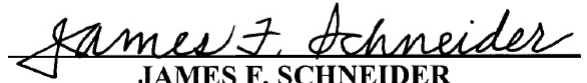


SO ORDERED




JAMES F. SCHNEIDER

U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

*

WILLIAM HENRY SMITH,

*

Case No. 06-13894-JS

Debtor

*

Chapter 13

* * * * *

***ORDER DENYING MOTION OF M. L. DEWBERRY CO.
TO FILE LATE CLAIM***

On July 5, 2006, the debtor, William Henry Smith (the “debtor”), filed the instant Chapter 13 proceeding in this Court. On May 15, 2007, M. L. Dewberry Co. (“Dewberry”), filed a motion to file claim after claims bar date [P. 40], to which the debtor and Gerard R. Vetter, the Chapter 13 Trustee, filed oppositions [PP. 42 and 46]; the debtor also filed a supplemental opposition [P. 47]. On August 22, 2007, a hearing was held on the motion and oppositions.

The motion alleged that the debtor was president of Harbour Environmental Engineering Incorporated (“Harbour”), a Maryland corporation with a principal place

of business in Anne Arundel County, Maryland; that in October 2002, the debtor contacted Dewberry to order a rooftop heating, ventilation and air conditioning unit to be installed by Harbour at the Anne Arundel County Police Department (the “Police Department”); that Dewberry delivered the unit to the Police Department in November 2002 and was charged \$35,763.17 by the distributor; that the debtor and Harbour refused to pay Dewberry, whereupon Dewberry brought suit against the debtor and Harbour and obtained a joint judgment against the debtor and Harbour in the Circuit Court for Anne Arundel County in the amount of \$37,034.27; that through collection efforts, the judgment against the debtor has been reduced to \$27,596.47, plus interest; that as of the petition date, the claim against the debtor totaled \$31,592.73; that in the instant case, the debtor listed Dewberry on the schedules and mailing matrix as “M. L. Donberry Co.,” the bar date for filing claims was November 20, 2006; and that as a result of the debtor’s misnaming of the claimant, Dewberry did not receive notice of the filing of the instant case or of the bar date. Dewberry sought the authority to file a late claim based upon “excusable neglect,” pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(3) and the decision of the U.S. Supreme Court in *Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed.2d 74 (1993).

However, the motion of Dewberry to file late claim must be denied because this Court does not have the authority to grant the requested relief, for the following reasons.

First, 11 U.S.C. § 502(b)(9) and Federal Rule of Bankruptcy Procedure 3002(c) do not authorize the granting of such relief. Section 502(b)(9) provides that the court shall allow claims “except to the extent that... proof of such claim is not timely filed...” Rule 3002(c) states that in a case under chapter 7, 12 or 13, “a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code...” Federal Rule of Bankruptcy Procedure 9006(b)(3) states that “[t]he court may enlarge the time for taking action under Rules...3002(c)... only to the extent and under the conditions stated in those rules.” None of the exceptions stated in Rule 3002(c) are applicable. Accordingly, courts have held that they are without authority to extend the 90-day period in which a creditor may file a proof of claim in a chapter 13 case. *See In re Stewart*, 247 B.R. 515, 519-20 (Bankr. M.D. Fla. 2000) (“A bankruptcy court does not have the discretion to allow late filed claims in a Chapter 13 case.”); *In re Hogan*, 346 B.R. 715, 722 (same); *Matter of Greenig*, 152 F.3d 631, 635 (7th Cir. 1998) (reaching same holding in a Chapter 12 case); *Aboody v. United States (In re Aboody)*, 223 B.R. 36, 38 (BAP 1st Cir. 1998); *In re Armstrong*, 238 B.R. 438, 440 (Bankr. E.D. Ark. 1999);

In re Zich, 291 B.R. 883, 886 (Bankr. M.D. Ga. 2003); *In re Nyeste*, 273 B.R. 148, 149 (Bankr. S.D. Ohio 2001).

The first date set for the Section 341 meeting of creditors in this case was August 21, 2006. Dewberry's Motion for Authority to File Proof of Claim after Bar Date was filed on May 15, 2007, 267 days after the first date set for the creditors' meeting. Accordingly, this Court is without authority to allow Dewberry's late-filed claim.

Second, the holding in *Pioneer* that excusable neglect may justify the filing of late claims is not applicable in Chapter 13. That case involved excusable neglect in filing a late claim in a Chapter 11 case. *See Pioneer*, 113 S.Ct. at 1492. Because the claim was in a Chapter 11 case, the limitations on enlargement of time contained in Federal Rule of Bankruptcy Procedure 9006(b)(3) did not apply, and the Supreme Court was free to find excusable neglect under Rule 9006(b)(1). However, Rule 3002(c) governs the time allowed to file a claim in cases filed under chapters 7, 12, and 13. Federal Rule of Bankruptcy Procedure 9006(b)(3) states that "[t]he court may enlarge the time for taking action under Rules...3002(c)... only to the extent and under the conditions stated in those rules." None of the conditions stated in Rule 3002(c) apply so the Court is without authority to extend the allowable time to file a claim.

Third, Federal Rule of Bankruptcy Procedure 3003, which the motion references, is not applicable to Chapter 13 cases. Rule 3003(a) states “[t]his rule applies in chapter 9 and 11 cases.” *See In re Harper*, 138 B.R. 229, 234 (Bankr. N.D. Ind. 1991).

WHEREFORE, the motion of M. L. Dewberry Co. to file late claim is hereby DENIED.

END OF ORDER

cc: Brett Weiss, Esquire
Brett Weiss P.C.
18200 Littlebrooke Drive
Olney, Maryland 20832
Counsel to the debtor

Gerard R. Vetter, Esquire
7310 Ritchie Highway, Suite 715
Glen Burnie, Maryland 21061-3293
Chapter 13 Trustee

Mary Fran Ebersole, Esquire
Megan K. Mechak, Esquire
Tydings & Rosenberg LLP
100 East Pratt Street
Baltimore, Maryland 21202
Counsel to M. L. Dewberry Co.

Office of the U.S. Trustee
2625 U.S. Courthouse
101 W. Lombard Street
Baltimore, Maryland 21201