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The Exclusive View v. The Non-Exclusive View: Can a Creditor's Claim be Dismissed for Failing to Provide Supporting Documentation?

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I. INTRODUCTION

May a creditor's claim be dismissed simply because he failed to provide supporting documentation in violation of Federal Rule of Bankruptcy Procedure 3001? The answer depends on which jurisdiction the creditor is pursuing its claim in. Courts are currently sharply divided on the issue. If the creditor is fortunate enough to be in a jurisdiction which follows the "exclusive" view, which is the majority rule, the answer to this problem will be yes. However, if the creditor happens to be in a jurisdiction which follows the "non-exclusive" view, which is the minority rule, the answer to this problem will be no. The allowance of a creditor's proof of claim is governed by 11 U.S.C. § 502. Section 502 provides that a creditor's proof of claim should be allowed except if the claim falls into one of the nine categories listed in section 502(b). According to the "exclusive" view, a creditor's claim can only be dismissed for one of the nine reasons listed in section 502(b). Although failure to attach supporting documentation to a proof of claim is a violation of Rule 3001, courts that follow the "exclusive" view do not dismiss a creditor's proof of claim for this violation because this violation is not one of those nine reasons listed in section 502(b). By contrast, the "nonexclusive" view does allow a creditor's claim to be dismissed for reasons other than those specifically stated in section 502(b). Therefore, because failure to attach supporting documentation to a proof of claim is a violation of Rule 3001, courts

which follow the “non-exclusive” view will dismiss a creditor’s proof of claim even though non-compliance with the Rule is not one of those nine reasons listed in section 502(b).

This article discusses the difference between the “exclusive” view and the “non-exclusive” view. First, this article examines the provisions of federal law at issue in this court split: 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3001. Second, this article explains the differences between the “exclusive” view and the “nonexclusive” view, principally by analyzing two recent cases: *B-Line v. Kirkland (In re Kirkland)*, 379 B.R. 341 (B.A.P. 10th Cir. 2007), which exemplifies the “exclusive view,” and *In re Tran*, 369 B.R. 312 (S.D. Tex. 2007), which exemplifies the “nonexclusive view.” Finally, this article concludes by discussing some important implications of this issue, specifically, the implications these two different views have on large third party debt buyers. These third party debt buyers, such as B-Line and eCast, buy thousands of unsecured claims from credit card companies for cents on the dollar and then seek to collect these claims from debtors in bankruptcy. Depending on which of the two views is applied to their often unsupported proofs of claim these companies stand to gain, or lose, millions of dollars.

II. 11 U.S.C. § 502 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3001

The two provisions at the heart of the “exclusive” versus “nonexclusive” view debate are 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3001. Section 502 governs the allowance of a creditor’s claim. Section 502(a) provides that a creditor’s proof of claim filed pursuant to the Bankruptcy Code will be deemed allowed unless a party to the action, such as a trustee or debtor, objects. Section 502(b) further provides for a court to hear any such party’s objection to a creditor’s claim and to allow the claim to stand after determining what the proper

amount of the claim should be “except to the extent that” the creditor’s claim falls into one of the nine categories listed in section 502(b). If a creditor’s claim falls into one of these nine listed categories the claim is dismissed. Non-compliance with Rule 3001 is not one of the nine categories listed.

Rule 3001 governs the proper manner for a creditor to file a proof of claim. Specifically, Rule 3001(c) provides that when a creditor’s proof of claim is based on a writing “the original or a duplicate shall be filed with the proof of claim.” Rule 3001(f) further provides that a proof of claim “filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” A proof of claim filed without the documentation mandated by Rule 3001 is not automatically dismissed; rather, such a claim is merely stripped on the *prima facie* validity it otherwise would have enjoyed. These unsupported claims will be allowed unless challenged by a party in interest, such as a trustee. As a result, many claims can be, and are, automatically allowed against debtors even though no documentation is provided to prove that the claim even exists. But if a party objects to a proof of claim filed without supporting documentation the claim will not automatically be allowed; rather, the court will seek to determine the validity of the claim. However, courts disagree as to whether the ultimate result of a creditor’s failure to provide supporting documentation can be dismissal of the creditor’s claim.

