

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
GULF PACKAGING, INC.,¹) Case No. 15-15249
)
Debtor.) Hon. Pamela S. Hollis
)

OBJECTION TO MOTION TO ALLOW LATE FILED CLAIM

Joseph Myers, not individually but solely as trustee (the “*Creditor Trustee*”) of the Gulf Packaging, Inc. Creditor Trust (the “*Creditor Trust*”), by and through his undersigned counsel, hereby objects (the “*Objection*”) to the Motion to Allow Late Filed Claim (the “*Motion*”) (ECF No. 374) filed by Alliance Plastics LLC (“*Alliance*”). In support of the Objection, the Creditor Trustee states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and Article XII of the Plan (defined below). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On April 29, 2015 (the “*Petition Date*”), Gulf Packaging, Inc. (the “*Debtor*”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the “*Court*”).

¹ The last four digits of the Debtor’s tax identification number are 5030.

3. On May 8, 2015, the Debtor filed an Affidavit of Service stating that the Debtor served its creditors with notice of the Debtor's chapter 11 bankruptcy case and the initial meeting of creditors on May 6-7, 2015. [ECF No. 63.]

4. The Debtor served Alliance with notice of the Debtor's chapter 11 bankruptcy case via U.S. Mail at: P.O. Box 1587, Fort Mill, SC 29716. [ECF No. 63 at p. 8.]

5. On May 28, 2015, the Court entered an order (the "*Claims Bar Date Order*") setting the general claims bar date as July 31, 2015 (the "*Claims Bar Date*"). [ECF No. 130.]

6. The Debtor served Alliance with notice of the Claims Bar Date via U.S. Mail on June 4, 2015 at: P.O. Box 1587, Fort Mill, SC 29716. [ECF No. 154.]

7. On December 15, 2015, the Court entered an order (the "*Confirmation Order*") confirming the Debtor's First Amended Chapter 11 Plan, as amended (the "*Plan*"), including the Gulf Packaging, Inc. Creditor Trust Agreement (the "*Creditor Trust Agreement*") separately filed with the Plan Supplement.

8. The Plan became effective on January 22, 2016.

9. On March 29, 2016, Alliance filed the Motion seeking allowance of a late-filed claim in the amount of \$15,126.99 (the "*Late Claim*").

OBJECTIONS

10. The Creditor Trustee objects to the Motion and the allowance of the Late Claim because: (1) Alliance received notice of the Debtor's bankruptcy case and of the Claims Bar Date, (2) the relief requested in the Motion is moot as Alliance does not have a claim against the Debtor, and (3) this is not the proper time or procedure to determine whether the Late Claim should be allowed.

A. Alliance Received Notice of the Bankruptcy Case and the Claims Bar Date

11. Alliance argues that the Late Claim should be deemed timely filed because Alliance did not receive any notice of the Debtor's bankruptcy case until February 16, 2016 – the date Alliance received a demand letter from the Creditor Trustee regarding recovery of avoidable transfers.

12. Alliance is mistaken. The Debtor served Alliance with notice of the Debtor's chapter 11 bankruptcy case and the section 341 meeting of creditors [ECF No. 63] as well as with notice of the Claims Bar Date [ECF No. 154] at the P.O. Box address listed on Alliance's invoices. *See Invoices Attached to Late Claim.*

13. Alliance has offered no explanation for this factual discrepancy and, significantly, has not even acknowledged that it was listed as having been served with the relevant bankruptcy filings.

14. Accordingly, Alliance did in fact receive notice and has not established any excusable neglect that would permit this Court to deem the Late Claim timely filed. The Court should deny Alliance's Motion.

B. Alliance Does Not Have a Claim Against the Debtor

15. The Court should also deny Alliance's Motion because the relief requested is futile. Alliance does not have a claim against the Debtor and deeming the Late Claim timely filed would only require the Creditor Trustee to file an objection to the Late Claim.

16. Alliance attached the Late Claim to its Motion, along with fifteen invoices evidencing the Late Claim. Those fifteen invoices reflect debts owed by two of the Debtor's affiliates, Carolina Gulf Packaging, LLC (located in Kannapolis, NC) and Gulf Systems, Inc. (located in Humble, Texas). There is nothing on the face of the invoices which ties the debts to

the Debtor. In fact, the invoices to Carolina Gulf Packaging, LLC and Gulf Systems, Inc. even reflect different customer numbers – No. 79 and 167, respectively. Consequently, the Late Claim cannot be asserted against the Debtor, and to deem the claim timely would require the Creditor Trustee to file an objection to invalidate the Late Claim.

C. The Late Claim Should Not Be Ordered to Be Paid Pro Rata With Other Unsecured Claims

17. Finally, the Court should reject the Motion’s second request for relief – that the Late Claim be required to be paid pro rata with other unsecured claims. Even if the Court determines that the Late Claim should be timely filed, this is not the time or the proper procedure for “allowing” the Late Claim. The Creditor Trustee should be permitted to file an objection to the merits of the Late Claim in accordance with the claims objection process set forth in the Bankruptcy Rules and the Plan.

Conclusion

18. Based on the foregoing, the Creditor Trustee requests that the Court deny the Motion in its entirety because Alliance received notice of the Debtor’s bankruptcy case and Claims Bar Date, Alliance does not have a claim against the Debtor. Should the Court allow the Late Claim to be deemed timely filed, the Creditor Trustee should nonetheless be permitted to file an objection to the Late Claim in accordance with the procedure set forth in the Bankruptcy Rules and the Plan.

Dated: April 21, 2016

**JOSEPH MYERS, CREDITOR TRUSTEE
OF THE GULF PACKAGING, INC.
CREDITOR TRUST**

By: /s/ Shelly A. DeRousse
One of His Attorneys

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