

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

IN RE: ) CASE NO. 586-00113-INH  
 )  
STANFORD RAY HOWE, ) CHAPTER 11  
 )  
 ) MEMORANDUM DECISION  
 ) RE: OBJECTIONS TO  
Debtor. ) PROOF OF CLAIM

The matter before the Court is the Objections to Proof of Claim filed by Debtor. It is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). A hearing was held August 7, 1990 and the matter was submitted to the undersigned for consideration upon receipt of the hearing transcript. This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

Debtor filed a Chapter 11 petition for reorganization on May 27, 1986. V.L. Norman, d/b/a Yellowstone Potato Company (Yellowstone), filed a proof of claim for \$19,132.64 on September 23, 1986. Attached to the proof of claim was a hand written payment schedule for a \$60,000 debt. No notes or security agreements were attached to the proof of claim. A plan of reorganization was confirmed December 4, 1989. The plan provided that Class VI claimants must file a proof of claim to receive any dividend. Yellowstone's already-filed claim met that condition.

Debtor filed an objection to Yellowstone's proof of claim on February 5, 1990 that argued Debtor had satisfied Yellowstone's claim. Yellowstone filed a letter with the Court on February 14, 1990 that disputed Debtor's assertion. A hearing on the objection was noticed for April 3, 1990. That hearing was rescheduled to May 1, 1990 and rescheduled a second time to June 5, 1990.

Debtor filed an Amended Objections to Proof of Claim on May 16, 1990 that argued Yellowstone had failed to credit Debtor for a return of unordered merchandise and that the debt was owed by Stan's Water Service, Inc., not Debtor personally. A hearing on the Amended Objections was properly noticed for June 5, 1990.

At the June 5, 1990 hearing, only John Mairose, Debtor's attorney, appeared. No one appeared for Yellowstone. No evidence in support of the

objection was presented. By letter opinion filed June 26, 1990, the Court directed Debtor to reset the matter for an evidentiary hearing. In accordance with the applicable Bankruptcy Code provisions, Bankruptcy Rules, and relevant case law cited in the letter opinion, the Court held Debtor would have the burden of producing evidence in support of his objection. If that burden was met, Yellowstone would have the burden of persuading the Court that its claim was valid. Both parties were directed to appear at the evidentiary hearing.

On July 17, 1990 Debtor's counsel provided notice to Yellowstone and other interested parties that a hearing on Debtor's Amended Objections to Proof of Claims was scheduled for August 7, 1990.

At the August 7, 1990 hearing, Debtor testified that in March of 1980 he had borrowed \$60,000 from his then father-in-law, V.L. Norman, but that no written or oral agreements that set forth repayment terms were entered into. Debtor marked but did not move for entry of an exhibit. The exhibit was entitled

Stans [sic] Water Service Box 948  
Stanford Howe Note Summary

and was a copy of the document attached to Yellowstone's proof of claim. On the exhibit were listed, among other things, several dates and check amounts received in payment of the original \$60,000 debt. Debtor testified that Norman prepared the exhibit and that the payments documented on the exhibit totaled "61,000-something." Debtor stated he had repaid the debt. No other evidence was presented.

The Court then questioned Attorney Mairose on why Debtor's objections to this claim had not been consistent. The Court noted that the plan and order of confirmation acknowledged the debt was personal to Debtor and that the original objection argued payment had been made. In contrast, the amended objection asserted that the debt was owed by a corporation, not Debtor. Mairose responded that the amended objection had been withdrawn and Debtor stood on its original objection that the debt had been paid. Mairose further explained that debt was listed in the plan as a personal debt because Debtor wanted to be sure that "[i]n the event that there are any contingent possibilities that any of these creditors

who arose from the operation of the corporation claimed individual liability of [Debtor], they were listed as individual contingent [debts] in dispute of that."

No withdrawal of the amended objection was filed with the Court prior to the hearing and the original objection was **not** noticed for hearing on August 7, 1990.

## II.

As noted in the Court's letter opinion dated June 26, 1990:

A proof of claim filed in a bankruptcy proceeding constitutes prima facie evidence of its validity and amount. See Bankruptcy Rule 3001(f) and 11 U.S.C. § 502(a). See also In re Tesmetges, 87 B.R. 263 (Bankr. E.D. N.Y. 1988), and 3 King, Collier on Bankruptcy, ¶502.01 at 502-16 (1987). Inasmuch as Rule 3001(f) and § 502(a) provide that a duly filed claim is deemed allowed, the objector has the burden of going forward in support of his objection since the allegations of the claims are taken as true. Thus the burden of producing evidence in support of the objection shifts to the objector. However, the ultimate burden of persuasion remains on a creditor filing a proof of claim. Tesmetges, supra. See also Collier, supra, at 502-22; In re Friedman, 436 F. Supp. 234 (D. Md. 1977), and In re Bagnato, 80 B.R. 655 (Bankr. S.D. N.Y. 1987).

In re Stanford R. Howe, Bankr. No. 586-00113-INH, letter op. at 2 (June 26, 1990). The question presented here is whether Debtor has rebutted Yellowstone's prima facie proof of claim. In re Colonial Bakery, Inc., 108 B.R. 13, 15 (Bankr. D.R.I. 1989) (cases cited therein); see also California State Board of Equalization v. Official Unsecured Creditors' Committee (In re Fidelity Holding Co., LTD.), 837 F.2d 696, 698 (5th Cir. 1988); and In re RBS Industries, Inc., 115 B.R. 419, 422 (Bankr. D. Conn. 1990).

## III.

The Court concludes that the evidence presented by Debtor in support of his Objections to Proof of Claim was not sufficient to rebut the prima facie validity of Yellowstone's claim established by its proof of claim. Debtor presented nothing more than his testimony that he had paid the debt in full and that he had not agreed to any interest rates or repayment terms. There was nothing more. The lack of other evidence, coupled with Debtor's ever-changing theory of why

this claim is objectionable to him, does not persuade the Court that the prima facie claim against Debtor has been sufficiently rebutted.

An order will be entered which recognizes that Debtor's Amended Objections to Proof of Claim has been withdrawn.

Within ten days of entry of this Decision, Debtor may move the Court for an order reopening the hearing held August 7, 1990 so that Debtor may present additional evidence in support of his Objections to Proof of Claim. If no such motion is timely made, an order will be entered that overrules Debtor's Objections to Proof of Claim.

Dated this \_\_\_\_\_ day of November, 1990.

ATTEST:

BY THE COURT:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_  
Deputy Clerk  
(SEAL)

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

IN RE:	)	CASE NO. 586-00113-INH
	)	
STANFORD RAY HOWE,	)	CHAPTER 11
	)	
	)	ORDER OVERRULING
	)	OBJECTION TO
Debtor.	)	PROOF OF CLAIM

In recognition of and compliance with the Memorandum of Decision Re: Objections to Proof of Claim filed this day,

IT IS HEREBY ORDERED that Debtor's Amended Objections to Proof of Claim are withdrawn in compliance with Debtor's oral motion at the hearing before the undersigned held August 7, 1990.

So ordered this 19th day of November, 1990.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt

Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)