III. THE DIFFERENCES BETWEEN THE “EXCLUSIVE” VIEW AND THE “NONEXCLUSIVE” VIEW

In the absence of a clear statutory answer as to whether a creditor who does not comply with Rule 3001 should have her claim dismissed, two different views of claims objections have developed among the courts: the “exclusive” view and the “nonexclusive” view. Courts adopting the “exclusive” view hold that a creditor’s claim can only be dismissed for one of the

nine specific reasons listed in section 502(b). For example, section 502(b) provides that a creditor's claim can be dismissed if the claim is for unmatured interest, or if the claim is from an attorney of the debtor. Therefore, under the "exclusive" view, mere non-compliance with Rule 3001 is not an adequate reason to dismiss a creditor's claim. In contrast, courts adopting the "nonexclusive" view hold that a creditor's claim can be dismissed for reasons other than one of the nine specific reasons listed in section 502(b). Therefore, under the "nonexclusive" view non-compliance with Rule 3001 is an adequate reason to dismiss a creditor's claim. This section of this article seeks to further explore the reasoning behind both views and the way these views are practically applied by way of two recent case examples. First, this section explores the reasoning behind the adoption of the "exclusive" view and its practical application by the Tenth Circuit Bankruptcy Appellate Panel in the case of *B-Line v. Kirkland (In re Kirkland)*, 379 B.R. 341 (B.A.P. 10th Cir. 2007). Then, this section explores the reasoning behind the adoption of the "non-exclusive" view and its practical application by a district court in Texas in the case of *In re Tran*, 369 B.R. 312 (S.D. Tex. 2007).

A. THE "EXCLUSIVE" VIEW: B-LINE V. KIRKLAND (IN RE KIRKLAND)

In *B-Line*, the Tenth Circuit Bankruptcy Appellate Panel adopted the "exclusive" view of claims objections, holding that a creditor's claim could only be dismissed for one of the nine specific reasons provided in section 502(b) of the Bankruptcy Code. In *B-Line*, the debtor initially filed for bankruptcy protection under chapter 13. *B-Line*, 379 B.R. at 342. However, after her attempt of debt restructuring failed, her chapter 13 case was converted into a chapter 7 liquidation case. *Id.* In her schedule the debtor listed a substantial amount of unsecured debt to a credit card company identified as Next Card. *Id.* Next Card then transferred its unsecured claim

to a company known as B-Line,¹ which then filed a proof of claim against the debtor's estate. *Id.* The trustee of the debtor's estate objected to B-Line's proof of claim, arguing that B-Line did not provide the necessary supporting documentation to prove that it had a valid claim² against the estate. *Id.* at 342–43. The trustee further argued that B-Line's claim should be dismissed because its failure to supply supporting documentation violated Rule 3001. *Id.* The lower court agreed with the trustee, sustained the objection, and disallowed the B-Line's claim. *In re Kirkland*, 361 B.R. 199, 205 (Bankr. D.N.M. 2007). Thus, the lower court adopted the “nonexclusive” view of claims objections. *Id.* The lower court noted that B-Line failed to present any supporting documentation with its proof of claim even though given “ample opportunity” to produce it. *Id.* B-Line appealed, and both parties agreed to have the appeal decided by the Tenth Circuit Bankruptcy Appellate Panel (“BAP”). *B-Line*, 379 B.R. at 343. The BAP reversed the lower court's decision and firmly adopted the “exclusive” view of claims objections. *Id.* at 344.

