditor Matrix timely and omitting any reference to leaving a particular creditor off the Creditor Matrix, this maxim would counsel the Court to find that the omission was intentional and signals Congressional intent to narrowly grant a discretionary extension.

In fact, one court and one commentator have followed this maxim and rejected any attempt to expand its meaning to include an omitted creditor. In *In re Wulff*, 598 B.R. 459 (Bankr. E.D. Wis. 2019), the debtor listed a secured creditor on his creditor matrix and in his schedules but with an invalid address. The creditor did not learn of the bankruptcy until after the proof of claim deadline had expired. Acknowledging that it was clear the creditor had insufficient notice of the case in time to file a claim, the court nevertheless ruled that the other condition of Rule 3002(c)(6)(A)—the debtor's failure to

⁴ Rule 1007(a)(1) provides that a debtor in a voluntary case, "shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms."

timely file the Creditor Matrix—had not been met. Relying on a strict reading of the rule’s language, the court held that it did not apply where a debtor timely files the Creditor Matrix but omits the creditor or provides an incorrect address. *Id.* at 465.

Similarly, the Collier treatise suggests that Rule 3002(c)(6)(A) applies only where notice to creditors of the proof of claim deadline is delayed by the debtor’s failure to timely file the list of creditors.

If notice of the time to file a proof of claim is delayed because the list of creditors is not filed with the petition or a motion to extend the time for filing the list of creditors is granted under Rule 1007(a)(5), a creditor may have grounds to file a motion to extend the time for filing a proof of claim. However, delay in receiving the notice by itself is not a sufficient basis for granting the motion. The creditor will need to show that the notice it received was insufficient because of the failure to timely file the list of creditors, which therefore caused the creditor to not be given a reasonable time to file a proof of claim within the Rule 3002(c) time periods. *A creditor may not argue under Rule 3002(c)(6)(A) that the notice was insufficient for reasons other than those caused by the untimely filing of the list of creditors.*

9 *Collier on Bankruptcy* ¶ 3002.03[7] (16th ed. 2019) (emphasis added).

Since the adoption of Rule 3002(c)(6)(A) is relatively recent, there are only a few other reported cases interpreting it. Without a great deal of analysis, two cases have interpreted the rule more broadly. In *In re Mazik*, 592 B.R. 812 (Bankr. E.D. Pa. 2018), the debtor filed her bankruptcy case *pro se*, filing only a petition and a hand-written Creditor Matrix that omitted one of her creditors. Once she obtained an attorney to represent her, she filed schedules that included the omitted creditor, but her attorney failed to amend the Creditor Matrix. Consequently, the creditor did not receive notice of the bankruptcy case until after the proof of claim deadline had expired. It then filed a motion for an extension under Rule 3002(c)(6)(A). Observing that it was a matter of first impression, the court held that the rule covered the failure to include a creditor on the Matrix. It reasoned that the rule’s condition of a failure to timely file the Matrix:

is satisfied if the debtor files a list of creditors that omits the name and address of the creditor seeking relief under the rule. This is so because the omission of the creditor from the filed list constitutes a failure to comply with the requirement in Rule 1007(a) that the list include the name and address “of each entity included or to be included on Scheduled D, E/F, G and H.”

Id. at 818 (citing Fed. R. Bankr. P. 1007(a)); *see also In re Ray*, 18-14806 MER (Bankr. D. Colo. March 19, 2019). In dicta, two other courts have observed that a creditor omitted from the debtor’s timely-filed creditor Matrix, or included on the list at an incorrect address, might have grounds to request an extension, but the courts did not have to decide the question. *In re Wood*, 2019 WL 994573, *7 n. 23 (Bankr. N.D. Ga. Feb. 27, 2019); *In re Cisneros*, 2018 WL 4473621, *8 n. 3 (Bankr. N.D. Ohio Sept. 17, 2018). Thus, it is too early to declare a majority and minority view on this issue.

Normally, this Court would weigh in on the side of applying rules of statutory construction to enforce the rule as it is written. But a maxim is only intended to aid in finding the legislature's intent. It is "subordinate to the primary rule that the legislative intent governs the interpretation of the statute. Thus, it can be overcome by a strong indication of contrary legislative intent or policy." 2A Norman J. Singer, J.D. Shambie Singer, *Statutes and Statutory Construction* § 47:23 (7th ed. 2007). Additionally, this maxim "will be disregarded and an expanded meaning given where an expanded interpretation will accomplish beneficial results, where its application would thwart legislative intent made apparent by the entire act" *Id.* The Court believes that this new rule provision is one in which legislative intent would be thwarted by a plain language interpretation.

