

No. 24-5156

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT COURT**

JERRY DUARTE,
Creditor-Appellant

v.

JENNA DENISE HILLARD
Debtor-Appellee

On Appeal from the United States District Court
For the Northern District of California
No. 4:23-cv-01461-JSW
Hon. Jeffrey S. White

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

The Bankruptcy and District Courts erred by holding that an informal proof of claim cannot be submitted under Rule 3004. This Court's decision in *In re Barker*, 839 F.3d 1189 (9th Cir. 2016), re-affirmed that informal proofs are acceptable under Rule 3002, did not reject the possibility of an informal proof under Rule 3004, and actually evaluated the claim that a proof was submitted informally under Rule 3004, ultimately finding one was not.

To allow an informal proof under Rule 3002 but not Rule 3004 would run contrary to basic rules of statutory construction and the principles underlying Rule 3004: to administer the bankruptcy estate for the benefit of all creditors regardless of dischargeability of claims.

Debtor's Response does not address the substance of this appeal. Amici's arguments misconstrue *Barker* and rely heavily on speculation (which Amici actually admit).

The Court should hold that Rule 3004 is susceptible to informal proofs, should find that Debtor timely submitted an informal proof in this case (in fact, Debtor does not even claim that she did not), and

reverse with instructions that the objection in the Bankruptcy Court be overruled.

II. CLARIFICATION OF ISSUES PRESENTED

Appellant's statement of issues presented contained two typos that warrant correction. In two places, Appellant mistakenly used "creditor" where "debtor" was intended. Appellee/Debtor's Response and the amicus filers' submission make clear that neither was misled by typos, but Appellant will not oppose a request, if made, to address the typo by supplemental brief.

To clarify, the issues presented should read:

1. Bankruptcy Rule 3004 authorizes a debtor to submit a creditor's claim only where the creditor did not timely submit their own claim within the time provided under Rule 3002. Did the lower courts err as a matter of law in concluding that a creditor must timely file its claim under Rule 3002 even if the debtor timely submits the claim under Rule 3004?

2. Did the District Court err as a matter of law in finding that the informal claim doctrine does not apply to actions taken by a debtor?

III. ARGUMENT

A. Debtor’s Response does not address the substantive issues on appeal.

Debtor Response largely consists of a rough timeline and a request to affirm. It does not address the substantive legal or factual issues on appeal, except to acknowledge that her Chapter 13 plan was amended several times.

Importantly, Debtor does not dispute that she amended her bankruptcy schedules to incorporate Appellants’ detailed claim (AOB at 9) and that she amended her Chapter 13 plan twice during the Rule 3004 period to provide for payment of general unsecured creditors who submitted under Rule 3002 *and* Appellant, excluding all other general unsecured creditors from the plan. (AOB at 9–11.)

In turn, Appellant will address the arguments raised by Amici.

B. Allowance of informal proofs under Rule 3004 is consistent with the Bankruptcy Code’s policy that debtor estates “be administered for the benefit of creditors without regard to the dischargeability of their claims.”

Amici argue against allowing informal proofs under Rule 3004, but their argument runs contrary to the Bankruptcy Code’s policy and Rule 3004’s expansive invitation for submission of claims on behalf of a creditor. Amici do not dispute that the bankruptcy system is designed to

benefit creditors (see *Cent. Va. Cmty. College v. Katz*, 546 U.S. 356, 373–74 (2006) [Bankruptcy Act was “chiefly a measure designed to benefit creditors”]; see also *Harrington v. Purdue Pharma L.P.*, 219 L. Ed. 2d 721, 743 (2024) [Kavanaugh, J., dissenting] [“underscores that the bankruptcy system is designed to benefit creditors”]) and that Rule 3004 was promulgated to serve the Bankruptcy Code’s “policy... that debtors’ estates should be administered for the benefit of creditors without regard to the dischargeability of their claims.” Fed. R. Bankr. P. 3004 advisory committee’s note 1983. Amici also do not dispute that courts should liberally construe claim submissions in favor of allowing claims, and that the informal claim doctrine is representative of that rule. See, e.g., *In re Edelman*, 237 B.R. 146, 154 (9th Cir. B.A.P. 1999) (discussing variety of circumstances where actions in and out of court were deemed informal proofs of claim).