The BAP in *B-Line* analyzed the language of section 502 and Rule 3001 and concluded that the “exclusive” view was the proper view to follow. *Id.* at 345. The BAP reasoned that section 502(b) firmly governed the reasons for which a creditor's claim could be dismissed. *Id.* That is, section 502(b) provided that a creditor's claim could only be dismissed for one of the nine reasons listed in section 502(b). The BAP further reasoned that section 502(b) used “mandatory language” which mandated that a court “shall” allow a creditor's claim “except” if a creditor's claim met one of the nine reasons listed in the statute. *Id.* Thus, the BAP held that the

¹ B-Line is in the business of buying debt accounts of debtors who have filed for bankruptcy from unsecured creditors, often credit card companies, and then attempting to collect from these debtors in bankruptcy proceedings. B-Line's business is estimated to have handled over \$45 billion dollars of debt since 1997. *See In re Cleveland*, 396 B.R. 83, 85–86 (Bankr. N.D. Okla. 2008); *In re Wingenter*, 376 B.R. 221, 223 n.1 (Bankr. N.D. Ohio 2007).

² The trustee also objected to B-Line's claim on the ground that B-line failed to produce supporting documentation of a valid transfer of claim from Next Card, the original creditor. However, this claim was not considered by the lower court for procedural reasons. *See In re Kirkland*, 361 B.R. 199, 200 (Bankr. D.N.M. 2007).

plain language of the statute spoke in “absolute terms,” and therefore a creditor’s claim could only be dismissed for one of the nine reasons listed in section 502(b). *Id.* The BAP then analyzed whether Rule 3001 modified the application of section 502(b). *Id.* Specifically, the BAP analyzed whether the supporting documentation requirement of Rule 3001 provided an additional reason for a creditor’s claim to be dismissed. *Id.* The BAP noted that although Congress gave the Supreme Court the power to write the Bankruptcy Rules, Congress specifically provided that the Rules would not modify a substantive right of any party. *Id.* The BAP further noted that dismissal of a creditor’s claim for non-compliance with Rule 3001 would modify a creditor’s substantive rights. *Id.* Therefore, because allowing a creditor’s claim to be dismissed for non-compliance with Rule 3001 would modify a creditor’s substantive right the BAP held that Rule 3001 did not provide an additional reason for a creditor’s claim to be dismissed. *Id.*

In not dismissing B-Line’s proof of claim, the BAP reasoned that adopting the “nonexclusive” view would result in more litigation as to whether a creditor’s proof of claim substantially complied with conflicting instructions. The instructions in conflict are found in Rule 3001 and in Official Form 10. *Id.* at 353. Rule 3001 instructs a creditor how to properly file a proof of claim, and Official Form 10 is used by a creditor to prepare its proof of claim. However, Rule 3001 and Official Form 10 each instruct a creditor to provide different documentation with its proof of claim. For example, Rule 3001 instructs a creditor to submit the original or duplicate of any document upon which its claim is based. By contrast, Official Form 10 instructs a creditor to submit a summary of lengthy documents upon which its claim is based. Therefore, if a creditor complied with Official Form 10 and submitted only a summary of a long document upon which its claim was based it would technically violate Rule 3001 because it

failed to provide the original or duplicate of the document upon which its claim was based. The BAP explained that adopting the “nonexclusive” view would result in trustees and debtors filing objections to such supporting documentation—seeking to have the creditor’s claim dismissed—because the creditor did not “substantially comply” with Rule 3001. *Id.* at 352–54. Deciding these constant objections would cause a dramatic increase in litigation. *Id.* Thus, to avoid this dramatic increase in litigation the court adopted the “exclusive” view. *Id.*

