

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT

BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560

FAX (605) 224-9020

June 26, 1990

John Mairose, Esq.
Post Office Box 8301
Rapid City, South Dakota 57709

Robert Nash, Esq.
Post Office Box 1552
Rapid City, South Dakota 57709

Charles Nail, Esq.
300 No. Dakota Ave., Suite 510
Sioux Falls, South Dakota 57102

Richard Sharp, Esq.
Post Office Box 290
Rapid City, South Dakota 57709

Mr. V.L. Norman
Yellowstone Potato Company
1825 East B Street
Torrington, Wyoming 82240

Re: Stanford Ray Howe
Chapter 11; 586-00113

Gentlemen:

The Court has before it debtor Stanford Ray Howe's objection to the proof of claim filed by V.L. Norman, d/b/a/ Yellowstone Potato Company. The proof of claim for \$19,132.64 was filed with the clerk on September 23, 1986.

An order confirming the debtor's Chapter 11 plan of reorganization was entered by the Court on December 4, 1989. Yellowstone Potato Company was listed in Class VI, personal and unsecured debts. The plan required that Yellowstone and other members of that class file a proof of claim in order to participate in any dividend under the plan. Yellowstone's earlier submitted proof of claim abided by this condition. Attached to the proof of claim was a hand written payment schedule for a \$60,000.00 debt due to Yellowstone. No notes or security agreements were attached. It appears that the debtor is unsecured.

Debtor's objection, filed February 5, 1990, argues that the debtor had paid and satisfied Yellowstone's claim. In a letter to the Court dated February 14, 1990, Yellowstone disputed this assertion. On May 16, 1990, debtor filed an amended objection to the proof of claim, alleging that Yellowstone did not provide the debtor with credit for a return of unordered merchandise and
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further that the debt is properly a corporate debt of Stan's Water Service, Inc., for which the debtor has no personal liability.

A hearing on this matter was set for June 5, 1990. John Mairose appeared for the debtor but stated on the record that he was not prepared to proceed. No appearance was made for Yellowstone. Yellowstone was properly served with notice of the hearing.

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)

Because of the lack of evidence currently before the Court, the debtor is instructed to reset this matter for an evidentiary hearing. At that hearing, the debtor will have the burden of producing evidence in support of his objection. Should that burden be met, Yellowstone will have the burden of persuading the Court concerning the validity of the proof of claim. Both parties should be present at the hearing.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk