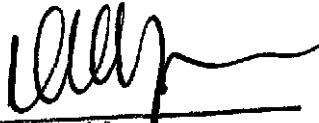


U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS
ON THE COURTS DOCKET
TAWANA C. MARSHALL, CLERK

JUN 25 2009


D. Michael Lynn
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	
	§	CHAPTER 13
RUFKI SALIHI,	§	
	§	CASE No. 08-41832 (DML)
DEBTOR.	§	

Memorandum Order

Before the court is the *Motion to File Late Proof of Claim* (the "Motion"), filed by Artee Fin, LLC, a creditor of the named Debtor (the "Creditor"). In the Motion the Creditor asserts that it is the owner and holder of a second lien note secured by certain real estate (the "Property") owned by Debtor. The Creditor further asserts that neither it, its predecessor in interest, or the Property was listed by Debtor in his schedules and that the Creditor did not receive notice of Debtor's bankruptcy until more than a year after its filing - too late to file within the claims bar date of Fed. R. Bankr. P. 3002(c). By the

Motion the Creditor now asks leave to file a proof of claim.

However, no order of the court is necessary in order to file a proof of claim. *See In re Columbia Ribbon & Carbon Mfg. Co.*, 54 B.R. 714, 714 (Bankr. S.D.N.Y. 1985). Neither may the court allow a claim filed after the bar date in a Chapter 13 case such as Debtor's. The time fixed by Rule 3002(c) may not be expanded by the court. *See Fed. R. Bankr. P. 9006(b)(3) and Rule 3002(c)*; *In re Jensen*, 333 B.R. 906, 908 (Bankr. M.D. Fla. 2005); *In re Valerino Constr, Inc*, 275 B.R. 684, 686 (Bankr. W.D.N.Y. 2002); 9 Collier on Bankruptcy ¶ 3002.03 (15th ed. rev. 2009).

On the other hand, the Creditor's failure to file a proof of claim will not affect its rights *vis-à-vis* the Property. *See In re Thompson*, 263 B.R. 134, 136 (Bankr. W.D. Okla. 2001); 9 Collier on Bankruptcy ¶ 3002.01 (15th ed. rev. 2008). Moreover, the extent the Creditor may be unsecured, it may not be deprived of its rights against Debtor if it had notice of Debtor's bankruptcy inadequate to timely file its claim: the due process requirement of the Fifth Amendment to the Constitution so limits the effect of a discharge under 11 U.S.C. § 1328. *See In re Nahat*, 278 B.R. 108, 114 (Bankr. N.D. Tex. 2002); *Cody v. Cody (In re Cody)*, 246 B.R. 597, 600 (Bankr. E.D. Ark. 1999).

For the foregoing reasons, the Motion is denied without prejudice to the Creditor's rights as to the Property or any claims it may make by reason of denial of due process.

It is so **ORDERED**.

End of Order