

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	Chapter 13
In re:	:	
	:	Case No. 15-10523 (CGM)
John James,	:	
	:	
Debtor.	:	
	:	
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**MEMORANDUM DECISION DENYING TOWER CAPITAL MANAGEMENT’S
MOTION TO FILE AMENDED PROOF OF CLAIM**

A P P E A R A N C E S :

David J. Babel, Esq.
2525 Eastchester Road
Bronx, NY 10469
Attorney for Debtor

Robert W. Griswold, Esq.
Shapiro, Dicaro & Barak, LLC
One Huntington Quadrangle, Suite 3N05
Melville, NY 11747
Attorney for Tower Capital Management, LLC

Jody Kava, Esq.
399 Knollwood Road, Suite 102
White Plains, NY 10603
Attorney for Chapter 13 Trustee

**CECELIA G. MORRIS
CHIEF UNITED STATES BANKRUPTCY JUDGE**

Tower Capital Management, LLC (“Tower Capital”) seeks permission to amend proofs of claim to accurately reflect the amounts due so John James (the “Debtor”) can cure the full amount of the outstanding tax liability through bankruptcy. The Debtor objects to Tower Capital’s proposed amended proofs of claim. The Debtor argues that the proposed amendments

substantively alter the interest rates in the original proof of claim, which would cause the Debtor prejudice. For the reasons discussed below, Tower Capital's motion to file amended proof of claim is denied.

Jurisdiction

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(a) and the Standing Order of Reference signed by Chief Judge Loretta A. Preska dated January 31, 2012. This is a "core proceeding" under 28 U.S.C. § 157(b)(2)(B) (allowance or disallowance of claims against the estate).

Background

Debtor filed this chapter 13 petition on March 7, 2015. Debtor's Pet., ECF No. 1. The Court affirmed the chapter 13 plan on October 6, 2015. Order Confirming Ch. 13 Plan 1, ECF No. 15. The deadline for filing proofs of claim was July 1, 2015. Notice of Creditor's Meeting 1, ECF No. 5. No creditor filed a timely claim so the Debtor filed claims on the creditors' behalf. Fed. R. Bankr. P. 3004 ("If a creditor does not timely file a proof of claim...the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims.").

Debtor filed the following three claims:

1. Claim No. 1, filed on behalf of New York City Tax Lien 2013-A trust in the amount of \$60,000.
2. Claim No. 2, filed on behalf of the New York City Water board in the amount of \$30,000.
3. Claim No. 3 filed on behalf of the New York City Department of Finance in the amount of \$27,000.

Debtor's Am. Ch. 13 Plan 3, ECF No. 13. Movant, Tower Capital Management, is the servicer for two trusts, each of which holds a tax lien with respect to the Debtor's property. Mot. to File Am. Proof of Claim 1-3, ECF No. 25. The three aforementioned claims make up debts that are serviced by Tower Capital. *Id.* The debts are for outstanding tax liens. *Id.* The Debtor's plan

pays these claims in full. Claim No. 1 has a *Till* rate of interest of 4.5% and Claim No. 2 is paid at 9%. *Till v. SCS Corp.*, 541 U.S. 465, 476 (2004); Debtor's Am. Ch.13 Plan 3, ECF No. 13.

The confirmed plan states: "(i) For purposes of this Plan, Prepetition Arrearages **shall include all sums included in the allowed claim and shall have a "0" balance upon entry of the Discharge Order in this case.** (ii) No interest will be paid on Prepetition Arrearages unless otherwise stated. (iii) Payments made by the Trustee on Debtor's Prepetition Arrearages shall be applied only to those Prepetition Arrearages and not to any other amount owed by Debtor to the Secured Creditor." Order Confirming Ch. 13 Plan 2, ECF No. 15.

No creditor filed an objection to confirmation nor did any creditor file an appeal to the confirmation order. Debtor's Opp'n to Mot. 2:19, ECF No. 28. The confirmation became a final order 14 days after its entry date of October 6, 2015. Fed. R. Bankr. P. 8002(a)(1).

On February 1, 2017, Tower Capital filed a motion to amend the proof of claims. Mot. to File Am. Proof of Claim, ECF No. 25. Tower Capital claims that the plan fails to comply with the requirements of § 506 and failure to amend the claims would result in the Debtor leaving bankruptcy with outstanding liens on the property. Mot. to File Am. Proof of Claim 2, ECF No. 25. According to Tower Capital, the plan's interest rates on claims No. 2 and claim No. 3 are incorrect and should be increased. Mot. to File Am. Proof of Claim 3-4, ECF No. 25.

Debtor opposes the motion. Debtor's Opp'n to Mot. 1-7, ECF No. 28. Debtor argues that he requested payoff letters from the Creditors prior to creating the plan. *Id.* at 2:4. The Debtor served the plan on all creditors and no creditor filed an objection. Debtor's Aff. of Serv. 1, ECF No.12. Moreover, Tower Capital failed to file claims. Debtor's Opp'n to Mot. 2:23, ECF No. 28. Debtor's counsel points out that the trust that now purports to hold the claims was not even in existence when the case was filed. *Id.* at 3:17. Debtor also argues that the claims are not true

amendments as they do not supplement the original claims. *Id.* at 4:11. Rather, Debtor argues that Tower Capital seeks to substantively affect the proof of claim by attempting to alter the interest rate provided in Proof of Claim No. 1 and adding interest to Proof of Claim No. 3, which the Debtor did not owe at the time this case was filed. *Id.* at 4:11.