Eschewing the underlying policy, Amici argue that Rule 3004 must be strictly applied, to the letter, and Rule 3004 does not expressly describe an informal proof of claim. (Amici at 20–21.) But the language on which Amici rely to support their ultra-strict reading of Rule 3004 comes from *In re Barker*, 839 F.3d 1189, 1194 (9th Cir. 2016), where

this Court *recognized* the validity of informal proofs under Rule 3002 (*Barker*, 839 F.3d at 1196), even though Rule 3002 similarly does not refer to informal proofs. *See* Fed. R. Bankr. P. 3002.

Rule 3002 and Rule 3004 use the same language—“proof of claim.” *Compare* Fed. R. Bankr. P. 3002 *with* Fed. R. Bankr. P. 3004. To apply Rule 3002 and Rule 3004 differently, allowing an informal proof under one and not the other, requires finding that Congress intended similar language within the same legal framework to have different meanings. That goes against the basic rules of statutory construction. *Tulelake Irrigation Dist. v. U.S. Fish & Wildlife Serv.*, 40 F.4th 930, 937 (9th Cir. 2022) (“It is an elementary principle of statutory construction that similar language in similar statutes should be interpreted similarly.”). Construing Rule 3004 to preclude informal proofs would also run contrary to the underlying policy of benefiting creditors regardless of dischargeability, evinced by the fact that Rule 3004, unlike former Rule 303, does not limit the types of claims that may be submitted. Fed. R. Bankr. P. 3004 advisory committee’s note 1983.

In *Barker*, this Court implicitly evaluated the possibility of a Rule 3004 submission via informal claim. *See Barker*, 839 F.3d at 1197.

The Court did not reject the argument for lack of a formal proof of claim form; rather, the Court evaluated the facts and found that the debtor's schedules did not constitute a proof of claim and that the debtor had not made the required "additional showing" to constitute a proof of claim.

Ibid.

The Court should hold that Rule 3004 is amenable to an informal proof just as Rule 3002 is.

- C. Debtor satisfied the requirement that she make an additional showing of her desire to include Appellant's claim in her Chapter 13 plan.**
- 1. Amici's focus on the amended bankruptcy schedules is myopic—Debtor amended her bankruptcy schedules to incorporate Appellant's detailed claim information and then amended her Chapter 13 plan to provide for payment of Appellant's claim.**

Amici are correct that amendment of the Debtor's bankruptcy schedules *alone* would not be sufficient to constitute an informal proof of claim. But Debtor did not merely amend her schedules.

Barker makes clear that a debtor must do something more than merely submit bankruptcy schedules to demonstrate their intent to include the claim in their plan. *Barker*, 839 F.3d at 1197. And this debtor did.

Debtor affirmatively included Appellant's claim, based on the detailed proof of claim submitted and her amended schedules, in her amended bankruptcy plan. (AOB at 9–11.) At the same time, Debtor excluded all other unasserted claims from her Chapter 13 plan. Including just one unasserted claim in her plan, to the exclusion of all other unasserted claims, and submitting it for approval by the court is a clear demonstration of intent to “include [the] unasserted claim in [her] Chapter 13 plan.” *Barker*, 839 F.3d at 1197.

Amici claim *Barker* requires the debtor to file a formal proof of claim form. (Amici at 15). Not true. The language on which Amici rely says nothing about a formal proof of claim form. Rather, *Barker* articulates two requirements for submitting under Rule 3004: (1) “an additional showing of their desire to include [the] claim in their Chapter 13 plan”; and (2) that showing is made “after receiving notice of which creditors intend to enforce their claims.” *Barker*, 839 F.3d at 1197.

