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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**JOSEPH ANDREW MCVICKER
and JENNIFER LYNN
MCVICKER,**

Debtors.

Case No. **19-60607-13**

ORDER

At Butte in said District this 28th day of January, 2020.

In this Chapter 13 bankruptcy, Debtors filed on December 23, 2019, an Objection to Proof of Claim No. 18 (“Objection”) filed by Todd and Stephanie Foster (“Fosters”). The Objection was filed in accordance with Mont. LBR 3007-1, which provides: “a trustee, debtor or other party in interest may file an objection to a creditor’s proof of claim in accordance with Fed. R. Bankr. P. 3007, by using Mont. LBF 28.”

As required by Mont. LBF 28, the Objection is accompanied by a “NOTICE” provision which grants Fosters thirty (30) days to respond to the Objection and schedule the matter for hearing. The “NOTICE” further provides that “[i]f no objections are timely filed, the Court may reduce, modify, or eliminate the claim.” Fosters did not file a written response or request a hearing on the Objection within the thirty-day time period.

However, Fosters’ failure to respond does not end the Court’s inquiry. Debtors ask that the Court disallow Proof of Claim No. 18 arguing “the amount of claim #18 has been paid in full as of 10/3/19 and can be verified by the creditor’s own motion to dismiss the eviction proceeding for which it claimed damages to be. The Claim is moot. Enclosed is the local order, dismissing

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the case without prejudice, dated roughly 6 Nov 19.” The “local order” referenced in Debtors’ Objection is not “enclosed.”

FED. R. BANKR. P. 3001(f), provides that a proof of claim completed and filed in accordance with 11 U.S.C. § 501 and any applicable Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. Thus, if a procedurally proper claim is filed, an objecting party carries the burden of going forward with evidence contesting the validity or amount of the claim. *In re Weber*, 16 Mont. B.R. 49, 56 (Bankr. D. Mont. 1997); *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). However, once the objecting party succeeds in overcoming the *prima facie* effect given to the claim by Rule 3001(f), the burden shifts to the claimants to prove the validity of their claims by a preponderance of the evidence. *In re Allegheny Int’l, Inc.* 954 F.2d 167, 173-74 (3rd Cir. 1992). Proof of Claim 18 filed by the Fosters was completed and filed in accordance with 11 U.S.C. § 501.

Debtors commenced this Chapter 13 bankruptcy on June 18, 2019. In their Proof of Claim, Todd and Stephanie Foster assert they are owed \$2,300 for July and August rent (no year is specified). But Fosters filed a motion to modify stay on November 6, 2019. In the motion to modify stay, the Fosters sought authorization to proceed with eviction proceedings against Debtors. In an affidavit filed November 14, 2019, at ECF No. 70, Stephanie Foster represented that Debtors began falling behind with their rent payments in July 2019. As of November 2019, Debtors owed \$4,650 in rent and late payment penalties of which \$750.00 remains owing from July 2019 and \$1,550 remains owing from August 2019. The balance owing for July and August is the amount reflected in Proof of Claim No. 18. Proof of Claim No. 18 does not include the amounts due and owing after August 2019.

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At a hearing held January 10, 2020, Debtors agreed that the Court could grant the Fosters' motion to modify stay. The Debtors also agreed to vacate the home they rent from the Fosters by February 15, 2020. Debtors also agreed that the Fosters could apply their security deposit of \$1,900 against the delinquent rent payments owed by Debtors to the Fosters. The parties did not specify whether the \$1,900 would be applied to July and August 2019, or to the rent that was due thereafter.

Section 1305 of the Bankruptcy Code, governs filing and allowance of post-petition claims. 11 U.S.C. § 1305. It provides in relevant part that “[a] proof of claim may be filed by any entity that holds a claim against the debtor—... that is for a consumer debt, that arises after the date of the order for relief under this chapter ...” 11 U.S.C. § 1305(a)(2). Congress specifies in this section that certain post-petition creditors may elect to participate in a Chapter 13 plan by filing a proof of claim in the case. That appears to be precisely what the Fosters have done, at least as to a portion of the post-petition rent owed by Debtors. The Court can find no “local order” that shows the Fosters' claim is moot. Because Debtors have not overcome the prima facie validity afforded the claim and because the Court cannot determine whether Debtors' \$1,900 security deposit should be applied to July and August rent, or to the unpaid rent for the months thereafter,

IT IS ORDERED that Debtors' Objection to Proof of Claim No. 18 is overruled; and Proof of Claim No. 18 shall be allowed as filed.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana