IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

IN RE:	:	
	:	
ELBA LEBRON CARDONA	:	*CASE NO. B-93-06047(ESL)*
	:	
	:	*CHAPTER 13*
Debtor	:	
	:	

OPINION AND ORDER

This case is before the Court on the motion by VAPR Federal Credit Union (VAPR) requesting reconsideration of the order entered on July 8, 1994 disallowing claim #6. The Court will address allegations made in the motion which are overly impressed with emotion because the Court's opinion of moving creditor's counsel is that he is a zealous advocate.

The motion for reconsideration complains of the processing of documents by the Clerk and the labeling of orders by the Court as they relate to dates. Therefore, a brief exposition of the procedural posture follows.

On February 18, 1994, VAPR filed two proofs of claim signed by their attorney, Mr. Luis O. Dávila Alemán. The claims appear numbered as six (6) and seven (7) in the Claims Register. On April 12, 1994, debtor filed an objection to claim #6 in the amount of $11,250.30 filed as an unsecured claim. Debtor alleged the following reasons:

"1. The loan represented in claim #6 was granted to debtor's

husband on September 1992. (See attachment to Proof of Claim.)

2. *Debtor has been separated from her husband since 1989.*

3. *The loan was not obtained nor used for the benefit of the conjugal partnership.*

4. *For this reason, debtor is not liable for said loan (WRC Properties, Inc. v. Santana, 116 D.P.R. 127 (1985); Banco de Ahorro del Oeste v. Santos, 112 D.P.R. 70 (1982); See also, FDIC v. Perez, 637 F. Supp. 358 (1986)."*

The objection to claim #6 included the following notice:

"NOTICE TO CREDITORS AND PARTIES IN INTEREST:

> *You are hereby advised that, should no timely written answer be filed within 30 days from the date of this notice, the request for disallowance of Proof of Claim #6 will be granted without further notice or hearing."*

The case came before the Court on May 10, 1994 for a hearing on confirmation. The plan was confirmed and claim #6 by VAPR was estimated at $100.00 for confirmation purposes only pursuant to 11 USC 502(c). Present at the hearing was counsel for VAPR. See docket #11.

On May 12, 1994, VAPR filed a timely answer to the objection (docket #13). The answer prays for the denial of the objection on two grounds, that the objection is not well plead and that service was improper. In a footnote or margin order dated June 4, 1994 and entered on June 6, 1994 the Court found that the objection was well plead and granted claimant twenty (20) days to file an amended answer or the claim would be disallowed. The Court in its footnote

order commented that claimant may be confused as to the case to which the defense applies. The comment in the footnote order did not give the premises for the same. These are: (1) that counsel appears before this Court in numerous cases, (2) that no mention was made regarding the thrust of debtor's argument, that is, that the loan was granted to her husband (not her) from whom she has been separated since 1989, that the conjugal partnership did not benefit from the loan, and, thus, she was not liable (to this end debtor cited the cases quoted hereinabove); and, (3) that the arguments in the answer are generally made when the objecting party merely states that the amounts "are not owed", without specifying the reasons therefor.

On July 8, 1994, the Court entered an order disallowing claim #6 because VAPR had failed to comply with the footnote dated June 4, 1994 and entered on June 6, 1994 in the document identified as docket number 13. On July 15, 1994, VAPR filed its motion for reconsideration (docket #15).

Paragraph one (1) of the motion merely restates the order disallowing claim #6.

Paragraph two (2) states that the order entered on July 8, 1994 "erroneously" quotes another, and that no notice was given of the order as the docket clerk in charge of the case did not sign the entry because she was on vacation. The allegations are irrelevant either because they are not material or no prejudice was caused. Counsel is first concerned with semantics. Orders are "dated" on

the day signed by the judge and "entered" by the Clerk in the docket on the same or another day. When the Court stated "order of June 6, 1994" it meant order entered on June 6, 1994, and is no error. Second, the entry of the footnote order in docket entry #13 is initialed, not so the names of the parties who were given notice, as they appear in the third page (Mr. Luis Dávila Alemán is one of the parties), because the initials appear on the first page right above the stamped date when the order was entered. How counsel knows who is in charge of this case in the Clerk's office and that she was on vacation is beyond my actual knowledge of the daily working of the Clerk's office. Yet, it is completely irrelevant.

Paragraph three (3) alleges that the order dated June 4, 1994 was not sent because counsel for VAPR did not receive it. The conclusion is not a direct corollary of the premise. In any event, failure to give notice does not affect the finality of an order. In re Stagecoach Utilities, Inc., 86 B.R. 529 (BAP 9th Cir. 1988); Matter of Mullis, 79 BR 26 (Bankr. D. Nev. 1987); Matter of Futoronics Corp., 53 BR 126 (Bankr. N.Y. 1985).

