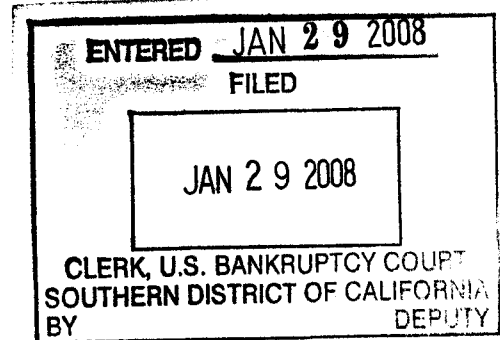


1 WRITTEN DECISION - FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 07-02209-B13
12 ANASUGA MOI and) Adversary No. 07-90289
13 TAIU MOI,)
14 Debtors,) ORDER ON MOTION
15) TO DISMISS
16)
17 ANASUGA MOI and)
18 TAIU MOI,)
19 Plaintiffs,)
20 v.)
21 ASSET ACCEPTANCE LLC,)
22 and DOES 1 through 10,)
23 inclusive,)
24 Defendant.)
25)
26)

23 This matter came on regularly for hearing on defendant's
24 motion to dismiss plaintiffs' First Amended Complaint.

25 This Court has subject matter jurisdiction pursuant to
26 28 U.S.C. § 1334 and General Order No. 312-D of the United States

1 District Court for the Southern District of California. This is
2 a core proceeding under 28 U.S.C. § 157(b)(2)(A) & (B).
3

4 DISCUSSION

5 Plaintiffs' First Amended Complaint purports to set out two
6 claims for relief. The first is styled "Objection to Proof of
7 Claim", and the second is captioned "Contempt of Court 11 USC
8 105". The thrust of defendant's motion to dismiss is that
9 neither of those claims are among those which "may be brought as
10 an adversary proceeding" under Rule 7001, Fed.R.Bankr.P.

11 Rule 7001 provides:

12 An adversary proceeding is governed by the rules
13 of this Part VII. The following are adversary
proceedings:

14 (1) a proceeding to recover money or property,
other than a proceeding to compel the debtor to
15 deliver property to the trustee, or a proceeding
under § 554(b) or § 725 of the Code, Rule 2017, or
Rule 6002;

16 (2) a proceeding to determine the validity,
priority, or extent of a lien or other interest in
17 property, other than a proceeding under Rule
4003(d);

18 (3) a proceeding to obtain approval under § 363(h)
for the sale of both the interest of the estate
19 and of a co-owner in property;

20 (4) a proceeding to object to or revoke a
discharge;

21 (5) a proceeding to revoke an order of
confirmation of a chapter 11, chapter 12, or
chapter 13 plan;

22 (6) a proceeding to determine the dischargeability
of a debt;

23 (7) a proceeding to obtain an injunction or other
equitable relief, except when a chapter 9, chapter
24 11, chapter 12, or chapter 13 plan provides for
the relief;

25 (8) a proceeding to subordinate any allowed claim
or interest, except when a chapter 9, chapter 11,
26 chapter 12, or chapter 13 plan provides for

1 subordination;

2 (9) a proceeding to obtain a declaratory judgment
3 relating to any of the foregoing; or

4 (10) a proceeding to determine a claim or cause of
5 action removed under 28 U.S.C. § 1452.

6 Defendant is clearly correct that neither objection to claim nor
7 civil contempt are included in the list. In fact, Rule 3007
8 provides that "[i]f an objection to claim is joined with a demand
9 for relief of the kind specified in Rule 7001, it becomes an
10 adversary proceeding." The clear implication is that a simple
11 objection to claim need not be brought as an adversary
12 proceeding. The issue, though, is not whether an objection to
13 claim (or request for a holding of civil contempt) must be
14 brought as an adversary proceeding, but whether it may be.

15 The cases relied upon by defendant simply hold that an
16 objection to claim need not be brought as an adversary proceeding
17 - they do not hold that it may not. See In re Wylie, 349 B.R.
18 204, 214 (9th Cir.BAP 2006) and this Court's decision in In re
19 America's Shopping Channel, Inc., 110 B.R. 5, 8 (Bankr.S.D.Cal.
20 1990). The same is true of the cases involving requests for
21 attorney fees. See e.g., In re Chambers, 140 B.R. 233, 238
22 (N.D.Ill. 1992).

23 This Court has found no case which holds that an objection
24 to claim may not be brought as an adversary proceeding. The
25 Court has found one case opining that it may. In In re Lexington
26 Healthcare Group, Inc., the court stated that the "fact that
adding a claim under Rule 7001 to an objection to claim requires
all be heard as an adversary proceeding does not mean that an

1 objection to claim alone cannot be heard as an adversary
2 proceeding." 339 B.R. 570, 578 (Bankr.D.Del. 2006).

3 Nothing in the Rules or Code specifically precludes an
4 objection to claim being brought as an adversary proceeding and
5 the Court can think of no practical reason to so hold. The
6 adversary procedure imposes no additional hardship on the
7 claimant and, in fact, it affords a claimant heightened due
8 process.

