

Filing a Proof of Claim in a Bankruptcy Court Subjects the Filing Party to the Court's Jurisdiction. Anti-waiver Clauses in the Proof of Claim Are Not the Same Thing as Objecting to Jurisdiction

Christina Buru, J.D. Candidate 2020

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INTRODUCTION

In the United States, a federal court must have both personal and subject-matter jurisdiction to hear and rule on a case.¹ Subject-matter jurisdiction can be met by satisfying the requirements under §1331 or §1332 of title 28 of the United States Code.² These are typically referred to as “federal question” jurisdiction and “diversity” jurisdiction. §1331(a) allows district courts to exercise original jurisdiction over “civil actions arising under the Constitution, laws, or treaties of the United States”.³ §1332(a) allows district courts to exercise original jurisdiction over civil actions “where the matter in controversy exceeds the sum or value of \$75,000...and is between citizens of a State and citizens or subjects of a foreign state...”.⁴ Due process also requires a court to establish personal jurisdiction over all parties.⁵ As a threshold matter, this requirement is satisfied where a party has certain “minimum contacts” within the forum state in

¹ *Int'l Shoe Co. v. Wash.*, 326 U.S. 310 (1945).

² 28 U.S.C. §1331-2 (2012).

³ *Id.* §1331.

⁴ *Id.* §1332(a).

⁵ U.S. CONST. amend. V.

which the court sits.⁶ The party filing the suit submits itself to the court's jurisdiction by filing its claim in that court. Similarly, a defendant's voluntary appearance, without raising objections to the court's jurisdiction in its initial pleadings, constitutes submission to the jurisdiction of the court. By not raising the issue of jurisdiction from the out-set the party waives its right to make such objections in the future and is deemed to have consented to the court's jurisdiction.

This memo aims to address a bankruptcy court's jurisdiction over a foreign creditor. Part I discusses Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004") and a court's requirement to have jurisdiction in order to compel discovery. Part II discusses how a creditor submits themselves to a court's jurisdiction by filing a proof of claim. Part III discusses how a court's jurisdiction over a foreign creditor who has filed a proof of claim extends to related court proceedings.

I. Jurisdiction is Necessary to Compel Discovery

Rule 2004 provides that a bankruptcy court may order the examination of any entity, provided that it:

may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a . . . reorganization case under chapter 11 of the Code . . . the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan. Fed. R. Bankr. P. 2004.⁷

The purpose of Rule 2004 is "to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether

⁶ *Int'l Shoe*, 326 U.S. at 316.

⁷ Fed. R. Bankr. P. 2004.

wrongdoing has occurred.”⁸ A Rule 2004 examination “has been likened to a quick ‘fishing expedition’ into general matters and issues regarding the administration of the bankruptcy case.”⁹

For a court to grant a Rule 2004 motion, a court must have jurisdiction over the party from which information is being sought. The plaintiff has the burden of proof in showing jurisdiction. In a bankruptcy case, the trustee bears the burden of pleading and proving the court’s jurisdiction.¹⁰

II. Filing a Proof of Claim Submits a Party to the Court’s Jurisdiction for that Case

As a preliminary matter, a court can assert personal jurisdiction over a defendant who “could have reasonably expected to be hailed into court” in the forum so to not offend the “traditional notions of fair play and substantial justice”.¹¹ An assessment of the party’s direct or indirect contact with the forum state or its residents will determine whether the reasonable expectation standard has been met.¹² In a bankruptcy case, a proof of claim is filed by creditors of a debtor. The United States Supreme Court has explained that “by filing a claim against a bankruptcy estate the creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court’s equitable power.”¹³

Bankruptcy courts have made clear that the filing of a proof of claim constitutes submission to the court’s jurisdiction by the filing party.¹⁴ Under the normal test for minimum contacts, filing a proof of claim without objecting to jurisdiction constitutes a waiver of the

⁸ *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004).

⁹ *In re Bakalis*, 199 B.R. 443, 447 (Bankr. E.D.N.Y. 1996).

¹⁰ *See Sunward Elecs. Inc. v. McDonald*, 362 F.3d 17, 24 (2d Cir. 2004).

¹¹ *Int’l Shoe*, 326 U.S. at 316.

¹² *See id.*

¹³ *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990).

¹⁴ *See Buena Vista TV v. Adelphia Commc’ns Corp. (In re Adelphia Commc’ns Corp.)*, 307 B.R. 404, 418 (Bankr. S.D.N.Y. 2004)(“As the Supreme Court’s decisions... particularly *Langenkamp*—make clear, when the [creditor] filed proofs of claim in the bankruptcy court, they submitted to the equitable jurisdiction of this Court”); *Arecibo Cmty. Health Care, Inc. v. Puerto Rico*, 270 F.3d 17, 26 (1st Cir. 2001)(“The filing of a proof of claim waives an individual’s due process right to insist on minimum contacts within the forum state before being subject to the court’s jurisdiction.”)

party's right to make such an objection in the future.¹⁵ Bankruptcy courts across the country have adopted an analogous standard for asserting personal jurisdiction over a party. "[A] proof of claim filed by a creditor is conceptually analogous to a civil complaint, an objection to the claim is akin to an answer or defense and an adversary proceeding initiated against the creditor that filed the proof of claim is like a counterclaim."¹⁶ Since a proof of claim is analogous to a civil complaint, inserting a provision that says a filing party is not submitting to the court's jurisdiction does not have any impact on a bankruptcy court's analysis. Anti-waiver clauses in a proof of claim do not allow a party to "opt-out" of the court's jurisdiction.¹⁷ Voluntarily appearing in court with no challenge to the court's personal jurisdiction is a waiver. An anti-waiver clause is not the same thing as an objection to jurisdiction. If a party wishes to contest a court's jurisdiction it must follow the "special appearance" rules, which vary state by state.