B. THE “NON-EXCLUSIVE” VIEW: IN RE TRAN

In *In re Tran*, the United States District Court for the Southern District of Texas adopted the “nonexclusive” view of claims objections, holding that a creditor’s claim could be dismissed for a reason other than one of nine specific reasons provided in section 502(b) of the Bankruptcy Code. That is, the court allowed a creditor’s claim to be dismissed because the creditor violated Rule 3001 by not providing supporting documentation with its proof of claim. *In re Tran*, 369 B.R. 312, 322 (S.D. Tex. 2007). In *In re Tran*, the debtor filed for bankruptcy protection under chapter 13. Among the debtor’s creditors were three credit card issuers. *Id.* at 314. However, these credit card issuers did not submit claims against the debtor’s estate. *Id.* Instead, the credit card issuers assigned their claims to a company known as eCast.³ *Id.* eCast then submitted a proof of claim against the debtor’s estate. *Id.* The debtor objected claiming that “eCast was a stranger” and that she did not owe them any money. *Id.* The debtor further argued that because eCast did not submit any supporting documentation with its proof of claim, in violation of Rule 3001, its proof of claim should be dismissed. *Id.* at 316, 318. Instead of then providing the required supporting documentation, eCast responded by providing a “general assignment

³ eCast, like B-line, is in the business of buying debt accounts of debtors who have filed for bankruptcy from credit card companies and then attempting to collect from these debtors in bankruptcy proceedings. See *In re Armstrong*, 320 B.R. 97, 101 (Bankr. N.D. Tex. 2005).

agreement” between itself and the three credit card issuers and a document containing “boilerplate” language which professed to contain a summary of its claims against the debtor. *Id.* at 317, 319. The bankruptcy court agreed with the debtor, sustained the objection, and dismissed eCast’s claim. *Id.* at 314. Thus, the bankruptcy court adopted the “nonexclusive” view of claims objections. eCast then appealed, and the appeal was heard by the United States District Court for the Southern District of Texas. *Id.* The district court affirmed the bankruptcy court’s decision and adopted the “nonexclusive” view of claims objections. *Id.*

The court in *In re Tran* analyzed the language of section 502 and Rule 3001 and concluded that the “nonexclusive” view was the proper view to follow. *Id.* at 322. The court analyzed the language of Rule 3001 and concluded that eCast’s proof of claim was not entitled to *prima facie* validity. *Id.* at 317. The court noted that Rule 3001(f) provides that a creditor’s proof of claim submitted in accordance with the Federal Rules of Bankruptcy Procedure will enjoy *prima facie* validity. *Id.* at 316–17. That is, if eCast submitted its proof of claim with supporting documentation, as required by Rule 3001(c), then its proof of claim would enjoy *prima facie* validity—a presumption that its claim was valid. The burden of proof would then be on the debtor to disprove the presumed validity of eCast’s proof of claim. *Id.* at 317–18. However, the court explained that because eCast did not submit supporting documentation with its proof of claim, a violation of Rule 3001(c), its proof of claim was not entitled to *prima facie* validity. *Id.* at 317. Therefore, the debtor did not have to overcome the burden of disproving the validity of eCast’s proof of claim. *Id.* Rather, the debtor merely objecting to the improperly filed proof of claim placed the burden of proof on eCast to prove the validity of its proof of claim. *Id.* The court then concluded that since eCast declined to produce the documentation mandated by Rule 3001(c) its claim should be dismissed. *Id.* at 322.

In dismissing eCast's proof of claim, the court rejected eCast's argument that the court should follow case law from courts in the Ninth Circuit which had adopted the "exclusive" view. *Id.* at 316. eCast argued that although its proof of claim was not filed in accordance with Rule 3001, it could not be dismissed because non-compliance with the Rule is not one of the nine reasons listed in section 502(b) for which a creditor's claim can be dismissed. *Id.* The court rejected eCast's argument, noted that the court's ruling was "consistent with Fifth Circuit law," and adopted the "nonexclusive" view of claims objections which allowed for eCast's claim to be dismissed for failing to comply with Rule 3001. *Id.* at 315, 322.

