

Insights

The Importance of Paying Attention to Notices Received in Bankruptcy Cases: Creditor Misses Proof of Claim Bar Date and Loses Claim for \$2 Million

November 13, 2020

By: Alexander E. Porter

A recent decision from the United States Bankruptcy Court for the Central District of Illinois ("Court") is a stark reminder of the importance of paying attention to notices received from bankruptcy cases and the need for creditors to consider retaining counsel to protect their interests in such cases. In *In re Kevin R. Gaffney*, after Kevin Gaffney ("Debtor") filed a petition for relief under chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, the Clerk issued a "Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline" ("Notice") to a creditor by sending it to a law firm that had represented the creditor in different proceedings, presuming the firm would also represent the creditor in the bankruptcy case.¹ Although the creditor eventually learned of the bankruptcy filing from this law firm, the creditor did not monitor the bankruptcy case in time to file a timely proof of claim. Because of this, the creditor's proof of claim for \$2,266,831.08 (unsecured) was filed *after* the proof of claim bar date, and the Court denied the creditor's request to allow the claim to be deemed timely, with the result that the creditor received \$0.²

The Debtor filed his petition for relief under chapter 7 ("Petition") on October 11, 2019, and on the same day the Clerk issued its Notice, which directed creditors not to file a proof of claim "unless and until it became apparent that there would be assets available to pay claims..."³ When completing the mailing matrix for the bankruptcy case, the Debtor provided the Atlanta office for law firm Weinberg Wheeler Hudgins Gunn & Dial ("WWHGD") as the address for the creditor S.P. Richards Company ("SPR"), rather than using SPR's business address.⁴ The Debtor assumed WWHGD would represent SPR in his own case because they had appeared on behalf of SPR in a separate bankruptcy filed by Midwest Office Supply, Inc. ("Midwest"), in which Debtor held a 25% interest. Before the Petition was filed, WWHGD also sent a demand letter from its Atlanta Office to Midwest and its guarantors, including Debtor, and the demand letter stated WWHGD had been retained by SPR "regarding various agreements entered into between SPR and Midwest and its guarantors."⁵ The Court eventually set a proof of claim bar date of February 13, 2020, and the Clerk mailed notice to all creditors using the addresses from the mailing matrix filed with the Petition. SPR filed a proof claim for an unsecured amount of \$2,266,831.08 two months *after* the proof of claim bar date, and also filed a motion asking the Court to allow its claim be treated as timely, or, alternatively, to extend the proof of claim deadline.⁶

In considering SPR's motion, the Court focused on whether SPR had imputed or actual notice of Debtor's bankruptcy to determine whether SPR's proof of claim could be allowed, even though tardily filed. The Court found that such notice can be imputed "when an attorney is representing a creditor in order to collect a debt outside of the bankruptcy..."⁷ Other than the prior demand letter, there were no communications between WWHGD and the Debtor until the Petition was filed, and as a result the Court found there was insufficient evidence to impute notice.

Despite SPR's lack of imputed notice, the Court found that SPR had actual notice. A WWHGD attorney admitted that he received the initial notice of case filing and even sent it to other attorneys representing SPR in a state court collection action. This attorney also admitted discussing the Petition with SPR, although he was uncertain when the discussion took place.⁸ SPR still argued that its tardy claim should be allowed because it lacked notice of the claims deadline. The Court disagreed, noting that once a creditor has notice of a bankruptcy case in which it might have an interest, the burden is on the creditor to track the case for important deadlines.⁹ SPR did not carry this burden because although SPR learned of the existence of the case sometime in October or November of 2019, SPR never inquired why it did not receive the notice directly, and SPR never engaged an attorney to file an appearance on its behalf in the case. Accordingly, SPR's motion was denied, and its claim denied status as timely filed.¹⁰

Takeaway

The results in *Gaffney* are a wake-up call to creditors. *Gaffney's* harsh result stems from the creditor's failure to monitor the bankruptcy case and to seek legal advice as to the significance of the many tight deadlines which often arise in a bankruptcy case. At a minimum, once the creditor learned of the bankruptcy case, it should have investigated further to learn the status of the case. Overall, the lesson from *Gaffney* is that creditors must be vigilant about notices received regarding bankruptcy cases, no matter the form such notices take, because there may be drastic consequences from ignoring them.

If you would like to learn more about Krieg DeVault LLP's Creditor's Rights and Bankruptcy Professionals, please click **here**.

[1] *In re Kevin R. Gaffney*, No. 19-71492 (Sept. 29, 2020). Available at https://www.ilcb.uscourts.gov/judges-info/opinions?field_judge_nid=51.

[2] *Id.*

[3] *Id.* at 3.

[4] *Id.*

[5] *Id.* at 12-13.

[6] *Id.*

[7] *Id.* (citing *In re Herman*, 737 F.3d 449, 454 (7th Cir. 2013)).

[8] *Id.* at 14.

[9] *Id.*



[10] Note that pursuant to 11 U.S.C. § 726(a)(3), tardily filed claims potentially still may receive a distribution in a chapter 7 bankruptcy case, but only if there are sufficient funds available after paying all timely filed claims. Needless to say, payment to tardily filed claims rarely happens.