

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND**

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In re:

Chapter 13  
Case No. 13-10603

KEVIN P. CONLON

Debtor

(Not for Publication)

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**MEMORANDUM AND ORDER**  
(relating to Doc. ## 27, 30, 32)

Wells Fargo Bank, N.A. (“Wells Fargo”) filed an objection to confirmation of the Debtor’s Chapter 13 Plan six days after the deadline established by this Court. By its Motion to Allow Late Objection to Debtor’s Chapter 13 Plan, Wells Fargo contends that its delayed filing was a product of excusable neglect and should be allowed by the Court. The Debtor objects and asserts that Wells Fargo has not satisfied the excusable neglect standard. After consideration of the matter, the Court concludes that Wells Fargo should be permitted to pursue its objection to confirmation of the Debtor’s Plan.

**JURISDICTION**

The Court has jurisdiction over this matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a). This is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(L).

**PROCEDURAL HISTORY**

Wells Fargo holds a first mortgage on the Debtor’s real property located at 34 Dean Avenue, Johnston, RI. The Debtor’s Chapter 13 Plan, filed on March 14, 2013, proposes to modify the mortgage by bifurcating the claim into a \$175,000 secured claim to be paid outside of the Plan monthly through June 2023 and treats the remaining balance as an unsecured claim to be

paid under the Plan.<sup>1</sup> The Plan notified all creditors that a confirmation hearing would be held before this Court on May 22, 2013,<sup>2</sup> and that creditors were required to file any objections to the Plan on or before seven days prior to the confirmation hearing, hence May 15, 2013. The certificate of service attached to the Plan reflects that the Plan was served on Wells Fargo, and Wells Fargo does not otherwise contend that it did not receive notice of the Plan with the accompanying notice of the objection deadline. Wells Fargo nevertheless did not file its objection to the Plan until May 21, 2013.<sup>3</sup> On that same day, Wells Fargo filed its Motion to File Out of Time, urging the Court to accept its tardy objection as a product of excusable neglect.

Wells Fargo explains:

Due to inadvertence and error, Wells Fargo neglected to review the Debtor's plan and realized the oversight while working ... [on] preparing a response to the Debtor's objection to Wells Fargo's proof of claim.

Motion at ¶ 4. On June 7, 2013, the Debtor filed his objection to this Motion.

### **DISCUSSION**

Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure authorizes this Court to allow a late-filed pleading "where the failure to act was the result of excusable neglect." In determining whether "excusable neglect" is present, the Court considers the following factors:

[T]he danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the

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<sup>1</sup> The Plan lists the mortgage claim at \$292,762 (only \$175,000 of which the Debtor contends is secured), whereas Wells Fargo's proof of claim asserts a total claim of \$285,978.01.

<sup>2</sup> On May 21, 2013, the Court rescheduled the confirmation hearing to June 19, 2013.

<sup>3</sup> Wells Fargo alternatively contends that its confirmation objection was timely because it was filed no later than seven days prior to the rescheduled confirmation hearing date of June 19, 2013. This aspect of Wells Fargo's argument will not be addressed because the Court has resolved this matter based on the Court's exercise of its discretion to allow the Motion even if its filing is deemed late.

delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

*Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

The Debtor does not allege, and the Court does not find, any danger of prejudice to the Debtor, any negative impact on these judicial proceedings, or a lack of good faith on Wells Fargo's part. In fact, on April 30, 2013, the Debtor filed an objection to Wells Fargo's proof of claim challenging Wells Fargo's assertion of a pre-petition arrearage. The Debtor's claim objection mirrors one of the grounds asserted by Wells Fargo in its Objection to the Plan. Because the existence or non-existence of any arrearage would affect the distribution to unsecured creditors, it is prudent to resolve the dispute regarding Wells Fargo's claim in connection with Wells Fargo's objection to the Plan. Additionally, Wells Fargo timely filed a response to the Debtor's objection to its claim, indicating its intent to challenge the Debtor's treatment of its claim in this bankruptcy case, and impliedly under the Plan. Finally, Wells Fargo's objection to confirmation was filed only six days late. The Court finds that the Debtor is neither unfairly disadvantaged nor prejudiced by the six day delay in filing the objection to the Plan.

The Debtor's sole contention in opposition to the Motion is that Wells Fargo's stated reason for missing the objection deadline—inadvertence and error—is not sufficient under the excusable neglect standard. However, the review of Wells Fargo's Motion is not a mechanical one, and the Court has substantial discretion in determining whether to permit a late filed motion. "Rule 9006's allowance for late filings due to 'excusable neglect' entails a correspondingly equitable inquiry." *Id.* at 389. The Supreme Court elaborated in *Pioneer* that:

it is clear that "excusable neglect" ... is a somewhat "elastic concept" and is not limited strictly to omissions caused by

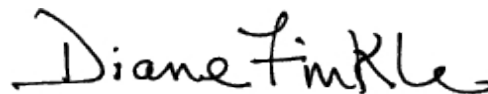
circumstances beyond the control of the movant.

*Id.* at 392.

Given the considerable discretion vested in the Court under this equitable inquiry, the Court finds and concludes that excusable neglect has been sufficiently established by Wells Fargo under the circumstances presented. Counsel's delayed confirmation objection by only a few days was a singular incident in this case. *See In re Gutschow*, 2010 Bankr. LEXIS 1314, at \*6 (Bankr. D. Neb. April 19, 2010) (finding excusable neglect despite counsel's oversight because "counsel has not run afoul of other deadlines in this case."); *Perry v. Wolaver*, 2006 U.S. Dist. LEXIS 23234 (D. Me. April 24, 2006) (finding excusable neglect because counsel's oversight in timely filing a response to a motion for summary judgment was an isolated incident in that case). In the Debtor's case, as noted, Wells Fargo did timely file its proof of claim and response to the Debtor's claim objection. "There is nothing [in the record] to indicate that counsel's error is attributable to disregard for the importance of such notifications or for counsel's obligations to the Court." *Perry*, 2006 U.S. Dist. LEXIS 23234, at \*6.

The Motion to File Out of Time is GRANTED, and the Debtor's Objection to the Motion is OVERRULED. In light of this ruling, the Court will continue the hearing on confirmation of the Plan to July 10, 2013, and the Debtor may file a response to Wells Fargo's objection to confirmation of the Plan by July 3, 2013.

Dated: June 17, 2013

 06/17/2013

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Diane Finkle  
United State Bankruptcy Judge