III. Filing a Proof of Claim Also Submits a Party to The Court's Jurisdiction For Any Such Related Claims.

In general, a creditor may file a proof of claim against the debtor in a bankruptcy case. The routine filing of a proof of claim, however, results in the creditor's submission to the bankruptcy court's jurisdiction. By filing a proof of claim, a party not only submits to the court's jurisdiction for that particular claim, but also for any claims related to that case. "Once [a party] enter[s] the jurisdiction of this Court for purposes of bringing its proof of claim, it also enter[s] this Court's realm of authority to resolve any claims necessary to determine the extent of allowance of its...claim."¹⁸

¹⁵ See *Cruisehone Inc. v. Cruise Ships Catering and Servs. N.V. (In re Cruisehone, Inc.)*, 278 B.R. 325, 330 (Bankr. E.D.N.Y. 2002).

¹⁶ See *id.*

¹⁷ See *In re China Fishery Group*, 16-11895 (JLG), 2017 WL 3084397 at *1 (Bankr. S.D.N.Y. July 19, 2017).

¹⁸ *Schwinn Plan Comm. v. TI Reynolds 531 Ltd. (In re Schwinn Bicycle Co.)*, 182 B.R. 526, 531 (Bankr. N.D. III. 1995).

This is illustrated by *In re China Fishery*. The United States Bankruptcy Court for the Southern District of New York held that jurisdiction was proper over a foreign creditor notwithstanding a provision in the proof of claim stating that the creditor was not submitting to the court's jurisdiction.¹⁹ In that instance, The Hongkong Shanghai Banking Corporation Limited ("HSBC-HK") filed proofs of claim against CFIL, CFGI, and SmartGroup.²⁰ CFG Peru also filed proofs of claim against these entities.²¹

Following his appointment, the trustee for CFG Peru Investments made a motion for an order authorizing the trustee to compel discovery from HSBC-HK under Rule 2004.²² The trustee sought the information because he alleged HSBC-HK had been aggressively attempting to obtain repayment of the loans, "even at the risk of disrupting the operations of the CF group and to the possible detriment of CFG Peru and its other creditors and stakeholders."²³ HSBC-HK opposed the motion, arguing, among other things, that the court lacked personal jurisdiction. According to the trustee, this was a "textbook" case to grant a 2004(a) motion. Additionally, the trustee asserted he met the burden of showing the court had jurisdiction because HSBC-HK had previously filed proofs of claim.

HSBC-HK argued that it had not submitted to the bankruptcy court's jurisdiction, reasoning that the filing of the proofs of claim was not "voluntary,"²⁴ as they had to choose between "either foregoing repayment of money owed to it by the Debtors for which it is a creditor, or potentially subjecting itself to claims against it in a forum with which it has no contacts and in which it engaged in no relevant conduct."²⁵ Moreover, HSBC-HK had an anti-

¹⁹ See generally *China Fishery*, 2017 WL 3084397.

²⁰ See *id.*

²¹ See *id.*

²² Fed. R. Bankr. P. 2004.

²³ *China Fishery*, 2017 WL 3084397 at *4.

²⁴ See generally *Stern v. Marshall*, 564 U.S. 462 (2011),

²⁵ *China Fishery*, 2017 WL 3084397 at *7.

waiver provision in its proofs of claim. The anti-waiver provision read: “[t]he filing of this Proof of Claim is not ... a consent by the Claimant to the jurisdiction of the Bankruptcy court with respect to the subject matter of the Claim or... any other proceeding...otherwise involving the Claimant.”²⁶ The court disagreed with HSBC-HK, holding that HSBC-HK had submitted to the bankruptcy court’s jurisdiction. The court reasoned that (1) it is well settled that “the filing of a proof of claim waives an individual's due process right to insist on minimum contacts within the forum state before being subject to the court's jurisdiction”;²⁷ and (2) the case relied upon by HSBC-HK was “inapposite since it does not speak to the court's jurisdiction.”²⁸

Conclusion

A court needs jurisdiction over the parties of a case in order to preside over the dispute. Typically, the party must have minimum contacts for a court to establish personal jurisdiction. Filing a proof of claim in a US court submits the filing party to the court’s jurisdiction. Inserting language in the proof of claim asserting that the party does not intend to be subjected to the court’s jurisdiction does not give the party the ability to dodge the court’s jurisdiction. Essentially, such language serves no function and will not be accepted by the court in deciding whether it has jurisdiction.

²⁶ *Id.* at *6.

²⁷ *Arecibo*, 270 F.3d at 26

²⁸ *China Fishery*, 2017 WL 3084397 at *7.