V. IMPORTANT IMPLICATIONS OF THE "EXCLUSIVE" VIEW AND THE "NONEXCLUSIVE" VIEW

There are a number of important implications regarding the adoption of the "exclusive" view and the "nonexclusive" view. Two of these implications are examined in this section. First, the effect of these two views on the conservation of judicial resources is examined. Then, this section concludes by examining the effects these two different views have on the operations of large third party debt buyers, such as B-Line and eCast.

The "exclusive" view better conserves judicial resources than does the "nonexclusive" view. The "exclusive" view conserves judicial resources by eliminating the incentive for trustees to object to a creditor's proof of claim for every technical violation. That is, under the "exclusive" view a trustee no longer has the incentive to object to every technical violation in a creditor's proof of claim because he knows that the claim can only be dismissed for one of the nine reasons listed in section 502(b). By contrast, under the "nonexclusive" view a trustee has the incentive to object to every technical violation in a creditor's proof of claim because he knows that the claim can be dismissed for such technical violations. Moreover, rather than

create an incentive for a trustee to object to every technical violation the “exclusive” view encourages a trustee to utilize the broad discretion to object to a creditor’s claim granted to him in section 704 of the Bankruptcy Code. Specifically, the “exclusive” view encourages a trustee to use his discretion and object to a creditor’s claim only when the claim appears genuinely invalid. Additionally, the “exclusive” view conserves judicial resources by allowing courts to avoid the difficult determination of whether supporting documentation attached to a creditor’s proof of claim “substantially” complies with the Rules notwithstanding technical defects.

The “exclusive” view supports the operations of large third party debt buyers better than the “nonexclusive” view. These third party debt buyers, such as B-Line and eCast, buy debt accounts of debtors who have filed for bankruptcy from unsecured creditors, who are frequently credit card companies. These third party debt buyers buy these claims for cents on the dollar and then attempt to collect on these claims in bankruptcy proceedings against the debtor. These debt buyers have adopted a common practice of filing proofs of claim with little to no supporting documentation, a clear violation of Rule 3001. *See, e.g., In re Kemmer*, 315 B.R. 706 (Bankr. E.D. Tenn. 2004); *In re Henry*, 311 B.R. 813 (Bankr. W.D. Wash. 2004). Nevertheless, even though these proofs of claim are filed in violation of Rule 3001 they are merely stripped of *prima facie* validity, and absent a challenge from a debtor or a trustee these claims are automatically allowed. However, even if a debtor or a trustee does challenge one of these defective proofs of claim the “exclusive” view provides further protection for creditors. That is, because the “exclusive” view only allows a proof of claim to be dismissed for the reasons specifically listed in section 502(b) courts will still not dismiss a proof of claim for being submitted without adequate documentation. It can be argued that the “exclusive” view allows the practices of these third party debt buyers to flourish because these companies are allowed to violate Rule 3001

without fear of having their claims dismissed. In fact, a representative of eCast testified that forcing third party debt buyers to provide the proper documentation in strict compliance with Rule 3001 would be “cost prohibitive.” *In re Armstrong*, 320 B.R. 97, 101–02 (Bankr. N.D. Tex. 2005).

By contrast, the “nonexclusive” view does not support the operation of large third party debt buyers. The “nonexclusive” view serves to encourage compliance with Rule 3001 by threatening to dismiss the defective claims of these third party debt buyers. For example, in *In re Gilbreath*, 395 B.R. 356, 358, 364 (Bankr. S.D. Tex. 2008), the court endorsed the “nonexclusive” view and stated that the court would continue to police the “shoddy practices” of creditors like eCast and B-Line who submit proofs of claim without adequate supporting documentation. The court further stated that it would not permit these third party debt buyers to continue to submit proofs of claim which violate Rule 3001. *Id.* at 359. Therefore, under the “nonexclusive” view these third party debt buyers have a powerful incentive to comply with Rule 3001, a practice which would dramatically decrease their profits in their lucrative business. *Cf. In re Armstrong*, 320 B.R. at 101–02.

