

2020 Mont. B.R. 7

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

In re

JENNIFER L. MICONE,

Debtor.

Case No. **19-60589-13**

ORDER

At Butte in said District this 21st day of January, 2020.

In this Chapter 13 bankruptcy, after due notice, a continued hearing was held January 16, 2020, in Missoula on confirmation of Debtor's Third Amended Chapter 13 Plan ("Plan") filed at ECF No. 55 and on Debtor's Objection to Proof of Claim No. 1-2 filed at ECF No. 60 ("Objection"). Appearances at the hearing were noted on the record. The Court heard testimony from Debtor.

Debtor commenced this case on June 13, 2019. Joshua Micone ("Micone") filed Proof of Claim 1-2 ("Claim") on August 2, 2019, asserting a total claim of \$43,580 of which \$33,595 is secured, \$2,495 is a priority debt relating to a domestic support obligation and \$7,490 is a general unsecured claim, all stemming from a divorce decree. Debtor objects to Micone's Claim arguing Micone was awarded \$31,000.00 under a property settlement related to real estate, contingent upon Micone executing a quitclaim deed to facilitate Debtor's refinance or modification of the underlying mortgage. Debtor contends that Micone has not executed the quitclaim as required. Debtor argues that the remainder of Micone's Claim relates to child support that has been litigated by the Child Support Enforcement Division and is being paid by an ongoing withholding order. Debtor also contends that Micone's child support Claim is subject to setoff. Micone responded to Debtor's Objection at ECF No. 65.

2020 Mont. B.R. 8

During Debtor's testimony, her counsel noted that Micone filed a voluntary Chapter 7 bankruptcy petition on August 3, 2017 and received a discharge of his debts. *See* Case No. 17-60783-7. Debtor's counsel suggested that Micone failed to list his property settlement with Debtor in his bankruptcy. Given this new development, the Court agreed to take judicial notice of Micone's bankruptcy and continued the hearing on Debtor's Objection and confirmation of Debtor's Plan to February 13, 2020, so that Micone's bankruptcy trustee could determine whether Micone's estate had an interest in Micone's claim.

Following the hearing, the Court reviewed Micone's bankruptcy case. On schedules filed August 16, 2017, at ECF No. 8, Micone listed on his Schedule B "Marital Property Settlement Agreement" with an indeterminate value. On Schedule C, Micone claimed an exemption in the Marital Property Settlement Agreement. Micone represented at the hearing that he had discussed the matter with his Trustee. Thus, contrary to the suggestion at the hearing, it appears Micone listed the Marital Property Settlement Agreement in his bankruptcy. However, as the Court ruled at the hearing, the Court will invite Micone's trustee to file a report in this case.

While the Court will reserve its final ruling on Debtor's Objection until conclusion of the continued hearing, 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.

2020 Mont. B.R. 9

In re Allegheny Int'l, Inc. 954 F.2d 167, 173-74 (3rd Cir. 1992). Proof of Claim 1-2 filed by Micone was completed and filed in accordance with 11 U.S.C. § 501.

Three documents are attached to Micone's Claim: (1) Findings of Fact, Conclusions of Law, and Decree of Dissolution ("Decree of Dissolution") entered in the Montana Eleventh Judicial District Court, Flathead County ("State Court"), which were signed by the State Court Judge on June 8, 2017 (consisting of 37 pages plus attached exhibits); (2) Order on Motion to Amend Judgment; or in the alternative, for Relief From Judgment ("Order on Motion") filed in the State Court on May 15, 2019; and (3) Amendment to Findings of Fact, Conclusions of Law, and Decree of Dissolution signed by the State Court Judge on July 21, 2017.

A. Debt relating to marital home.

With regard to the parties' residence, the Decree of Dissolution provides, starting at paragraph 117:

The Court finds that the residence should be valued at \$211,000 . . . [Debtor] shall be entitled to retain the property, providing she pays [Micone] \$31,100 within 60 days from the date of entry of decree, and refinances the property to remove [Micone] from the debt within 60 days from the date of entry of decree.

118. The Court was made aware that the property is in foreclosure that is likely to occur in 2017, which may occur near the time or even before the time the Court is able to issue its final ruling herein. Should the property be foreclosed upon, the equity in the property will be lost to both parties.

Debtor still resides in the marital home, the marital home has not yet been foreclosed, and Debtor has not paid Micone the \$31,100 she was required to pay him by approximately August 8, 2017. Unless and until the home is foreclosed upon, Micone has an interest in the home to the extent of \$31,100. Nothing in Debtor's testimony suggests anything to the contrary.

Micone asserts that \$33,595 of his Claim is secured. Micone does not provide an accounting of how he arrived at the figure of \$33,595, when The Decree of Dissolution required

2020 Mont. B.R. 10

that Debtor pay Micone \$31,100. Micone shall provide an accounting of how he arrived at the figure of \$33,595 prior to the continued hearing.

B. Priority Child Support Debt.

Micone asserts he is owed \$2,495 as a priority debt for child support. Debtor testified that she and Micone owe each other offsetting child support. The Order on Motion filed in the State Court on May 15, 2019, provides that “[t]he total amount [Debtor] owes [Micone] for arrearage and overpayment of child support is \$2,495.” The Order on Motion also provides that “[a]part from the \$2,495 [Debtor] owes [Micone], there are no other arrearages.” The foregoing comports with Micone’s priority child support Claim. Debtor’s testimony that is inconsistent with the Order on Motion does not overcome the prima facie validity of Micone’s Claim.

C. Micone’s Unsecured Claim.

Pursuant to his Claim, Micone also asserts a general unsecured claim of \$7,490. Pursuant to the attachments to the Claim, Micone was to receive various items of personal property in the parties’ divorce. Micone did not receive many of the items. Debtor does not dispute that the items were awarded to Micone. Instead, Debtor testified that she either did not know the whereabouts of the items, or she had sold them. Nothing in Debtor’s testimony has overcome the prima facie validity afforded the unsecured component of Micone’s Claim.

As previously indicated, the Court is not issuing a final ruling on Debtor’s Objection, and is continuing the hearing on Debtor’s Objection. The foregoing is merely a tentative ruling, subject to any further proceedings. Accordingly,

IT IS ORDERED that Richard J. Samson, the Chapter 7 Trustee in *In re Joshua Joseph Micone*, Case No. 17-60783-7, is invited to file, on or before **January 29, 2020**, a statement as to

2020 Mont. B.R. 11

whether that estate has any interest in the Claim asserted by Micone in this case. The Clerk of Court is directed to serve this Order on Richard J. Samson.

IT IS FURTHER ORDERED that Micone is granted through **January 29, 2020**, to file an accounting of how he calculated the secured portion of his Claim in the amount of \$33,595.

IT IS FURTHER ORDERED that Debtor shall have through **January 29, 2020**, to file a fourth amended chapter 13 plan; parties-in-interest shall have through **February 5, 2020**, to file objections to confirmation of Debtor's fourth amended chapter 13 plan; and the hearing on confirmation of Debtor's fourth amended chapter 13 plan and the final hearing on Debtor's Objection filed at ECF No. 60 shall be held **Thursday, February 13, 2020, at 09:00 a.m.**, or as soon thereafter as the parties can be heard, in the BANKRUPTCY COURTROOM, RUSSELL SMITH COURTHOUSE, 201 EAST BROADWAY, MISSOULA, MONTANA.

BY THE COURT:



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