UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 6-87-34

GLEN H. MOEN,

MEMORANDUM ORDER

Debtor.

At Fergus Falls, Minnesota, December 17, 1990.

The above-entitled matter came on for hearing before the undersigned on the 11th day of December, 1990 on a motion by Richard Burns and Richard Burns & Associates (the "Movants") for an order deeming their proof of claim to have been filed before the claims bar date. The appearances were as follows: Erik Johnson for the Movants; and the Trustee, Wayne Drewes, in propria persona. This Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. Sections 157 and 1334, and Local Rule 103. Moreover, this Court may hear and finally adjudicate this motion because its subject matter renders such adjudication a "core" proceeding pursuant to 28 U.S.C. Section 157(b)(2)(B).

FACTS

The notice to file claims in this case indicated that proofs of claim were required to be filed with the Clerk of the United States Bankruptcy Court for the District of Minnesota at his Fergus Falls, Minnesota office on or before June 4, 1987. But the notice also indicated that the first meeting of creditors would be held in Fargo, North Dakota. Movants' counsel mistakenly mailed their proof of claim to the Fargo office of the Clerk of the United States Bankruptcy Court for the District of North Dakota. The Fargo clerk's office date stamped the proof of claim as being received on June 4, 1987, the last day to file a timely proof of claim, and then returned it to the Movants' counsel on June 5, 1987. Movants' counsel refiled the proof of claim with the Fergus Falls clerk's office on June 10, 1987. Movants' counsel also mailed a copy of the proof of claim to the Trustee.

DISCUSSION

Movants' rely on Bankruptcy Rule 5005(b), even though the provisions of that rule do not explicitly address the instant fact situation:

> Error in Filing. A paper intended to be filed but erroneously delivered to the trustee, a bankruptcy judge, a district judge, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. In the interest of justice, the court may order that the paper shall be deemed filed as of the date of its original delivery.

Fed. R. Bankr. P. 5005(b). The proof of claim was not delivered to any of the entities listed in the rule, but instead was delivered to the bankruptcy court in the neighboring district.(FN1)

I do not consider that fact sufficient preclude the application of Bankruptcy Rule 5005(b) to the Movants' situation. The purpose of Bankruptcy Rule 5005(b) is to ensure that a creditor who makes a good faith effort to file a proof of claim before the

(FN1) It is not clear from the record whether the Fargo clerk's office transmitted the claim to the Fergus Falls clerk's office. I conclude, however, that any such failure to transmit the claim would not preclude the Movants from invoking Bankruptcy Rule 5005(b).

bar date will receive any distribution forthcoming despite his or her delivering the proof of claim to the wrong office or officer:

> As we interpret [former Bankruptcy Rule 509(c), the predecessor of Bankruptcy Rule 5005(b)], the rule only requires that the creditor intend that the paper will become a part of the bankruptcy court proceedings and receive some official response. A creditor who sends a paper to a court-appointed trustee or other official, under circumstances that the sender can be said to have acted with an expectation that it would receive an official response, has done so with intent that the paper is being "filed."

Anderson-Walker Indus., Inc. v. LaFayette Metals, Inc. (In re Anderson-Walker Indus., Inc.) 798 F.2d 1285, 1288 (9th Cir. 1986). Movants' counsel had a reasonable expectation of receiving official response from the Fargo clerk's office, since the notice of the meeting of creditors in Fargo led him to believe the case had been filed in the District of North Dakota. Bankruptcy Rule 5005(b) should be liberally construed to permit bankruptcy courts to do substantial justice:

> Bankruptcy courts are courts of equity, and must assure "that substance will not give way to form, [and] that technical consideration will not prevent justice from being done." Pepper v. Litton, 308 U.S. 295, 305 (1939); In re International Horizons, Inc., 751 F.2d 1213, 1216 (11th Cir. 1985). The "liberal" rule reflects our preference for resolution on the merits, as against strict adherence to formalities.

Id. at 1287. Consequently, I conclude that the Movants' "error in filing" falls within the purvey of Bankruptcy Rule 5005(b).

Moreover, deeming the Movants' proof of claim to have been timely filed would be in the interest of justice. Movants' counsel refiled the proof of claim in the Fergus Falls clerk's office only a few days after the bar date and mailed a copy to the trustee. Thus, the Trustee has had notice of the Movants' potential claim since early in the case. Consequently, it cannot be said that the orderly administration of the estate would be disrupted by deeming the proof of claim to have been timely filed.

ACCORDINGLY, IT IS HEREBY ORDERED that the proof of claim filed by Richard Burns and Richard Burns & Associates shall be

deemed to have been file with the Clerk of the United States Bankruptcy Court for the District of Minnesota at his Fergus Falls, Minnesota office on June 4, 1987.

Nancy C. Dreher
United States Bankruptcy Judge