Debtor received notice of the creditors who timely filed claims. (3-ER-225.) *Then*, Debtor amended her plan, twice, incorporating Appellant's update claim amount and dropping all other creditors who

did not file under Rule 3002. (AOB at 10–11; 3-ER-183 at § 3.14 [first amended plan]; 3-ER-176 at § 3.14 [second amended plan].) An additional showing, after notice of the timely Rule 3002 claims.

2. Amici’s discussion of the creditor intent requirement in *Barker* is ignores the material distinction between Rule 3002 and Rule 3004.

Amici are flat wrong in asserting that *Barker* “was decided directly contrary to [Appellant’s] argument.” (Amici at 13.) *Barker* was not decided on similar facts. *Barker* dealt with the debtor’s initial bankruptcy schedules and initial bankruptcy plan. That debtor did not file anything at all during the Rule 3004 period. *Barker*, 839 F.3d at 1197. As a result, Rule 3004 could not come into play. It is for that reason that *Barker* focuses on Rule 3002 and speaks to the creditor’s intent under Rule 3002.

Amici sidestep this fact, arguing instead that *Barker* “recognize[s] the need for the creditor to express intent to hold the estate liable.” (Amici at 8.) *Barker* does not recognize such a requirement for claims submitted under Rule 3004. To the contrary, *Barker* describes claims that are submitted under Rule 3004 as being previously “unasserted claims,” meaning claims where the creditor has not expressed intent to

hold the estate liable. *See Barker*, 839 F.3d at 1197 (contrasting “unasserted claims” with the claims of “creditors [who] to enforce their claims”). And the Court did not look to an expression of the creditor’s intent when evaluating Rule 3004 in *Barker*. The Court looked to the debtor’s intent under Rule 3004. *See Barker*, 839 F.3d at 1197 (“*Barker* [the debtor] never made this additional showing.”). Under Rule 3002, the Court looked at the creditor’s showing; under Rule 3004, the Court looked at the debtor’s. *Id.* at 1194, 1196–97.

Amici’s creditor-intent reading of *Barker* would nullify the express condition precedent to filing under Rule 3004—the absence of a timely creditor filing under Rule 3002. Amici’s take on *Barker* disregards the facts of that case and cannot be squared with Rule 3004’s plain language.

Rule 3002 focuses on creditor action. Fed. R. Bankr. P. 3002. Rule 3004 first requires the creditor took no timely action. Fed. R. Bankr. P. 3004. *Barker* quickly discarded Rule 3004 as a basis for recognizing the creditor’s claim, and focused on Rule 3002. The creditor intent requirement clearly exists applies to a Rule 3002 submission.

A creditor intent requirement has no basis in Rule 3004's language and Amici make no effort to explain how such a requirement could be plausibly fit read into Rule 3004. A claim submitted under Rule 3004 is valid without any creditor action whatsoever.

3. The validity of a claim submitted under Rule 3004 does not turn on the debtor's reason(s) for submitting the claim.

Amici ask the Court to explore the reasons why Debtor would submit Appellant's claim under Rule 3004 and speculate as to what reason she might have had for submitting Appellant's claim. (Amici at 17.) Rule 3004 does not impose a good cause or adequate reason requirement on Debtor and, as such, does not invite judicial inquiry into the reason for submitting a claim. Rule 3004 also does not limit the types of claims that may be submitted under it.

4. Amici admit that most of their arguments rest on rife speculation. If those arguments had any basis in fact, Debtor and her counsel would have raised them in the Bankruptcy Court.

Amici offer the Court a variety of possible explanations for why Debtor incorporated Appellant's detailed claim information, during the Rule 3004 period, into her amended schedules and amended plans.

(Amici at 18–20.) The problem with those proffered explanations is that none of them has any basis in fact.

Amici muse about why Debtor “likely” did one thing or another. (Amici at 18 [“she likely felt she had a duty”].) They comment on what “many chapter 13 trustees demand,” without substantiating that assertion or establishing that the trustee in this case made such a demand. (Amici at 19–20.) And they fault the record for not disclosing the reasons for Debtor’s plan amendments, hypothesizing that the trustee in this case was insistent. (Amici at 20.) In so doing, Amici admit that they are speculating, entirely. (Amici at 20 [“the record allows only speculation”].)

