

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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COUNTER COPY - DO NOT REMOVE -

In re ) Bankruptcy Case No. 79C-00037  
UTAH AGRICORP, INC. )  
Debtor. ) MEMORANDUM OPINION ON THE PROOF  
OF CLAIM OF THE STATE OF  
DELAWARE )

JURISDICTION

This case was filed before October 1, 1979 and jurisdiction over its administration is given this court by Section 403(a) of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, 2685 (1978) (uncodified). Section 403(a) provides that "[a] case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined under such Act as if this Act had not been enacted, and the substantive rights of the parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceeding as if the Act had not been enacted."

DISCUSSION

The State of Delaware was not listed on debtor's schedule of creditors and thus received no notice of the statutory deadline

for filing a proof of claim. See Section 57n of the Bankruptcy Act, former 11 U.S.C. § 93n. The deadline expired twenty-nine days after the State of Delaware first received notice of debtor's filing. The State now seeks to file a claim past the deadline over the trustee's objection, arguing that equitable considerations permit waiver of the deadline.

In particular, the State of Delaware argues that it is unrealistic to expect an entity its size to act in the twenty-nine days left to the State by debtor's failure to schedule it as a creditor. The State urges "that this Court exercise its discretion to prevent an injustice in this case" because "there is a wealth of authority supporting the proposition that a bankruptcy court has inherent equitable powers which permit it to extend the six month filing deadline when such an extension would prevent fraud or injustice." The State's argument that its size excuses it from filing a claim within the deadline is unpersuasive because the statute makes no distinctions between large and small creditors in its time limits for filing proofs of claim. The State's argument that the blame for its late filing lies at the feet of the debtor has some persuasive force. The law in this circuit, however, prevents this court from waiving the six month deadline for filing claims.

In In re Universal Trade Corporation, No. 79-2148, filed November 17, 1980 (unpublished slip opinion but binding precedent in this circuit - copy attached), the Tenth Circuit Court of

Appeals ruled that the bankruptcy courts have no discretion, even where equitable considerations might counsel otherwise, to waive the time limit imposed by Section 57n. In that case, the creditor was not listed on the debtor's schedules and received no notice of the bankruptcy until three and one-half years after the claims deadline expired. The court rejected the creditor's argument that the bankruptcy court possesses equitable powers which it can use to prevent injustice resulting from a strict application of the six month limitation period where a creditor does not receive notice of the proceedings.

Thus, this court has no power to allow the claim of the State of Delaware in equity as a timely filed claim.<sup>1</sup> If in this case all claims allowed are paid in full, the court may, pursuant to Rule 302(e)(5) and Section 57n, permit the filing of claims not filed on time against the remaining surplus.

IT IS THEREFORE ORDERED that the trustee's objection to the claim of the State of Delaware for pre-petition taxes is sustained.

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<sup>1</sup> The six month deadline under the Act, which governs this case, was imposed by statute. Under the Bankruptcy Reform Act of 1978, there is no statutory deadline for claims. Claims deadlines are imposed by rules. It may be that because the Reform Act lacks a statutory period of limitations for claims, the bankruptcy courts, acting in cases governed by the new law, may waive the six month deadline where the equities of a particular case suggest that a late claim should be allowed as a timely filed claim. But see 11 U.S.C. § 726(a) for the priority of tardily filed claims in cases under chapter 7.

DATED this 16 day of March, 1983.

BY THE COURT:

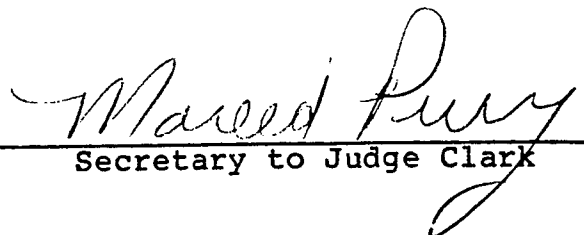
  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing memorandum opinion to the following this 11 day of March, 1983.

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Secretary to Judge Clark