Paragraph four (4) alleges that "R&G Mortgage Corp.'s" constitutional right to due process was violated because an actual hearing was not held. No legal analysis is provided for this conclusion. At the outset the Court states that it understands claimant to be VAPR and not R&G Mortgage. For the reasons that follow the Court finds that VAPR's due process rights were not violated.

Rule 3007 of the Federal Rules of Bankruptcy Procedure provides as follows:

> *"Rule 3007. Objections to Claims*
>
> *An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding."*

The debtor's objection was in writing and filed with the Court, notice of the objection was given to claimant and an answer was filed within thirty (30) days. Claimant had the opportunity to request a hearing and did not. No actual hearing was held prior to the Court's ruling. Such are the facts. Is failure to hold an actual hearing fatally defective? We don't think so, as long as due notice and opportunity for a hearing was given.

The known practice of this Court in relation to objections to claims is that they must be in writing, must plead with specificity the grounds for the objection, and must allow claimant at least thirty (30) days to reply before an order is entered. The objection to claim before the Court meets the above criteria.

Whether an actual hearing is required pursuant to Rule 3007 of the FRBP is the subject of debate. This Court follows the rationale that the concept of "after notice and hearing" in 11 USC 102(1) controls. This means that there must be due notice and "opportunity" for a hearing, and that if there is no request for a

hearing the action by the Court may be taken without an actual hearing. It must be noted that this Court's policy is that action by the Court may be taken and an order entered. Such an order is necessary to comply with Rule 9021 of the FRBP. See 2 William L. Norton, Jr., Norton Bankruptcy Law and Practice 2d § 41.8, p. 41-18, fn. 66 (1994).

This Court is conscious of the precedent that although having caseloads and repetitive motions may impose time consuming burdens, the due process rights of the parties must not be impinged. United States v. Genaro Medina Silverio, No. 93-1800, slip op. at 7 (1st Cir. July 19, 1994). However, this Court's procedure fully complies with the constitutional due process requirements and the spirit of the statute as well. The procedure is necessary in order to allow litigants to have reasonable access to the limited available resources. Counsel and parties should not be surprised by the procedure as it is not unique to this Court. The Cowans treatise on bankruptcy states the following on the subject:

> *"The overload in the bankruptcy court has caused a number of courts to develop their own means of handling the fact that many claimants do not respond to objections. Setting aside a period of time to hear objections has caused a possibly unnecessary result when claimants do not appear. Some courts may require a response and/or demand for hearing if a hearing is to occur. Some may even disregard the wording of the rule. Local inquiry is necessary. Failure to give the debtor notice of a hearing has been held error, but harmless under the circumstances. A practice of disallowing claims without a hearing and allowing 10 days to seek to modify has puzzled the Eighth Circuit and perhaps others. One court has used the practice of requiring creditors disputing objections to*

> ***file by a stated date or be foreclosed." (Footnote omitted).***

3 Daniel R. Cowans, Cowans Bankruptcy Law and Practice § 12.34, p. 160, (6th ed. 1994).

Paragraph five (5) alleges that the "legal partnership" between debtor and her estranged husband is "liable for this claim". No legal analysis or support is given. We begin by noting that it is questionable that the "conjugal partnership", as such, is before the Court. The petition was filed under Chapter 13. Chapter 13 is a voluntary chapter and there is no allegation or indication that the debtor intends to pay claims with property belonging to the conjugal partnership. See generally In re Gomez Molina, 77 BR 368 (Bankr. P.R. 1987). If only the individual is before the Court, then, that the conjugal partnership is liable for the claim only has a subsidiary effect. Moreover, claimant failed to contest the legal precedent cited by the debtor. The Court has reviewed the cases and agrees with claimant that the established caselaw in Puerto Rico is that there are exceptions to the general rule (31 LPRA 3661) that personal loans by a spouse are an obligation of the conjugal partnership when the spouse not signing the obligation did not benefit from the incurred debt. Debtor made a prima facie showing when it alleged that the spouses were separated when the personal loan was made.

VAPR belatedly attempts in its motion for reconsideration (paragraph 6) to allege that the conjugal partnership benefitted because the husband used some of the money to pay off debts incurred

while they were married. VAPR does not specify amount nor offers any evidence in support of its allegation. Thus, there is no reason to reconsider on this ground. Moreso, no evidence is attached to the proof of claim to indicate that the loan is in arrears, and the debtor has now alleged in her opposition to the motion for reconsideration (docket #16) that payments on the loan by debtor's spouse are current and being made by payroll deduction. Thus, no prejudice to claimant VAPR is shown or apparent.

In view of the foregoing, VAPR's motion for reconsideration is denied.

SO ORDERED.

San Juan, Puerto Rico, this _____ day of July, 1994.

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ENRIQUE S. LAMOUTTE
Chief, U. S. Bankruptcy Judge