Amici conveniently do not address the fact that Debtor was represented by counsel in the Bankruptcy Court. (*See, e.g.*, 3-ER-161 [Notice of Opportunity for Hearing on amended plan].) If any of Amici’s proffered explanations had a basis in fact, Debtor and her counsel would have raised them in the Bankruptcy Court. Debtor also could have offered those explanations at the District Court or in her Response here. The record does not support Amici’s speculation because the facts do not support Amici’s arguments.

5. Amici’s concern about plan confirmability is a red herring.

Amici argue against the allowance of informal claims under Rule 3004 because an allowed claim might prevent a plan from being confirmed. That argument lacks merit in this case and in general.

Here, the plan funded whether or not Appellant’s claim was allowed. (3-ER-92–93 [“the numbers work whether or not they prevail on this objection”].)

The concern also does not apply more generally. A plan could be defeated based on timely Rule 3002 claims, yet the law recognizes informal proofs of claim under Rule 3002.

Rule 3004 also does not provide for the rejection of a proof of claim even if its allowance would render a plan unconfirmable. *See* Fed. R. Bankr. P. 3004. And, if a Bankruptcy Court is concerned that a pro se debtor inadvertently took action that could be interpreted as an informal proof—Amici’s “dangerous trap for unwary consumer debtors” (Amici at 19)—the Bankruptcy Court is well-situated to inquire as to whether a debtor actually intended to submit the claim, to determine whether the debtor made *Barker’s* additional showing.

The possibility that a plan might not be confirmable if a claim were to be allowed on informal proof under Rule 3004 is not a well-founded reason for interpreting similarly worded rules differently, especially when a formal claim under Rule 3004 could not be disallowed simply because it renders a plan unconfirmable. Amici's plan confirmability worry has no merit on the facts of this case and undermines long-standing rules of construction. To adopt Amici's result-oriented approach would be to protect against a worry that Rule 3004 does not inherently protect against. Otherwise, Rule 3004 would provide for disallowance of otherwise dischargeable claims that threaten plan confirmability.

6. Amici's attempt to recharacterize the plan amendment has no basis in fact or logic.

Amici argue that the plan amendments do not evidence Debtor's intent to include Appellant's claim in her plan because of standard language in the Chapter 13 plan form. (Amici at 15–16.) That argument turns the idea of debtor intent on its head.

Chapter 13 debtors are required to use a standard form consisting of boilerplate language. Here, Debtor used Local Form NDC 1-1. If the Northern District did not have its own local form, the use of Official

Form 113 would have been required. *See* December 2017 Committee Note to Official Form 113 (“Official Form 113 ... is the *required* plan form in all chapter 13 cases, except to the extent Rule 3015(c) permits the use of a Local Form.”).

In any event, Amici would have the Court divine Debtor’s intent from the boilerplate language in mandatory forms, rather than the plan content over which Debtor had actual control—the amount stated for claims to be paid under the plan. (Amici at 15–16 [suggesting the Court should look to the boilerplate language in section 3.01 of the court-mandated form for an expression of Debtor’s intent].)

Amici cannot avoid the simple fact that Debtor was represented by counsel, received notice of the Rule 3002 claims, incorporated Appellant’s detailed claim information into her amended schedules, and submitted two amended plans during the Rule 3004 period, in which she indicated her intent to pay Appellant’s claim through the plan and excluded all other non-3002 claims.

IV. CONCLUSION

Allowance of informal proofs under Rule 3004 is consistent with this Court’s interpretation of Rule 3002 and the policy underlying

Rule 3004. The Court should hold that informal proofs are allowable under Rule 3004, should find that a timely informal proof was submitted in this instance, and reverse the lower courts with instructions to overrule the objection in the Bankruptcy Court and allow Appellant's claim.

Dated: March 25, 2025

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CERTIFICATE OF COMPLIANCE

9th Cir. Case No. 24-5156

I certify that this brief contains 2,765 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief complies with the word limit of Cir. R. 32-1.

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