Reading the rule narrowly would render it all but superfluous. Understanding why this is so requires a detour through a relatively new statute and several rules. The end result of this statutory and rule-based patchwork is that the new rule would hardly ever apply because other requirements would dictate the dismissal of the case due to the untimely filing of a Creditor Matrix long before any creditor would face a bar against an untimely proof of claim.

First, the Creditor Matrix is required to be filed "with the petition." Fed. R. Bankr. P. 1007(a). A debtor may seek an extension of time to file the Matrix, but only "on motion for cause shown." Fed. R. Bankr. P. 1007(a)(5). Practically speaking, bankruptcy courts will typically grant only a very short extension of time to file the Creditor Matrix. This is because, as discussed above, the Clerk of Court must have the Creditor Matrix in order to mail notices to all creditors as mandated by the Rules. The Rules require the Clerk to give notice to all creditors of the entry of an order for relief in a voluntary consumer case within twenty-one days of the petition date. Fed. R. Bankr. P. 2002(o). The clerk must also provide at least twenty-one days' notice of the meeting of creditors. Fed. R. Bankr. P. 2002(a)(1). Because the meeting of creditors must occur, in a chapter 13 case, no later than fifty days after the petition date, the Initial Notice must usually be mailed within the first two to three weeks after the petition date. Fed. R. Bankr. P. 2003. This deadline is even earlier in a chapter 7 case, where the meeting of creditors must occur no later than forty days after the petition date. *Id.* The Clerk must also provide the creditors with sufficient notice of important deadlines in the case, including the deadline for filing proofs of claim and the deadline for filing nondischargeability claims. Fed. R. Bankr. P. 2002(f). Without a Creditor Matrix, none of these notices can be sent. This means that, if a debtor files a petition without a Creditor Matrix, most bankruptcy courts, including this Court, will immediately issue a compliance order requiring the debtor to quickly fix the deficiency or face dismissal of the case. *E.g., In re Walker*, 2010 WL 2812570, at *3-5 (Bankr. N.D. Ala. July 15, 2010) (refusing to reinstate chapter 13 case dismissed eleven days after petition date due to debtor's failure to file creditor matrix as instructed in compliance order).

If for some reason the bankruptcy court does not immediately issue a compliance order, Bankruptcy Rule 1017 provides that the U.S. Trustee may move for dismissal by the court "after a hearing on notice." Fed. R. Bankr. P. 1017(c). Dismissal under this rule would necessarily occur somewhat later in the case due to the required notice

period. But even if the U.S. Trustee did not move for dismissal, there is another, more significant barrier to a case progressing without a Creditor Matrix. In 2005, with the adoption of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”), Congress provided that, if the debtor fails to file the Creditor Matrix or other necessary schedules and statements “within 45 days after the date of the filing of the petition, the case *shall be automatically dismissed* effective on the 46th day after the date of the filing of the petition.” 11 U.S.C. § 521(i)(1) (emphasis added). The subsection immediately following this one allows any party to request a court order verifying the dismissal, *i.e.* a comfort order, but no order is required to effectuate the dismissal. 11 U.S.C. § 521(i)(2).

Thus, if there is no Creditor Matrix on file, the case will be automatically dismissed on the *forty-sixth* day of the case. The deadline for filing a proof of claim in chapter 7, 12, or 13 case is *seventy days* after the filing of a voluntary petition. Fed. R. Bankr. P. 3002(c). If the case is thereafter converted to either a chapter 12 or 13 proceeding, then another seventy-day period runs from the date of conversion. *Id.* In some instances not relevant to this case, the claims deadline may be ninety days from a specified event. Fed. R. Bankr. P. 3002(c)(5). Of these various deadlines, the shortest possible one is seventy days from the petition date. This means that, in cases in which the debtor fails to file a timely Creditor Matrix, the forty-five-day automatic dismissal deadline will always occur long before any deadline for filing a proof of claim. Thus, if the rule is read narrowly, it will simply never apply. No creditor will need to seek an extension because, with the dismissal of the case, all claims will be preserved to the extent permitted by non-bankruptcy law.

A brief example will illustrate this point. Assume a debtor files a chapter 13 petition on August 1 and the U.S. Trustee sets the meeting of creditors forty days later on September 10. This means the Clerk of Court must mail the Initial Notice, which contains the date for the meeting of creditors, by August 20 at the latest. If the debtor fails to file a Creditor Matrix on the petition date, the court is likely to issue a compliance order to ensure that he does so before August 20 to enable the Clerk of Court to give adequate notice. If that does not occur, the case will proceed without creditors receiving any notice of the case or of the upcoming deadlines. Assuming the U.S. Trustee does not move for dismissal earlier, the case will be automatically dismissed on September 16, the *forty-sixth* day of the case. At that point, the October 10 proof of claim deadline will not have occurred and there would be no need for any creditor to seek an extension of that deadline under Rule 3002(c)(6)(A).

