

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

L.A. RAY REALTY, INC. : BK No. 92-11017  
Debtor Chapter 7  
- - - - -X

TITLE: *In re L.A. Ray Realty, Inc.*

CITATION: 1999 WL 671865 (Bankr. D.R.I. July 29, 1999)

**ORDER VACATING PRIOR ORDER AND ALLOWING  
LATE FILING OF PROOF OF CLAIM**

Heard on June 22, 1999, on Commonwealth Engineers & Consultants, Inc.'s ("Commonwealth") Motion to file a Proof of Claim out of time. At the conclusion of the hearing, and based upon the arguments presented, we denied the motion. Upon *sua sponte* reconsideration, however, in light of a projected \$44,000 surplus of funds in the case, and a previously overlooked provision of the Bankruptcy Code which authorizes tardily filed claims in Chapter 7 cases<sup>1</sup>, we VACATE our prior Order, and GRANT Commonwealth's Motion to tardily file its proof of claim.<sup>2</sup>

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<sup>1</sup> Here the creditor had sufficient notice of the bankruptcy case to enable it to timely file a proof of claim, thereby making it ineligible to receive payment with other general unsecured creditors. Nevertheless, the distribution scheme in Section 726 allows such creditors to receive payment, where there are sufficient funds. That section states:

(a) Except as provided in section 510 of this title, property of the estate shall be distributed-

...

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection.

11 U.S.C. § 726(a)(3).

<sup>2</sup> Commonwealth attached a proof of claim to its Motion, and this attachment is accepted as Commonwealth's tardily filed proof of claim.

The Debtor and any other interested parties have ten (10) days within which to object to said claim, and if oppositions are received, hearing thereon is scheduled for Wednesday, August 18, 1999, at 9:30 a.m., with the Joint Pre-Trial Order due on or before Friday, August 13, 1999. If no objections are filed, Commonwealth's claim is allowed without further hearing as a tardily filed third priority claim, in the amount requested, with distribution to be made in accordance with Section 726(a)(3).

Dated at Providence, Rhode Island, this 29<sup>th</sup> day of July, 1999.

/s/ Arthur N. Votolato  
Arthur N. Votolato  
U.S. Bankruptcy Judge