

**In re Bernard TEICHMAN, a/k/a Berish Teichman, d/b/a B.T. Jewelry Company,
Debtor**

Bankruptcy No. 182-10738-260

**UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF
NEW YORK**

29 B.R. 323; 1983 Bankr. LEXIS 6352

April 22, 1983

CASE SUMMARY:

PROCEDURAL POSTURE: The debtor filed a motion to preclude certain creditors from participating in his Chapter 13 plan because they did not file claims within the period required by Fed. R. Bankr. P. 13-302(e)(2). The creditors opposed the motion, relying on the provisions of *11 U.S.C.S. § 501(c)*.

OVERVIEW: The debtor, a jewelry merchant, filed a Chapter 13 petition in bankruptcy. Creditors of the debtor failed to appear at the first meeting of creditors for the reason that it was the custom of the trade to effect out of court workouts in cases of this kind. Adhering to that custom, the creditors attempted to solve their problems with the debtor, but apparently without success. Claiming to have relied on this unwritten custom and the alleged assurances of the debtor, the creditors neglected to file claims against the debtor before the expiration of the statutorily prescribed six month period. The debtor moved to dismiss the claims ultimately filed by the creditors, alleging the claims were precluded by the rule. The creditors opposed the motion primarily on equitable grounds. In denying the debtor's motion, the court noted that the creditors acknowledged that their proofs of claim were not timely filed. However, under *11 U.S.C.S. § 501(c)*, the trustee had the authority to file proofs of claim on the creditors' behalf. Accordingly, the debtor was not entitled to prevent the creditors from participating in the distribution.

OUTCOME: The debtor's motion to preclude the creditors from participating in the distribution under the plan was denied.

COUNSEL: [**1] Isaiah Sheps, Great Neck, New York, for Debtor.

Alan Gelbstein, Brooklyn, New York, for Creditors.

JUDGES: Conrad B. Duberstein, Bankruptcy Judge.

OPINION BY: DUBERSTEIN

OPINION

[*323] CONRAD B. DUBERSTEIN, Bankruptcy Judge.

DECISION

The court has before it a motion to preclude certain creditors from participating in the debtor's Chapter 13 plan because they did not file claims within the period required by Bankruptcy Rule 13-302(e)(2).¹ That Rule mandates the filing of unsecured claims within 6 months of the date set for the first meeting of creditors under *11 U.S.C. § 341*.

1 Rule 13-302(e)(2) reads in relevant part:

Unsecured claims, whether or not listed in the Chapter XIII Statement, must be filed within 6 months after the first date set for the first meeting of creditors in the Chapter XIII case.

FACTS

The debtor, Bernard Teichman, a jewelry merchant, filed a Chapter 13 petition in bankruptcy on or about March 17, 1982. The first meeting of creditors under § 341 was scheduled for April 26, 1982. [**2] Goldheart International, Lazarus Diamond Co. and J. Stark, creditors of the debtor, failed to appear at this meeting. The court is informed by the parties involved that it is the custom of the trade to effect out of court workouts in cases of this kind. Adhering to that custom the creditors attempted to solve their problems with the debtor outside of the courts but apparently without success. Claiming to have relied on this unwritten custom and the alleged assurances of the debtor, the creditors neglected to file claims against the debtor before the expiration of the

statutorily prescribed six month period on October 25, 1982, as provided for by Bankruptcy Rule 13-302(e)(2).

Eventually, on November 1, 1982 the creditors did file claims with this court. The debtor has moved to dismiss the claims as untimely. He relies for his authority on the aforesaid Rule 13-302(e)(2). The creditors oppose the motion primarily on equitable grounds. They argue, in essence, that the debtor deceived them into not filing timely claims. Subsequently, the creditors, apparently suspecting their claims might be dismissed, requested of the trustee in this case, Kenneth Kirschenbaum, Esq., that he [**3] file claims on their behalf. The trustee complied with this request. The debtor opposes this action by the trustee arguing that it is not supported by statutory authority. We disagree.

FINDINGS

11 U.S.C. § 501(c) states that "if a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim." The language [**324] of this statute is clear and unambiguous. It permits the trustee to file a claim on behalf of a creditor if and when the creditor fails to do so. Moreover, it has been held that this power can be exercised by the trustee "only if such creditor has not timely filed a proof of claim." (emphasis added). *In re Popular Fruit and Produce, Inc.*, 21 B.R. 185 (Bkrty.S.D.N.Y.1982). The record indicates, and the creditors concede, that their proofs of claim were not timely filed. Accordingly, the trustee had the authority to file proofs of claim on the creditors' behalf. The debtor's motion to preclude the creditors from participating in the distribution under the plan is therefore denied.