A debtor could try to avoid dismissal of his case on the forty-sixth day by seeking an extension of the Creditor Matrix filing deadline under § 521(i)(3), which allows a court to give a debtor up to another forty-five days to file necessary documents, if it finds adequate “justification” for the extension. It is difficult to imagine a case in which a court would grant a lengthy extension of this deadline, especially another forty-five days. If no Creditor Matrix is filed until the ninetieth day of the case, key deadlines set by the Rules will have passed before creditors have even received notice of the case. For example, suppose our fictional debtor sought an extension to October 30, the ninetieth day of the case, to file his Creditor Matrix. At that point, the proof of claim deadline (October 10)

would have passed, as well as the deadline to hold the meeting of creditors (September 20). The Clerk of Court would have been prevented from mailing the Initial Notice until the ninetieth day, and then the Initial Notice would apprise creditors of already-expired deadlines.

If a court were to grant an extension under § 521(i)(3), then certainly grounds would exist for *all* creditors to obtain relief from the expired proof of claim deadline, not just those that file a motion under Rule 3002(c)(6)(A). In fact, under a strict interpretation of this new rule, this might be the only circumstance in which the rule would ever apply. Otherwise, the case would always be dismissed on the forty-sixth day, well before any proof of claim deadline would have expired.

Given that it is highly unlikely a court would ever grant a lengthy extension of the Creditor Matrix deadline, Congress must have intended for this new rule granting an extension of the claims filing deadline to serve some other purpose. If it is interpreted more broadly to apply whenever a *full and complete* Creditor Matrix is not timely filed, such as when a creditor is omitted from the list or is listed incorrectly in such a way that the creditor does not receive notice, then it has great utility and benefit to both debtors and creditors. The benefit to creditors is obvious. But it also benefits the debtor because often the debtor will want certain creditors to share in the distribution from the estate. Claims that are nondischargeable, such as priority tax claims and domestic support obligations, and secured claims where the debtor's ability to retain the creditor's collateral is at stake are examples of the types of claims that debtors want to see paid as much from the estate as possible. In fact, in a chapter 13 case, the trustee is not permitted to make distributions on late-filed claims. See Fed. R. Bankr. P. 3021 (providing that chapter 13 trustee is to distribute funds to creditors with *allowed* claims); 11 U.S.C. § 502(b)(9) (providing for disallowance of late-filed claims). Thus, if the creditor does not obtain an extension of the deadline, then the debtor may be at risk of losing his home or car or he will have increased liability on a non-dischargeable claim after his plan is completed.

When a plain language interpretation of a statute or rule renders it meaningless or of very little effect, then courts should attempt to ascertain the legislature's intent. See *U.S. v. Blanchard*, 618 F.3d 562, 567 (6th Cir. 2010) ("Only when the plain language results in ambiguity or leads to an unreasonable result do we look to the statute's legislative history."). Unfortunately, the Advisory Committee Notes to this 2017 amendment to the rule provide only limited insight as they merely parrot the rule itself. They say that the purpose of the amendment is:

to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a).

Fed. R. Bankr. P. 3002, advisory committee's note to 2017 amendment. The first sentence clearly indicates the intent of the drafters to expand the circumstances under

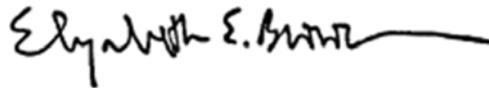
which creditors may seek an extension of the claim bar date. It also addresses the situation where a creditor does not receive timely notice. However, the second sentence refers only to the timely filing of a Creditor Matrix. Paired together, these sentences shed very little light on what the drafters intended when a debtor omits a creditor from a timely-filed Matrix or misidentifies a creditor in a manner that causes the creditor to not learn of the bankruptcy until after the bar date for filing claims.

It is also unfortunate that there is no binding precedent in the Tenth Circuit on this issue. In the absence of such a precedent, this Court believes that the intent of Congress is best effectuated by reading this rule to apply whenever the debtor fails to timely file a *full and complete* Creditor Matrix. If the purpose of the rule is to provide the Court with discretion when a creditor's due process rights have been abridged, then this broader reading will support that goal. The fact that the extension remains discretionary and is only for a brief additional period of sixty days will keep the exceptions from swallowing the general rule imposed by a claims bar date.

For the foregoing reasons, the Court ORDERS that American Express' Motion is GRANTED to the extent that the claim is hereby deemed timely filed pursuant to Fed. R. Bankr. P. 3002(c)(6)(A). However, this Order does not preclude the Debtor or another party in interest from objecting to American Express' claim on grounds other than timeliness.

DATED this 28th day of August, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Elizabeth E. Brown", with a long horizontal flourish extending to the right.

Elizabeth E. Brown, Bankruptcy Judge