

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

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IN RE:)	CASE NO.	99-33729 (LMW)
)		
DAVID JOHN JORCZAK and)	CHAPTER	7
DEBORAH ANN JORCZAK,)		
)	DOC. I.D. NO.	56
DEBTORS.)		

APPEARANCES

David F. Falvey, Esq. Attorney for Debtors
258 Route 12
Groton, CT 06340

Richard Belford, Esq. Chapter 7 Trustee
Nine Trumbull Street
New Haven, CT 06511

Claimant
Chase Manhattan Automotive Finance Corporation
c/o Paul P. Taylor
Bankruptcy Department
900 Stewart Avenue
Garden City, NY 11530

**BRIEF MEMORANDUM AND ORDER REGARDING DEBTORS'
OBJECTION TO PROOF OF CLAIM #11**

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, this court has issued a prior relevant opinion in this case, *In re Jorczak*, 314 B.R. 474 (Bankr. D. Conn. 2004) (the "Prior Opinion"), and familiarity with the Prior Opinion is assumed;

WHEREAS, the commencement of this joint chapter 7 case created a separate estate for each of the above-referenced debtors (the "Debtors"), which estates remain separate as of the date hereof;

WHEREAS, the estate of Mr. Jorczak is solvent, while the estate of Mrs. Jorczak is unfunded (*i.e.*, a "no asset" estate);

WHEREAS, the last date (the "Bar Date") for filing proofs of claim in this chapter 7 case was March 1, 2004 (*see* Doc. I.D. No. 16);

WHEREAS, on March 15, 2004, Chase Manhattan Automotive Finance Corporation ("CMAFC") filed a proof of claim (the "Proof of Claim") against the estate of Mr. Jorczak asserting an unsecured nonpriority claim in the amount of \$5,342.96 allegedly arising out of a certain "[a]utomotive [l]oan;"

WHEREAS, the Schedules (as that term is defined in the Prior Opinion) listed on Schedule D ("Creditors Holding Secured Claims") a debt owing to "Chase Automotive" as a joint, noncontingent, liquidated and undisputed claim against the estates of each of the Debtors, secured to the extent of \$19,625.71¹ and unsecured to the extent of \$3,125.71;

WHEREAS, on May 25, 2004, the Debtors filed an objection (Doc. I.D. No. 56, the "Objection") to the Proof of Claim.² The Objection asserts the following grounds for objection:

- 1) The Bar Date for filing Proofs of Claim was 3/1/2004 and this claim was filed 3/15/2004 and, therefore, is not timely filed [the "Bar Date Objection"].
- 2) No supporting documentation or "writing" was filed in accordance with Bankruptcy Rule 3001 [the "Documentation Objection"].

(Objection.);

WHEREAS, an initial hearing (the "Hearing") on notice to CMAFC was held on August 18, 2004. The Debtors appeared at the Hearing, but CMAFC did not. At the Hearing, counsel for the

¹ The collateral for the debt is listed in Schedule D as a "1996 Dodge Caravan."

² The chapter 7 trustee (the "Trustee") serving in this case has not participated in proceedings related to the Proof of Claim. Although the Objection purports to be by the Debtors, in fact it is an objection by Mr. Jorczak. However, for the sake of convenience, the court will continue to refer to the objecting party as the "Debtors."

Debtors conceded that the Bar Date Objection could not be sustained as to the estate of Mr. Jorczak because that estate was solvent. *See also* 11 U.S.C. §§ 726(a)(2)(C), 726(a)(3);

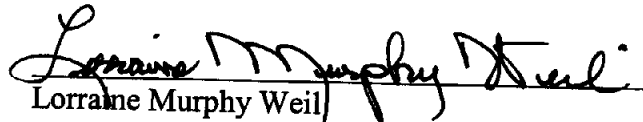
WHEREAS, at the conclusion of the Hearing, the court took the matter under advisement in order to determine whether a *prima facie* case had been established with respect to the Proof of Claim such that the Debtors would be required to go forward with evidence in support of the Documentation Objection notwithstanding CMAFC's failure to appear at the Hearing;

WHEREAS, based upon the rationale of the Prior Opinion, the court has determined that the Schedules establish a *prima facie* case with respect to the Proof of Claim at least as a general unsecured claim in the amount of \$3,125.71. Accordingly, the Debtors bear the burden of production with respect to the Objection at least to that extent;

NOW, THEREFORE, it is hereby **ORDERED** that a continued (evidentiary) hearing (the "Continued Hearing") is scheduled with respect to the Objection for November 30, 2004 at 10:00 a.m. at the United States Bankruptcy Court, Fleet Financial Center, 157 Church Street, 17th floor courtroom, New Haven, Connecticut.³

BY THE COURT

DATED: October 20, 2004


Lorraine Murphy Weil
United States Bankruptcy Judge

³ The court reserves the question of whether, if the Schedules are not further amended, they would be conclusive against the Debtors as to the Proof of Claim (at least as a general unsecured claim in the amount of \$3,125.71) rather than merely "some evidence" against them. *See Jorczak*, 314 B.R. at n. 11. The court also reserves the question of whether a *prima facie* case has been made with respect to a general unsecured claim in an amount exceeding \$3,125.71 such that CMAFC's failure to appear at the Continued Hearing would be fatal to the enforceability of such claim in such greater amount.