

**IT IS SO ORDERED.**

**Dated: 04:28 PM November 18 2013**



**UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF OHIO  
 EASTERN DIVISION**

IN RE:	)	CASE NO. 10-50494
	)	
FAIR FINANCE COMPANY,	)	CHAPTER 7
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM
	)	
	)	<b>ORDER GRANTING IN PART AND</b>
	)	<b>DENYING IN PART DEBTOR'S</b>
	)	<b>"MOTION FOR AN ORDER AMENDING</b>
	)	<b>THE PROCEDURES FOR THE</b>
	)	<b>ASSIGNMENT OF FILED CLAIMS"</b>
	)	<b>[DOCKET #1320]</b>

This matter is before the Court on a "Motion for an Order Amending the Procedures for the Assignment of Filed Claims" [docket #1320] (the "Motion to Amend") filed by the chapter 7 trustee administering this case. Although no responses to the Motion to Amend have been filed, the Court is without authority to grant all the relief being sought in that pleading.<sup>1</sup>

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<sup>1</sup> This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on April 4, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331(b).



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## **BACKGROUND**

1. On February 8, 2010, an involuntary chapter 7 bankruptcy petition was filed against Fair Finance Company (“Debtor”).

2. On March 2, 2010, this Court entered an Order granting the relief sought by the petitioning creditors, *nunc pro tunc* as of February 24, 2010.

3. Brian A. Bash is the duly appointed trustee in this case (the “Trustee”).

4. To assist with the orderly and efficient processing of the large volume of claims expected in this case, the Trustee retained Kurtzman Carson Consultants LLC (“KCC”) as his claims agent. The Court entered an Order approving the Trustee’s retention of KCC on March 23, 2010. KCC has maintained the register of Debtor’s creditors and other information with respect to creditor claims, which is updated as often as needed to accurately reflect information set forth in the claims.

5. On August 1, 2012, the Trustee filed a motion seeking entry of an order approving procedures for the assignment of claims filed in the Debtor’s bankruptcy case, including approving the use of certain transfer and notice forms in lieu of the Official Bankruptcy Forms (the “Claims Trading Procedures Motion”) [docket #1030].

6. On August 22, 2012, the Court entered an order granting the Claims Trading Procedures Motion (the “Initial Claims Trading Procedures Order”) [docket #1064] which established certain Claims Trading Procedures and approved the use of certain forms in lieu of the Official Bankruptcy Forms.<sup>2</sup>

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<sup>2</sup> The Claims Trading Procedures Motion and the Initial Claims Trading Procedures Order are incorporated by this reference as if fully rewritten herein. All terms not otherwise defined herein shall have the meanings ascribed to them in the Initial Claims Trading Procedures Order.

7. In September 2012, the Judicial Conference of the United States approved a new fee of \$25.00 for filing a transfer of claim pursuant to Bankruptcy Rule 3001(e) (a “Claims Transfer Fee”).

8. The Claims Transfer Fee appears as item 20 on the Bankruptcy Court Miscellaneous Fee Schedule and it became effective as of May 1, 2013.

9. Through the Motion to Amend, the Trustee seeks to an Order from this Court approving the following:

- (a) an amendment to the claims trading procedures established in the Initial Claims Trading Procedures Order requiring claim transferees to also file an “Assignment Form” executed by the transferor or the transferor’s legal representative;
- (b) the use of an “Assignment Form;” and
- (c) waiver of the Claims Transfer Fee for each Filed Claim Transfer.<sup>3</sup>

10. Through the date of the entry of this Order 1,369 entries have been made on the docket of the main case. This does not include the entries of the dockets in the 150 plus related adversary proceedings.

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<sup>3</sup> In the Claims Trading Procedures Motion the Trustee makes reference to the transfer of claims pursuant to a decedent’s will, trust or probate plan. In the Motion to Amend, the Trustee does not separately discuss transfers of claims based upon the death of the original claimant but instead refers generally to any Filed Claim Transfer. Pursuant to Fed. R. Bankr. P. 7025(a)(1), the Court deems the Claims Transfer Fee to be inapplicable when a claim is being transferred due to the death of the original claimant.

## DISCUSSION

In the Motion to Amend, the Trustee sets forth the following as justification for his request that the Claims Transfer Fee be waived:

The Trustee further seeks to amend the Claims Trading Procedures to waive the payment of the \$25 transfer fee imposed by the Court's existing Bankruptcy Fee Schedule. Since the entry of the Original Order, the Court [sic] has imposed a \$25 fee for the transfer of claims to help offset the Clerk's costs for administering claim transfers. In this case, under the Original Order, it is KCC that administers the transfer of Filed Claims, not the Clerk. Accordingly, the Trustee asks this Court to waive the \$25 claim transfer fee. Inasmuch as the Trustee has been paying these costs to the present, no request for payment to the estate of any transfer fee is being requested.

