

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
LOUIS JUNIOR YATES and § Case No. 09-40455
BEVERKY JOHNSON YATES, § (Chapter 13)
§
Debtors. §

**MEMORANDUM OPINION AND ORDER DENYING MOTION TO
RECONSIDER ALLOWANCE OF CLAIM**

This matter is before the Court on the debtors' motion to reconsider the allowance of the unsecured claim filed by Mitchell Chapel Church of God in Christ in the amount of \$89,041.92, which the Court has denominated as claim number 13, pursuant to 11 U.S.C. § 502(j) and Bankruptcy Rule 3008. Mitchell Chapel has not opposed or otherwise responded to the motion. The following constitutes the Court's findings of fact and conclusions of law. *See* FED. R. BANKR. P. 7052, 9014(c).

PROCEDURAL HISTORY

In 2003, Louis Yates contracted with Mitchell Chapel to construct a new building and parking lot for a contract price of \$580,000. Mr. Yates later sued Mitchell Chapel for breach of contract in Texas state court. Mitchell Chapel denied his allegations and counterclaimed. In its counterclaim, Mitchell Chapel alleged that Mr. Yates had not completed the building and parking lot and, as a consequence, Mitchell Chapel had been forced to purchase certain appliances that Mr. Yates should have provided as well as pay \$87,000 to other contractors to finish the work started by Mr. Yates.

On February 18, 2009, the debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code. The suit between Mr. Yates and Mitchell Chapel was pending in

state court at that time, and the debtors listed Mitchell Chapel's claim as unliquidated and disputed. Mitchell Chapel timely filed proof of its claim on July 1, 2009, attaching a copy of its counterclaim to the proof of claim form. On October 7, 2009, the Chapter 13 trustee filed and served her report and recommendation regarding claims pursuant to LBR 3015(g). The trustee recommended, among other things, allowance of Mitchell Chapel's proof of claim.

The debtors timely objected to the allowance of Mitchell Chapel's claim on October 28, 2009. *See* LBR 3015(g)(7). As the sole grounds for disallowance, the debtors asserted that Mitchell Chapel's claim had not been reduced to a judgment. Since the debtors' objection failed to comply with all of the procedural requirements of LBR 3007, including the requirement that a debtor support a claim objection with an affidavit or other documentary proof, the Court entered an order on December 4, 2009, dismissing the objection without prejudice to re-filing.

On December 14, 2009, the Court entered an order approving the Chapter 13 trustee's report and recommendation concerning claims. The Court thereby allowed the unsecured claim filed by Mitchell Chapel. Several days later, on December 18, 2009, the debtors renewed their objection to Mitchell Chapel's claim. On January 21, 2010, the Court once again dismissed the debtors' objection based upon the failure to comply with all of the procedural requirements of LBR 3007, including the requirement to serve the Mitchell Chapel with a copy of the objection. Approximately seven months later, on August 3, 2010, the debtors re-filed their objection to Mitchell Chapel's claim and, in the alternative, requested that the Court reconsider the allowance of Mitchell Chapel's claim.

The debtors' motion for reconsideration, which they amended on August 4, 2010, is now before the Court.

ANALYSIS

In bankruptcy cases, the bankruptcy court has power to reconsider the allowance or disallowance of proofs of claim “for cause” at any time prior to the closing of the case. 11 U.S.C. § 502(j); FED. R. BANKR. P. 3008. In *Matter of Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987), the Fifth Circuit affirmed the bankruptcy court’s decision not to reconsider a claim, stating that “the bankruptcy court's discretion in deciding whether to reconsider a claim is virtually plenary, as the court may decline to reconsider without a hearing or notice to the parties involved.” The Fifth Circuit criticized the movant in that case for not even generally asserting cause for reconsideration under § 502(j). *Id.*

Here, the debtors have not explained their delay in filing the motion. Their motion does not directly address whether “cause” for reconsideration exists. Instead, they object to the allowance of Mitchell Chapel’s proof of claim because the state court had not reduced the claim to a judgment as of the petition date, and because they listed their debt to Mitchell Chapel as disputed in their bankruptcy schedules. In their argument, they assert that the claim is “unsubstantiated” and request that the Court allow their objection to be litigated.

Although what constitutes “cause” for purposes of § 502(j) is “discretionary with the bankruptcy court,” this discretion does not give this Court authority to act as a roving commission to do equity. The standard is not standardless. In this case, when deciding whether to relieve the debtors from their default, the Court may consider the willfulness of the default, the existence of a meritorious defense, and the level of prejudice that the

non-defaulting party may suffer should relief be granted. *See* FED. R. BANKR. P. 9014(c) (applying Bankruptcy Rule 7055, which incorporates Civil Rule 55, to contested matters); FED. R. CIV. P. 55(c) (providing that “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).”). *See also, e.g., Commercial Bank of Kuwait v. Rafidain Bank*, 15 F.3d 238, 243 (2nd Cir. 1994) (describing the factors a court may consider in setting aside a default).

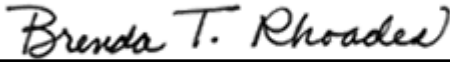
The debtors in this case were aware of the deadline for objecting to Mitchell Chapel’s claim. They filed a timely objection that the Court struck for procedural reasons. The order striking the debtors’ objection detailed the Court’s reasons. Approximately two weeks later, in the absence of a pending objection to the Chapter 13 trustee’s report and recommendation, the Court approved it. In their request for reconsideration of the Court’s allowance of Mitchell Chapel’s claim, the debtors have not explained their delay in re-filing their objection or seeking reconsideration of the Court’s order allowing Mitchell Chapel’s claim. Moreover, they have failed to raise a meritorious objection to Mitchell Chapel’s claim for the Court to decide.

A claim need not be reduced to judgment in order to be allowed by a bankruptcy court. The Code defines the term “claim” to include unliquidated claims, *see* 11 U.S.C. § 101(5)(A), and allows bankruptcy courts to estimate unliquidated claims, *see* 11 U.S.C. § 502(c). In this case, however, Mitchell Chapel’s claim was not unliquidated as it could be readily calculated: “If the amount of a claim has been ascertained or can readily be calculated, it is liquidated -- whether contested or not.” *In re Knight*, 55 F.3d 231, 235 (7th Cir. 1995). The existence of a dispute over part or all of the debt allegedly owed to

Mitchell Chapel did not convert the debt from a liquidated one to an unliquidated or “unsubstantiated” one. *See, e.g., In re Horne*, 277 B.R. 712, 715 (Bankr. E.D. Tex. 2002) (citing *In re Visser*, 232 B.R. 362 (Bkrcty. N.D. Tex. 1999)).

IT IS THEREFORE ORDERED that the Amended Objection to Claim of Mitchell Chapel Church of God in Christ, Claim Number 13, and in the Alternative Motion to Reconsider Claim Number 13, shall be, and it is hereby, **DENIED**.

Signed on 1/26/2011

 MD

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE