

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON DIVISION**

**IN RE**

**ESTELL WAYNE HATTER  
MELISSA BREWSTER**

**CASE NO. 18-20482**

**DEBTORS**

**ORDER SUSTAINING OBJECTION TO CLAIM**

This matter is before the Court on the Chapter 13 Trustee's amended and corrected Objection to creditor McCluskey Chevrolet's Claim No. 12-1.<sup>1</sup> [ECF Nos. 26, 38.] Trustee requests that the Court disallow Creditor's claim as tardy. Debtors responded in opposition [ECF No. 29], and Trustee replied [ECF No. 34]. Creditor did not respond or otherwise participate. The Court held a hearing on September 11, 2018, and took the matter under submission. The Court having reviewed the record, considered arguments of counsel, and being otherwise sufficiently advised, this matter is now ripe for decision.

A claim is deemed allowed if proof of that claim is filed, unless a party in interest objects. 11 U.S.C. § 502(a). If an objection is made, after notice and a hearing, the Court shall allow the claim unless "proof of such claim is not timely filed, except to the extent tardily filed as permitted . . . under the Federal Rules of Bankruptcy Procedure" or under other exceptions not applicable in this case. 11 U.S.C. § 502(b)(9). Bankruptcy Rule 3002(c) instructs that a proof of claim is timely filed in a chapter 13 case if it is filed not later than 70 days after the order for relief.<sup>2</sup> It is undisputed that Creditor filed Claim No. 12-1 thirty-five days late.

---

<sup>1</sup> "McCluskey Automotive LLC" is the name of the creditor listed on Claim No. 12.

<sup>2</sup> References to the Federal Rules of Bankruptcy Procedure appear as Bankruptcy Rule \_\_\_\_ or Rule \_\_\_\_.

Even though Creditor's claim was untimely, Debtors urge the Court to either allow the claim to stand as filed or allow Debtors time to file a proof of claim on Creditor's behalf. In support, Debtors cite Bankruptcy Rule 9006(b)(1), which gives the Court discretion to permit an act to be done after the expiration of a period specified in the Bankruptcy Rules "where the failure to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). However, Rule 9006(b)(1)'s "excusable neglect" exception is not applicable to the claims-filing deadline set by Rule 3002(c). *In re Tench*, No. 15-8026, 2016 WL 2892497, at \*3 (B.A.P. 6th Cir. May 11, 2016) (citing Fed. R. Bankr. P. 9006(b)(3)).

Debtors alternatively request that the Court grant them relief on an "equitable basis." Because Debtors did not cite supporting authority, the Court assumes that they are relying on the Court's equitable powers in § 105(a) to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). "It is hornbook law that § 105(a) 'does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code.'" *Law v. Siegel*, 571 U.S. 415, 421 (2014) (quoting 2 Collier on Bankruptcy ¶ 105.01[2], p. 105–6 (16th ed. 2013)). "[T]he Code and the Federal Rules of Bankruptcy Procedure that determine timeliness provide that untimely claims filed in Chapter 13 cases shall be disallowed." *Tench*, 2016 WL 2892497, at \*4. "Even if the equities weigh against disallowing the late-filed claims, § 105 cannot be used to expand the Code and Rules to allow them." *Id.* Debtors' request for equitable relief is thus unavailing.

At the hearing, Debtors' counsel and the Trustee opined that Debtors could rely on the Rule 9006(b)(1) "excusable neglect" exception to request permission to file a claim on Creditor's behalf under Rule 3004, even though the period for doing so has expired. Because Debtors have

not moved the Court to grant them relief from the Rule 3004 deadline, that issue is not before the Court at this time, and the Court declines to rule on it.

Therefore, IT IS HEREBY ORDERED as follows:

1. Trustee's Amended and Corrected Objection to Claim [ECF No. 38] is SUSTAINED.
2. Debtors' Response and Objection to Trustee's Objection to Claim [ECF No. 29] is OVERRULED.
3. Claim No. 12-1 filed by McCluskey Automotive LLC is DISALLOWED.
4. This Order is without prejudice to any future request by Debtors or Trustee to file a proof of claim on Creditor's behalf pursuant to Bankruptcy Rule 3004.

---

The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



**Signed By:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Tuesday, October 23, 2018**  
**(tnw)**