9 That is how this Court sees it - an adversary proceeding is
10 a more formal procedure for reaching resolution of certain
11 issues. A policy determination has been made in Rule 7001 which
12 sets out those matters where the more formal procedure is
13 required to be utilized, rather than the more common and less
14 formal motion process. As noted, Rule 3007 provides a further
15 illustration. At its core, however, an adversary proceeding is
16 just a procedure and does not, of itself, give rise to some
17 broader array of causes of action or remedies. In the instant
18 case, a claim objection is still a claim objection, whether
19 raised by filed objection or by adversary. Plaintiffs have
20 adequately pleaded their objection to defendant's proof of claim,
21 so as to the plaintiffs' first claim for relief, defendant's
22 motion to dismiss is denied.

23 As noted, plaintiffs' second claim for relief is for
24 contempt of court, and invokes 11 U.S.C. § 105. At the center of
25 the question is whether plaintiffs may sue defendant for contempt
26 of court. The Court concludes they may not directly sue

1 defendant for contempt unless expressly authorized by Congress,
2 similar to the authorization granted in 11 U.S.C. § 362(k).

3 In 2002, the Ninth Circuit Court of Appeals filed its
4 decision in Walls v. Wells Fargo Bank, 276 F.3d 502. In that
5 case, the court was asked to find a private right of action in
6 the discharge injunction statute, 11 U.S.C. § 524, and also in
7 11 U.S.C. § 105. The court declined, and this Court is bound by
8 its ruling.

9 In explaining its holdings, the Ninth Circuit observed:

10 In the 1984 amendments, Congress added
11 subsection (h) to § 362, expressly conferring
12 on debtors the right to sue for damages for a
13 willful violation of the automatic stay.
14 Section 524 was amended on the same day, but
no similar provision, providing a private
right of action for violation of the
discharge injunction, was added.

15 276 F.3d at 509. After another sentence, the court placed its
16 footnote 3, which stated:

17 This also bolsters our conclusion that
18 § 105 does not allow for a private right of
19 action to enforce § 524. If Congress had
20 understood § 105 as permitting a private
cause of action, the 1984 amendment creating
one for violations of § 362 would have been
superfluous.

21 Id.

22 The contempt powers of § 105 are powers granted to the
23 specific court that issued the subject order. As the Walls court
24 noted:

25 Implying a private remedy here could put
26 enforcement of the discharge injunction in
the hands of a court that did not issue it

1 (perhaps even in the hands of a jury), which
2 is inconsistent with the present scheme that
3 leaves enforcement to the bankruptcy judge
whose discharge order gave rise to the
injunction.

4 Id. Because the powers of § 105 are reserved to the court, and
5 do not grant a private right of action to a party in interest,
6 such as the plaintiffs here, the defendant's motion to dismiss
7 plaintiff's second claim for relief is granted. The appropriate
8 course of action for plaintiffs, if they believe defendant has
9 engaged in conduct which would invoke the Court's contempt powers
10 is to apply to the Court for an Order to Show Cause re Contempt.
11 This is more than form over substance, because allowing
12 plaintiffs to proceed in their complaint against defendant for
13 contempt would be according them a *de facto* private right of
14 action, precisely contrary to the controlling authority in this
15 Circuit. Moreover, allowing plaintiffs to file and serve
16 defendants with allegations of contempt not statutorily
17 authorized might have a terrorizing impact on some defendants.

18 In their prayer for relief, plaintiffs ask for: 1)
19 declaratory relief on the unenforceability of defendant's proof
20 of claim; 2) injunctive relief requiring the defendant to
21 withdraw all its proofs of claim in this case; 3) requiring the
22 defendant to produce all proofs of claim filed in any case in
23 this judicial district; 4) attorneys fees and costs; and 5) civil
24 contempt damages. As noted, the Court has concluded that
25 plaintiffs have pleaded a claim objection sufficiently to
26 withstand defendant's motion to dismiss. The fact that

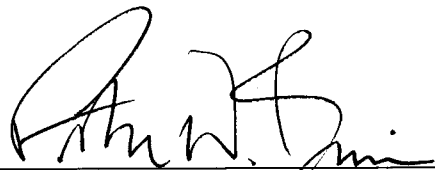
1 plaintiffs have raised their objection in the procedural context
2 of an adversary proceeding does not change or enlarge the range
3 of relief available to them on a claim objection.

4
5 **CONCLUSION**

6 For the foregoing reasons, defendant's motion to dismiss is
7 denied as to plaintiffs' first claim for relief, and granted as
8 to the second claim for relief. Defendant shall file and serve
9 its responsive pleading to the First Amended Complaint within
10 twenty (20) days of the date of service of this Order.

11 IT IS SO ORDERED.

12 DATED: JAN 29 2008

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14 
15 PETER W. BOWIE, Chief Judge
16 United States Bankruptcy Court
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