Motion to Amend ¶10. As the basis for the relief being sought, the Trustee relies upon 11 U.S.C. § 105(a).

Section 1930 of Title 28 of the United States Code provides, in part:

- (a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 [the Bankruptcy Code] shall pay to the clerk the following fees . . . .
- (b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 [the Bankruptcy Code] of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

28 U.S.C. § 1930. Pursuant to 28 U.S.C. § 1930(b), the Judicial Conference has established the Bankruptcy Court Miscellaneous Fee Schedule. As noted above, the Judicial Conference, in September 2012, approved the Claims Transfer Fee which became effective as of May 1, 2013.

Prior to 2005, nothing in § 1930 of Title 28 provided for the waiver of any fees established under that section. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 added subsection (f) to § 1930 which addresses fee waivers in certain limited circumstances. Section 1930(f)(1) provides that the bankruptcy court "may waive the filing fee in a case under chapter 7 of

title 11 for an individual” upon a determination that “such individual has income less than 150 percent of the income poverty line (as defined by the Office of Management and Budget . . .)” (an “IFP Debtor”). Section 1930(f)(2) permits the court to waive for an IFP Debtor the other fees prescribed under § 1930(b) and (c). Finally, § 1930(f)(3) provides that “[t]his subsection does not restrict the . . . bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.”

Because subsections (2) and (3) of § 1930(f) are inapplicable, the Claims Transfer Fee may be waived only if the provisions of subsection (3) apply. That subsection permits a fee waiver if it is “in accordance with Judicial Conference policy.” Judicial Conference policy on fees is set forth in the Bankruptcy Fee Compendium which is issued by the Administrative Office of the United States and provides guidance to bankruptcy clerks with respect to the collection of the fees prescribed by the Judicial Conference pursuant to 28 U.S.C. § 1930. *See* Guide to Judiciary Policy, Vol. 4, Ch. 6, § 620.30 (referring to the Bankruptcy Fee Compendium and its supporting documents for further guidance on fees in bankruptcy courts). The Bankruptcy Fee Compendium specifically states that “[t]he Judicial Conference has not yet issued a policy concerning waiving fees for other debtors and creditors” pursuant to 28 U.S.C. § 1930(f). Bankruptcy Fee Compendium n.262 at p. 63 and Part K, § 3 at p. 78 (May 1, 2013 Edition) (available on Court’s web site). In addition, this Court does not view claims purchasers as falling within the meaning of “debtors and creditors” until the transfer is complete, which would include payment of the fee.

As noted above, the Trustee relies upon § 105(a) of the Bankruptcy Code as the basis for the relief sought in the Motion to Amend. That provision of the Bankruptcy Code provides that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the

provisions of this title.” 11 U.S.C. § 105(a). While that provision confers broad equitable powers upon a bankruptcy court, those powers are not without limit. *In re Foremost Mfg. Co.*, 137 F.3d 919, 924 (6th Cir. 1998). “[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.” *Id.* (citations omitted). Nor does § 105(a) give a bankruptcy court the authority to circumvent the plain wording of other applicable statutes. *United States v. Sutton*, 786 F.2d 1305, 1307 (5th cir. 1986) (“That statute [§ 105(a)] does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.”); *In re Rashid*, 87 B.R. 610, 615 (Bankr. W.D.Okla. 1989). Given such constraints, this Court is without authority under § 105(a) to waive payment of the statutorily required Claims Transfer Fee. *Cf. In re Perroton*, 958 F.2d 889 (9th Cir. 1992).

In addition to a lack of authority to waive the Claims Transfer Fee pursuant to § 105 of the Bankruptcy Code, the Court finds that the Trustee’s assumption, that his employment of a claims agent in this case negates the justification for collecting the newly developed fee, is unfounded. As a general rule, asset cases require far more court resources than the modest filing fee. Recovery of some of the costs to the fiduciary through this fee is totally appropriate.

## CONCLUSION

Based upon the foregoing, the portion of the Motion to Amend seeking waiver of the Claims Transfer Fee for each Filed Claim Transfer is here **DENIED**. The portions of the Motion to Amend seeking (1) an amendment to the claims trading procedures established in the Initial Claims Trading Procedures Order requiring claim transferees to also file an “Assignment Form” executed by the transferor or the transferor’s legal representative and (2) the use of an “Assignment Form” are hereby **GRANTED**.

# # #

cc (*via* electronic mail):

Kelly Burgan, counsel to the Trustee  
Alexis Osburn, counsel to the Trustee  
Daniel McDermott, U.S. Trustee Region 9