Discussion

The decision to grant or deny an amendment to a timely-filed proof of claim rests with the sound discretion of a bankruptcy judge. *See Gens v. Resolution Trust Corp. (In re Gens)*, 112 F.3d 569, 575 (1st Cir. 1997); *In re McLean Indus., Inc.*, 121 B.R. 704, 708 (Bankr. S.D.N.Y. 1990). “Although amendments to proofs of claim should in the absence of contrary equitable considerations or prejudice to the opposing party be freely permitted, such amendments are not automatic.” *In re W.T. Grant Co.*, 53 B.R. 417, 420 (Bankr. S.D.N.Y. 1985).

“[N]either the Bankruptcy Code nor the Bankruptcy Rules directly address amendment of a proof of claim”. *In re Enron Creditors Recovery Corp.*, 370 B.R. 90, 95 (Bankr. S.D.N.Y. 2007). The Second Circuit has adopted a two-prong test for allowing amendments to claims and case law developed additional useful criteria to apply it. *See Midland Cogeneration Venture L.P. v. Enron Corp. (In re Enron Corp.)*, 419 F.3d 115, 133 (2d Cir. 2005); *Integrated Res., Inc. v. Ameritrust Co. N.A. (In re Integrated Res., Inc.)*, 157 B.R. 66, 70 (Bankr. S.D.N.Y. 1993). Bankruptcy courts within the Second Circuit “examine each fact within the case and determine whether it would be equitable to allow the amendment.” *In re Enron*, 419 F.3d at 133. Hence, they “must first look to whether there was timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.” *In re Integrated*, 157 B.R. at 70 (citations omitted). If there was a timely assertion, the court then examines each fact within the case and determines whether it would be equitable to allow the amendment. *Id.* In balancing the equities,

the court considers the following equitable factors: (1) undue prejudice to opposing party; (2) bad faith or dilatory behavior on part of the claimant; (3) whether other creditors would receive a windfall were the amendment not allowed; (4) whether other claimants might be harmed or prejudiced; and (5) the justification for the creditor's inability to file the amended claim at the time the original claim was filed. *Id.* As the United States Court of Appeals for the Fifth Circuit noted that these considerations really come down to two questions: (1) is the creditor attempting to stray beyond the perimeters of its original proof of claim, effectively filing a new claim, and (2) what is the degree and incidence of prejudice caused by the creditor's delay. *United States v. Kolstad (In re Kolstad)*, 928 F.2d 171, 176 (5th Cir. 1991).

Here, it is quite clear that the Court should not permit Tower Capital to amend its claim. Though Tower Capital was only recently transferred this claim, it takes the claim that exists in the bankruptcy case—not the one it wishes it had. Here, Debtor did everything right. He requested payoff letters, filed a plan and served that plan on all creditors. Debtor's Opp'n to Mot. 2:4, ECF No. 28; Debtor's Model Ch. 13 Plan, ECF No. 2; Debtor's Aff. of Serv. 1, ECF No.12. He filed claims on behalf of creditors when those creditors failed to file their own. Debtor's Am. Ch. 13 Plan 3, ECF No. 13. No one ever objected to the plan and now that plan is final. Debtor's Opp'n to Mot. 3:12, ECF No. 28; Order Confirming Ch. 13 Plan, ECF No. 15. By this motion, Tower Capital is attempting to get a "do-over" on a claims allowance process that has already closed. Tower Capital (or its predecessor) had the opportunity to file claims or object to the plan before the Court confirmed the plan. At this juncture, it would be inequitable to allow Tower Capital a second bite at that apple. *Belser v. Nationstar Mortg., LLC (In re Belser)*, 534 B.R. 228, 244 (B.A.P. 1st Cir. 2015) (finding courts generally do not allow creditors to amend a

debtor-filed proof of claim when allowing the amendment would be inequitable and cause the debtor prejudice to jeopardize the debtor's reorganization plan).

As to Tower Capital's argument that the liens will not be discharged, that is simply incorrect. The Debtor's plan clearly indicates that when paid in full, creditor's claims will be at a \$0 balance. Debtor's Am. Ch. 13 Plan 1, ECF No. 13. Thus, whatever remaining amounts Tower Capital believes is due—simply is not. The claim will be paid in full upon completion of the plan. *Id.* As the Supreme Court made clear that an order confirming a plan is a final judgment and the plan has a binding affect unless the creditor can show lack of due process—which Tower Capital cannot claim. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). And section 1327(a) states: "The provisions of a confirmed plan bind the debtor and each creditor . . . whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. 1327(a). A creditor cannot collaterally attack a confirmed plan by filing (or attempting to file) an amended claim. *See In re Galindez*, 514 B.R. 79, 88 (Bankr. D. P.R. 2014).

Conclusion

For the foregoing reasons, the Court denies Tower Capital's motion to file amended proof of claim. When the Debtor pays the plan in full no monies will be owed on any of the claims and Tower Capital may not seek to collect any monies from Debtor as that would be a violation of the discharge injunction. The Debtor shall submit an order in accordance with this Memorandum Decision.

Dated: June 19, 2017
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge